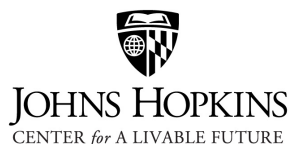


# Putting Local Food Policy to Work for Our Communities

2<sup>nd</sup> edition

**A Legal Toolkit from the Harvard Law School Food Law and Policy Clinic**

**September 2017**



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# INTRODUCTION

Local food advocates are playing an increasingly important role in transforming local and national food policies. These advocates have spearheaded efforts to create food systems that are healthy, sustainable, and transparent. Their efforts have helped to spur demand for locally grown foods, garner support from governments for local food producers, and increase consumer access to healthy foods. In many cases, innovative policies at the local level have served as models for national policy change over the past decade. For example, providing “double the bucks” incentives for food assistance program dollars spent at farmers markets, offering financial incentives for healthy food retailers to locate in underserved areas, banning trans fats from the food supply, and requiring calorie labeling on restaurant menus all originated as local initiatives. The past decade has seen a surge in the number of individuals engaging with local food policy, and an increasing number of cities and counties have formalized their commitment to food policy by hiring food policy coordinators as governmental officials.

Many individuals have found ways to make their voices heard in food policy by establishing or joining local food policy councils. When we published the first version of this toolkit, *Good Laws, Good Food: Putting Local Food Policy to Work in Our Communities* in 2012, there were 204 food councils in the United States. In just four years, the number of councils has increased to 243.<sup>1</sup> Local food advocates, whether through their food policy councils, or through increased attention to and engagement in local food policy decision-making, have made much progress over the past five years to build healthy and sustainable food systems. This toolkit is intended to educate, inspire, and empower these local food advocates and local food policy councils across the United States to continue building healthier and more sustainable communities. While much of the toolkit is similar to the 2012 version, this updated version includes new ideas, examples, and sections.

In updating the toolkit, we reviewed each section to ensure that previous examples were still relevant, provided cutting edge new examples, and highlighted new issue areas. With this updated version, we also made some broader changes, including:

- ❖ Adding a full section, Section VI: Procurement, to explore opportunities for public and private institutions to leverage their procurement dollars for good. Increasingly, institutions have sought to harness their purchasing power to support local and regional producers, healthier foods, environmentally-sustainable production methods, and fair labor practices.
- ❖ Adding a full section, VIII: Decreasing and Recovering Wasted Food, dedicated to tackling the problem of wasted food. In the United States, we waste nearly 40% of food. This wasted food contributes to greenhouse gas emissions and results in economic waste. Increasingly, local advocates are developing innovative solutions to reduce food waste and incentivize food recovery.
- ❖ Further exploring trends that were still nascent in 2012, such as food hubs and healthy corner store initiatives.
- ❖ Identifying trends that are likely to take off over the next five years, such as ethical sourcing of foods produced with animal welfare and fair labor practices.

This toolkit is geared towards local food policy councils and local food advocates—those who have identified a challenge or opportunity within their community’s food system and want to make an impact through policy change. This toolkit provides a starting place to understand the basic legal concepts surrounding local food

<sup>1</sup> Lily Sussman and Karen Bassarab, *Food Policy Council Report 2016*, JOHNS HOPKINS CT. FOR A LIVABLE FUTURE 14 (2017).



There are a number of tools from the Harvard Law School Food Law and Policy Clinic and the Johns Hopkins Center for a Livable Future that local food advocates can use to identify their policy priorities and to evaluate the resources available in their community. For example:

### **Food Policy Rating Criteria**

This tool provides a list of criteria to evaluate the feasibility of various local food policy interventions.

### **Get it Toolgeth​er: Assessing Your Food Council's Ability to Do Policy Work**

Intended for food policy councils, this online toolkit helps councils to gain a better understanding of what the policy process entails and to evaluate how effectively they work on food policy.

### **What's Cooking in Your Food System? A Guide to Community Food Assessment**

This guide provides information to support the development of a Community Food Assessment—a tool and a process for gathering information about what is happening in a local food system to inform policy solutions for positive change in that system.

### **Good Laws, Good Food: Putting State Food Policy to Work for Our Communities**

This toolkit, originally released in 2012, is intended to serve as a reference for food policy councils, food advocates, state policymakers, and non-profit entities. This state food policy toolkit focus on state policy, meaning the laws and policies that are created at the state level, and on state systems of production, distribution, and consumption.

**Sources:** Mark Winne, *Food Policy Rating Criteria*, JOHNS HOPKINS CT. FOR A LIVABLE FUTURE, available at <http://www.foodpolicynetworks.org/food-policy-resources/?resource=969>; Anne Palmer and Larissa Calancie, *Get it Toolgeth​er: Assessing Your Food Council's Ability to Do Policy*, JOHNS HOPKINS CT. FOR A LIVABLE FUTURE (2017), [https://jhsph.co1.qualtrics.com/SE/?SID=SV\\_6qYZ6idMhnruBD&Q\\_JFE=0](https://jhsph.co1.qualtrics.com/SE/?SID=SV_6qYZ6idMhnruBD&Q_JFE=0); Kami Pothukuchi, et al., *What's Cooking in Your Food System? A Guide to Community Food Assessment*, COMMUNITY FOOD SECURITY COALITION (2002), available at [https://assets.jhsph.edu/clf/mod\\_clfResource/doc/What%E2%80%99s%20Cooking%20in%20Your%20Food%20System1.pdf](https://assets.jhsph.edu/clf/mod_clfResource/doc/What%E2%80%99s%20Cooking%20in%20Your%20Food%20System1.pdf).

systems, develop a base of knowledge about the main policy areas, and discover examples and innovations from other localities.

## ABOUT THIS TOOLKIT

### **Intended Audience**

This toolkit can help 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. 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 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 was followed by a state-level food policy toolkit, *Good Laws, Good Food: Putting State Food Policy to Work for Our Communities (2012)*<sup>2</sup>, which provides more specific guidance, opportunities, and examples for state food policy advocates and state level policy change. These food policy toolkits are intended as part of a greater set of information to help advocates and food policy councils with their formation and success.

<sup>2</sup> HARVARD LAW SCHOOL FOOD LAW & POLICY CLINIC, *GOOD LAWS, GOOD FOOD: PUTTING STATE FOOD POLICY TO WORK IN OUR COMMUNITIES* (Nov. 2012), available at <http://www.chlpi.org/wp-content/uploads/2013/12/FINAL-full-state-toolkit.pdf>.



## Using the Toolkit

This document is intended to serve as a reference for exploring different food policy issue areas and levers for policy change. To get the most out of this 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 locality. This toolkit aims to provide an overview that is broad enough to be applicable to most localities; however, some recommendations may not be appropriate for your locality. Make sure that the policy strategies that you decide to pursue fit within your community's legal structures, priorities, and resources.
- ❖ Use this toolkit piece-by-piece. This toolkit covers a variety of food policy issues, and is not necessarily intended to be read cover-to-cover. Each section aims to give as complete a summary as possible of a food policy issue area. 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 toolkit in one sitting. We have tried to indicate the places where there is overlapping information between sections and you may need to jump between sections in order to get a more complete perspective.
- ❖ Read, digest, and explore. We have attempted to include sufficient detail to meaningfully inform readers, but also acknowledge the need to keep this toolkit to a manageable size. We hope that this toolkit provides a strong foundation for learning about the governmental, legal, and environmental factors, among others, that shape local food policy. We have included textboxes that reference other resources that may be useful for advocates.

## What's Inside

This toolkit is composed of eight sections that cover a range of food policy topics that advocates may wish to explore. Each section is generally self-contained, and can be read on its own 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 make 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 that can be important partners and stakeholders for policy change.



### Section II

**Food System Infrastructure** describes the important role of facilities and services throughout the food system—from production, processing, distribution, retail sales, marketing, to food waste management. This section recommends policies that advocates can use to spur development in each segment of the food system.



### Section III

**Land Use Planning and Regulation** gives a broad overview of zoning and land use concepts as they relate to local food policy. 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 increasing the accessibility of healthy foods.





#### Section IV

**Urban Agriculture** provides a variety of tools for advocates to support urban agriculture initiatives in their communities. 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 and Consumer Demand** addresses increasing access to healthy food from three different vantage points: bringing healthy food into communities, bringing communities to healthy food, and changing consumer behavior. This section covers a vast array of solutions, including farmers markets, mobile vending, grocery stores, public transportation, food labeling, and taxing unhealthy items.



#### Section VI

**Procurement** addresses how public and private institutions can adopt procurement policies that favor local and regional producers, as well as fair labor practices, environmentally-sustainable production methods, and humane treatment of animals. 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

**School Food and Nutrition Education** details the ways in which advocates can work with their local school districts to improve access to and the nutritional quality of school meals. This section also includes information on how advocates can support effective nutrition education initiatives, which can be critical for increasing student demand and enjoyment of healthier meals.



#### Section VIII

**Decreasing and Recovering Wasted Food** gives advocates a number of tools for addressing the problem of wasted food—from preventing food waste, to promoting food recovery, to supporting food recycling. While it is important that advocates encourage their localities to intervene at all stages to reduce the amount of food that is wasted in their communities, this section encourages advocates to pursue policy strategies that address the root causes of excessive food waste.



## ABOUT THE AUTHORS

This toolkit was researched and written by the Food Law and Policy Clinic at Harvard Law School, in close partnership with the Center for a Livable Future at Johns Hopkins Bloomberg School of Public Health.



The **Harvard Law School Food Law and Policy Clinic**, a division of the Center for Health Law and Policy Innovation, is an experiential teaching program at Harvard Law School that links law students with opportunities to work with clients and communities on various food law and policy issues. The clinic strives to increase access to healthy foods, assist small and sustainable farmers in breaking into new commercial markets, and reduce waste of healthy, wholesome food, while educating law students about ways to use law and policy to positively impact the food system. For more information, visit <http://www.chlpi.org/flpc>.

The report was authored by the following staff in the Food Law and Policy Clinic: Emma Clippinger, Ona Balkus, Christina Rice, Annika Nielsen, and Emily Broad Leib. The following Clinic students and interns contributed significant research and writing to this toolkit: Jennifer Benson, Jabari Brown, Alyssa Chan, Robin Cheng, Goliath Davis, Erika Dunyak, Daniel Edelstein, Meaghan Jerrett, Joshua Komarovsky, Michelle Maley, Brandon Marsh, Caitlin Matthews, Lee Miller, Sydney Montgomery, Eliza Pan, Olivia Smith, Henry Thomas, and Dominique Trudelle.



**JOHNS HOPKINS**  
CENTER *for* A LIVABLE FUTURE

Since 1996, the Johns Hopkins **Center for a Livable Future** has been addressing some of the most pressing issues in the food system while advancing public health and protecting the environment. As an interdisciplinary academic center based within the Bloomberg School of Public Health, the Center for a Livable Future is a leader in public health research, education policy, and advocacy that is dedicated to building a healthier, more equitable, and resilient food system. For more, visit: [www.jhsph.edu/clf](http://www.jhsph.edu/clf).

Support for this project was provided by the following staff at the Center for a Livable Future: Anne Palmer, Karen Bassarab, and Raychel Santo.



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## SECTION I: GENERAL LEGAL SETTING

*One of the first things that advocates will want to understand is how their local government is structured and what kinds of food policy laws and regulations are possible at the local level. This section explains the breakdown between federal, state, and local authority, how to determine the authority that a city government has, and some of the local government agencies that will be relevant to food policy work.*

In this section . . .

1. The Interplay between Federal, State, Local, and Tribal Law
2. How Local Governments Get the Authority to Act
3. Other Checks on Local Government: State General Laws and State Preemption
4. How Federal, State, Local, and Tribal Law Affects Food Policy
5. How Local Governments are Organized
6. Partnering with Local Government and Local Agencies

### 1. The Interplay between 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 may not directly govern those areas. In the areas in which the federal government has authority to govern, federal laws generally override state laws; at the same time, if there is no applicable federal law, states are often free to act in that area.

The interplay between state and local governments works slightly differently. Local governments do not have any express authority under the U.S. Constitution. Local governments only have the power given to them by their state under its constitution or statutes. Thus, while all states have the same amount of authority under the federal government, the amount of authority that states give local governments varies from state to state and sometimes from city to city within the same state. Because there is so much variation, this toolkit cannot lay out all of the specific authorities given to local governments in each state, but it will provide advocates with some tools to help identify different types of authority.

The interplay between Native American tribal governments and state or federal government is slightly more complicated. In the United States, Native American tribes 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.”<sup>1</sup> This 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.”<sup>2</sup> Tribal laws cannot be overridden—or preempted—by state laws, but they can be overridden by federal laws. State law can only override tribal law when Congress has explicitly given that state the authority to override tribal law within that specific area.<sup>3</sup> As the focus of this toolkit is on local government, its analysis of tribal government is limited. Those who are working in Navajo Nation should refer to FLPC’s 2015 toolkit, *Good Laws, Good Food: Putting Food Policy to Work in Navajo Nation*.<sup>4</sup>

In order to change a law or regulation, advocates must first understand whether the law or regulation originates at the local, state, or federal level. Even if advocates seek to work in a general policy area and it is not clear whether there is an applicable law or regulation that needs to be changed, it is still important to understand whether the local government has the authority to act in that policy area.

**Local** governments may pass laws and regulations when they are authorized by the state government to do so. Oftentimes, localities can pass ordinances that impose more stringent requirements than state law. For example, local governments have made great strides in creating nutrition standards for vending machine foods on government property. While California requires that 35% of vending machine food sold on government property must meet state nutrition standards,<sup>5</sup> **Los Angeles**,<sup>6</sup> **Monterey**,<sup>7</sup> and **San Diego**<sup>8</sup> require that 100% of vending machine food sold on government property must meet those standards. In states, such as Florida and Illinois, that do not have nutrition standards for vending machine food sold on government property, local governments, such as **Palm Beach County, FL** and **Chicago, IL**, have created their own nutrition standards for vending machine foods.<sup>9</sup>

## KEY TERMS

**Municipality:** A city or town with corporate status and its own government

**Statute:** A law enacted by a legislative body

**Ordinance:** Legislation enacted by a municipal authority

**Regulation:** How laws are implemented – agencies develop, implement, and enforce regulations

**Preemption:** A situation where a law enacted by a higher authority takes precedence over a law enacted by a lower authority

If it is a **state law or regulation**, you should identify whether your local government has the power to pass a local law affecting how that state law or regulation is implemented. This may depend on how much power has been delegated by the state to your 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. For example, in **Wyoming, Tennessee**, and **Florida**, state governments have preempted local government action with regards to urban beekeeping, meaning local governments do not have the authority to pass laws related to urban beekeeping.<sup>10</sup> Even if the law or regulation at issue was implemented at the state level, keep in mind that you can work with other advocates and stakeholders to affect change at the state level.

If it is a **federal law or regulation**, you should, as with a state-level regulation, identify whether your local government has the power to pass a local law affecting how that federal law or regulation is implemented at the local level. Local governments sometimes have the authority to impose stricter regulations and laws than the ones at the federal level. It is more difficult to affect change at the federal level, but it is not impossible. Local advocates would benefit from forming or joining coalitions of other advocates and stakeholders from around the country in order to affect change at the federal level.



### Key Takeaways:

Advocates must identify the level(s) of government most relevant to the particular issue in order to determine the likelihood of achieving policy change, and consequently, whether they should devote time and resources to the topic.

## 2. How Local Governments Get the Authority 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 legislature must explicitly give local governments authority to take action on specific issues. Second, state laws can always preempt local governments from taking action on specific issues. Third, statewide rules and regulations must generally be followed in all localities.

Advocates 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, advocates should be aware of the restrictions their municipality faces with regards to its ability to enact certain laws or regulations.<sup>11</sup>

### Overview: Dillon's Rule & Home Rule

In general, local governments have no inherent authority under the U.S. Constitution. States grant authority to local governments through one of two mechanisms: Dillon's Rule or Home Rule. Generally speaking, Dillon's Rule gives local governments limited powers, while Home Rule provides local governments with broader powers. However, the specific authority that local governments derive from their state's grant of authority varies greatly from state to state, and sometimes even from locality to locality. In addition to determining whether their state follows Dillon's Rule or Home Rule, advocates should understand how their state's grant of authority affects the specific food policy issue or area they seek to address.

### Dillon's Rule

States that operate under Dillon's Rule generally provide a narrower grant of power to local governments. Dillon's Rule is derived from an 1872 ruling by Judge John Dillon of the Iowa Supreme Court, who determined that local governments are simply extensions of state governments.<sup>12</sup> Dillon's Rule holds that local governments only have powers expressly given to them by the state. Specifically, such powers must be:

- ❖ "First, those granted in express words;
- ❖ Second, those necessarily or fairly implied in, or incident to, the powers expressly granted; and
- ❖ Third, those essential to the declared objects and purposes of the corporation—not simply convenient, but indispensable."<sup>13</sup>

In a Dillon's Rule State, 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 local government does not have that power.<sup>14</sup> States that are considered Dillon's Rule states generally depend on the state legislature to pass legislation, so-called *enabling statutes*, that give localities the authority to act with regard to a particular issue. An enabling statute is a "law that permits what was previously prohibited or that creates new powers."<sup>15</sup> Absent enabling legislation, municipalities might not have the authority to take on certain food policy issues. For example, Maryland, a Dillon's Rule state, passed enabling legislation in 2014 authorizing Maryland counties and the City of Baltimore to pass tax credits for urban agriculture.<sup>16</sup>

### Home Rule



Home Rule is a broad grant of power from the state to municipalities. Home Rule 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. States with Home Rule delegate authority to municipalities through either the state constitution or a statute.<sup>17</sup> Home Rule powers are shaped by the specific language of that delegation or its interpretation by state courts.<sup>18</sup> While most states now have some form of Home Rule authority,<sup>19</sup> its particular form varies greatly from state to state.<sup>20</sup>

The majority of Home Rule states also give municipalities permission to enact a *Home Rule Charter*, the local government's "organizational plan or framework, analogous to a constitution," which is created by the locality and adopted by popular vote.<sup>21</sup> A Home Rule authorization may allow a local government to make and enforce laws in specified areas, such as local police and sanitation,<sup>22</sup> or it may give a local government broad authority to make laws over any local matter that is not expressly preempted by state law.<sup>23</sup> When it is unclear what constitutes a "local matter," the state legislature (if Home Rule was granted through legislation) or state courts (if Home Rule was granted through the state constitution) interprets the exact scope of the local government's power.<sup>24</sup> Unlike Dillon's Rule, under Home Rule, when authorization is vague, many states assume that municipalities *have* power, unless it is explicitly denied.<sup>25</sup> However, advocates should be aware that, when a state constitution has provided broad Home Rule authority, this authority may be further defined by supplemental state statutes.<sup>26</sup>

Not only do states allow varying amounts of power depending on the particular area of the law, 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.<sup>27</sup> Further, states such as Arizona, Missouri, and Delaware require a minimum population size before a municipality can create a Home Rule Charter.<sup>28</sup> This means that certain cities are granted Home Rule authority while others are not.

### Key Takeaways:

A locality only has the authority that has been given to it by the state, either through broad Home Rule authority or an express grant of authority in a state enabling statute.

If a state is not a Home Rule state, advocates need to determine the types of authority and the areas of law that have been given to local governments via enabling statutes.

Even if a state is considered a Home Rule state, there may still be certain areas where Home Rule does not apply. Advocates must determine (1) if a specific locality has Home Rule authority, (2) if Home Rule applies to the area of law advocates 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, advocates should remember that the powers granted to a local government may not mirror the powers of local governments in other states (or even in other localities in the same state).

The possibility of state preemption always exists. Unless there is something in a 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.

### **Dillon's Rule and Home Rule**



Dillon’s Rule and Home Rule are not exclusive: states can follow Dillon’s Rule while still allowing some Home Rule authority, and vice versa. Further, while it may appear that localities in Dillon’s Rule states have less power, this is not necessarily true. North Carolina, for example, follows Dillon’s Rule, yet local governments have powers that are the same—and sometimes in excess of—local government powers in Home Rule states.<sup>29</sup> The particulars of how authority is delegated can be just as important as the Dillon’s Rule/Home Rule distinction.

### 3. Other Checks on Local Government: State General Laws and State Preemption

States can further constrain local government authority by passing general state laws that affect localities and by passing state laws that preempt local laws.

#### **State Laws of General Impact**

Because state laws apply across the state, they will always have an impact on localities. For example, when a state sets a state sales tax, everyone in that state must comply with the tax. Local governments cannot amend or eliminate the state 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**

States always retain the power to block local governments from acting on certain issues through preemption. Preemption occurs when the state government passes a law that establishes that the state has exclusive authority over an issue, barring the possibility of local action on that issue. 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.<sup>30</sup> (Note: federal law can also preempt state law and, thereby, also preempt local law. For purposes of this section, however, we will only focus on state preemption of local laws.)

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

- ❖ In **Mississippi**, the state legislature passed a bill that took away the authority of local communities to create or enforce any regulation, other than the state’s, regarding any food nutrition or consumer incentive items, e.g., fast food toys.<sup>31</sup> Such state preemption would bar local ordinances similar to the **San Francisco, CA** ban on giving away toys with meals, like fast food kids meals, that do not meet certain nutrition standards.<sup>32</sup>
- ❖ In **Iowa**, the state legislature preempted local legislation regarding any animal feeding operation. The law prohibits all Iowa counties 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.”<sup>33</sup> The statute has been interpreted broadly. The Iowa Supreme Court ruled that a **Worth County, IA** ordinance that sought to regulate CAFOs for public health purposes was “expressly preempted by the state statute.”<sup>34</sup>
- ❖ In **Cleveland, OH**, after the city passed an ordinance banning restaurants from using trans-fat, the Ohio Senate quickly added an amendment to the state budget preempting local municipalities from regulating the ingredients used by fast food eateries.<sup>35</sup> Unlike the other examples, however, a state court held that this preemption was unconstitutional under the Ohio state constitution.<sup>36</sup> Ultimately, this regulation was preempted by the federal government’s ban on trans-fat, which accomplished the same goal on a national level.<sup>37</sup>

Local advocates should confer with state-level advocates when proposing controversial laws in order to gauge



the likelihood of the state passing preemption legislation. In order to successfully pass controversial local legislation, local advocates should work with state and national allies. Advocates should be aware that state preemption clauses are often “‘snuck in’ through last-minute maneuvers” and “vigilance is often necessary to avoid an unexpected loss of local control.”<sup>38</sup> In order to combat this, advocates can also ask for “savings clauses” in state enabling legislation, which expressly permit localities to pass ordinances that go beyond state law.<sup>39</sup>

## 4. How Federal, State, Local, and Tribal Law Affects Food Policy

As described above, federal, state, local, and tribal governments all have distinct powers. However, a range

**TABLE I-1: ROLE OF VARIOUS LEVELS OF GOVERNMENT IN FOOD POLICY**

ISSUE	FEDERAL LEVEL	STATE LEVEL	LOCAL LEVEL
<b>FOOD SAFETY</b>	The Food and Drug Administration (FDA) creates the FDA Food Code, a model food safety code that has been adopted in some form by all 50 states and the District of Columbia. <sup>40</sup> The USDA directly regulates food safety for meat and poultry processing, <sup>41</sup> and the FDA regulates farms and food manufacturing and processing facilities through the Food Safety Modernization Act (FSMA). <sup>42</sup> The federal government also has some food recall authority. <sup>43</sup>	State governments implement laws and regulations affecting restaurants and retail stores, based on federal guidance. All 50 states have adopted a modified version of the FDA Food Code. <sup>44</sup> States can create their own meat and poultry processing inspection regime, but it must be at least as stringent as the federal regime. <sup>45</sup> Forty-two states have adopted “cottage food laws” which allow for the production and sale of non-potentially hazardous foods made in home kitchens. <sup>46</sup>	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. Local governments are often allowed to have stricter regulations than the states, but cannot have more lenient regulations.
<b>LAND USE AND ZONING</b>	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. <sup>47</sup>	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.
<b>GEOGRAPHIC PREFERENCE IN FOOD PROCUREMENT</b>	Food purchased using federal dollars, such as meals under the National School Lunch Program (NSLP), must follow federal procurement guidelines. Federal law authorizes schools using NSLP dollars to prefer food grown locally. <sup>48</sup> 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. <sup>49</sup> 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. <sup>50</sup> When using state funds or local funds, they may give preference to local food if authorized under the relevant state or local authority.





**TABLE I-1: ROLE OF VARIOUS LEVELS OF GOVERNMENT IN FOOD POLICY (CONTINUED)**

ISSUE	FEDERAL LEVEL	STATE LEVEL	LOCAL LEVEL
<b>FOOD LABELING</b>	The federal government regulates ingredient and nutrition labeling for all packaged foods that travel in interstate commerce (i.e., go across state lines). <sup>51</sup> Federal law also regulates calorie labeling of chain retail food establishments and chain vending machine operators. <sup>52</sup>	States are preempted from enacting calorie labeling laws for packaged foods or chain restaurants/vending machines, as these are regulated by federal law. However, states may, in limited areas, require additional label information <sup>53</sup> (if it is not covered by applicable federal laws) and regulate labeling for non-chain restaurants. <sup>54</sup>	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 regulate labeling for non-chain restaurants or for items other than calories (see, e.g. NYC sodium rule). <sup>55</sup>
<b>FOOD ASSISTANCE BENEFITS</b>	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 the case of WIC, authorizing 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.
<b>FOOD WASTE</b>	The federal government offers tax incentives for food donations, and the Bill Emerson Good Samaritan Act provides liability protection to food donors.	Many states also provide tax incentives and good Samaritan protections to food donors. State governments may have date labeling laws and food safety regulations that restrict past-date sale or donation of otherwise safe foods. Some states have also passed organic waste bans. <sup>56</sup>	Local governments can provide education and guidance on federal and state laws. Some cities have passed organic waste bans, where the state has not acted. School districts can implement food waste prevention policies, like going trayless and changing the timing of lunch periods.

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 [How Local Governments Get the Authority to Act](#), 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, a specific local government plays in these issues, advocates should talk to the local government, local partners, or an attorney.

## 5. How Local Governments are Organized

It is important to consider the structure of a local government when organizing a food policy council. Most Americans 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 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. 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 3,031 counties and 19,519 municipal governments in the United States, there are also dozens of joint city-county governments, in which cities and their surrounding counties have consolidated government functions.<sup>57</sup> 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.<sup>58</sup> One unique example of regional governance is **Metro**, the elected regional government of the greater **Portland, OR** area; it serves three counties and 24 cities.<sup>59</sup> Metro manages regional transit, helps control urban sprawl into rural areas, and is responsible for solid waste, including composting.<sup>60</sup>

Advocates should start by determining whether the relevant local governmental body is a city council, county government, or some sort of consolidated city/county government.

## 6. Partnering with Local Government and Local Agencies

In order to create enduring food systems change, advocates must work closely with their local governments. Advocates find that educating local government officials about food policy and developing these relationships can yield significant positive returns over time.

In addition to the local legislative bodies, like city or county councils mentioned above, cities usually have an elected official, like a mayor. Importantly, local governments have agencies that administer local laws and also create their own regulations, policies, and programs. Advocates should seek to develop close relationships with these agencies and their officials as they can play a significant role in shaping the local food system. Key agencies and officials include boards of health and health departments, economic development agencies, planning commissions and planning departments, and transportation authorities. Some cities also have food policy directors/coordinators, positions dedicated to working on food policy, who would be important partners to include in any food policy advocacy activity.

### **Food Policy Directors**

While many government agencies shape food policy, there is no single “food agency” at the federal, state, or local level. The lack of coordination among agencies engaged with the food system often slows progress. In order to combat this lack of coordination, several local governments have created the position of “food policy director,” housed in a local agency or the mayor’s office. Food policy directors are responsible for coordinating and implementing comprehensive food policies for their localities. Food policy directors can be key allies because they are uniquely positioned to draw attention to food policy issues and convene key government actors.<sup>61</sup>

A number of cities, including **Baltimore**,<sup>62</sup> **New York**,<sup>63</sup> **New Haven**,<sup>64</sup> **Boston**,<sup>65</sup> **Madison**,<sup>66</sup> **Washington, D.C.**,<sup>67</sup> and **San Francisco**,<sup>68</sup> have added food policy specialists to their municipal administrations. 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 government’s commitment to food policy. Advocates should not only strive to work with their local food policy director, but should also encourage their local government to establish the position if it does not already exist.

### **Boards of Health and Health Departments**

Boards of health comprise elected or appointed officials who are responsible for ensuring the provision of adequate public health services in their communities. There are approximately 2,800 such agencies across the country.<sup>69</sup> These boards assess their communities’ health needs in order to develop policies and programs to meet those needs.<sup>70</sup> Health departments then implement these policies and programs.<sup>71</sup> The different roles assigned to boards of health and health departments vary from place to place, so it is important to research





how they operate in your locality.<sup>72</sup>

Boards of health can be instrumental in starting and sustaining local food policy councils. For example, in **Buffalo, NY**, the Erie County Board of Health created the Buffalo Food Policy Council as a subcommittee of the Board of Health.<sup>73</sup> The City of Buffalo Common Council also passed a resolution in support of the creation of the Buffalo Food Policy Council.<sup>74</sup> The Council advises the Erie County Board of Health on food systems issues.<sup>75</sup>

As rates of obesity and associated diet-related diseases increase, local boards of health and health departments are becoming increasingly interested in improving access to healthy foods and physical activity.<sup>76</sup> In **El Paso, TX**, the Department of Public Health passed an obesity prevention resolution focused on improving physical and nutritional health among community members.<sup>77</sup> The resolution has been implemented by a coalition that includes the Department of Public Health, the local school district, and regional nonprofits and focuses on providing nutrition and physical activity education programs.<sup>78</sup>

As another example, in **Boulder County, CO**, the Boulder County Board of Health partnered with local nonprofits and government agencies to lead a campaign to reduce sugar-sweetened beverage consumption.<sup>79</sup> The Boulder County Board of Health also unanimously passed a resolution that it would not take any in-kind or cash donations from the sugar-sweetened beverage industry.<sup>80</sup>

Boards of health may also be responsible for the development and maintenance of food safety regulations. While local food safety regulations are necessary to protect public health, outdated or poorly designed ones may negatively impact local businesses and farmers. It is important for advocates to stay abreast of local food safety regulations and partner with local boards of health and health departments to ensure that they protect the public health, but also allow the local food economy to develop.

### ***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.<sup>81</sup> Once these zoning and land use regulations are created, planning departments generally oversee their implementation.<sup>82</sup> Land use regulations significantly shape the way that food is produced, distributed, and consumed. As described further in [Section III: Land Use](#), such regulations can have a range of detrimental effects, including contributing to the loss of farmland, making it more difficult for grocery stores to locate in low-income areas, and allowing fast food restaurants to cluster in certain neighborhoods.<sup>83</sup> 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.<sup>84</sup> 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. By contrast, through thoughtful planning, land use ordinances can bolster local food systems by including food system goals in formal comprehensive plans, involving food system advocates on committees, requiring the creation of sustainability plans, and allowing for agriculture and food vending in all zoning areas.

An effective way for advocates to foster food system change is to build coalitions with local planning commissions and planning departments. This will help to ensure that goals such as 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.<sup>85</sup> For example, the Cleveland-Cuyahoga County Food Policy Coalition in **Cleveland, OH**, worked closely with the Cleveland Planning Commission and the City Council to create opportunities for urban farming by modifying zoning classifications and creating an urban garden overlay district.<sup>86</sup> In **Siler City, NC**, the Pedestrian Master Plan provides an analysis of healthy food vendor access and makes recommendations to improve walkable access



to grocery stores.<sup>87</sup>

### **Transportation Authorities**

Transportation authorities 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. Advocates can work 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 some instances, local governments may consider subsidizing transportation to ensure healthy food access. For example, **Huntsville, AL** provides free bus passes for children to access free summer meal sites.<sup>88</sup> Alternatively, healthy food vendors can be brought to transportation hubs. In **Atlanta, GA**, the Metropolitan Atlanta Rapid Transit Agency (MARTA) hosts Fresh MARTA Market, a pop up farm stand, at four public transportation stations.<sup>89</sup> These competitively-priced markets feature fresh produce from local growers and offer incentives to double the value of SNAP dollars.<sup>90</sup>

### **Economic Development Agencies and Community Development Corporations**

Each state has at least one statewide economic development agency and often several local level agencies.<sup>91</sup> These agencies assist businesses in all stages of development, from start up to international expansion. Economic development agencies are a great tool for budding and established food enterprises and farms.<sup>92</sup> Community development corporations (CDC) take a more community-based approach and focus their resources on particular neighborhoods. CDCs might be particularly involved in organizing farmer's markets and other food access solutions. In the Lower Ninth Ward of **New Orleans, LA**, the Sankofa CDC has implemented several food access initiatives, including mobile markets, fresh food markets, and increased SNAP benefits for fresh produce.<sup>93</sup> These groups can be important allies in developing the local food economy and increasing access to fresh food retailers.

### **Other Potential Partners**

In addition to these local agencies, there are many state agencies that can also have a significant impact in food policy at the local level. In particular, local advocates should seek to develop relationships with their state's department of agriculture, department of education, and department of health. In addition, there are various government-affiliated or private local institutions, such as prisons, hospitals, schools, and universities, that can have a considerable effect on local food system economies. As discussed in more detail in [Section VI: Procurement](#), advocates can work with these institutions to encourage them to adopt procurement policies that favor local foods.



## Endnotes

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- <sup>10</sup> Jaime Bouvier, *How Cities are Responding to the Urban Agriculture Movement with Micro-Livestock Ordinances*, 47 THE URBAN LAWYER 85, 110 (Winter 2015), [https://papers.ssrn.com/sol3/papers2.cfm?abstract\\_id=2681319](https://papers.ssrn.com/sol3/papers2.cfm?abstract_id=2681319) [https://perma.cc/P9JN-JY7K].
- <sup>11</sup> 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 Cnty. v. Lowder*, 711 P.2d 273 (Utah 1985).
- <sup>12</sup> Hugh Spitzer, *‘Home Rule’ vs. ‘Dillon’s Rule’ for Washington Cities*, 38 SEATTLE U. L. REV. 809, 813 (2015), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2595265](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2595265) [https://perma.cc/MNC4-69D6]; *Clinton v. Cedar Rapids & M. R. R. Co.*, 24 Iowa 455 (1868).
- <sup>13</sup> JOHN F. DILLON, TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS, § 55, 101 (1st ed. 1872).
- <sup>14</sup> Spitzer, *supra* note 12, at 816 (quoting JOHN F. DILLON, TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS, § 93, 136 (1st ed. 1872)).
- <sup>15</sup> *Statute*, BLACK’S LAW DICTIONARY (10th ed. 2014).
- <sup>16</sup> MD. CODE, TAX–PROP. § 9-253 (2014).
- <sup>17</sup> HOWARD LEE MCBAIN, THE LAW AND THE PRACTICE OF MUNICIPAL HOME RULE 658 (1916).
- <sup>18</sup> Frayda S. Bluestein, *Do North Carolina Local Governments Need Home Rule?*, POPULAR GOVERNMENT 15, 16 (Fall 2006), <http://www.iog.unc.edu/pubs/electronicversions/pg/pgfal06/article2.pdf> [https://perma.cc/WYK7-JNRC].
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- <sup>20</sup> *See* SAMUEL B. STONE, HOME RULE IN THE MIDWEST, INDIANA UNIV. PUB. POLICY INST. 4 (July 2010), [http://policyinstitute.iu.edu/uploads/PublicationFiles/PC\\_HmRules\\_Web.pdf](http://policyinstitute.iu.edu/uploads/PublicationFiles/PC_HmRules_Web.pdf) [https://perma.cc/5LVL-M5RN].
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- <sup>23</sup> N.M. CONST. art X, § 6D (provides authority over any local matter that is “not expressly denied by [the state’s] general law or [the municipality’s] charter.”).
- <sup>24</sup> *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); *see also 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 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).
- <sup>25</sup> Spitzer, *supra* note 12, at 822.



26 MCBAIN, *supra* note 17.

27 See DALE KRANE ET AL., HOME RULE IN AMERICA: A FIFTY-STATE HANDBOOK (2001).

28 *Id.*

29 Bluestein, *supra* note 18, at 17.

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 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 MISS. CODE ANN. § 75-29-901 (2013).

32 S.F., CAL., HEALTH CODE 8-471.4 (2010).

33 IOWA CODE § 331.304A(2) (1998).

34 *Worth County Friends of Agriculture v. Worth County*, 688 N.W.2d 257 (Iowa 2004).

35 *Foods Containing Industrially-Produced Trans Fat Restricted*, CLEVELAND CODIFIED ORDINANCES § 241.42 (2012); OHIO REV. CODE ANN. § 3717.53 (2014).

36 *City of Cleveland v. State of Ohio*, 989 N.E.2d 1072 (Ohio Ct. App. 2013).

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38 AMERICAN PUBLIC HEALTH ASSOCIATION, IMPACT OF PREEMPTIVE LAWS ON PUBLIC HEALTH (2015), <http://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2016/01/11/11/08/impact-of-preemptive-laws-on-public-health> [<https://perma.cc/42SR-BMAT>].

39 *Id.*

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41 21 U.S.C. §§ 601–695 (2014); 21 U.S.C. §§ 451–472 (2014).

42 FDA Food Safety Modernization Act, Pub. L. No. 111-353, 124 Stat. 3885 (2011).

43 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 21 U.S.C. §§ 451–471 (2014); 21 U.S.C. §§ 601–695 (2014). 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. §§ 301–399 (2016). 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) (1996); 21 U.S.C. § 342(a)(2)(B) (2005).

44 *Real Progress in Food Code Adoptions*, *supra* note 40.

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48 7 C.F.R. 210.21(g) (2016).

49 As of 2015, at least 37 states had passed legislation allowing purchasing preferences for in-state agricultural products. HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC, INCREASING LOCAL FOOD PROCUREMENT BY MASSACHUSETTS STATE AGENCIES 51-53 (2015), [http://www.chlpi.org/wp-content/uploads/2013/12/Increasing-Local-Procurement-by-Massachusetts-State-Agencies\\_FINAL\\_FULL-REPORT.pdf](http://www.chlpi.org/wp-content/uploads/2013/12/Increasing-Local-Procurement-by-Massachusetts-State-Agencies_FINAL_FULL-REPORT.pdf) [<https://perma.cc/M9PS-TLE9>].

50 7 C.F.R. 210.21(g) (2016).

51 21 U.S.C. §§ 341 et seq. (2015).

52 21 U.S.C.A. § 343(q)(5)(H) (2010).

53 See e.g., ALASKA STAT. § 17.20.040(a)(12) (2005) (requiring the labeling of farm-raised seafood products).

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## SECTION II: LOCAL FOOD INFRASTRUCTURE

*Local food infrastructure encompasses the entire food supply chain: production, processing, distribution, retail sales, marketing, and food waste management. Without reliable facilities and services, local food systems cannot reach their full potential. Advocates 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 economy. This section walks through the supply chain and recommends policies at each stage that advocates can use to spur development and improve outcomes.*

In this section . . .

1. Community Food Assessments
2. Production
3. Processing
4. Aggregation and Distribution
5. Retail
6. Food Waste Management
7. Using the Food System to Foster Economic Development

### 1. Community Food Assessments

Advocates can work with local governments and local agencies to conduct a community food assessment (CFA). A CFA is a tool for analyzing the elements of the local food supply chain, including food production, processing, distribution, consumption, waste management, and all associated regulatory institutions and activities. The data collected through a CFA can provide local advocates with the information that they need to identify specific gaps or weaknesses in the current food system, make informed decisions for developing successful food system programs, strengthen local community networks, increase awareness and understanding of food-related issues, promote health, and preserve local wealth.<sup>1</sup> Because CFAs can require a significant amount of time and effort, partnerships with local governments and agencies can provide important support.

Advocates in localities across the country have undertaken community food assessments, using them as an opportunity to build coalitions and raise awareness about local food systems and challenges.

- ❖ In **Fairfax County, VA**, the Fairfax Food Council undertook a CFA in collaboration with a broad coalition that included the Fairfax County Health Department and George Mason University.<sup>2</sup> The



CFA was funded through a grant from the Kaiser Permanente of the Mid-Atlantic States Community Benefit Program.<sup>3</sup> The Fairfax Food Council formed three new working groups in response to the CFA's findings: food access, community gardens, and food literacy.<sup>4</sup>

- ❖ In **Clackamas County, OR**, the Oregon Food Bank and the University of Oregon/AmeriCorps Resource Assistance Program for Rural Environments partnered to conduct a CFA with support from a private foundation.<sup>5</sup> Because Clackamas County is largely rural, the CFA focused on challenges surrounding rural farming and infrastructure.<sup>6</sup>

There are several resources available to help advocates get started with a CFA, such as *The Economics of Local Food Systems: A Toolkit to Guide Community Discussions, Assessments and Choices* published by the Agricultural Marketing Service of the U.S. Department of Agriculture (USDA).<sup>7</sup> This toolkit contains seven modules that walk through the steps of assessing the economic impacts of local food system activities. Organizations have also produced location-specific guides for CFAs that could serve as a model for guides in other areas. For example, the Northwest Arkansas Regional Food Council published the *Northwest Arkansas Regional Food Assessment*,<sup>8</sup> and the Oregon Food Bank published *The State of Our Community Food System*,<sup>9</sup> summarizing the process and results of their CFAs.

## 2. Production

Advocates can promote various strategies and policies that improve the ability of local farmers to grow and produce food. This includes examining local resources (including natural, production, and management resources) that can impact local food productivity, the economy, and the environment. This toolkit focuses on urban agriculture and community gardening, but it is important to keep in mind that local advocates can also support food production in suburban and rural areas. While there are fewer barriers to food production outside of urban areas, advocates can still work with local governments in rural and suburban areas to improve access to land and to incentivize food production. Since the challenges faced in different areas are likely to be unique, we recommend that local advocates convene focus groups or conduct interviews with key stakeholders in order to learn what barriers may exist for local food production.

### **Agricultural Resources**

Agricultural resources include seeds, soil, water, sunshine, fertilizer, pesticides, herbicides, human labor, machinery, and energy.<sup>10</sup> Policies surrounding agricultural resources can foster a more robust local economy, further local environmental protection goals, and support community building and self-sufficiency. Robust agricultural resource management policies contribute to the sustainable use of natural resources and the environment, which can have a significant impact on the long-term economic viability of communities.<sup>11</sup> For more information about agricultural resources, see *Agricultural Resources and Environmental Indicators, 2012 Edition*.<sup>12</sup>

Noncommercial seed sharing is a great example of how advocates can make inputs more readily available. Most state seed laws impose burdensome testing and labeling requirements for seeds for commercial sales.<sup>13</sup> While noncommercial seed saving is usually exempt from such laws, some seed laws have ambiguous language that may subject noncommercial seed sharing to the same regulations as seeds for commercial sales.<sup>14</sup> The Save Seed Sharing Campaign led by the Sustainable Economies Law Center raises awareness about seed saving and advocates for the clarification of ambiguous state laws in order to make it easier for seed sharing programs to operate.<sup>15</sup> The Campaign website includes tips for local advocates who want to create laws and policies that protect and promote seed sharing.<sup>16</sup>

- ❖ **Reform unfavorable state seed laws:** One strategy for local advocates to encourage seed sharing is





through supporting reforms to ambiguous or unfavorable state seed laws.

- ♦ In December 2014, the **Duluth, MN** City Council passed a resolution urging for reform of the Minnesota Seed Law to “support the sharing of seeds by individuals and through seed libraries” by exempting such sharing from the law’s labeling, testing, and permitting requirements.<sup>17</sup> This resolution, in conjunction with grassroots campaigns, helped to persuade state legislators to amend the state seed law to permit community-based seed sharing in May 2015.<sup>18</sup>
- ❖ **Support seed libraries:** Another way to promote seed sharing is through seed libraries, which are community-based organizations that provide free access to seeds, promote saving and sharing, and educate the public about the importance of seeds and genetic diversity in the food system. There are over 450 seed libraries across the United States.<sup>19</sup> Many seed libraries are run out of local libraries, such as those in **Omaha, NE**,<sup>20</sup> **Pittsburgh, PA**,<sup>21</sup> **Magnolia Springs, AL**,<sup>22</sup> and **Pima, AZ**.<sup>23</sup> Seed libraries can also serve as a community resource. For example, Richmond Grows Seed Lending Library in **Richmond, CA** provides an extensive online resources library on seed saving and also offers hands-on gardening courses.<sup>24</sup>

### **Urban Agriculture**

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. Animal husbandry and bee-keeping are also methods of production that are gaining popularity in local food systems. Especially in urban areas, advocates are working to amend zoning codes to allow for increased production opportunities in urban areas. Urban agriculture can help increase food access, encourage entrepreneurial food production, foster community building, improve air quality, and reduce energy costs associated with the transportation of food over long distances.<sup>25</sup>

More detailed information on policies to promote urban food production are located elsewhere in this toolkit. [Section III: Land Use Planning and Regulation](#) features information on how local zoning codes can allow and encourage agriculture production in urban areas and [Section IV: Urban Agriculture](#) identifies additional policy strategies to assist urban farmers in accessing the resource and markets they need to succeed.

## **3. 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 and extend the shelf life of locally produced foods, as well as increase farmers’ 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.<sup>26</sup> Increased pay not only encourages more individuals to grow and produce food, but it also has an economic multiplier effect on the community, meaning that it benefits the community because more money is available to be spent locally.<sup>27</sup> In addition, processing allows for increased utilization of raw commodities and livestock, which means the community 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), meat and poultry slaughter and processing facilities (including mobile processing facilities), and 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 around shared-use processing facilities, and a summary of its findings is shown in the box on the next page.<sup>28</sup>



### 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),
  - producer 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 can impede development of and investment in small-scale facilities at the local level; and
- 4) the 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*, CENTER FOR ENVIRONMENTAL FARMING SYSTEMS, <http://ncsustainablefood.wordpress.com/working-issue-groups/processing-food-systems-infrastructure> [<https://perma.cc/HJ9X-L9YY>] (last visited June 12, 2017)

Often, food processing capacity is one of the weakest links in the local food system, so this is an area where advocates can play a big role. Some tasks that advocates 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 create state meat and poultry slaughter inspections, as allowed under federal law,<sup>29</sup> and for legislation that allows for mobile poultry and meat slaughtering;
- ❖ Encouraging local and state governments to provide financial support for community kitchens, shared processing facilities, and kitchen incubators.

### Mobile Slaughter Units

Constructing a slaughterhouse that complies with USDA requirements is extremely expensive. Mobile Slaughter Units (MSUs), while still expensive, are a potential solution for rural producers who want to process and sell their meat to local consumers. A MSU can serve multiple small producers in areas where slaughter services might be unaffordable or unavailable. Because MSUs travel to farms, they can reduce the transportation costs for farmers. MSUs, which often consist of a trailer with a processing room and a cooler room, are also less expensive to build than a fixed location slaughter facility.<sup>30</sup> The first step is to determine what state law allows and what restrictions your locality places on mobile slaughtering; laws and regulations—and their interpretation—can vary greatly from state to state, and county to county.<sup>31</sup> The **Montana Poultry Growers Co-Op** initially faced challenges with its MSU operation because of “the wildly disparate interpretations of the regulations from county to county.”<sup>32</sup>

The USDA offers webinars on how to develop MSUs that are compliant with meat and poultry slaughter and



processing regulations.<sup>33</sup> A USDA-inspected MSU must be approved by the USDA district office and comply with the USDA requirements for any slaughter facility, with the notable exceptions that slaughter and bleed-out may occur outside.<sup>34</sup> Moreover, an MSU must comply with any existing state slaughter and processing laws. MSUs can be somewhat expensive to outfit and operate, but federal, state, and private resources are available to defray the cost. Advocates can work with their local governments to apply for grants and otherwise invest in MSUs.

- ❖ In rural **Sullivan County, NY**, the Sullivan County Agricultural Local Development Corporation received a \$50,000 Rural Businesses Opportunity Grant from USDA to hire a consultant to develop a meat processing facility.<sup>35</sup>
- ❖ In **Taos, NM**, the Taos County Economic Development Corporation (TCEDC) received a grant from the State of New Mexico and the First Nations Development Institute for its MSU.<sup>36</sup> The TCEDC also operates a hang-and-age and a cut-and-wrap facility, and has a refrigerated truck for meat transportation.<sup>37</sup> These services allow local ranchers in northern New Mexico to provide markets with locally grown meats.

### **Shared-Use Commercial Kitchens**

A shared-use kitchen is a certified commercial kitchen space that can be used by a range of small and mid-sized producers and processors. Shared-use kitchens provide numerous benefits, from supporting the local economy by providing a boost to entrepreneurs to increasing access to locally-grown and made products. Advocates can help to secure space and funding for shared-use kitchens.

- ❖ In **Douglas County, KS**, the Douglas County Food Policy Council and Douglas County Extension teamed up to rebrand the county's community kitchen, which had been in existence since 2005, and make it more attractive to larger users by detailing the kitchen's facilities, policies, and rates on a revamped website.<sup>38</sup>
- ❖ In **Pasco, WA**, the Pasco Specialty Kitchen received initial funding from the U.S. Department of Commerce Economic Development Administration, North American Developmental Bank, and a Community Development Block Grant.<sup>39</sup> The kitchen is owned by the City of Pasco, Pasco School District, and the City of Pasco community/economic development fund provides extra support.<sup>40</sup>

## **4. Aggregation and Distribution**

As small and mid-sized farmers respond to increasing demand for local food by scaling up production, they need to move beyond direct sales of small quantities to larger wholesale transactions with restaurants, supermarkets, and other institutions.<sup>41</sup> It is important for local food systems to establish robust aggregation and distribution sectors that foster these larger transactions, helping farmers provide fresh food at lower prices to both individuals and institutions.<sup>42</sup> Since many communities currently lack these vital regional aggregation and distribution systems, it is important for municipalities to think about supporting such systems.<sup>43</sup>

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.<sup>44</sup>



## Food Hubs

Food hubs serve as a critical bridge between smaller producers and larger, regional markets. USDA defines a food hub as “a business or organization that actively manages the aggregation, distribution, and marketing of source-identified food products primarily from local and regional producers to strengthen their ability to satisfy wholesale, retail, and institutional demand.”<sup>45</sup> Fresh fruits and vegetables often make up the majority of food hubs sales, but meat and dairy products are also common, as well as value-added products such as jams and dried fruits.<sup>46</sup> Food hubs can have numerous benefits, including increasing the viability of small producers, creating new businesses and jobs, keeping money in the local economy, and increasing access to healthy foods.<sup>47</sup>

As of June 2017, USDA’s Agricultural Market Service includes 187 food hubs in its national directory.<sup>48</sup> These food hubs vary greatly in their size, years of operation, core functions, business models, and legal structure.<sup>49</sup> Food hubs generally operate according to one of three models: 1) wholesale (aggregates and delivers large-volume food orders to other distributors), 2) direct-to-consumer (connects farmers with end-consumer community members), and 3) hybrid (combines elements of several operational models, such as by selling products both directly to end-consumers and to wholesale clients).<sup>50</sup> Wholesale markets include grocery stores, local restaurants, schools, and other institutions, while direct-to-consumer models include community supported agriculture (CSAs), online retail, and home delivery.<sup>51</sup> In addition, food hubs can be classified according to five different legal structures: nonprofit, for-profit, cooperative, publicly owned, and other.<sup>52</sup> This classification is important for determining which funding options are available.

Increasingly, food hub advocates are considering how to transform food hubs into centers of food system activity beyond aggregation and distribution, and how to incorporate food hubs into larger redevelopment plans for cities and towns. Advocates should be aware that such food hubs are often ambitious endeavors, requiring significant financial resources and buy-in from numerous stakeholders.

- ❖ In **Baltimore, MD**, the city announced the development of a food hub as a \$23.5 million historic renovation project that will, among other things, “bring new life to a brownfield site in a disinvested urban area.”<sup>53</sup> The Baltimore Food Hub’s 3.5 acre campus, which started construction in 2016, will include job training, teaching and commercial production kitchens, space for food manufacturing, an urban farm, and an all-seasons market.<sup>54</sup>
- ❖ **West Louisville, KY**’s ambitious \$35 million FoodPort was canceled, despite over two years of planning and support among city councilors, when a key partner and tenant, a vertical farming company, pulled out of the project.<sup>55</sup>

For more information on food hubs, advocates should visit the USDA **Food Value Chains and Food Hubs** webpage, which includes an extensive collection of resources and research related to food hubs.<sup>56</sup>

Advocates help bring food hubs to their communities or support existing food hubs in the following ways:

- ❖ *Working with the local government to conduct a feasibility study.* In **Knoxville, TN**, the Knoxville-Knox Metropolitan Planning Committee and the University of Tennessee received a grant from USDA’s Local Food Promotion Program to undertake a food hub feasibility study.<sup>57</sup> The study concluded with the recommendation that “a dedicated full-service food hub *not* be initiated at this time and that smaller incremental steps could be taken to increase the existing connections between supply and demand.”<sup>58</sup> By conducting a feasibility assessment, local advocates and policymakers can determine the likelihood of a prospective food hub’s success and make decisions accordingly.
- ❖ *Hosting outreach and awareness-raising events.* In **Douglas County, KS**, the Douglas County Food Policy Council co-hosted a food hub workshop with the Kansas Health Foundation, USDA Rural



Development, and Kansas Farmers Union.<sup>59</sup> The Council also worked with the Greater Kansas City Food Policy Coalition to design a food hub feasibility study.<sup>60</sup> The Northeast Kansas Food Hub has since found a location in **Lawrence, KS** and is accepting grant applications.<sup>61</sup>

- ❖ *Encouraging the government to incorporate food hubs into broader city planning activities.* In **New Haven, CT**, the New Haven Food Policy Council encouraged the government to include plans and zoning for a food hub in revisions to the City of New Haven's Comprehensive Plan.<sup>62</sup>
- ❖ *Working with the government to apply for grants and make other investments.* In a 2015 survey of 143 food hubs, securing access to capital was one of the top three challenges they faced.<sup>63</sup> After completing a food hub feasibility assessment, the Northwest Hills Council of Governments in **Northwest, CT** voted to supply the matching funds needed to complete a USDA Local Food Promotion Program grant to launch a food hub.<sup>64</sup>
- ❖ *Endorsing laws, regulations, policies, and programs that support regional aggregation and distribution.* The 2015 food hub survey found that over two-thirds of food hubs prefer that their producers and suppliers have Good Agricultural Practices (GAP) and/or Good Handling Practices (GHP) certification; however, nearly one-third of hubs also reported that meeting these food safety certifications was a challenge for their producers.<sup>65</sup> Advocates can help identify food safety certification opportunities for small producers. For example, Cherry Capital Foods, a local foods distributor in **Traverse City, MI**, joined a pilot program to provide GroupGAP certification to local producers.<sup>66</sup>

### **Online Marketplaces**

Online platforms that connect small producers to wholesalers and consumers have also started to emerge. MarketMaker ([www.foodmarketmaker.com](http://www.foodmarketmaker.com)), a non-profit established at the University of Illinois at Urbana-Champaign, is "an ever-growing partnership of Land Grant Universities, Departments of Agriculture, and food agriculture organizations investing in a coordinated effort to build a virtual infrastructure that brings healthier, fresher, and more flavorful food to the average consumer."<sup>67</sup> MarketMaker's extensive database connects producers, buyers, and customers to facilitate relationships across the production and distribution chain. With over twenty state partners, MarketMaker also builds custom databases for states to explore state-specific markets, producers, informational articles, and other resources.<sup>68</sup> Another more regionally-based example is FoodHub ([www.food-hub.org](http://www.food-hub.org)), which currently operates in the Western United States.<sup>69</sup> Membership is free and FoodHub's nearly 7,000 members include buyers, sellers, distributors, and other local food experts.<sup>70</sup>

## **5. 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.<sup>71</sup> Finally, government agencies, schools, universities, hospitals and other institutions are purchasing local food more than ever before. Advocates 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.

### **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.<sup>72</sup> 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.

- ❖ The Crescent City Farmers Market in **New Orleans, LA** estimates that it contributed \$11.66 million to the local economy in 2012, with \$6.66 million spent at the farmers market and an estimated \$5 million spent at local businesses by farmers market customers.<sup>73</sup>

Advocates 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
- ❖ 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).

For more information about farmers markets, see [Section V: Consumer Access and Consumer Demand](#).

### **Mobile Vending**

Mobile vending encompasses everything from mobile farmers markets and mobile grocery stores to food trucks and produce carts. Mobile markets are generally renovated trucks or trailers that bring fresh produce, household staples, and prepared foods into underserved neighborhoods with food deserts.<sup>74</sup>

- ❖ The Gorge Grown Mobile Market in the **Columbia River Gorge region of OR and WA** sells fresh locally-grown produce in a low-income rural community where 10% of the population uses food stamps.<sup>75</sup>

Food trucks and food carts consist of 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 even have the potential to become full-fledged, brick and mortar restaurants. There are many online resources that provide general knowledge on how to start a mobile food business, including the **U.S. Small Business Administrations'**

### **Mobile Food Stores**

**Minneapolis, MN** used to only allow mobile food stores to sell pre-packaged foods and operate only in designated senior citizens' high-rise apartments. Luckily, the city amended its mobile vending ordinance in 2014 to expand the authorized locations of mobile food stores and expand the selection of healthy foods.

- 295.30. - *Place of sale limited.*
  - o No sales of food or other products shall be made from any mobile food store upon the city streets, alleys or public ways, and sales of food from such mobile food stores shall be limited to parking lots accessory to commercial, industrial, or high-density residential properties, with the written permission of the property owner or manager.
- 295.40. - *Foods permitted to be sold.*
  - o (a) The licensee shall sell only prepackaged staple foods as defined by section 203.10 of this Code and fresh produce approved by the commissioner of health.

**Source:** Minneapolis, City Code of Ordinances, Title 13, Chapter 295: Mobile Food Stores, [http://library.municode.com/mn/minneapolis/codes/code\\_of\\_ordinances?nodeId=COOR\\_TIT13LIBURE\\_CH295MOFOST\\_295.40FOPEBESO](http://library.municode.com/mn/minneapolis/codes/code_of_ordinances?nodeId=COOR_TIT13LIBURE_CH295MOFOST_295.40FOPEBESO) [<https://perma.cc/XT2L-NTXZ>] (last visited June 12, 2017).





resources,<sup>76</sup> and the **Food Truck Legal Toolkit for Boston, MA.**<sup>77</sup>

Mobile vending not only makes fresh food accessible to people with few other options, but can also increase revenue by providing an outlet for sales of locally-produced foods outside of the immediate community. Mobile food vending generates approximately \$650 million in revenue annually.<sup>78</sup> More importantly, mobile markets and food trucks are often less costly to create than stationary restaurants or grocery stores, offering an avenue of business development for new entrepreneurs.

There are various ways for advocates 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 a centralized and more streamlined permitting process for mobile vending businesses;
- ❖ Identifying and creating centralized locations where mobile vendors can gather and vend;
- ❖ 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.

### **Grocery Stores**

Many communities do not have an appropriate site or the necessary market capacity to support a large supermarket. In these areas, residents 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 food hubs, 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. For more information about small retail outlets, see Section V: Consumer Access and Consumer Demand.

Although large retailers are not well-suited to all communities, they may nevertheless critically shape the local food infrastructure. Large retailers are especially important to healthy food financing initiatives. Primarily at the state level, though also at the national and local levels, healthier food retail legislation aims to draw full-service grocery stores and supermarkets to underserved communities. These large retail outlets may not only promote access to nutritious food, but also increase local retail activity, employment rates, and property values.<sup>79</sup>

- ❖ **New Orleans, LA** instituted the Fresh Food Retailers Initiative, which gives loans to supermarkets, grocery stores, and other fresh food retailers improving access to fresh food. The \$14 million in funds come from \$7 million in Disaster Community Development Block Grant money, matched dollar for dollar by a private financing organization.<sup>80</sup>
- ❖ In **New York, NY**, the Departments of Health and City Planning and the city's Economic Development Corporation created the Food Retail Expansion to Support Health (FRESH) program in 2009 to provide zoning and financial incentives for grocery stores in low-income neighborhoods that dedicate certain amounts of retail space to fresh produce and other nutritious foods.<sup>81</sup> The incentives, which include



required parking space and real estate tax reductions, have resulted in 13 FRESH stores available to the public to date.

- ❖ Similar initiatives can encompass small retailers. For instance, in 2008, **Minneapolis, MN** enacted its Staple Foods Ordinance, which requires licensed food retailers—including grocery stores, corner stores, gas stations, dollar stores, and pharmacies—to sell a specified amount of basic foods, such as fruits and vegetables, whole grains, eggs, and low-fat dairy.<sup>82</sup> In 2014, the Minneapolis City Council amended the ordinance to provide more comprehensive and clear standards for food retailers.<sup>83</sup>

## 6. Food Waste Management

Approximately 40 percent of food in the United States goes uneaten,<sup>84</sup> this food waste costs about \$218 billion annually to grow, process, transport, and dispose<sup>85</sup> and comprises approximately 20% of our fresh water, crop land, and fertilizer usage.<sup>86</sup> Reducing food waste can thus lower economic, environmental, and social costs, while also helping to feed food insecure households. While food waste reduction efforts can and should be undertaken at every level, food recovery and recycling efforts particularly depend on adequate infrastructure.

### **Food Waste Recovery**

Food recovery solutions aim to rescue surplus food and redistribute it to those in need. This is critical as estimates show that redistributing just 30% of all wasted food would be sufficient to feed food insecure Americans their total diet.<sup>87</sup> Currently, food recovery and anti-hunger organizations across the U.S. recover and redistribute nearly 1.7 million tons of food each year,<sup>88</sup> yet barriers to food donation and, in many cases, a lack of infrastructure still prevent millions more from being recovered. Food recovery efforts often involve harvesting, washing, and sorting surplus produce on farms, processing or preparing food for donation, storing and transporting donations and, when necessary, reconditioning the food to ensure it complies with federal, state, and local quality and labeling laws.<sup>89</sup> Many of these processes depend on infrastructure, such as refrigerated trucks, processing facilities, kitchen equipment, storage, and apps that connect donors and recipient organizations.

Local governments can encourage development of this infrastructure by providing grants or other funding. This support can allow food recovery and anti-hunger organizations to scale up their operations, ultimately increasing the amount of food they can recover and the number of people they serve. At the same time, these investments can spur local economies by generating new jobs in logistics and transportation, while also increasing access to wholesome foods and reducing food waste.<sup>90</sup>

- ❖ In **Thurston County, WA**'s Food Recovery Enhancement grant takes proposals from organizations with existing projects in order to enhance the countywide capacity of food donation, collection, and distribution.<sup>91</sup> Eligible organizations include food pantries, churches, and feeding programs.<sup>92</sup> A total of \$230,400 in funding is available to be awarded to organizations across the county.<sup>93</sup>
- ❖ The **Montgomery County, MD** Department of Health and Human Services and the Mead Family Foundation support the Community Food Rescue Mini-Grants Program for organizations looking to expand their food recovery initiatives.<sup>94</sup> The Community Food Rescue Mini-Grants Program awards small grants (\$5,000–\$20,000) to organizations looking to increase the capacity and infrastructure for food recovery.<sup>95</sup>

### **Food Waste Recycling**

While food waste prevention and recovery initiatives can significantly reduce food waste, some food will





inevitably end up uneaten. Currently, this food waste comprises the largest component of municipal solid waste in landfills nationwide,<sup>96</sup> where it produces at least 113 million tons of greenhouse gases each year.<sup>97</sup> It is thus crucial to support methods of food disposal that are economically and environmentally sustainable, minimizing the amount of waste that ends up in the landfill.

Advocates can support local policies (e.g., municipal organic waste bans, zero waste goals, and food waste prevention plans) that incentivize recycling of food scraps through composting or anaerobic digestion. Such policies can generate markets for alternate methods of food disposal, and effectively drive development of infrastructure and investment in waste recycling technologies.

- ❖ In **Austin, TX**, the Zero Waste Initiative seeks to reduce the amount of trash sent to the landfill by 90% by 2040.<sup>98</sup> As part of this Initiative, the city's Universal Recycling Ordinance requires food enterprises to establish programs to divert food scraps.<sup>99</sup> Beginning in October 2016, the largest establishments (greater than 15,000 square feet) must comply with the Ordinance, and by 2018 all food enterprises must be in compliance.<sup>100</sup>
- ❖ **New York City's** organic recycling mandate, which went into effect in July 2016, requires large<sup>101</sup> food service establishments, food manufacturers, and wholesalers to source-separate their organic material and arrange for its transportation.<sup>102</sup>

Advocates can also encourage local governments to work toward developing food waste recycling infrastructure themselves.

- ❖ Through a one-year pilot program, **Cambridge, MA** worked to develop a weekly curbside pickup program for food scraps. After a successful one year pilot program, the city was able to offer its free weekly curbside pickup of food scraps from 600 to 5,000 households, and expects to expand compost collection citywide in subsequent years.<sup>103</sup> During the first year of the pilot program, over 600 participating households collected over 170,000 pounds of food scraps using free curbside bins, in-house containers, and compostable bags.<sup>104</sup> Participating residents' food waste bins were picked up for free on the same day as trash and recycling. The average amount of organic waste collected was 6.6 pounds per household per week, reducing trash by nearly 35%.<sup>105</sup>

For more information about food waste management, see [Section VIII: Decreasing and Recovering Wasted Food](#).

## 7. Using the Food System to Foster Economic Development

Improvements to the local food system can have a significant 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, advocates 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 business development or expansion.<sup>106</sup> 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.<sup>107</sup>
- ❖ **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.<sup>108</sup>
- ❖ **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.<sup>109</sup>
- ❖ **Employment and Job Training Programs** aim to give workers the skills they need to receive high-quality employment opportunities and can help to prepare a workforce for new businesses in the community.<sup>110</sup>

### **Community Development Financial Institution Fund (CDFI Fund) & the New Markets Tax Credit Program (NMTC Program)**

CDFIs are “mission-driven financial institutions that take a market-based approach to supporting economically disadvantaged communities.” Run by the Treasury Department, the CDFI Fund provides certification programs, trainings, and technical assistance to CDFIs seeking to provide healthy food options in underprivileged communities. In 2015, the CDFI Fund awarded \$22 million in Healthy Food Financing Initiative (HFFI) Financial Assistance to CDFIs.

Also run by CDFI Fund, the NMTC Program provides tax credit (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. In 2016, the CDFI Fund financed over 5,400 businesses, generating \$8 million of private investment for every \$1 million of federal funding.

**Sources:** CDFI FUND, <http://www.cdfifund.gov/Pages/default.aspx> [https://perma.cc/X2G5-STKN] (last visited June 12 2017); *The CDFI Fund and the Healthy Food Financing Initiative*, CDFI FUND, [http://www.cdfifund.gov/Documents/CDFI7205\\_FS\\_HFFI\\_updatedJan2016.pdf](http://www.cdfifund.gov/Documents/CDFI7205_FS_HFFI_updatedJan2016.pdf) [https://perma.cc/9JKK-MXYC] (last visited June 12, 2017).

Improving every step of the supply chain—including production, processing, distribution, retail sales, and food waste utilization—helps to build a sustainable, robust, and healthy food system. As explained above, these improvements can spur economic growth and introduce 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 and thus prioritized by the local government.



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## SECTION III: LAND USE PLANNING AND REGULATION

*Land use planning and regulation is foundational to any food system. It can prohibit some activities and incentivize others, and generally shapes a community's relationship to its land. This section presents an overview of basic zoning and land use law concepts and discusses ways that advocates can improve the existing legal scheme to further their goals.*

In this section . . .

1. Local Authority to Regulate Land Use
2. Land Use Planning
3. Land Use Regulation
4. Land Use Planning and Regulation to Improve the Food Environment
5. Protecting Agricultural Land

### 1. Local Authority to Regulate Land Use

Government bodies undergo land use planning and enact land use regulations to control permissible uses of land.<sup>1</sup> State governments have the authority to enact these kinds of regulations through what is known as their general *police power*.<sup>2</sup> State governments, in turn, generally give local governments the authority to enact land use regulations. When a local government regulates land use, it is because the state government has delegated this power to the local government. For a more detailed explanation of how the state gives power to local governments, see [Section I: General Legal Setting](#).

This section covers the following 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. **Social and cultural impact of use**, including public spaces and urban agriculture.<sup>3</sup>

#### **Police Power**

Local governments derive the authority to regulate land use and development from the state's police power.<sup>4</sup> *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."<sup>5</sup> In the United States, the police power is a power of the states, *not* its municipalities. Before a municipality may use this power, the state must delegate it.





The police power is broad, yet limited by the Fifth and Fourteenth Amendments of the United States Constitution, which protect the rights of individuals.<sup>6</sup> 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.”<sup>7</sup> Courts generally will not question uses of the police power, unless they are clearly illegal.<sup>8</sup> Essentially, if there is a logical argument for why a particular land use regulation is permissible, a court will likely uphold it.

### **How Local Governments Get the Power to Regulate Land**

As described in more detail in [Section I: 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 for local governments to get the power to act in certain areas, including land use planning and regulation. While there is some variation, states generally delegate a significant amount of land use regulation authority to local governments. Local governments generally 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<sup>9</sup> (Dillon’s Rule), or
2. Constitutional or legislative acts of the state government to delegate police power, which expand municipalities’ power beyond land use regulation by giving them broad grants of power (Home Rule).

In states that delegate the police power through enabling statutes, in accordance with **Dillon’s Rule** (see [Section I: General Legal Setting](#)), localities *only* have the powers explicitly granted to them by the state. Most zoning enabling statutes are based on a model zoning enabling act (*A Standard State Zoning Enabling Act*) published by the federal government, though there may be some variations.<sup>10</sup> 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.”<sup>11</sup> 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.”<sup>12</sup> In other words, states that delegate the police power through enabling statutes generally give land use powers to local governments, but this does not mean that local governments have *absolute* power over land use.

On the other hand, if a city’s land use power comes from a general grant of **Home Rule** authority, 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 create 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.”<sup>13</sup> However, it is important to keep in mind that even if a 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 a city has a Home Rule Charter, the charter may simply require the municipality to follow state statutes.<sup>14</sup>

It is important to know how a municipality derives its land use power because any recommendations for changes to local planning and zoning 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 these distinctions will help you to optimize the time you spend in working to change local land use regulations.

However a municipality or county gets its authority to implement land use regulations, it must next enact codes or ordinances to utilize this power. This can take the form of comprehensive plans, zoning codes, zoning ordinances, subdivision regulations, environmental land use regulations, and other forms of land use rules.<sup>15</sup> The



next sections will introduce land use planning and some of the major types of land use regulations.

## 2. Land Use Planning

Before land use regulations are enacted and enforced, a municipality must make a plan for how the land will be used and laid out.<sup>16</sup> Through land use planning, a government guides development in pursuit of common goals and values.<sup>17</sup> The requirements for land use planning vary from state to state. Some states require local governments to engage in a formal planning process and create a “comprehensive plan,” also known as a “master plan” or “general plan.”<sup>18</sup> Such formal planning requirements, however, are the exception and not the rule.<sup>19</sup> Most courts have held that the planning requirement can also be met through zoning, as long as the zoning is comprehensive and demonstrates adherence to a well-thought-out plan.<sup>20</sup>

- ❖ **If a municipality is required to engage in formal land use planning**, the requirement will generally be found in state enabling legislation. The local government will need a comprehensive plan, which “makes predictions of needs and resources for an estimated future period, proposes goals for orderly growth and development, and suggests methods for implementation and achievement of those goals.”<sup>21</sup> Advocates should start by looking at their municipality’s comprehensive plan.
- ❖ **If a municipality is not required to engage in formal land use planning**, then planning must be evident in the municipality’s land use laws themselves. Zoning officials must have a “‘generalized conception’ of how the [zoning] power shall be used;” this can be evidenced in the zoning ordinances rather than in a separate plan.<sup>22</sup> Therefore, while a comprehensive plan is not required, the municipality’s zoning ordinances must be *comprehensive*, adhering to a well-thought-out plan. This is necessary because, if zoning is done in a piecemeal fashion, then the zoning code could be vulnerable to legal challenges.

### Comprehensive Plans

Even though a comprehensive plan may not be *required*, a local government may still have one and it may be considered legally binding. In order to determine if a municipality has a comprehensive plan, advocates should check their municipality’s code of ordinances or the local planning commission’s website. Generally, once a plan is adopted (whether required or not) it serves as a “constitution for all future development.”<sup>23</sup> 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; however, a legislative body, like a city council, may be able to overrule a planning agency by a super majority vote.<sup>24</sup>

For municipalities that have comprehensive plans, advocates should work with the local planning commission and legislative body to amend the plan to incorporate food system goals. Comprehensive plans can include a range of food-related goals, from the specific to the more general.

- ❖ The comprehensive plan for **Seattle, WA** requires at least one community garden for every 2,500 households in an urban village or neighborhood.<sup>25</sup>
- ❖ The comprehensive plan for **Milwaukee, WI** includes a natural resources policy plan, which highlights the growing momentum of urban agriculture in the city. It includes general policies to advance urban agriculture, such as: “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 vacant and underutilized properties in order to promote these beneficial uses.<sup>26</sup>



### **The Local Planning Commission**

States generally require that local land use planning be completed by an independent public commission, made up primarily of private citizens.<sup>27</sup> These commissions are often called *local planning commissions*. Planning commissions advise the local governing body (e.g., the city council) concerning land use development in the community. This advice usually takes two forms: (1) “the adoption of formal plans that serve as recommendations for the physical development and uses of land,” and (2) “reviewing requests for modifications to existing land use regulations through the enactment of amendments to the zoning ordinance.”<sup>28</sup> Local planning commissions generally do not have the authority to directly enact or modify land use regulations, as this power is reserved for the local city council or local legislative body.<sup>29</sup> Instead, planning commissions provide detailed guidance and advice for local governments.

### **Sustainability Plans**

Another avenue to formalize support for local food systems is a *sustainability plan*, which guides municipalities in setting and implementing target goals for greater environmental sustainability. Even though they do not necessarily carry the force of law, sustainability plans do signal a municipality’s support for and prioritization of such goals, making it easier for advocates to gather support for policy change. Food-related goals are often included in these plans as promoting local food and food systems can bolster sustainability. Advocates can encourage their municipality to create a sustainability plan if it does not already exist, or amend it to engage more food system stakeholders and goals.

- ❖ The **Baltimore, MD** City Council approved the Baltimore Sustainability Plan in 2009, which included goals for composting food waste and developing urban agriculture.<sup>30</sup>
- ❖ **Santa Fe, NM**’s sustainability plan, adopted in 2008, has a chapter devoted to creating a sustainable food system, including setting targets for local food and the development of a foodshed program.<sup>31</sup>
- ❖ The **Philadelphia, PA** Planning Council enacted a specific food system plan in 2011 to support the city’s goals of supporting local farmers and providing access to healthy food for all of its citizens.<sup>32</sup> The plan includes recommendations for improving access to affordable farmland, promoting nutrition education, and increasing farm to school programs, among others.<sup>33</sup>

## **3. Land Use Regulation**

Once a plan is in place, the plan is put into action through land use regulation. The core component of modern land use regulation is known as *zoning*. The words regulation and zoning are often used interchangeably, though land use regulation encompasses more than zoning. In this toolkit, we will use *zoning* in its limited sense to refer to the particular kind of land use regulation that involves breaking up a city or town into different zones and declaring only certain land uses or structures to be permissible in specific zones. The term *land use regulation* will refer to the more expansive idea of public control of land.

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 within certain districts. Regulations and allowed uses vary from district to district.<sup>34</sup> The general idea is that certain land uses are incompatible with each other and should therefore be separated into different districts.<sup>35</sup> The table below describes common zoning districts and their accompanying uses.



**TABLE III-1: EXAMPLE ZONING DISTRICTS & USES**

<b>Zoning District</b>	<b>Allowed Uses</b>
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 use	Allows uses that would usually be confined to separate zones; often includes mixed residential/commercial uses.

After dividing the land into zones, the zoning code declares what you can do and how you can do it in each zone. The zoning code regulates each zoning district through specific rules related to the “[re]construction, alteration, repair, or use of buildings, structures, or land within that district.”<sup>36</sup> It also regulates other aspects of buildings and land, such as bulk density, setbacks, and dimensions.<sup>37</sup> Most ordinances use a system called *permissive zoning*, in which the zoning ordinance lays out a definite list of permitted uses in each district. If a use is not expressly permitted in the ordinance, it is prohibited.<sup>38</sup>

Zoning 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 have an impact on the food system by not listing certain activities, such as food sales, as a legal commercial activity in certain zones, which would make selling food, such as at a farm stand, illegal. Zoning rules might also say what kinds of structures are allowed, which could exclude the construction of greenhouses or hoop houses. In addition, zoning might set limits on which animals, such as chickens or bees, can be kept on your property. [Section IV: Urban Agriculture](#) discusses some of these zoning challenges in more detail, but it is important to remember that most of these impediments result from land use regulations.

In 2013, **Boston, MA**, adopted Article 89, an urban agriculture zoning code that permits commercial urban agriculture within the city.<sup>39</sup> Article 89 was crafted over a two-year period with extensive research, working group meetings, and community input.<sup>40</sup> The city published a user-friendly guide, *Article 89 Made Easy*, to help explain the changes to the zoning code.<sup>41</sup> The amended code defines permissible urban agricultural activities, as well as requirements and restrictions for farm types, farm structures, signage, farming practices, market and sales, and animal husbandry (hens and bees).<sup>42</sup> For example, the amended zoning code allows ground-level commercial farms under one acre in all zones.<sup>43</sup> The Harvard Food Law and Policy Clinic released a guide, *Urban Agriculture in Boston*, to help urban growers navigate permitting and zoning for ground-level farms under one acre.<sup>44</sup>

The amended zoning code also includes a Comprehensive Farm Review (CFR),<sup>45</sup> which ensures that the scale of operations and farming activities are appropriate for the site and surroundings. The Boston Redevelopment Authority requires a CFR for farms with the highest potential impact on the surrounding areas, including ground-level farms greater than one acre, roof-level farms greater than 10,000 square feet, farms in more sensitive zoning areas (such as residential and historical), and roof-level farms with greenhouses.<sup>46</sup>

### **Nonconforming Uses and Variances**

It is important to keep in mind that zoning is prospective in nature and is, therefore, best suited for the regulation



## Rooftop Gardening

Rooftop gardening provides a host of benefits to urban communities, including improving air and water quality, lowering air and building temperatures, and adding beauty and green space to the area. One way to amend the zoning code in order to support rooftop agriculture is by altering restrictions on building height to allow for structures such as greenhouses. However, this also raises important issues, such as the visual impact or the safety of building roofs with additional weight added as a result of agricultural activities.

Article 89 of the **Boston, MA** zoning code categorizes urban farms as ground-level farms, roof-level farms, or freight container farms. Roof-level farms are further categorized as roof-level open air farms and roof-level greenhouses. Both types and all sizes of roof-level farms are allowed in large-scale commercial, industrial, and institutional zones. In residential and small-scale commercial zones, small roof-level open air farms are allowed and all other types and sizes of roof-level farms are conditional uses, meaning that they may be approved after a public hearing and approval by the Zoning Board of Appeals. **Chicago, IL**, permits urban rooftop farming in appropriate zones as long as a building permit and business license is acquired prior to construction.

**Source:** *Article 89 Made Easy: Urban Agriculture for The City of Boston*, BOSTON REDEVELOPMENT AUTHORITY 2, 5 (2014), <http://www.bostonredevelopmentauthority.org/getattachment/5579e854-b3c5-49e6-b910-fedaa2dd6306> [<https://perma.cc/A8RM-HEHB>]; City of Chicago, Urban Agriculture FAQ, [https://www.cityofchicago.org/city/en/depts/dcd/supp\\_info/urban\\_agriculturefaq.html](https://www.cityofchicago.org/city/en/depts/dcd/supp_info/urban_agriculturefaq.html) [<https://perma.cc/D2VJ-8XYW>] (last visited Jan 20, 2017).

of new uses of previously undeveloped land. But what if there is a preexisting land use or structure that does not meet the prospective zoning rules, such as a factory in an area that is being zoned for residential use? Under the general constitutional protections mentioned briefly above, the factory cannot be forced to shut down or relocate without paying compensation to the owner. 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.<sup>47</sup>

The concept of a nonconforming use limits the power of zoning.<sup>48</sup> For example, a new zoning ordinance that prohibited fast food restaurants near schools could not force an existing fast food restaurant to shut down; instead, the fast food restaurant would be grandfathered in as a nonconforming use. No new fast food restaurants could be built in the designated 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, which is determined by weighing the benefit to the public against the loss to the property owner.<sup>49</sup>

A *variance* is similar to a nonconforming use. It grants permission to do something otherwise not allowed by the zoning code in order to avoid hardship; it is a method for obtaining permission to violate a zoning regulation.<sup>50</sup> 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 of the external, public costs of a particular land use on the land user. 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.<sup>51</sup> However, since exactions have the potential to be unfair to the property owner, there are limits on exactions. The exaction must be directly related to the reason for which the local government could reject the development permit.<sup>52</sup> Also, the exaction must be roughly proportional to the impact of the proposed development on the problem the restriction addresses.<sup>53</sup>

One type of exaction that can have an impact on 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 legally require set-asides, the municipality should be sure to tie the open-space requirement to legitimate concerns related to the development.<sup>54</sup>

### **Flexible Zoning Techniques**

Since the 1950s, new forms of land use regulation have been developed with the goal of achieving greater flexibility than traditional zoning allows. These flexible zoning techniques are meant to create incentives for growth and development of the community, rather than just restrict certain uses.<sup>55</sup> Since flexible zoning techniques are less common than the traditional zoning forms discussed above, this section will not be useful to all advocates. This section is included to help you understand these terms if and when you come across them. Advocates have been experimenting with these tools to create new and creative ways to promote food system goals. Examples of flexible zoning techniques include:

- ❖ **Planned Unit Development (PUD)**, also known as *cluster development*, permits a developer to mix uses within a tract of land and to deviate from normal density requirements.<sup>56</sup> For example, while traditional zoning limits the number and density of residential units to one per lot, a PUD provision might permit units to be clustered in one portion of a tract, as long as the rest is left undeveloped such that the overall density remains the same.<sup>57</sup> This could allow a developer to create a cluster of denser residential housing, leaving open space 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 zones until they become fixed to a particular location.<sup>58</sup> The attachment of the floating zone is achieved through another zoning decision, usually called 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.<sup>59</sup> Incentive zoning allows higher densities or variations other than those permitted in the general zoning code, and, in return, developers must include certain features in their projects, such as public facilities or affordable housing.<sup>60</sup> 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 can then pick an option from each list. Examples of what a city could offer include a 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 healthy food retailer, community garden, or farmers market in the development plans.<sup>61</sup>
  - ♦ **New York City’s FRESH Program**, described in more detail below, offers zoning incentives, such as increased space and reduced parking requirements, to developers that include healthy food retailers in their development plans.<sup>62</sup>
- ❖ **Performance Zoning** regulates land uses based on how the use performs a particular function, such as traffic control and storm water drainage, instead of based on a specification standard.<sup>63</sup> For example, while 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, a performance standard would specify that run-off during storms is unacceptable, leaving it up to the farmer to decide which technique to employ. Specification standards are simpler to enforce, but performance requirements may encourage more innovation, as it





permits more flexibility for different uses within a single zone.

- ❖ **Overlay Zoning** can place new restrictions or add new uses on multiple, preexisting zoning districts through the creation of a new zoning district that “overlays” existing districts.
  - ♦ The **Cincinnati, OH** zoning code authorizes the city to create environmental quality districts (EQDs) on top of preexisting districts in order to protect the quality of the urban environment,<sup>64</sup> which includes both natural and 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 police power” to preserve the character of important neighborhoods.<sup>65</sup>

## 4. Land Use Planning and Regulation to Improve the Food Environment

Advocates can use the tools outlined above to achieve a variety of food system goals, such as creating more walkable neighborhoods and increasing access to healthy foods. This sub-section focuses, specifically, on land use and regulation policy strategies, but additional strategies can be found in [Section V: Consumer Access and Consumer Demand](#).

### Create More Walkable Neighborhoods

Many municipalities have enacted policies to encourage or maintain walkable neighborhoods, particularly as a means to promote easy access to food retailers. Municipalities can use *mixed-use zoning*, which allows multiple uses within one zone, to bring more grocery stores and restaurants into residential and commercial areas.<sup>66</sup> In addition, municipalities can incorporate walkability into formal planning processes and documents.

- ❖ The city of **Berkeley, CA** has a land use policy that includes the goal to “maintain and improve Neighborhood Commercial Areas as pedestrian-friendly and visually attractive areas that fully serve neighborhood needs.”<sup>67</sup>
- ❖ **Arlington County, VA**’s Development and Growth Goals include preserving and enhancing neighborhood retail areas that serve everyday shopping and service needs.<sup>68</sup>
- ❖ One of the guiding principles for **Cincinnati, OH**’s first comprehensive plan in over thirty years is to “preserve or create a pedestrian-scaled city.”<sup>69</sup>

### Reduce Barriers for Grocery Stores

Private property owners can place restrictions on how their property is used, such as disallowing grocery stores on their property. Such restrictions are called negative use restrictions. However, when “municipalities are interested in encouraging uses that benefit the public, and where these uses are in line with zoning, they can prohibit private owners from disallowing the use of their property for such uses.”<sup>70</sup> Advocates can encourage municipalities to include prohibitions against negative use restrictions in their zoning codes.

- ❖ **Madison, WI**,<sup>71</sup> **Chicago, IL**,<sup>72</sup> and **Buffalo Grove, IL**<sup>73</sup> have all amended their zoning codes to prohibit negative use restrictions on grocery stores.
- ❖ Advocates can also ensure that their municipality’s zoning code explicitly names grocery stores as a permitted use in mixed use districts. In **Destin, FL**, a 234-acre mixed-use zoning area did not include a grocery store because it was not a permitted use under the city’s zoning code.<sup>74</sup> Destin’s City Council debated an ordinance that would have amended the zoning code to allow “grocery stores” as a permitted use; however, it failed to pass.<sup>75</sup>



### ***Provide Incentives for Grocery Stores to Open in Under-served Areas***

In addition to removing barriers, municipalities can provide incentives for healthy food retailers to move into under-served neighborhoods. First, as described above in the Land Use Regulation: Zoning section, municipalities can use incentive zoning to get developers to come into underserved neighborhoods and create space for a farmers market or other food retailer. Municipalities can go even further to attract healthy food retailers, specifically.

- ❖ **New York City's "FRESH"** (Food Retail Expansion to Support Health) Program promotes grocery store development in under-served areas by combining both financial and zoning incentives.<sup>76</sup> In order to qualify for these incentives, developers must include a FRESH-certified food retailer in their plans. The criteria for FRESH certification includes "at least 30 percent of retail space for perishable goods that include dairy, fresh produce, fresh meats, poultry, fish and frozen foods" and at least 500 square feet of retail space for fresh produce.<sup>77</sup> For developers that include a FRESH-certified food store in their plans, zoning incentives include allowing additional residential floor area for mixed-used buildings; reducing the number of required parking spaces; and making larger stores permissible as-of-right in light manufacturing areas (eliminating the need for special permits and costly, lengthy review of proposals).<sup>78</sup>

### ***Reduce Barriers for Farmers Markets***

Farmers markets are an excellent way to increase food access quickly, as they require much less infrastructure than typical retail establishments. Advocates can encourage cities to facilitate the development of farmers markets by amending their municipality's zoning code to make farmers markets a permitted use within as many zoning districts as possible.

### ***Reduce Barriers for Mobile Food Vendors and Ensure They Promote Healthy Food***

Mobile food vendors 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. Advocates can educate entrepreneurs on 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. They can go one step further and work to ensure that mobile vendors offer healthy food options.

- ❖ In **Boston, MA**, the city's permitting rules require that, when food trucks 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: 3/4 cup of fresh fruits or fruits packed in own juice with no sugar added; 3/4 cup of fresh or frozen vegetables with no salt added; 8 oz low fat dairy option such as yogurt; whole grains; 2 oz reduced-fat or lean cut of meat that are grilled, broiled, or baked."<sup>79</sup> Food trucks that operate on public land are also required to join the "Rethink Your Drink" campaign, which aims to reduce the consumption of sugar-sweetened beverages.<sup>80</sup>
- ❖ Through the Green Carts Program, the **New York City** Department of Health and Mental Hygiene used the zoning code to create incentives for vendors who sell fresh fruits and vegetables in low-access neighborhoods. The city created a new vending permit class and established 1,000 Green Cart licenses for use in designated zones – neighborhoods that lack access to fresh produce.<sup>81</sup> The produce selection for each cart often reflects the cultural and dietary preferences of the neighborhood. Green Cart vendors can also request a free wireless EBT terminal in order to accept SNAP benefits.<sup>82</sup>

### ***Reduce Access to Unhealthy Fast Food Restaurants***

Municipalities can use zoning to influence where and how fast food restaurants are allowed to operate.<sup>83</sup> However, it is important to keep in mind 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. A number of strategies may be employed:



- ❖ Use *conditional zoning* to rezone a particular residential site to allow the development of all types of restaurants except fast food establishments.<sup>84</sup>
- ❖ Create *healthy zones* near schools, which limit the availability of fast food. Unlike efforts to use zoning to reduce fast food restaurants in the city generally, using zoning for the protection of children generally gets special treatment in the law. While general restrictions on advertising can bring challenges on the basis of free speech under the First Amendment to the U.S. Constitution,<sup>85</sup> regulations on advertisements near schools that are narrowly tailored to the purpose of limiting youth exposure have been upheld.<sup>86</sup> Cities may establish zoning ordinances that restrict the development of fast food establishments near school grounds and public playgrounds.<sup>87</sup> Zoning ordinances can also restrict mobile vending of calorie-dense, nutrient-poor foods near school and public playgrounds.<sup>88</sup> In order to avoid constitutional conflicts, these ordinances must be carefully worded. **ChangeLab Solutions**, a California non-profit organization, has crafted a model ordinance for cities to use in creating healthy zones near schools and playgrounds.<sup>89</sup>
  - ♦ **Detroit, MI** requires a minimum distance of 500 feet between certain carryout, fast food, and drive-through restaurants and the nearest school.<sup>90</sup>
- ❖ *Place restrictions on new fast food restaurants.* Municipalities can use zoning to prevent new fast food restaurants from opening in certain neighborhoods.
  - ♦ In 2008, **Los Angeles, CA** passed an ordinance that put a one-year freeze on the opening or expansion of stand-alone fast food restaurants in an area that included 700,000 residents.<sup>91</sup> In 2010, the City Council added the ordinance as a permanent amendment to the city's General Plan.<sup>92</sup> The city argued that the high density of fast food restaurants in the area posed a public health concern, especially for children.<sup>93</sup> A 2015 study analyzing the impact of the ordinance found that new fast food restaurants had still opened in the area, highlighting some of the ordinance's limitations: for example, its application only to "stand alone" restaurants and its exemption for shared buildings, such as a strip mall.<sup>94</sup> While changing the food environment is, ultimately, a long-term, multipronged process, such an ordinance can have symbolic value in changing community attitudes towards healthy diets.<sup>95</sup>
- ❖ *Regulate the number or density of fast food restaurants.* Municipalities can also enact zoning ordinances that regulate fast food restaurants based on density within a specific geographic area.<sup>96</sup>
  - ♦ **Westwood, CA** took a street-by-street approach, specifying that there could only be one fast food restaurant for every 200-400 feet of lot frontage (depending on the street).<sup>97</sup>
  - ♦ **Warner, NH** takes a different approach and requires 2,000 feet between fast food restaurants to "encourage the rural character of the community."<sup>98</sup>

## 5. Protecting Agricultural Land

Although comprehensive plans and zoning are the most common forms of land use regulation, advocates 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 that are produced locally. In addition to planning and zoning, agricultural land may be protected through *land trusts* and *conservation easements*.



## Land Trusts

A land trust is a nonprofit organization that acquires land and/or land rights in order to protect land and environmental resources.<sup>99</sup> Land trusts may acquire land through donation, bargain sale, or fair market purchase or, alternatively, as a reserved life estate, testamentary gift, or conservation easement.<sup>100</sup> In addition to acquiring land, land trusts establish conservation easements to ensure permanent legal protection from certain types of development, negotiate limited development plans, and make sure that the restrictions described in easements and limited development plans are honored.<sup>101</sup> Land trusts support agricultural land use by selling or leasing land to farmers at a low cost, or by purchasing development rights from farmers through a conservation easement, giving farmers income to purchase land or equipment.<sup>102</sup>

There are two types of land trusts: conservation land trusts and community land trusts. Conservation land trusts tend to focus on open space, environmental resources, and conservation easements, whereas community land trusts tend to focus on community resources such as long-term access to affordable housing.<sup>103</sup> However, both of these types of land trusts have engaged in work to conserve land for food production in urban and rural settings.

- ❖ The Troy Gardens community in **Madison, WI**, is an example of the joint land trust effort—both conservation and community—that preserves land use for urban agriculture, co-housing, and prairie restoration.<sup>104</sup>

More information about using land trusts for urban agricultural purposes can be found in [Section IV: Urban Agriculture](#).

## Conservation Easements

Conservation easements allow a landowner to donate or sell development rights to his or her property to a land trust, a nonprofit organization, or a municipality in order to protect conservation values on that land.<sup>105</sup> Conservation easements can also be called scenic easements, agricultural conservation easements, open space easements, historic preservation easements, and conservation restrictions.<sup>106</sup>

- ❖ In **Maine**, approximately 35,000 acres of farmland on 225 farms are permanently protected from development via agricultural conservation easements.<sup>107</sup>

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.<sup>108</sup> The landowner still owns the land, except for the development rights, and can sell or otherwise transfer ownership of the land.<sup>109</sup> 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.<sup>110</sup>

This type of easement may also help ensure the preservation of community gardens. 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. However, advocates can persuade the city to commit to leaving the land as a garden by creating an easement, and 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.

Advocates can research land trusts and 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.<sup>111</sup>



### **Other Tools for Protecting Agricultural Land**

In addition to land trusts and conservation easements, other unique land use planning and regulatory tools can be used to preserve agricultural land. *Agricultural Protection Zoning (APZ)* is a form of zoning that restricts other uses in areas designated as primarily agricultural zones. This type of zoning protects agricultural land by limiting residential and other commercial development which helps to keep farmland affordable and reduces potential conflicts between farmers and their neighbors.<sup>112</sup> *Transfer of Development Rights (TDR)* programs allow development rights to be transferred from one area to another. These programs can be used to transfer development rights away from agricultural lands, preserving them for agricultural uses.<sup>113</sup> In return for giving up their development rights in an agricultural area, developers get credits to develop in other, similarly desirable areas, sometimes with added benefits, like increased density allowances.



## Endnotes

- <sup>1</sup> PETER W. SALSICH & TIMOTHY J. TRYNIECKI, *LAND USE REGULATION: A LEGAL ANALYSIS & PRACTICAL APPLICATION OF LAND USE LAW* 1–3 (Candace M. Cunningham et al. eds., 3d ed. 2015).
- <sup>2</sup> *Id.* at 3.
- <sup>3</sup> *Id.* at 1.
- <sup>4</sup> *Id.* at 3.
- <sup>5</sup> *Police Power*, BLACK’S LAW DICTIONARY (10th ed. 2014). 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.
- <sup>6</sup> SALSICH & TRYNIECKI, *supra* note 1, at 4. 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.
- <sup>7</sup> *Id.*
- <sup>8</sup> *Id.* at 4–5.
- <sup>9</sup> *Id.*
- <sup>10</sup> Stuart Meck, *Model Planning and Zoning Enabling Legislation: A Short History*, MODERNIZING STATE PLANNING STATUTES 1–3 (Stuart Meck ed., 1996), [https://planning-org-uploaded-media.s3.amazonaws.com/legacy\\_resources/growingsmart/pdf/PAS462.pdf](https://planning-org-uploaded-media.s3.amazonaws.com/legacy_resources/growingsmart/pdf/PAS462.pdf) [<https://perma.cc/ZAR6-KURR>].
- <sup>11</sup> *Id.* at 1.
- <sup>12</sup> *Id.*
- <sup>13</sup> *Id.*
- <sup>14</sup> *Id.*
- <sup>15</sup> *See generally*, SALSICH & TRYNIECKI, *supra* note 1.
- <sup>16</sup> *See id.* at 29, 49.
- <sup>17</sup> *Id.* at 29.
- <sup>18</sup> *Id.* at 44.
- <sup>19</sup> *Id.* at 29.
- <sup>20</sup> *Id.* at 29–30.
- <sup>21</sup> 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). (internal citations omitted).
- <sup>22</sup> *Id.* at 26 (quoting *Bell v. City of Elkhorn*, 364 N.W.2d 144, 147 (Wis. 1985)).
- <sup>23</sup> *Id.* at 42 (quoting *O’Loane v. O’Rourke*, 42 Cal. Rptr. 283, 288 (Cal. Dist. Ct. App. 1965)).
- <sup>24</sup> *Id.*
- <sup>25</sup> DEP’T OF PLAN. & DEV., URBAN VILLAGE, IN SEATTLE’S COMPREHENSIVE PLAN, app. B UV-A4 (Jan. 2005), [http://www.seattle.gov/DPD/cs/groups/pan/@pan/documents/web\\_informational/dpdd016610.pdf](http://www.seattle.gov/DPD/cs/groups/pan/@pan/documents/web_informational/dpdd016610.pdf) [<https://perma.cc/B4L5-YSWE>].
- <sup>26</sup> 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> [<https://perma.cc/BD5D-JEFR>].
- <sup>27</sup> Salsich & Tryniecki, *LAND USE REGULATION: A LEGAL ANALYSIS & PRACTICAL APPLICATION OF LAND USE LAW* 41 (Candace M. Cunningham et al. eds., 3d ed. 2015).
- <sup>28</sup> *Id.* at 42.
- <sup>29</sup> *Id.*
- <sup>30</sup> KAILEE NEUNER, et al. *FOOD SYS. PLANNING AND HEALTHY COMMUNITIES LAB, UNIV. OF BUFFALO, THE STATE UNIV. OF N.Y., PLANNING TO EAT? INNOVATIVE LOCAL GOVERNMENT PLANS AND POLICIES TO BUILD HEALTHY FOOD SYSTEMS IN THE UNITED STATES* (Sep. 2011); BALTIMORE DEP’T OF PLANNING, OFFICE OF SUSTAINABILITY, AND SUSTAINABILITY COMM’N, *THE BALTIMORE SUSTAINABILITY PLAN* (2009).
- <sup>31</sup> NEUNER, *supra* note 30; SUSTAINABLE SANTA FE COMM’N, *SUSTAINABLE SANTA FE PLAN: BUILDING A MORE SUSTAINABLE FUTURE BY LOOKING TO THE PAST* 28–30 (Oct. 2008).
- <sup>32</sup> DEL. VALLEY REG’L PLAN. COMM’N, *EATING HERE: GREATER PHILADELPHIA’S FOOD SYSTEM PLAN* 3–4 (Feb. 2011), <http://www.dvrpc.org/Reports/10063.pdf> [<https://perma.cc/4PPC-ZD3V>].
- <sup>33</sup> *Id.* at 5.
- <sup>34</sup> SALSICH & TRYNIECKI, *supra* note 1, at 185.
- <sup>35</sup> *Id.* This idea is not wholly accepted today, and the idea that multiple-use districts might be desirable is quite popular.
- <sup>36</sup> *Id.*
- <sup>37</sup> 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).





38 SALSICH & TRYNIECKI, *supra* note 1, at 185.

39 See BOSTON, MA ZONING CODE art. 89 (2013).

40 *Article 89 Made Easy: Urban Agriculture for The City of Boston*, BOSTON REDEVELOPMENT AUTHORITY 2 (2014), <http://www.bostonredevelopmentauthority.org/getattachment/5579e854-b3c5-49e6-b910-fedaa2dd6306> [https://perma.cc/E7YJ-HNRP].

41 *Id.* at 1.

42 *Id.* at 3-46. Depending on the neighborhood, the keeping of bees and hens may require the successful completion of a neighborhood petition process. See *id.* at 39.

43 *Article 89 Made Easy: Urban Agriculture for The City of Boston*, BOSTON REDEVELOPMENT AUTHORITY 4-5 (2014), available at <http://www.bostonredevelopmentauthority.org/getattachment/5579e854-b3c5-49e6-b910-fedaa2dd6306> [https://perma.cc/E7YJ-HNRP]. Roof-level farms are also allowed, but are more restricted, with some farms smaller than one acre requiring a conditional use permit, depending on the type of operation and the zone.

44 HARVARD LAW SCHOOL FOOD LAW AND POLICY CLINIC, URBAN AGRICULTURE IN BOSTON: PERMITS AND APPROVALS NEEDED TO START YOUR LESS THAN ONE ACRE GROUND-LEVEL FARM (July 2014), [http://www.chlpi.org/wp-content/uploads/2013/12/Boston-Urban-Agriculture\\_Less-than-1-Acre-Guide\\_July-2014\\_Complete1.pdf](http://www.chlpi.org/wp-content/uploads/2013/12/Boston-Urban-Agriculture_Less-than-1-Acre-Guide_July-2014_Complete1.pdf) [https://perma.cc/V2JZ-YUNV].

45 *Id.* CFR also applies to some smaller than one acre, roof-level farms.

46 *Id.* at 13-16.

47 *The Termination of Non-Conforming Uses*, WILLIAM AND MARY LAW REVIEW 2 (Jan 1965), <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=3091&context=wmlr> [https://perma.cc/RH4G-TKT7].

48 *Id.*

49 SALSICH & TRYNIECKI, *supra* note 1, at 211.

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## SECTION IV: URBAN AGRICULTURE

*Cities throughout the United States are embracing urban agriculture not only as a means to combat challenges such as air pollution, abandoned lots and food insecurity, but also 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 poultry and farming operations, and can be as diverse in scope as the cities that engage in these practices. This section describes both challenges for agriculture in urban environments and potential policy opportunities for advocates.*

In this section . . .

1. Overview
2. Zoning for Urban Agriculture
3. Animal Husbandry and Beekeeping
4. Economic Incentives for Urban Agriculture
5. Land Access
6. Other Resources for Urban Agriculture
7. Human Health and Environmental Concerns

### 1. Overview

Urban agriculture plays an increasingly important role in the development of local food systems. Urban agriculture can take a variety of forms, from growing fruits and vegetables on vacant lots to urban beekeeping on city rooftops. The United States Department of Agriculture (USDA) estimates that food grown in urban environments accounts for approximately 15% of the world's food supply.<sup>1</sup> Urban agriculture can provide a variety of benefits to a city, including increased green space, greater access to fresh and affordable food, and new job opportunities.

However, urban farmers face numerous barriers, such as inhospitable zoning codes, financial challenges, and lack of access to land. Advocates can work with cities to amend their zoning codes, create economic incentives for urban farmers, and increase the availability of land for urban agriculture.

### 2. Zoning for Urban Agriculture

Zoning codes are an important tool for advocates of urban agriculture. Many cities have updated their zoning codes 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 urban growers who, because of zoning restrictions, take major risks by investing in farming operations



that could be shut down if restrictive regulations are enforced. Changing a city's zoning code also encourages growers to expand their operations and pursue even more innovative agricultural projects in their communities.

Municipal zoning codes often restrict agricultural activities, including growing crops and raising livestock, in certain zones, especially in areas zoned as residential. Particular uses, like agriculture, may be allowed by right, by permission, or as a conditional use, in each zone type. If a use is allowed by right, it means the use is permitted without the need to apply for a permit. If a use is allowed by permission or is a conditional use, it means the property owner will need to ask permission to use the land for that purpose, sometimes requiring a permit application or a hearing before the commission. For a general background on zoning and land use, see [Section III: Land Use Planning and Regulation](#).

Advocates can play a significant role in working with municipalities to review and redesign zoning codes to permit various types of agricultural activities. Broadly speaking, there are two ways to amend zoning ordinances to create more spaces for urban agriculture:

- ❖ **Authorize Agricultural Uses in Existing Districts.** This approach involves explicitly allowing agricultural activities in existing zoning districts, giving urban farmers greater certainty that they can operate and invest in these areas.<sup>2</sup>
  - ♦ **Detroit, MI's** zoning ordinance, passed in April 2013, authorized urban gardens and farms in all residential and business zones in the city. The ordinance created formal definitions of urban gardens and farms and permitted gardens by right in all zones, while permitting farms by right in some zones and by permission in others.<sup>3</sup> The new ordinance also ensures that sale of produce is permitted on-site or at farmers' markets.<sup>4</sup> However, the ordinance forbids livestock, as well as bees and rabbits.<sup>5</sup>
- ❖ **Create a New District Type.** This approach applies a zoning designation of "urban farm" or "community garden" to a new district, protecting this land from future development.<sup>6</sup> This has the dual benefit of increasing the use of vacant, privately owned land and preserving land for agricultural use.<sup>7</sup>
  - ♦ **Baltimore, MD** established two Chesapeake Bay Critical Area overlay zones to guide development around the Chesapeake Bay and promote resource conservation; one of these zones explicitly permits a number of agricultural uses, including farms and produce stands, by right.<sup>8</sup>
  - ♦ In 2013, **California** passed legislation that allows cities to create Urban Agriculture Incentive Zones, which provides tax incentives to private landowners who lease land within these zones for agricultural use.<sup>9</sup>

More specifically, advocates can review their municipality's existing zoning code to identify barriers to urban farming and propose amendments.

- ❖ **Prohibitions on community gardens in residential zones** limit opportunities for rehabilitating vacant lots. Advocates can work to eliminate categorical restrictions on agriculture in residential areas and, moreover, recognize community gardens as a permitted use in industrial, residential, and commercial districts. Advocates can encourage their local government to interpret general provisions regarding parks and recreation areas to allow community gardens in those spaces.<sup>10</sup> In addition, advocates can support school gardens by ensuring that gardening activities and related structures are explicitly allowed on school property.<sup>11</sup>



## Fine-Tuning Urban Agriculture Ordinances in Chicago and Oakland

Amendments to the zoning codes in Chicago, IL and Oakland, CA demonstrate the need to continuously fine-tune land use ordinances to respond to urban growers' needs.

In **Chicago, IL**, Mayor Richard Daley introduced legislation in 2010 revising the city's zoning code for urban agriculture to allow for community gardens in all residential and commercial zones. However, advocates pushed back against the proposed changes because of lot size restrictions, restrictions on the use of off-site compost, and a prohibition on the processing and sale in residential zones of produce grown in community gardens. In 2011, Mayor Rahm Emanuel introduced amended legislation which addressed some of these concerns, increasing allowable lot sizes for urban farms and allowing for limited produce sales in residential areas. The amended legislation was passed, but urban growers continued to press for more allowed uses, including less-restrictive composting rules. In 2015, a new composting ordinance was passed to allow larger composting operations as well as composting of off-site material.

**Oakland, CA** amended its code in 2014. Concerns arose because the definition of "Community Garden" adopted in 2011 did not cover the sale of crops, plant products, or animal products. Selling any of these items, whether on-site or off-site, would result in a "Crop and Animal Raising Agricultural Activity" classification, which required a Conditional Use Permit. The 2014 amendments included modifying the definition of "Community Garden" to allow for limited seasonal sales of produce, as well as dividing agricultural uses into two categories: "Limited Agriculture" and "Extensive Agriculture." Limited Agriculture, which includes the growing and sale of crops without the use of heavy, mechanized equipment and beekeeping with up to three hives, is now a permitted use in all residential and most commercial zones. Extensive Agriculture, which includes raising livestock and growing crops with heavy equipment, still requires a Conditional Use Permit in residential and commercial zones.

**Sources:** CHI., ILL., CODE tit. 17 (2015); Peter Strazzabasco, *Zoning Amendment Would Nourish Urban Agriculture Citywide*, CITY OF CHICAGO, Dec. 8, 2010, [https://www.cityofchicago.org/city/en/depts/dcd/provdrs/sustain/news/2010/dec/zoning\\_amendmentwouldnourishurbanagriculturecitywide.html](https://www.cityofchicago.org/city/en/depts/dcd/provdrs/sustain/news/2010/dec/zoning_amendmentwouldnourishurbanagriculturecitywide.html) [<https://perma.cc/CF2N-X2YZ>]; Nevin Cohen, *Chicago's Urban Agriculture Zoning Proposal*, URBAN FOOD POLICY: STRATEGIES FOR SUSTAINABLE FOOD SYSTEMS (Jan. 6, 2011), <https://urbanfoodpolicy.com/2011/01/06/chicagos-urban-agriculture-zoning-proposal> [<https://perma.cc/2857-L88P>]; Maia Welbel, *Roots of a Movement: Community Action and the Impact of Urban Agriculture in Chicago*, POMONA SENIOR THESES (2017), [http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1170&context=pomona\\_theses](http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1170&context=pomona_theses) [<https://perma.cc/C26A-SBRH>]; OAKLAND, CAL., MUN. CODE tit. 17 (1997); Zoning Code Bulletin: Zoning Regulations Related to Agricultural Food Production, CITY OF OAKLAND, Sep. 5, 2014; *Urban Agriculture Citywide Update*, CITY OF OAKLAND, <http://www2.oaklandnet.com/government/o/PBN/OurOrganization/PlanningZoning/OAK029859> [<https://perma.cc/CU3G-WX7W>].

- ❖ **Restrictions on the size of urban farms** decrease the potential for urban farming. Advocates can work to eliminate size restrictions for farms in non-residential districts and increase size allowances in residential areas.
- ❖ **Expensive zoning permits** impose an additional, unnecessary barrier for urban farmers and can reduce their willingness to invest in rehabilitating land. Advocates should work to allow agriculture activities by right, reducing the need for permits. Even when agriculture is not allowed by right, advocates can work to eliminate the permit requirement or, alternatively, lower the cost of permits.
- ❖ **Restrictions on commercial farm sales in urban areas** make it harder to start and sustain urban farms, potentially stifling local economic activity. Advocates should work to ensure larger gardens, whether they are community or commercial gardens, have the opportunity to set up farm stands so that individuals can sell their own produce.





- ❖ **Restrictions on accessory buildings** require growers to seek alternative locations to store their equipment, limiting the functionality of urban farming sites. Advocates should work to create exemptions for temporary structures used to extend the growing season (e.g., hoop houses, cold frames, and greenhouses).<sup>12</sup> Advocates should also ask their municipality to clarify that no principal building is required for accessory agricultural structures; this means that agricultural structures can be built on blighted lots.<sup>13</sup>
- ❖ **Bans or restrictions on composting** limit the potential for cost-effective, environmentally sustainable urban farms. Advocates should, first, work to lift any bans on composting and, then, ensure that their municipality allows the use off-site composting materials. Advocates can work with their municipality to identify and adopt appropriate provisions to ensure that composting does not become a public health risk.<sup>14</sup>

Table IV-1 provides examples of zoning amendments designed to promote urban agriculture in different cities. Although their amendments vary widely, these cities all 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. The types of urban agriculture activity and possible nuisances<sup>15</sup> are important considerations for determining which district or mix of districts are appropriate to advocate in a given community. The most intensive urban agriculture uses are large urban farming initiatives and nonindustrial food processing. These uses can create jobs, ameliorate food access problems, and provide green space. Less-intensive agriculture also brings many benefits, often with less controversy.<sup>16</sup> 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 animal raising. Thus, more intensive agricultural uses may be more appropriate in some non-residential areas but less so in residential areas.

**TABLE IV-1: EXAMPLES OF CHANGING LAND USE LAW TO ENABLE URBAN FARMING**

In **Kansas City, MO**,<sup>17</sup> urban agriculture is now allowed in certain residential zones, without size restrictions, so long as the activity falls within four categories.

<b>HOME GARDEN</b>	Growers live on-site and food is grown for home consumption, sale, or donation.
<b>COMMUNITY GARDEN</b>	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.
<b>COMMUNITY SUPPORTED AGRICULTURE</b>	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” <sup>18</sup> depending on the zone.
<b>CROP AGRICULTURE</b>	Growers produce food for off-site retail sale. Produce can be sold on-site by special-use permit.

In **San Francisco, CA**,<sup>19</sup> the 2011 zoning ordinance divides urban agriculture activities into two categories.

<b>NEIGHBORHOOD AGRICULTURE</b>	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 from permitting requirements. Additionally, growing food for personal use does not require a permit. <sup>20</sup>
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**TABLE IV-1: EXAMPLES OF CHANGING LAND USE LAW TO ENABLE URBAN FARMING (CONTINUED)**

<b>LARGE-SCALE AGRICULTURE</b>	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. <sup>21</sup>
In <b>Boston, MA</b> , <sup>22</sup> the 2013 zoning amendments outline the agricultural uses allowed by zone.	
<b>GROUND-LEVEL FARMS</b>	Ground-level farms less than one acre are allowed in all major zone types, by right. However, farms between 10,000 square feet and one acre generally require a comprehensive farm review (CFR), which involves maps and written plans to ensure that the farm meets certain specifications. Farms larger than one acre are also allowed as a conditional use in all major zone types.
<b>ROOF-LEVEL FARMS</b>	Roof-level farms less than 5,000 square feet are allowed in all major zone types, by right. Roof-level greenhouses are allowed by right in industrial, institutional, and large-scale commercial zones, and as a conditional use in small-scale commercial and residential zones. Roof-level farms greater than one acre generally require a comprehensive farm review.
<b>HYDROPONICS</b>	Hydroponic farming is allowed as an accessory use in all districts, and as a primary use in all non-residential districts. However, hydroponic farming inside of modified freight containers is forbidden in residential zones, and is a conditional use in non-industrial zones.

### 3. Animal Husbandry and Beekeeping

Raising animals can be a natural next step for well-established urban agriculture operations, as diversifying their offerings can bolster sales and increase take-home pay. Yet, many cities impose restrictions—and even outright bans—on animal husbandry and slaughter to prevent nuisances such as animal waste and noise pollution, as well as possible harms to public health and safety. These restrictions are often overly broad, unnecessarily stifling the potential for urban animal husbandry and beekeeping.

The most important role advocates can play is through public outreach and education.<sup>23</sup> While many communities enjoy support for urban gardening, urban animal husbandry can be contentious. As proponents of equitable food access and sustainable local food economies, advocates should work in their communities to build consensus and viable compromises around these difficult issues. They can also enlist the help of specialized advocacy groups to better understand and communicate the benefits of animal agriculture in urban communities.

Advocates can also work alongside their local government to craft appropriate and equitable animal husbandry, beekeeping, and slaughter rules for their community. Ideally, a locality would provide general allowances for apiaries and various kinds of livestock, subject only to restrictions on the number of animals or the structures in which they are housed. Urban farmers also benefit from reasonable allowances for residential slaughter, which reduce the time and costs associated with transporting livestock to an industrial slaughter facility. However, it is important that the rules reflect the needs and concerns of the community, and such broad allowances may not work for every community.

#### **Beekeeping**

Beekeeping is a popular urban agricultural activity. Beyond honey production, beekeeping supports urban gardens through pollination. Because of concerns about public health and safety, cities may place restrictions or bans on beekeeping. However, many cities, like **New York, Chicago, Minneapolis, and Los Angeles** have



lifted bans on apiaries, even as they maintain prohibitions on larger farm animals.<sup>24</sup>

- ❖ **Denver, CO** revised its zoning regulations to permit beekeeping on residential lots.<sup>25</sup> Residents may keep two hives per lot, in the rear one-third of the lot, with at least five-foot setbacks from the side and back lot lines.<sup>26</sup>
- ❖ **Philadelphia, PA**'s City Council passed a resolution declaring Philadelphia a "Bee Friendly City." Philadelphia does not restrict beekeeping but requires apiaries to be registered and inspected by the Pennsylvania Department of Agriculture.<sup>27</sup>
- ❖ **Salt Lake City, UT** officially recognized the importance of beekeeping for agriculture and pollination by passing a beekeeping ordinance in 2010. The ordinance allows for up to 5 apiaries on any residential lot, and up to 10 apiaries on lots one-half acre or larger.<sup>28</sup>

### **Chickens**

One of the most common amendments to urban livestock restrictions is the relaxation of restrictions against hens (roosters pose more challenges because of noise).<sup>29</sup> Hens are easy to keep and provide a range of products, such as eggs, meat, and fertilizer.<sup>30</sup> Numerous cities have instituted "backyard-chicken laws" to allow a limited number of chickens in residential areas, subject to varied restrictions on where and how they may be kept.<sup>31</sup> Some cities group the regulation of chickens in with other "domestic fowl" such as ducks, geese, and even turkeys. While some cities allow chickens to roam freely on the owner's property, most cities require that they be enclosed in coops.<sup>32</sup>

- ❖ **Madison, WI** allows up to four chickens on a lot with up to four dwelling units. The city requires that the chickens be kept in a coop and forbids both roosters and slaughtering.<sup>33</sup>
- ❖ **St. Charles, IL** allows up to six chickens without a permit, as long as the chicken enclosure is at least five feet away from any property line and is screened with year-round landscaping, walls and/or fencing so as not to be visible by any public street or adjoining lot.<sup>34</sup>
- ❖ **Berkeley, CA** allows residents to raise rabbits, chickens, ducks, geese, turkeys, and other domestic fowl as long as they are kept in an enclosure that isn't within 25 feet of a residence.<sup>35</sup>

### **Other Animals**

Other farm animals are also becoming more common in urban areas, including goats, pigs, and rabbits. Such animals remain contentious, but some cities are making limited allowances for them, oftentimes depending on the size of the animal and/or lot.

- ❖ **Seattle, WA** 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.<sup>36</sup>
- ❖ **Charlottesville, VA** allows residents to keep up to three goats under 100 pounds on their lots.<sup>37</sup>
- ❖ **Spokane, WA** allows one pig per 2,000 square feet of lot space, as long as buildings and fences are set back a certain distance from property lines.<sup>38</sup> Owners must complete an animal-keeping certification.<sup>39</sup>

### **Slaughter**

Residential slaughter of livestock reduces transportation time and costs associated with raising livestock for meat. However, slaughtering raises nuisance concerns about unpleasant sights, smells, and noise in residential areas, as well as public health concerns about infectious diseases.<sup>40</sup> These concerns can often be overcome



with reasonable requirements, such as requiring slaughter indoors and following basic food safety precautions.

- ❖ **Austin, TX** allows residents to slaughter and sell up to 10 chickens per week per acre with a permit, but prohibits slaughtering in public view.<sup>41</sup> In addition, once slaughtered, the chickens can only be sold in non-residential districts.<sup>42</sup>
- ❖ **Cleveland, OH** allows chickens, ducks, rabbits and other small animals to be slaughtered on-site if done inside a building or if screened from view from adjacent properties.<sup>43</sup>

### **Typical Nuisance Issues**

Nuisance laws are used to mitigate and, in some cases, eliminate activities that produce unreasonable levels of noise, noxious smells, pollution, blight, and filth, among other concerns.<sup>44</sup> These laws are intended to protect the rights of homeowners and residents to enjoy their property without disturbance. However, nuisance laws can be overly broad, sometimes inhibiting urban agriculture practices that would not interfere with others' property rights. Many cities have passed more targeted nuisance laws to protect the community from nuisance while also allowing for reasonable agricultural uses in residential areas.

- ❖ **Noise:** Instead of an outright ban on animal agriculture, some localities have restrictions on excessive noise, or noise that could be a disturbance to other residents. For example, **Eugene, OR** has a prohibition against animals who make frequent or long-lasting noise; chickens or goats that make noise longer than 15 minutes may be prohibited from the neighborhood.<sup>45</sup> **Hartford, CT** revised its zoning code to allow for urban farming, but only allows the operation of loud equipment during certain daytime hours.<sup>46</sup>
- ❖ **Noxious Smells:** Some localities have narrowed nuisance laws to acknowledge public health concerns, but also accommodate urban agriculture. For example, in **Seattle, WA**, odors are not allowed "to escape into the open air in such amounts as to be detrimental to the health of any individuals or the public; or noticeable, discomforting, or disagreeable so as to offend the sensibilities of a reasonable individual at a distance of more than 200 feet from an urban farm."<sup>47</sup>
- ❖ **Blight and Decency Laws:** These laws often address standards of cleanliness and animal living conditions. Rather than banning larger animals altogether, cities can ensure that animals are kept in health conditions. While **Marysville, WA** allows larger animals, it requires "premises where animals are confined" to be kept in a clean condition to avoid unhealthy conditions or excessive waste.<sup>48</sup>
- ❖ **Rodents and Filth:** Cities can require that urban farmers use certain practices and equipment, such as rodent-proof bins, to mitigate concerns about rodents. In some cities, such as **Somerville, MA**, city health inspectors can issue fines if gardens or structures are attracting rodents.<sup>49</sup>

## **4. Economic Incentives for Urban Agriculture**

Between untangling potential zoning and permitting barriers and the costs of land, soil, seeds, animals, and infrastructure, urban agriculture can be an expensive endeavor. Grants, loans, and tax credits can provide an important incentive for urban growers, helping them overcome some of these initial costs or scale their operations.

### **Grants for Urban Agriculture**

Several financial resources exist to encourage urban agriculture, including government grants and private foundation funding. Advocates can be instrumental in identifying available sources of funding, pushing state and local governments to create funding mechanisms, and providing technical assistance to growers in the



application process. Because many public funding sources are administered at the federal and state level, advocates should push their local governments to apply for these funds. Advocates can also encourage their local governments to create their own grant programs.

- ❖ In 2014, **Somerville, MA** received \$36,000 of state funding from Massachusetts' Urban Agriculture Program. The grant supported construction of a greenhouse at an urban agriculture site, as well as establishment of a hydroponics system at a local school.<sup>50</sup>
- ❖ The City of **Cincinnati, OH** established an Urban Agriculture Grants Program, combining \$30,000 in funding from federal Community Development Block Grant funds and \$28,000 from the city's General Fund.<sup>51</sup> Grant funds can be used to support production, aggregation, and distribution activities, and non-profit and for-profit entities are eligible to apply.<sup>52</sup> In 2017, the city received 49 applications and was able to partially fund 45.<sup>53</sup>
- ❖ In **Detroit, MI**, the non-profit Recovery Park established an urban agriculture initiative for individuals dealing with drug addiction.<sup>54</sup> The non-profit received a four-year, million-dollar grant from the Erb Family Foundation to cover startup expenses in 2012.<sup>55</sup> In 2015, the city partnered with Recovery Park, leasing 35 acres of public land for \$105 an acre, in exchange for a promise to employ Detroit residents.<sup>56</sup>

### **Tax Credits for Urban Agriculture**

Local tax incentives, like reductions in property taxes, can help increase the use of privately owned, vacant land for urban agriculture and improve land security for urban agriculture projects.<sup>57</sup> Oftentimes, before a local government can pass an urban agriculture tax credit, the state must first pass enabling legislation (see [Section I: General Legal Setting](#) for more information on this). While enabling legislation sets the framework and basic eligibility criteria for a tax credit, localities that choose to enact a credit at the local level can often set additional eligibility criteria, determine the process for granting and maintaining the tax credit, and even set the amount of the tax credit.

- ❖ **Maryland** first authorized county and city tax credits for "urban agricultural property" in 2010.<sup>58</sup> While the original law required that parcels must be used exclusively for agricultural purposes, the Maryland Legislature removed the restriction in 2014 to extend the credit to land on which urban growers also reside.<sup>59</sup> Eligible parcels must be at least .125 acres and no more than 5 acres.<sup>60</sup> The law gives counties and cities the authority to determine the amount of the tax credit and additional eligibility criteria.<sup>61</sup> However, counties and cities must evaluate the tax credit after three years and terminate it if it is "ineffective in promoting agricultural purposes."<sup>62</sup> **Baltimore** took advantage of the state law and passed an urban agriculture tax credit in 2015.<sup>63</sup> The ordinance offers a 90% property tax credit to urban growers who sell at least \$5,000 worth of produce a year.<sup>64</sup> The credit lasts for five years, and may be renewed.<sup>65</sup> However, if the property owner does not maintain the agricultural use for the entire five-year term, the owner is liable for back taxes as well as a 1% surcharge.<sup>66</sup>
- ❖ **Missouri** authorized municipalities to create Urban Agriculture Zones (UAZs) in 2013.<sup>67</sup> Property taxes are reduced in UAZs, and water is available at wholesale prices with reduced water connection costs.<sup>68</sup> UAZs can only be created in blighted areas, defined as areas "that by reason of age, obsolescence, inadequate, or outmoded design or physical deterioration have become economic and social liabilities, and that such conditions are conducive to ill health, transmission of disease, crime or inability to pay reasonable taxes."<sup>69</sup> The state law also distinguishes between Grower UAZs, Processing UAZs, and Vending UAZs.<sup>70</sup> Municipalities review a parcel's UAZ status after five and ten years and can exempt a UAZ from property taxes for up to 25 years, at which point the UAZ dissolves.<sup>71</sup> In 2014, **Kansas City** passed an ordinance implementing the state UAZ law.<sup>72</sup> The city ordinance includes a detailed



definition of an “underutilized urban parcel,” adding additional eligibility criteria for a UAZ.<sup>73</sup> While the state law does not specify what happens when parcels do not continue to meet UAZ eligibility criteria, the city ordinance establishes that property owners are liable for back taxes.<sup>74</sup>

- ❖ In 2014, **California** passed the Urban Agriculture Incentive Zones Act.<sup>75</sup> The Act gives cities and counties the authority to create Urban Agriculture Incentive Zones (UAIZs), within which private owners of vacant or blighted land may receive a tax credit if they contract their land for agricultural activities.<sup>76</sup> The state law sets general parameters for UAIZs; for example, parcels must be 1) in an urban area, defined as having at least 250,000 people, 2) at least .10 acres and no more than 3 acres, 3) dedicated to an agricultural activity for at least 5 years, and 4) free of physical structures, except those that support the agricultural activity.<sup>77</sup> **San Francisco** then passed an ordinance implementing the state law.<sup>78</sup> The ordinance further defines the eligibility criteria for UAIZs, and establishes the processes by which they are approved.<sup>79</sup>

## 5. Land Access

Urban growers often face difficulty finding land suitable for urban agriculture, and then securing land tenure—whether through ownership or a long-term lease. Advocates can work with municipalities and other key stakeholders to identify land suitable for urban agriculture and clearly communicate the availability of such land to potential urban growers. Advocates can push their local government to make publicly-owned land available to urban growers at little-to-no cost. Municipalities are likely to be especially interested in converting vacant and blighted plots into productive gardens and green spaces. While securing ownership for individual growers may be more difficult, advocates can help to establish community land trusts, non-profit organizations which acquire land and manage it for community purposes, such as urban agriculture.

### **Tracking Land Inventory**

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. Advocates can help by working with city planning departments to conduct an inventory of public and private land suitable for urban agricultural development. Coordinating information about land suitable for urban agriculture can also help advocates facilitate strategic urban planning such that urban farms are more evenly distributed throughout a city, thereby providing more equitable access to both farming opportunities and healthy food for all members of the community.

- ❖ **New York City**’s Department of Citywide Administrative Services maintains an inventory of land owned or operated by the city.<sup>80</sup> This inventory is updated every two years and identifies which city agency owns each lot, and, among other things, whether it is suitable for urban agriculture.<sup>81</sup> Importantly, the inventory is accessible; it must be publicly available “in a sortable and searchable format and for download at no charge.”<sup>82</sup>
- ❖ **Cleveland, OH**’s Vacant Land Inventory for Urban Agriculture, compiled in 2009 by members of the Cleveland-Cuyahoga County Food Policy Coalition’s Land Use & Planning Working Group, detailed available plots of land for urban agriculture.<sup>83</sup> Lots were evaluated for their suitability for urban agriculture based on factors such as size, slope, soil type, and access to water.<sup>84</sup>
- ❖ A 2015 study from the University of Wisconsin in **Madison, WI** used a combination of ArcGIS mapping and field visits to generate a community garden site suitability index that sorted and inventoried undeveloped land potentially available for community gardens.<sup>85</sup>





Advocates 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 that in **New York**, which explicitly empowers state agencies to make state lands available for community gardens.<sup>86</sup> 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.<sup>87</sup> The law also gives municipalities the authority to identify suitable land for community gardening.<sup>88</sup> 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; 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.<sup>89</sup>

### **Facilitating Land Tenure**

Identifying land is often only the first step. If urban growers cannot buy land outright, it is important that they can create an arrangement in order to stay on the land long enough to invest in its productivity. Uncertain land tenure is one of the principle challenges facing urban growers.<sup>90</sup> Advocates can help to facilitate the acquisition, transfer, or long-term lease of land using some of the following strategies:

- ❖ **Support land lease and purchase programs.** Once land has been identified, municipalities can establish programs to lease city-owned plots to urban growers at a low or reasonable cost.
  - ♦ In **St. Louis, MO**, the city's Land Reutilization Authority (LRA) runs the Garden Lease Program, which allows residents to lease LRA-owned lots for five years at \$1/year.<sup>91</sup> Individuals, neighborhood associations, and community organizations are eligible to lease a lot.<sup>92</sup> Institutions, non-adjacent landowners, and multiple-lot leases may be required to obtain general liability insurance.<sup>93</sup> However, the Program does not guarantee tenure; because LRA lots are for sale, LRA can cancel a lease with a grower with 30-days' notice.<sup>94</sup>
  - ♦ Through **Baltimore, MD's** Land Leasing Initiative, urban growers can apply to lease pre-approved plots.<sup>95</sup> The Initiative provides growers with five-year leases, at \$100 per year.<sup>96</sup> In order to be eligible, growers must have one year of experience and demonstrate that their farms will be profitable.<sup>97</sup> Like St. Louis, lots are for sale and the city can revoke leases with 30-days' notice.<sup>98</sup> However, gardens that have been in existence for at least two and a half years are eligible for designation as a Qualified Community Managed Open Space (QCMOS).<sup>99</sup> The city does not actively market QCMOS lots, although it may sell them if approached by a buyer.<sup>100</sup> **Baltimore Green Space**, a local land trust, can purchase QCMOS lots that are at least five years old from the city for as little as \$1, preserving them in perpetuity.<sup>101</sup>
  - ♦ **New York City's** GreenThumb program, housed within the Department of Parks and Recreation ("DPR"), is the largest community gardening program in the country, with over 500 city-owned gardens in its network.<sup>102</sup> DPR guarantees the renewal of licenses for gardens on its land; however, gardens are still at risk as the city may revoke a license with 45 days' notice.<sup>103</sup> If the city does revoke a license, it is required to make efforts to relocate the garden.<sup>104</sup> It must provide the licensee with a list of all available city-owned vacant land within one-half mile of the existing garden.<sup>105</sup> The licensee may select any lot from that list as a relocation site.<sup>106</sup>
  - ♦ **Cleveland, OH's** Land Bank offers three options for urban gardeners: 1) enter into a license agreement for one year at \$1, 2) enter into a lease agreement for a period greater than one year at a negotiated rate, or 3) purchase eligible parcels of land for \$200.<sup>107</sup> Licenses are typically used for community gardens, while lease agreements are typically for established commercial



growers.<sup>108</sup> Lessees must have a \$1,000,000 general liability insurance policy.<sup>109</sup> Growers who want to purchase an eligible parcel must demonstrate that they have the financial resources to cover the cost of immediate improvements to the land, fees for deed recording, and, if applicable, a lot survey and consolidation.<sup>110</sup> Buyers are also subject to a clawback provision, allowing the city to recover value or the parcel itself if it is not maintained for agricultural purposes.<sup>111</sup>

- ♦ A 2007 resolution by the **Multnomah County, OR** Board of County Commissioners created the Multnomah County Digs Program, which donates or leases unused or excess county property to individuals or organizations for urban agriculture uses. Property that is eligible for the County Digs program is property “(1) that is not in use or designated for sale or other disposition, and (2) that has a water source or is able to secure a water source.” Six community gardens have been developed in Multnomah County since the start of the program.<sup>112</sup>

❖ **Establish community land trusts focused on urban farming.** Community land trusts (CLTs) can be used to promote urban agriculture.<sup>113</sup> A CLT is a non-profit corporation<sup>114</sup> committed to ensuring that land is used in the best interests of a community, while using charitable donations to cover its costs.<sup>115</sup> A trust acquires land and maintains ownership of it permanently, which can be helpful in alleviating land tenure issues.<sup>116</sup> The CLT can then lease (or sublease) its property to urban farmers. For more information on land trusts, see [Section III: Land Use Planning and Regulation](#).

- ♦ In **Baltimore, MD**, Baltimore Green Space operates a private land trust and welcomes flower gardens, open spaces, and food production.<sup>117</sup> The organization typically considers properties that are already being used for urban agriculture or community gardens and determines whether to purchase them based on a variety of factors, including how long the garden has been in place, its viability in the long term, the quality of the soil, and how the garden benefits the community.<sup>118</sup> The organization further encourages urban agriculture by providing liability insurance for the properties it manages.<sup>119</sup>
- ♦ In **Providence, RI**, the Southside Community Land Trust has operated for over 30 years, focusing on urban farming.<sup>120</sup> The Trust takes an active role in farming its properties, recruiting community members to farm over a dozen gardens. Among other programs, the Trust trains beginning farmers in business development and farming practices, and participating farmers become eligible to lease land owned by the Trust.<sup>121</sup>

## 6. Other Resources for Urban Agriculture

While capital and land are of critical importance, ensuring the success of urban agriculture requires a vast range of resources—from water and soil to information and social capital. Advocates can help marshal these resources for urban growers, whether by working directly with their local government to encourage the provision of these resources or by partnering with other key stakeholders.

### **Water**

Water is one of 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 either not established or not connected to a meter. Advocates can work with their local governments to decrease barriers to water access, from making fire hydrant permits available for urban farms to subsidizing the costs of equipment installation and water usage.

- ❖ In **San Francisco, CA**, the Public Utilities Commission has set up the Community Garden Irrigation



Meter Grant Program.<sup>122</sup> The Grant Program offers a onetime waiver, up to \$10,000, for the installation of a dedicated water irrigation system and meter.<sup>123</sup> In addition, the Grant Program will provide a \$1,300 rebate to help offset the costs of a required backflow prevention device.<sup>124</sup> Eligible gardens must be at least 2,000 square feet.<sup>125</sup>

- ❖ **Minneapolis, MN** issues seasonal fire hydrant permits to community gardens for \$50, with an additional \$100 deposit.<sup>126</sup> Urban growers are billed at the same rate as a general property owner.<sup>127</sup>
- ❖ **Cleveland, OH** also issues seasonal fire hydrant permits to urban growers; however, the city goes one step further towards reducing costs, and charges a low, fixed rate for water usage.<sup>128</sup> Eligible community gardens and urban agriculture sites must be under 2 acres.<sup>129</sup> The city encourages sites over 2 acres to obtain a permanent connection. In addition, all for-profit gardens can only receive subsidized seasonal permits for five years, at which point they have to install a permanent connection and meter.<sup>130</sup>
- ❖ In 2016, **Philadelphia, PA** passed an ordinance that allows a discounted stormwater fee, up to 100%, for community gardens.<sup>131</sup> Typically, a stormwater fee is included in the monthly water bill for Philadelphia water customers, but community gardens are given a discounted rate. The discount program went into effect in 2017.<sup>132</sup> Eligible lots must meet the criteria for a “community garden” and must be run by an “organized group,” whether a community/non-profit organization or a group of individuals “associated for the purpose of operating a garden for public benefit.”<sup>133</sup> The discounted rate is good for four years and can be renewed.<sup>134</sup>

Conserving water is another important factor to consider, especially in areas where water is scarce. Efficient techniques for being more water efficient include water harvesting, water reuse, and improved irrigation.<sup>135</sup> Water harvesting captures rainwater and runoff for later use.<sup>136</sup> Rainwater can be collected and stored using simple, low-cost equipment such as barrels. However, rainwater is best used in combination with a drip irrigation system that goes directly to a plant’s roots, as untreated water has the potential to transmit bacteria and diseases if sprayed on a plant’s leaves.<sup>137</sup>

Though most states allow for rainwater collection, some states, especially in the west, have restrictions on where and how rainwater can be collected. For example, with the passage of a 2016 law, **Colorado** became the last state to allow for residential rain barrel water collection, with restrictions on the number and size of the barrels and how the collected water can be used.<sup>138</sup> The rain barrel allowance is, however, limited to residences and does not apply to non-residential urban farms and gardens.<sup>139</sup>

- ❖ A number of cities, including **Tucson, AZ**,<sup>140</sup> **Austin, TX**,<sup>141</sup> **San Diego, CA**,<sup>142</sup> and **Gaithersburg, MD**,<sup>143</sup> offer rebates for rainwater harvesting systems.
- ❖ In **New York, NY**, the Department of Environmental Protection gives away rain barrels free of charge to individuals, schools, and community gardens to conserve water and reduce sewer overflow.<sup>144</sup> However, advocates should ensure rainwater collection methods are allowed under the law of their home state.<sup>145</sup>

Water retention techniques such as sheet mulching, basins and swales can also help to reduce stormwater runoff and improve water retention.<sup>146</sup>

- ❖ **Fairfax County, VA** provides free mulch for residents, as well as workshops and guides for building rain gardens and terraces.<sup>147</sup>



- ❖ In **Detroit, MI**, non-profit organizations Keep Growing Detroit, the Sierra Club, and Friends of the Rouge partnered to launch Rain Gardens to the Rescue, a program that helps residents set up rain gardens.<sup>148</sup> These shallow depressions filled with native plants hold rainwater, preventing stormwater runoff and serving as a water source for adjacent produce gardens.<sup>149</sup>

### **Training & Education**

Most urban growers could use support at key junctures, from navigating zoning and permitting to harvesting and marketing. Advocates can foster the development of new urban growers and secure the future of urban farming by aggregating and disseminating important information about urban agriculture. Workshops featuring more basic skills, like crop rotation, irrigation, and harvesting, can also serve as an effective community engagement tool, helping to build support for urban agriculture. The USDA and state and local advocacy organizations across the country have published excellent resources for urban growers.<sup>150</sup> However, given the vast differences in each locality's approach to urban agriculture, it is also important to provide user-friendly, location-specific resources to help urban growers know what they can and cannot do, what local resources exist, where they apply for permits, etc.

- ❖ **Seattle's** Department of Neighborhoods assembled a "Toolkit for Gardeners," an easy-to-navigate website with guides on a number of technical topics from organic gardening to rodent prevention.<sup>151</sup> The website also includes links to helpful resources, like affordable soil testing services and local seed banks, and information to help navigate the city's urban agriculture laws and programs.<sup>152</sup> The city condensed key information and helpful tips into a pamphlet, which is translated into many languages, including Chinese, Russian, and Spanish.<sup>153</sup>
- ❖ In **Dallas, TX**, the Dallas Coalition for Hunger Solutions published a 14-page guide on urban agriculture.<sup>154</sup> The guide features a helpful flow chart of the process of identifying, permitting, and preparing a plot of land so that it is in compliance with Dallas zoning and regulations.<sup>155</sup> Appendices include a glossary of key terms and a detailed explanation of how to obtain an aquaponics permit.<sup>156</sup>
- ❖ The **Pittsburgh, PA** Food Policy Council published "An Urban Grower's Guide: Selling the Food You Grow in Pittsburgh" which includes resources for business planning, direct marketing, value adding, donating food, and managing employees and volunteers.<sup>157</sup>
- ❖ The **Washington D.C.** Department of Parks and Recreation offers over 100 free workshops focused on practical urban gardening skills throughout the year, taught by local urban agriculture leaders.<sup>158</sup>
- ❖ In **Boston, MA**, the Mayor's Office of Workforce Development created an urban agriculture jobs training program for young people returning from incarceration called the Urban Farming Pathways Initiative.<sup>159</sup>

Education and training on sustainable agriculture techniques can also help to promote urban agriculture. Farmers who use sustainable growing methods can minimize pesticide and fertilizer use, thereby saving money and protecting future productivity while reducing their environmental impacts.<sup>160</sup> Some of the most common sustainable agriculture techniques employed to minimize weeds, pests, disease, and erosion are: crop rotation, planting of cover crops, and soil enrichment.<sup>161</sup> Advocates can work with local extension and non-profit partners to promote these methods.

### **Public Outreach**

Public outreach can build the social capital and community consensus necessary to make the major changes in local policy that are needed to expand urban agriculture. Advocates can provide forums for the discussion, negotiation, and evaluation of urban agriculture issues. Contentious debates over issues such as beekeeping



can be aired in a central space with the goal of reaching a viable middle ground that can be proposed to local government. Advocates can employ a variety of strategies, including the following:

- ❖ Creating an “urban agriculture campaign” to engage community members and increase awareness about the benefits of urban agriculture. Advocates can engage community members in a variety of forums, from open community meetings to more targeted outreach.
  - ♦ The City of **Raleigh, NC** hosts “Urban Agriculture Day” which includes the recognition of local urban agriculture grant award winners.<sup>162</sup> The urban agriculture grants program was established in 2015 by the Raleigh Environmental Advisory Board to recognize environmental leaders and promote urban agriculture and community gardening.<sup>163</sup> Among the 2017 award winners were community garden projects, children’s gardening projects, and school garden and agriculture education programs.<sup>164</sup>
  - ♦ The non-profit Planting Justice in **Oakland, CA** does door-to-door canvassing as well as workshops in schools and community centers.<sup>165</sup>
- ❖ Organizing events to showcase local growers and provide information on pertinent legal issues for urban agriculture, such as land permitting and rules on animal husbandry.
  - ♦ The Urban Farm in **Denver, CO** holds an annual “Farm Fest” featuring music, games and rides, workshops, vendor booths, and information about urban agriculture. It aims to raise awareness and advocacy around urban farming and the importance of local sustainable foods.<sup>166</sup>

## 7. Human Health and Environmental Concerns

As urban farms are often located on blighted land that was once used for residential, commercial, or industrial purposes, urban farmers have to pay attention to the realities of potential soil contamination. Urban properties that may carry a hazardous substance, pollutant, or contaminant are often referred to as “brownfields.”<sup>167</sup> Chemical pollution can make soil less fertile and can also pose human health risks, such as water contamination or lead poisoning. Advocates can help urban gardeners take the appropriate steps and identify resources to address contamination issues. In addition, advocates can help urban growers adopt practices that promote sustainability—both on the land and within the greater community—further demonstrating the beneficial impact of urban agriculture.

### Soil Testing

Most concerns about human health risks stem from soil contamination. Potential contaminants include lead, petroleum-based fuels and oils, cleaning solvents, and asbestos.<sup>168</sup> While contaminants can accumulate inside the tissue of certain plants,<sup>169</sup> the primary risk comes from ingesting, inhaling, or touching the soil itself.<sup>170</sup> Urban growers can take a number of precautions, such as wearing gloves, thoroughly washing all produce, using soil amendments, and building raised beds.<sup>171</sup> However, soil testing is often necessary to fully understand—and mitigate—the potential risks posed by a particular plot of land. Such testing can be very costly, especially for individual growers and small farms.

The federal government does not regulate when soil testing is necessary for urban agriculture; however, in 2011, the Environmental Protection Agency published a set of interim guidelines for converting urban brownfields to safe gardens.<sup>172</sup> The guidelines recommend that growers, first, identify the previous use of the land to determine the risk of soil contamination; if the risk is high or additional information is needed, conduct soil testing; and, finally, based on results, manage risks using bioremediation methods (suitable in cases of low levels of contamination)



or more invasive methods (e.g. replacing soil) where necessary.<sup>173</sup> As urban agriculture has become increasingly popular, localities have taken a variety of approaches to regulate soil testing and remediation.

- ❖ **Boston, MA** requires that all commercial farms conduct soil testing that includes analysis for lead, arsenic, selenium, and polychlorinated biphenyls (PCBs).<sup>174</sup>
- ❖ **Pittsburgh, PA** requires soil testing for all public parcels before they can be used by residents;<sup>175</sup> however, the city does not require soil testing for personal property, even if crops are sold.<sup>176</sup>
- ❖ **Los Angeles, CA** does not require soil testing for community gardens, but has published detailed guidelines for when it is advisable.<sup>177</sup>

Because many localities still do not have clear-cut policies when it comes to soil testing and remediation for urban agriculture, advocates can help to facilitate conversations around the appropriate approach for their communities, and then formalize and disseminate guidelines.

Moreover, advocates can help to ensure that testing and remediation is not prohibitively expensive. The **Environmental Protection Agency's** Brownfields Program provides a number of grants for brownfield planning, inventorying, assessment, cleaning, and environmental job training.<sup>178</sup> Application criteria vary by grant, but local governments and agencies are generally eligible.<sup>179</sup> States also often offer financial incentives for brownfields cleanup and redevelopment.<sup>180</sup> Advocates should check with their EPA regional offices and state's brownfields regulatory agency for current information on available funding sources.<sup>181</sup>

- ❖ In 2014, the **Philadelphia** Food Policy Advisory Council convened a Philadelphia Soil Safety Working Group.<sup>182</sup> The Working Group found that Philadelphia's lack of a formal soil safety policy or clear guidelines was inhibiting the development of urban agriculture and convened to conduct research and formulate recommendations for the city.<sup>183</sup> The Working Group recommended the following protocol: 1) always conduct a site history and test for soil contaminants; 2) test soil annually for nutrients; and 3) use best practices to mitigate the risks of exposure.<sup>184</sup> Though the city has not adopted formal guidelines, in 2015, the city hosted 45 workshops and five garden builds to raise awareness and train residents about soil safety best practices.<sup>185</sup> The city also received a \$200,000 EPA Brownfields Assessment Grant to provide free site histories and soil testing on city-owned lots.<sup>186</sup>
- ❖ **Austin, TX** hosts an annual four-day event, Soil Kitchen, where urban growers can drop off their soil samples with representatives from the city's Brownfields Office and receive free soil testing.<sup>187</sup> The Soil Kitchen is co-located with the East Austin Garden Fair, which offers a range of fun, educational, and family-friendly activities around gardening.<sup>188</sup> The Soil Kitchen is sponsored by the City of Austin's Brownfields Revitalization Office and EPA Region 6.<sup>189</sup>
- ❖ In **Washington D.C.**, the University of the District of Columbia, one of the country's only urban land-grant universities, offered free soil testing for urban growers in 2014 and 2015.<sup>190</sup>





## Endnotes

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## SECTION V: CONSUMER ACCESS & CONSUMER DEMAND

*Advocates who want to improve access to healthy foods in their community can promote programs that increase the availability of healthy, fresh foods in underserved areas and that facilitate transportation to stores carrying such foods. Advocates can also increase demand for healthy foods by altering the local food environment to make these foods more appealing and affordable. This section describes strategies to achieve policy changes both at the governmental and the institutional levels.*

In this section . . .

1. Bringing Healthy Foods to the Community
2. Bringing the Community to Healthy Foods
3. Increasing Consumer Demand for Healthy Foods

### 1. Bringing Healthy Foods to the Community

Residents living in communities that lack access to affordable, healthy foods often eat fewer servings of healthy foods, such as fruits and vegetables.<sup>1</sup> Diets lacking in these essential foods put consumers at an increased risk for future health complications, including obesity and associated chronic diseases.<sup>2</sup> Advocates 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.

An important first step is to survey the target community to understand its specific challenges in accessing healthy foods. Mapping food access is most accurately done on the local level. Through the 2008 farm bill, Congress directed the USDA to quantify and evaluate food deserts in the United States, but the USDA's definition of a food desert has proven problematic.<sup>3</sup> The USDA relies on population maps and national directories of food outlets to determine what areas are food deserts; however, this information does not account for barriers between people and grocery stores, such as lack of transportation or neighborhood boundaries,<sup>4</sup> or the type and quality of products available in specific food outlets.<sup>5</sup> Local governments can create their own methods for identifying food deserts in order to reflect important local factors and environmental features.<sup>6</sup>

- ❖ **Baltimore, MD's** Office of Sustainability partnered with the Johns Hopkins Center for a Livable Future to develop a city-specific definition of a food desert, incorporating four indicators into their analysis to create a more accurate representation of food access in the city.<sup>7</sup>

There is no one-size-fits-all approach, and the community's goals and priorities should be central to the



development of any policy strategy.

- ❖ **Indianapolis, IN** led a community-driven engagement process to identify solutions for increasing access to healthy, affordable food. A collaborative partnership that included the city’s Food Policy Coordinator, human-centered design experts, and representatives from the County Public Health Department, business, academia, community organizations, and faith-based organizations, among others, launched the **Indy Healthy Food Access Challenge** in early 2017.<sup>8</sup> The challenge proceeded through four distinct stages (inquire, ideate, investigate, and impact)—in the final stage, micro-grants were awarded to 20 different solutions that emerged over the course of the challenge.<sup>9</sup>

This section includes several options that communities have used to increase access to healthy foods.

### **Farmers Markets**

Farmers markets provide a variety of benefits to communities. They serve as a source of healthy, fresh food for residents, while also supporting the local economy and farmers. In addition, farmers markets can strengthen community ties by bringing together residents and farmers.

Advocates can push for their local policymakers to adopt policies that help farmers markets grow in number and capacity. First, advocates should meet with farmers market managers and vendors to better understand the challenges that they face when opening or maintaining their markets. With these challenges in mind, advocates can then work with local governments to break down barriers to opening and maintaining farmers markets. As an example, local zoning ordinances may impede the operation of farmers markets in certain areas. 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.<sup>10</sup>

Another way to use the zoning code to promote farmers markets is to use *incentive zoning* to encourage land developers to create space for markets in their developmental schemes. 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 give to developers that make those promises, such as a streamlined licensing process or allowing extra square footage for residential units beyond the limit in the zoning code. Then developers choose an option

#### **Tips for Strengthening Farmers Markets**

**Assess Your Community’s Needs:** Meet with farmers market managers and vendors to learn about the legal and policy barriers they face.

**Advocate for Policy Change:** Where there is a need for a new market, work with local government to amend regulations in order to make it easier for farmers markets to operate.

**Create SNAP-Friendly Markets:** Encourage local farmers markets to accept SNAP benefits by encouraging markets to purchase wireless EBT machines or advocating for your local government to require markets to accept SNAP or to distribute free EBT machines.

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

**Create “Double 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.



from each list.<sup>11</sup> See [Section III: Land Use Planning & Regulation](#) for more information on zoning and land use.

Advocates should identify the unique barriers to farmers markets in their communities and work with their local government to encourage changes in burdensome local zoning or permitting regulations that impede farmers market operations.

### **Food Assistance Programs at Farmers Markets**

Advocates can also encourage farmers markets to accept food assistance program benefits to make food more affordable for recipients of these programs. Advocates can educate farmers market managers and vendors on how they can potentially increase their consumer base and sales by accepting payments from food assistance programs, such as 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) (both of which offer funding specifically for use at farmers markets). Furthermore, advocates can encourage farmers markets to set up Double Up Food Bucks or comparable dollar-for-dollar match programs designed to help consumers purchase locally produced healthy foods.

Advocates can also use farmers markets as an opportunity to educate consumers about food assistance programs.

- ❖ In **Washington County, OR**, the WIC program travels to area farmers markets to distribute vouchers as part of the USDA's Farm Direct Nutrition Program, which provides additional funds for WIC participants to purchase nutritious foods.<sup>12</sup> In addition to handing out the vouchers to existing participants, consumers can speak with a WIC representative to find out if they are eligible for the program.<sup>13</sup>

Expanding the use of food assistance benefits at farmers markets could significantly increase access to fresh fruits and vegetables in low-income communities and increase revenue for farmers during the growing season. Most food assistance dollars spent at farmers markets currently come from SNAP. According to the Farmers Market Coalition, only 0.03% of SNAP dollars spent in 2015 were spent at farmers markets,<sup>14</sup> so there is an opportunity for advocates to increase access and raise awareness for SNAP recipients. The first step is to ensure that farmers markets accept these benefits. Farmers markets must apply to the USDA Food and Nutrition Service to be authorized to accept SNAP payments. Advocates can help markets complete the application online.<sup>15</sup>

Moreover, advocates can push for local legislation requiring that farmers market vendors within the city accept food assistance benefits. It is important to note that this type of policy increases start-up fees for new farmers markets and might be a barrier to entry; to address this concern, such a policy could include a grace period for new markets. Alternatively, advocates can push for legislation that requires that a certain percentage of farmers market vendors accept SNAP.

- ❖ The **San Francisco** Administrative Code requires that all farmers market vendors accept benefits from any local, state or federal food assistance program, including, but not limited to, SNAP, WIC Farmers Market Nutrition Programs, and Senior Farmers Market Nutrition Programs.<sup>16</sup>
- ❖ In 2015, the Council of **Jersey City, NJ** passed a new farmers market ordinance that requires that at least 25% of vendors at a farmers market accept SNAP in order for that market to receive a license from the city.<sup>17</sup>

Advocates can also work with individual farmers markets to amend their rules and policies to require that



vendors accept food assistance benefits. Individual markets can also centralize SNAP purchase processing, making it easier for individual vendors.

- ❖ The Easton Farmers Market in **Easton, PA** maintains its own rules, regulations, and criteria for vendor admission.<sup>18</sup> The Market's bylaws require that all vendors accept SNAP *tokens*; however, the umbrella organization for the market handles the processing of SNAP benefits.<sup>19</sup> Individuals who wish to use their SNAP benefits swipe their EBT cards at the market's information tent, specify how much they would like to spend, and receive one-dollar wooden tokens in return.<sup>20</sup> Because of Easton's proximity to New Jersey, the market accepts both Pennsylvania and New Jersey EBT cards.<sup>21</sup>

Farmers markets also need the appropriate equipment to accept SNAP payments. SNAP recipients are able to access their benefits using a card that is similar to a debit card and that vendors run through an EBT machine. In recent years, farmers markets have been able to obtain wireless EBT machines (needed for farmers markets that do not have access to electricity or a phone line) that markets can use on-site to accept SNAP benefits. Under federal law, states cannot provide most retailers, like grocery stores and convenience stores, with EBT equipment for free; however, states do have discretion to subsidize both EBT equipment and associated service fees for farmers markets.<sup>22</sup> Several states, including California, Oklahoma, and Arkansas, currently subsidize both equipment and service fees.<sup>23</sup> Local advocates can work with other advocates across the state to encourage the state government to subsidize EBT equipment and fees.

In addition, advocates can help SNAP-authorized farmers markets and farmers apply for free equipment through the **Free Snap EBT Equipment Program**, a joint initiative under the USDA and the Farmers Market Coalition (FMC).<sup>24</sup> However, advocates should note that, even if eligible farmers markets and farmers are able to obtain free equipment through this program, they still must pay service fees.<sup>25</sup> **MarketLink**, a program run by the National Association of Farmers Market Nutrition Programs (NAFMNP), helps to simplify the process of using electronic sales equipment, including applying for free equipment.<sup>26</sup>

Some states allow the fruit and vegetable portion of the WIC monthly allotment (called "Cash Value Vouchers," or "CVV") to be spent at farmers markets. In addition, some states augment federal funding for the WIC Farmers Market Nutrition Program (FMNP) and Senior-FMNP.<sup>27</sup> Advocates can educate farmers market managers and customers about these programs while pushing for their expansion at the state and local level.

States and localities can help SNAP benefits and other assistance programs go farther at farmers markets with nutrition incentive programs. Nutrition incentive programs provide assistance program participants with additional funds when they purchase fruits and vegetables at farmers markets and other eligible retailers.<sup>28</sup> While many programs double the value of the SNAP benefits up to a certain limit (typically \$20/day) and provide the incentive as a token or voucher, other programs are experimenting with a range of models that involve different incentive structures, assistance programs, and forms of technology.

- ❖ **Minneapolis, MN**'s Market Bucks program and **Philadelphia**'s Food Bucks program provide a \$2 coupon for every \$5 spent using SNAP that can be spent at participating farmers markets.<sup>29</sup>
- ❖ **Missoula, MT**'s Double SNAP Dollars program and **Knoxville, TN**'s Fresh Savings program provide a dollar-for-dollar match, up to \$20/day, for using SNAP at farmers markets.<sup>30</sup>
- ❖ The Madison-Dane County Double Dollars Program in **Dane County, WI** is administered by the Community Action Coalition with financial support from the City of Madison and Dane County.<sup>31</sup> The program provides a dollar-for-dollar match, up to \$25/day, for using SNAP at participating farmers markets.<sup>32</sup> In addition, the City of Madison supports Double Dollars Tuesdays at the Willy Street Co-Op, a local food cooperative with three brick-and-mortar locations.<sup>33</sup> While the Double Dollars



## EBT at Farmers Markets

There are five main models for accepting EBT benefits used at farmers markets across the country. Many markets use a combination of these models.

1. **Central EBT-only device.** An EBT device is centrally located and is managed by staff. The staff will swipe a customer's EBT card for a certain amount, and give the customer tokens or a voucher, known as "scrip," which the customer then uses to pay vendors. The tokens or vouchers are returned to the staff when the customer leaves and vendors are paid by the market for the scrip.
2. **Central EBT/credit/debit device.** Similar to above, except that the machine allows a credit, debit, or EBT card to be swiped for scrip. Scrip should differentiate between EBT users and credit/debit card users.
3. **Individual vendor devices.** Each market vendor that accepts EBT swipes a customer's EBT card. No scrip is distributed.
4. **Manual vouchers.** A staff member will give a customer a voucher for the amount they wish to spend at the market. The staff member contacts the financial institution directly to put a hold on the amount of money in the customer's account. Vouchers are sent back to the financial institution, and money is ultimately funneled back to the vendor.
5. **Smartphone App.** The app, Mobile Market+™, can be used to conduct EBT transactions in lieu of a traditional device. The app can be used on iPhone or iPad, but is not available in all states. To determine if the app is available in your state, visit <https://www.mobileebt.com>.

**Source:** Kat Bawden, *A Guide to SNAP/EBT at Farmers' Markets in North Carolina: Steps, Best Practices, Resources* 5 (2013), [http://www.eatsmartmovemorenc.com/NCFarmersMarketsGuideSNAP\\_EBT/Texts/Guide%20to%20SNAPEBT%20at%20Farmers'%20Markets%20in%20North%20Carolina%20Steps,%20Best%20Practices%20and%20ResourcesKat%20Bawden\\_January%202013.pdf](http://www.eatsmartmovemorenc.com/NCFarmersMarketsGuideSNAP_EBT/Texts/Guide%20to%20SNAPEBT%20at%20Farmers'%20Markets%20in%20North%20Carolina%20Steps,%20Best%20Practices%20and%20ResourcesKat%20Bawden_January%202013.pdf) [<https://perma.cc/GVZ2-GZGU>] (last visited June 7, 2016).

farmers market program runs through the early fall, the Double Dollars Tuesdays program begins in late October and runs through the spring.<sup>34</sup> SNAP recipients do not have to be Co-Op members to participate and can receive up to \$20 in vouchers when they use SNAP benefits to shop at Co-Op stores on Tuesdays.<sup>35</sup>

- ❖ In **Washington, D.C.**, the DC Department of Health sponsors the Produce Plus program, which provides \$10 worth of vouchers to DC residents at farmers markets that show their SNAP, WIC, Commodity Supplemental Foods, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), or Medicaid cards.<sup>36</sup> Residents do not have to spend any of their own money to receive a voucher. Organizers report that SNAP spending at farmers markets increased significantly during the program's first year in operation.<sup>37</sup>
- ❖ In 2016, **Flint, MI** implemented an electronic system to replace the tokens it had been using in its Double Up Food Bucks Program.<sup>38</sup> Flint's program has been very popular—in 2015, over 3,000 shoppers spent more than \$100,000 at the Flint Farmers Market.<sup>39</sup>

Funding for these nutrition incentive programs can come from a variety of sources, including USDA's Food Insecurity Nutrition Incentive (FINI) Grant Program, state and local grant programs, and foundations.

- ❖ The federal **Food Insecurity Nutrition Incentive (FINI) Grant Program** helps fund projects—either short pilot projects or large scale multi-year projects—that use incentive programs at the point of



purchase to encourage customers using SNAP to purchase more fruits and vegetables.<sup>40</sup> Local, state, and national non-profit organizations or governments may apply for a FINI grant, but all projects must have the support of the state agency responsible for administering SNAP.<sup>41</sup> In addition, FINI grant money may only be used for SNAP-based incentives.<sup>42</sup>

- ❖ A number of states, including **California**,<sup>43</sup> **Michigan**,<sup>44</sup> **Colorado**,<sup>45</sup> and **Maryland**<sup>46</sup> have their own nutrition incentive funding and technical assistance programs. These statewide programs aggregate funds from a variety of federal, state, private, and philanthropic sources. Farmers markets and other retailers can then apply to participate. State and local-run programs also offer increased flexibility. For example, while FINI funds can only be used for SNAP incentive programs, **Maryland Market Money** supports incentives for WIC and Farmers Market Nutrition Program (both WIC and Seniors) recipients.<sup>47</sup> While Market Money provides a match of up to \$5, a couple of markets have fundraised additional money to provide an increased match.<sup>48</sup>
- ❖ The **Farmers Market Coalition**<sup>49</sup> and **Healthy Food Access Portal**<sup>50</sup> maintain a list of funding resources and current public and private funding opportunities for farmers market nutrition incentive programs.

The table below illustrates the current use of these programs and the opportunities that are available for expansion that advocates may wish to explore.

**Table V-1: Recommendations To Expand Food Benefit Use at Farmers Markets**

	SNAP	WIC	WIC/SENIORS-FMNP
CURRENT USE AT FARMERS MARKETS	No limit on funds used at farmers markets. Can be used at any markets that are authorized SNAP vendors and have EBT machines.	\$6-10/month for fruits and vegetables <i>allowed</i> if state approves Cash Value Voucher (CVV)* checks at market. <i>*CVV checks are for fruit and vegetable purchases (in WIC monthly package).</i>	\$10-30/WIC recipient/year or \$20-50/S-FMNP recipient/year to spend at registered farmers markets. Both programs have limited availability in terms of voucher amounts and locations available.
STEPS TO INCREASE FARMERS MARKET PARTICIPATION	Work with state or local government to support the free distribution of wireless EBT machines or push for markets to purchase machines.  Advocate for a requirement that all new farmers markets over a certain size or within specified neighborhoods accept SNAP. Push existing markets (over a certain size or within specified neighborhoods) to transition by a certain date.  Push local agencies to utilize public funds or apply for private funding to offer incentive programs.	Advocate for state or local regulations that allow WIC CVV checks to be spent at farmers markets.  Where allowed, educate markets about WIC CVV and encourage them to take steps to become authorized WIC CVV vendors.  Push local agencies to utilize public funds or apply for private funding for incentive programs.	Advocate for expansion of federal FMNP funding. Push for state or local government to allocate funds to expand these programs and increase the voucher amounts.  Push local agencies to utilize public funds or apply for private funding for incentive programs.





## Healthy Food Prescription Programs

Healthy food prescription programs are another type of nutrition incentive program that have grown increasingly popular in recent years. These programs allow doctors and healthcare providers to write healthy food “prescriptions,” which typically come in the form of vouchers that can be used to purchase fresh fruits and vegetables at participating farmers markets and retailers.

While healthy food prescription programs can take a number of forms and involve a range of partners, the **Fruit and Vegetable Prescription Program**, or FVRx, is a model that has been popularized—and trademarked—by **Wholesome Wave**, a national non-profit that “empowers under-served consumers to make better food choices by increasing affordable access to healthy produce.”<sup>51</sup> FVRx programs generally use an incentive structure of \$1/day per household member—for a family of four, this would be \$28/week in fruit and vegetable incentives.<sup>52</sup> Wholesome Wave coordinates a (free) national network for nutrition incentive program providers with active members in 38 states, Washington, DC., and Navajo Nation.<sup>53</sup> In addition to providing financial and technical resources, Wholesome Wave published the comprehensive *Fruit and Vegetable Prescription Program Toolkit*; this resource is broken into five different modules that cover everything from planning and fundraising to monitoring and evaluation.<sup>54</sup>

Advocates should see if Wholesome Wave and its members are already active in their state—at the time of publication, Wholesome Wave had “thriving” program activity in ten states and “midstage” program activity in twelve states.<sup>55</sup> Advocates who have active fruit and vegetable prescription programs in their state and/or community can work with practitioners to leverage existing resources and scale programs further. Advocates without existing programs in their state and/or community can approach healthcare providers and healthy food retailers and try to facilitate partnerships between the two. Even if they don’t follow the Wholesome Wave model, advocates can still register with the network and consult the Toolkit and other resources.

- ❖ **Washtenaw County, MI**’s local health department launched the Prescription for Health program in 2008.<sup>56</sup> Through the program, health care providers give low-income patients at risk for diet-related chronic illness prescription cards for fruits and vegetables. Enrolled patients can redeem these cards at local farmers markets for \$10 in tokens and can use their cards up to ten times, for a total benefit of \$100.<sup>57</sup> In 2015, the program enrolled 285 patients across several local health clinics.<sup>58</sup> While the 2015 program was funded by the Kresge Foundation and a local hospital network (Saint Joseph Mercy Health System), the local hospital network covered the full cost of the program in 2016.<sup>59</sup> Washtenaw County published two resources, a *Program Implementation Guide* and a **Fruit & Vegetable Prescription Program Readiness Checklist**, to help other communities implement similar programs.<sup>60</sup>
- ❖ In **Augusta, GA**, Wholesome Wave Georgia partnered with the Harrisburg Family Health Care clinic, Icebox Ministries, G.R.O.W Harrisburg, and the Veggie Truck to launch a Fruit and Vegetable Prescription program in 2015.<sup>61</sup> Program participants meet with medical students monthly, receive fruit and vegetable prescriptions, and attend cooking classes.<sup>62</sup> Prescriptions of \$1 per household member per day can be redeemed at the Veggie Truck Farmers Market.<sup>63</sup> In 2016, the program served 115 participants who redeemed approximately \$12,222 for fresh fruits and vegetables.<sup>64</sup>

## Community-Supported Agriculture

Community-supported agriculture (or “CSA”) programs enable 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. The food is either made available for pickup at set locations or delivered to a client’s doorstep on a weekly or biweekly basis. CSA programs benefit farmers since they have a guaranteed amount of revenue at the beginning of the growing season, and encourage them to scale their production efficiently to meet the need.



Although CSAs increase access to fresh fruits and vegetables by offering convenient pick-up locations or home delivery, membership often requires a lump sum payment early in the growing season, which can be difficult for low-income customers. In addition, the USDA requires that customers who use SNAP benefits pay for CSA purchases no more than 14 days before receiving their produce.<sup>65</sup> In order to enable customers using SNAP to participate in CSAs, advocates should work with CSAs to modify their payment structures in one or more of the following ways:

- ❖ **Weekly and Bi-Weekly Payments:** CSAs can take payments on a more frequent basis, such as weekly or bi-weekly, instead of in one lump sum (see text box). If weekly or bi-weekly installments are not feasible, CSAs can explore other non-traditional options.
  - ♦ The Adelante Mujeres CSA in **Washington County, OR**, allows customers using SNAP benefits to pay in weekly installments; however these customers must pay a small deposit upfront, which cannot be paid with SNAP benefits.<sup>66</sup>
- ❖ **Sliding Scale Payments:** CSAs can institute more progressive fee systems by establishing a sliding scale according to a customer's income and ability to pay.
  - ♦ The FairShare CSA in **Dane County, WI**, through the Partner Shares program, offers up to a 50% discount for CSA shares for eligible households. FairShare also accepts SNAP benefits for the remaining balance of the partner share. This program is funded through grants and donations, as well as through the County's budget.<sup>67</sup>
  - ♦ The Kensington/Windsor Terrace CSA in **Brooklyn, NY** offers a first-come first-served sliding scale based on income and size of household, which ranges from a 25-50% discount on the full share price.<sup>68</sup> Payments can be made upfront or in monthly installments. The higher participation fees charged to higher-income customers help subsidize lower-income customers' CSA packages. When feasible, the CSA also offers a 10% discount on bi-weekly shares for some members who do not qualify for the sliding-scale discount.
- ❖ **Revolving Loan Fund:** CSAs can create or seek funding to create a revolving loan fund.
  - ♦ Chelsea CSA in **New York, NY** created a revolving loan fund through a grant from Hunger Action Network of New York State. The fund provides upfront payment to farmers on behalf of low-income members, who then replenish the fund with installment payments throughout the season.<sup>69</sup>
- ❖ **Work Trade Opportunity:** CSAs can offer a work trade option as an alternative form of payment.
  - ♦ Siembra Farm in **Gainesville, FL** customers can receive a family-sized basket of veggies in exchange for five hours of work on the farm each week.<sup>70</sup>
  - ♦ Backyard Urban Garden Farms in **Salt Lake City, UT** offers a work exchange program where members work a 4-6 hour shift once a week for the length of the growing season. These members receive a full vegetable CSA share in addition to home cooked meals at the end of each shift.<sup>71</sup> A work exchange doubles as an educational opportunity, especially for those who might be interested in starting a farm or garden.
- ❖ **Debit Card Discount:** Farmers can offer discounts to customers that pay up front for a debit card at the beginning of the season.



- ♦ Cedar Circle Farm CSA in **Thetford, VT** offers a Farmstand Dollar card as a flexible alternative to its traditional CSA system.<sup>72</sup> Members pay an upfront lump sum that goes onto a card that functions like a debit card, and then receive 10% off their purchase when they use this card. The card can be replenished throughout the season with additional installment payments, and leftover funds roll over to the following season.

Advocates can encourage CSAs to arrange for convenient pick-up sites, including locations in low-income communities and sites that are accessible via public transportation. CSAs might consider partnering with large institutions with a high employee and visitor population, such as public hospitals, to coordinate a pick-up spot.

- ❖ Highland General Hospital in **Oakland, CA** partners with a CSA as part of an effort to promote health and wellness within the hospital community.<sup>73</sup> Highland staff members can pay an affordable rate for a weekly or biweekly CSA box of fresh produce, and reduced-price boxes are available for low-income patients.<sup>74</sup>
- ❖ Lawrence Memorial Hospital in **Lawrence, KS** offers a CSA program to its employees; while the program is not subsidized, the convenience of picking up their produce on their ground floor of the hospital is a big selling point.<sup>75</sup>

### **Mobile Food Vending and Delivery Services**

Mobile food vending and delivery services can increase the distribution and sale of healthy foods to populations geographically isolated from fresh food sources and to individuals with limited mobility. Mobile food vendors can serve larger geographic areas where a stationary grocery store might struggle to survive. Advocates can work with local government to ensure that permitting, licensing, and zoning provisions make possible the operation of mobile grocery stores, mobile farmers markets, and mobile food banks. Examples of mobile vending strategies include:

- ❖ **Mobile Farmers Markets and Grocery Stores:** With the right equipment, farmers markets and grocery stores can travel to residences, underserved neighborhoods, offices, hospitals, government buildings, and more. Advocates can work with local governments to make sure that mobile markets are permitted and zoned to operate in target neighborhoods; to provide start-up funding; and to mobile markets on government property or in other convenient locations.
  - ♦ Rural Resources in **Greeneville, TN**, operates a mobile farmers market that delivers right to residents' homes and to the local hospital.<sup>76</sup>
  - ♦ In **Camden, NJ**, the Greensgrow Farms Mobile Market makes regularly scheduled stops at four urban locations on Thursdays and Fridays during the summer and fall months.<sup>77</sup>
  - ♦ In **Worcester, MA**, the Regional Environmental Council runs a mobile farmers market three days a week in season.<sup>78</sup> In 2014, the market reached approximately 8,000 customers across 16 locations.<sup>79</sup> In addition to cash and credit, the mobile market accepts EBT/SNAP, WIC, and senior coupons.<sup>80</sup>
  - ♦ In **Phoenix, AZ**, a group of local partners established Fresh Express, a former city bus that now brings fresh groceries and shelf-stable foods to underserved areas around Phoenix, targeting schools, senior centers, and other community meeting places.<sup>81</sup> In 2015, Fresh Express had nearly 7,500 customers.<sup>82</sup> Fresh Express introduced a Double Up program for SNAP recipients in its second year and saw a 666% increase in SNAP spending.<sup>83</sup> Notably, the bus was donated by the city.<sup>84</sup>



- ❖ **Produce Carts:** Mobile produce carts that carry exclusively fresh produce might be able to get an expedited permit from the city.
  - ♦ **Chicago, IL** added provisions for business licenses for movable produce stands to operate around the city, including on some private property. The Chicago ordinance requires that at least half of each stand's business be conducted in food deserts.<sup>85</sup>
  - ♦ In **New York, NY**, the city has brought a wide variety of fresh produce to underserved areas with its Green Carts program. Green Carts are mobile vendors selling only fresh fruits and vegetables in specifically-designated neighborhoods.<sup>86</sup> The program was developed as part of the city's efforts to positively impact public health by making affordable, high-quality produce more available in underserved communities.<sup>87</sup> Cart vendors can put in a request to the city to receive a free wireless EBT machine to use with their cart.<sup>88</sup> Green Carts are the only new food vendor permits currently available in New York City, so they also provide an economic opportunity for vendors.<sup>89</sup>
- ❖ **Online Food Purchasing:** Advocates can also work to help residents in underserved communities order groceries online and then pick them up from central locations. Advocates can push for local government agencies to facilitate convenient pick-up points. In addition, advocates should track the USDA's two-year pilot program that will enable SNAP participants in seven states to order groceries from select online retailers starting in 2017, and consider pushing for the expansion of this program to other locations.<sup>90</sup>
  - ♦ The Baltimarket program in **Baltimore, MD** is a partnership between local grocery stores and the Baltimore City Health Department through which low-income seniors can place grocery orders online or with a trained Neighborhood Food Advocate and then pick up the groceries at their senior apartment building or designated community site weekly.<sup>91</sup> The program operates in 13 sites, has delivered over \$400,000 in groceries to 1,100 customers, and has trained 57 Neighborhood Food Advocate volunteers.<sup>92</sup> 47% of customers report buying more fruits and vegetables with the program.<sup>93</sup>
- ❖ **Mobile Food Banks:** Advocates can work with local governments to encourage local food banks to bring food directly to communities by setting up weekly deliveries in a central location or providing home delivery for some populations.
  - ♦ 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 community underserved by fresh food retailers.<sup>94</sup>
  - ♦ Ballard Food Bank in **Seattle, WA** delivers to the homes of senior citizens and the disabled, taking into account the special dietary needs of their clients.<sup>95</sup>

### **Permanent Food Retail Establishments**

Whether or when a community should bring in a full-service grocery store depends on the goals and needs of each community. Full-service grocery stores often have longer operating hours, employ more people, and offer a wider selection of food. However, a full-service store can take years to establish, is more costly to launch and operate, and many struggle to survive in some communities. Also, stores owned by a national company might create challenges for existing locally owned food businesses and providers, and lead to more wealth leaving the community rather than being reinvested in it. Any efforts to bring in new businesses to communities should be in response to community research and discussions that identify this as a priority.



- ❖ The Center for Health Policy at Indiana University and the Marion County Public Health Department conducted an extensive Health Impact Assessment to determine the demand, need and likely outcomes of bringing a full-service grocery store to the Meadows neighborhood in **Indianapolis, IN**—a community underserved by grocery stores.<sup>96</sup> The assessment sought to answer the following questions, among others: (1) whether there is currently reasonable access to healthy foods in Meadows; (2) whether community residents believe they have reasonable access to healthy foods in the community; and (3) what is the health status of those living in Meadows.<sup>97</sup> A community survey asked residents about their grocery shopping and eating habits and what might change if a full-service grocery store opened in the neighborhood.<sup>98</sup> The assessment also included interviews with a small group of residents and key decision makers.<sup>99</sup> Ultimately, the assessment recommended a full-service grocery store in light of community demand, the number of residents who reported doing most of their shopping at a full-service store outside of the neighborhood, and the prevalence of chronic diet-related diseases.<sup>100</sup>

For neighborhoods that want a full-service grocery store, advocates can push local government to adopt policies that encourage the establishment of these stores. The federal **Healthy Food Financing Initiative (HFFI)** as well as state and local fresh food financing initiatives help fund projects that bring healthy food retailers into underserved communities.<sup>101</sup> These initiatives typically pair below-market loans, loan guarantees, grants, and tax credits to incentivize healthy food retailers to open in specific communities.<sup>102</sup>

- ❖ The City of **New Orleans, LA** partnered with a community development financial institution to start the New Orleans Fresh Food Retailer Initiative. The City pledged grants of up to \$7,000,000 for healthy food retailers.<sup>103</sup>
- ❖ In 2015, the City of **Madison, WI** authorized up to \$300,000 in financing, via a low-interest and partially forgivable loan, to bring a full-service, affordable grocery store to the city's Allied Drive neighborhood.<sup>104</sup> The Madison Food Policy Council oversaw the development of the city's Request for Proposals for the initiative and assisted in reviewing proposals.<sup>105</sup> The city awarded the funding to the community-based, multi-stakeholder Allied Community Cooperative, which is set to open in 2018.<sup>106</sup>
- ❖ **New York City's** Industrial Development Agency, in conjunction with the Food Retail Expansion to Promote Health (FRESH) program, provides real estate tax deductions and sales tax exemptions to qualifying grocery store operators and developers.<sup>107</sup> For more information about using zoning incentives, see [Section III: Land Use Planning & Regulation](#).

### **Healthy Convenience/Corner Store Initiatives**

Healthy convenience store initiatives, sometimes referred to as “healthy corner store” initiatives, increase the shelf space dedicated to fruits, vegetables, and other healthy foods in smaller stores. Often these smaller stores, such as gas stations or convenience stores, are the nearest retail food outlet to residents and can serve as important local businesses and centers of community life. However, for a variety of reasons including lack of demand and equipment, many smaller stores stock very little, if any, healthy foods. Healthy convenience store programs set standards for participating stores, which generally include requirements to stock certain kinds of foods, such as whole grain bread and fresh produce, and a minimum number of healthy foods.<sup>108</sup> Some initiatives further include requirements for store design and restrictions on the marketing of alcohol and tobacco products.<sup>109</sup> Participating stores that meet these guidelines may receive grants, star ratings, or training and technical assistance, among other rewards for improving access to and consumption of healthy foods in their communities.<sup>110</sup>

Advocates can work with convenience store owners, local government, schools, and other organizations to successfully implement healthy convenience store initiatives. There are a number of important considerations for advocates who want to start an initiative in their community:<sup>111</sup>



- ❖ **Where to Start:** Advocates should first take stock of local convenience stores, their owners, and the surrounding community. Getting a sense of a storeowner's goals, current practices and interest in changing their business model is critical because storeowners can be a great resource for gauging needs and demands of the community, and the storeowners' buy-in is key since they must ensure implementation and maintenance of the program.
  - ♦ **Providence, RI's** Healthy Corner Store Initiative organizers consulted with storeowners who knew that particular healthy foods would be popular with the ethnic populations they served.<sup>112</sup> These conversations also identified owners' primary concerns with implementation, which helped the organizers provide tailored support and resources.<sup>113</sup>
- ❖ **Who's in Charge:** Advocates should also consider which program structure best suits the community's needs. While some initiatives are organized by non-profits or public agencies, other programs are legislation-based or agency-led. Non-profit-based programs might be easier to get off of the ground, but may be more difficult to maintain over time. Successfully enacted legislation can allocate funding, resources, and oversight for the program. Advocates should consider the potential benefits and pitfalls of each option, consulting the USDA's *Healthy Corner Stores Guide* for information and resources for different strategies.<sup>114</sup>
  - ♦ An ordinance enacted in **Minneapolis, MN** required that all grocery stores stock a certain number of staple foods from a variety of categories, including fruits, vegetables, and whole grains.<sup>115</sup> Despite the threat of fines and other penalties, stores struggled to meet the requirements laid out in the statute.<sup>116</sup> The Minneapolis Health Department found that stores lacked adequate resources and support to implement the program, suggesting that legislation can prove ineffective without sufficient support in place.
- ❖ **Funding and Support:** Programs will require funding to assist stores in obtaining supplies, promotional materials, and any additional infrastructure. Such funding can come from federal, local or private allocations or grants, which the local government or a non-profit can receive to support the program.
  - ♦ After the initial challenges with the **Minneapolis, MN** statute, the Minneapolis Health Department established a program to assist stores in procuring food, setting up store displays, and promoting new products.<sup>117</sup> Since 2010, more than 30 stores have participated in the program.<sup>118</sup> In 2015, the Minneapolis Health Department expanded the program, providing free merchandising packages and basic technical assistance for all corner storeowners interested in improving their healthy food selections.<sup>119</sup>

## Community Gardens

Community gardens come in different shapes and sizes and are managed by a variety of groups, whether

### PLANT A ROW FOR THE HUNGRY

Many cities and counties around the country participate in Plant a Row for the Hungry. The nationwide program calls for local gardeners to designate a row of their garden to donate to the local food bank. Ottawa County, MI decided to start a program after finding that 60% of food banks found prices to be prohibitive for purchasing fruits and vegetables.

**Source:** *Plant a Row for the Hungry*, OTTAWA COUNTY FOOD POLICY COUNCIL, <https://www.miottawa.org/MediaRoom/pdf/2015/04242015B.pdf> [<https://perma.cc/LWK6-7EJC>] (last visited June 9, 2016).





private, public, or non-profit. The common thread among these gardens is that they are cultivated by multiple members of the community rather than a single individual. The produce, herbs, and plants from community gardens are then harvested by gardeners for their own use or for donation to community organizations. [Section IV: Urban Agriculture](#) provides more guidance on how larger gardens and urban farms can sell their food at farmers markets, corner stores, schools and restaurants.

Community gardens not only increase food access, but they also help build stronger community bonds, serve as education tools, decrease crime and violence on surrounding streets, and increase property values through neighborhood beautification.<sup>120</sup> Advocates can play an important role in increasing the number and capacity of community gardens in their municipalities through the following governmental and institutional strategies:<sup>121</sup>

- ❖ **Zoning:** Work with zoning boards and departments of planning to make zoning rules favorable to community gardens, both in terms of allowing for produce, bees, and chickens to be produced in the garden and allowing for sales from the garden even if the area was not traditionally zoned for commercial enterprise. Advocate to local government to pass or amend an ordinance that allows for composting in community gardens.
- ❖ **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 and hospitable for a garden. Push local government to put land into trusts or easements to preserve it for gardens. Ensure that gardens are easily accessible and suitable for children, the elderly, and those with disabilities.
- ❖ **Education:** Work with local government to raise awareness about community gardens through local news outlets, social media, and community message boards. 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 paying to connect the gardens with water supplies.

## 2. Bringing the Community to Healthy Foods

In order to increase healthy food access, advocates can also work to ensure public transportation options connect communities to food outlets and improve the ability of residents to walk and bicycle to retail food outlets. Increasing and improving options for walking and biking within the community not only expands food access but also promotes healthy lifestyles, community connections, and safety.

Whether decisions concerning the development of roads, traffic signals, and street lighting are made 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 or federal government. It is therefore important that advocates identify the relevant agencies or governmental bodies with the ability to implement the desired transportation system improvements.

Advocates can also work with local public transportation authorities, where applicable, to:

- ❖ **Ensure that Public Transportation Works for Underserved Communities:** Identify areas underserved



by public transportation and isolated from healthy food sources, often referred to as “grocery gaps,” 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 low-income neighborhoods with two supermarkets.<sup>122</sup>
  - ♦ The Transit Authority in **Duluth, MN** launched a pilot program to run a bus route from an underserved neighborhood directly to a supermarket with healthy, affordable food options.<sup>123</sup> The buses run several times each Tuesday and have bins to hold bags of groceries.<sup>124</sup> The pilot received funding from the Center for Prevention at BlueCross BlueShield of Minnesota.<sup>125</sup>
  - ♦ In **Springfield, MO**, City Utilities hosted public forums to discuss adding stops to an existing bus route in order to connect residents with a number of grocery stores.<sup>126</sup> By fall 2015, the city was revamping its bus system to include the additional bus stops.<sup>127</sup> Advocates seeking to support similar transportation improvement initiatives in areas with low access to grocery stores should reference the USDA Economic Research Service’s Food Environment Atlas.<sup>128</sup> The transportation landscape in a city impacts the “social distance” between people and healthy food sources, which can correlate more with food habits than the simple distance from home to food source does.<sup>129</sup>
- ❖ **Incorporate Car, Bicycle, and Ride Share Programs into Transportation Planning:** Across the country, municipalities have experienced a rise in car, bicycle, and ride share programs to increase mobility for residents. However, due to both cultural and structural barriers to many of these programs, low-income residents are the least likely to use these new resources. Low-income residents face many barriers to using these programs, including the lack of pick-up/drop-off locations in low-income neighborhoods, the need for internet access, the need for a bank account or credit card to make a reservation, and many others.
- ♦ The **Institute for Transportation and Development Policy** published a comprehensive report, *Connecting Low-Income People to Opportunity with Shared Mobility*, that recommends several key steps for local governments developing a shared mobility program aiming to serve low-income communities, including: (1) conducting community-based research into the actual gaps in transportation access, and what goods and services they have trouble accessing; and (2) coordinating with public transportation systems in the city to use shared mobility programs to extend the reach of these systems.<sup>130</sup>

#### INCLUSIVE BIKE SHARE

In Boston, MA, the “Hubway” bike share program offers a subsidized annual membership fee of \$5 to low-income individuals (the usual fee is \$85) and a free helmet. The City of Boston has reached out to social service agencies to increase participation in the low-income program and has streamlined the registration process. As of July 2014, over 1,300 individuals had participated in the low-income program, representing 11% of Hubway riders (for other bike share programs, low-income individuals make up less than 5% of ridership).

**Source:** MICHAEL KODRANSKY & GABRIEL LOWENSTEIN, INSTITUTE FOR TRANSPORTATION AND DEVELOPMENT POLICIES AND LIVING CITIES, CASE STUDIES: CONNECTING LOW-INCOME PEOPLE TO OPPORTUNITY WITH SHARED MOBILITY 5 (2014), <http://www.livingcities.org/resources/285-case-studies-can-shared-mobility-help-low-income-people-access-opportunity> [<https://perma.cc/KHD2-UXXG>].



- ♦ In **Washington, DC**, the Department of Transportation agreed to let car-share companies Zipcar and Flexcar use city-owned spaces if the companies agreed to place at least two car share stations and seven vehicles in low-income neighborhoods.<sup>131</sup>
- ❖ **Promote Safe Streets:** Advocates can work with city agencies to make streets safer for both pedestrians 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. There are federal regulations that require transportation agencies to consider bicycle and pedestrian interests when planning, but the Department of Transportation encourages state and local governments to implement more stringent standards to ensure safety and accessibility.<sup>132</sup> In order to sustain a program in a smaller city, advocates can raise awareness about the program and its benefits and work with local government and businesses to provide funding and support.
- ♦ The Bicycle Coalition of Greater **Philadelphia** runs the Safe Streets, Healthy Neighborhoods campaign, which partners with local government and public and private organizations to make Philadelphia neighborhoods easily accessible and safe for pedestrians and bicyclists.<sup>133</sup> The program works to improve the design of streets and sidewalks while educating and engaging the community to discuss potential barriers to access as well as benefits of increased mobility.<sup>134</sup>

Advocates should also consider partnering with other community institutions—for example, churches and universities—in order to provide free or reduced-cost transportation options to healthy food retailers. Advocates could also explore working with companies that provide shuttle services for their employees. Local government can encourage such initiatives by offering tax incentives to private businesses that lend their shuttles to help get community members to healthy food retailers.

- ❖ **Rock Island, IL** partnered with University of Illinois-Extension to provide a free once-a-month Supermarket Shuttle for residents. While on the shuttle, an educator provides tips for cooking methods and types of vegetables and facilitates a conversation where passengers can ask questions and share their own tips and insights.<sup>135</sup>
- ❖ In **Indianapolis, IN**, area church groups began providing daily shuttles to grocery stores in the wake of a large grocery store closure that left many residents without access to fresh food.<sup>136</sup>

### 3. Increasing Consumer Demand for Healthy Foods

In addition to making healthy food more accessible for all communities, there are also policy strategies to encourage more consumers to choose healthy foods. This section highlights some ways that advocates can influence consumer choices by using the following policy tools: education, labeling, taxes, marketing restrictions, and product and store restrictions.

#### **Consumer Education**

Local governments can play a key role in educating residents about nutrition and healthy food choices. City departments of health can run public service advertisements on public transportation or billboards.

- ❖ The **New York City** Department of Health and Mental Hygiene’s “Are You Pouring On the Pounds?” campaign ran graphic advertisements of solid fat being poured out of soda bottles, sometimes directly into people’s mouths.<sup>137</sup> The advertisements highlighted the strong correlation between soda consumption and obesity.



- ❖ **Howard County, MD** launched Howard County Unsweetened, a three-year campaign aimed at reducing consumption of sugary beverages, such as sodas, “through the promotion of policy systems, and environmental changes.”<sup>138</sup> A *Journal of the American Medical Association* study found that this public health policy campaign contributed to decreases in sugary beverage sales, including a 19.7% decrease in regular soda sales, a 15.3% decrease in fruit drink sales, and a 15.0% decrease in juice sales.<sup>139</sup>

Local governments can also require nutrition education in schools, child care settings, and other institutions to increase awareness about healthy eating, instill healthy habits, and teach food preparation skills.

- ❖ **Chicago, IL** not only requires that meals and snacks in childcare settings meet nutrition standards, but also recommends that child care providers offer a minimum of 8 hours of nutrition education/year to staff, and provide nutrition education programs at least twice a year for parents.<sup>140</sup>

## Labeling

Labels are one means through which consumers get vital information about the foods they eat.<sup>141</sup> By requiring additional or better information on nutrition labels, policymakers can influence consumer eating and purchasing decisions.

- ❖ **Packaged and Raw Food Items:** Under the federal Nutrition Labeling and Education Act (NLEA), the FDA requires that certain information be included on the labels of packaged food that is sold interstate, such as the Nutrition Facts Panel.<sup>142</sup> In 2016, the FDA updated the Nutrition Facts Panel.<sup>143</sup> Major changes include the addition of “added sugars,” removal of “calories from fat,” updated daily values for certain nutrients, and labeling requirements for items likely to be consumed in one sitting.<sup>144</sup> The NLEA explicitly preempts states from establishing their own labeling requirements for areas covered under the NLEA.<sup>145</sup> However, this leaves room for states to set their own requirements for areas *not* covered by the NLEA (unless preempted by other federal statutes). One notable area where states do have authority is defining and labeling local foods, as there is currently no federal definition of “local.”<sup>146</sup> Consumer perceptions of what it means for something to be “local” vary greatly from state to state, and locality to locality.
- ❖ **Restaurant Meals and Prepared Foods:** Advocates can push for change in labeling restaurant meals and on prepared foods sold by retailers. Significant research indicates that nutritional labeling of away-from-home food options help consumers to make healthier food choices.<sup>147</sup> The Patient Protection and Affordable Care Act of 2010 (the ACA) established calorie labeling requirements for chain restaurants and retailers with more than 20 locations.<sup>148</sup> These requirements were set to go into effect in May 2017, but the FDA extended the compliance deadline to May 2018.<sup>149</sup> While the ACA preempts states from imposing additional requirements on food service establishment that are covered by the statute, states and localities can still pass menu labeling laws for establishments that are not covered, e.g. smaller restaurants and retailers.<sup>150</sup> Such laws can go beyond the federal law, such as requiring additional nutritional information (e.g., sodium, fats, carbohydrates, etc.).

Given the repeated delays in implementing the ACA’s menu labeling requirement,<sup>151</sup> states and localities may also want to consider enacting menu labeling requirements identical to those under the ACA. By passing and enforcing their own laws with identical requirements, localities can begin enforcing their laws immediately and even impose its own penalties for violations.<sup>152</sup>

## Warning Labels

Warning labels for high levels of certain nutrients that may pose a risk to human health can be placed on packaged food items, on menus and menu boards, or on food advertisements, such as billboards. This has



become a fertile area for regulation—and litigation. Efforts to place warning labels on unhealthy foods and advertisements for these foods have been met with swift opposition from well-resourced interest groups. However, some states and localities have been successful in passing such measures and, furthermore, withstanding legal challenges.

- ❖ **Warning labels on unhealthy food advertisements:** In 2015, **San Francisco, CA** passed an ordinance requiring warning labels on sugar-sweetened beverage advertisements greater than 36 inches, on paper, poster, and billboard.<sup>153</sup> The warning label must state: “WARNING: Drinking beverages with added sugar(s) contributes to obesity, diabetes, and tooth decay,” and must occupy at least 20% of the advertisement.<sup>154</sup> The American Beverage Association brought a lawsuit against the City, claiming that ordinance violated free speech rights.<sup>155</sup> However, a U.S. District Court upheld the measure and it went into effect in July 2016.<sup>156</sup>
- ❖ **Warning labels on restaurant menus:** In 2015, the Board of Health in **New York, NY** passed a resolution that amends the New York City Health Code to require restaurants with 15 or more locations nationwide to post warning labels on menus and menu boards for foods that contain high levels of sodium.<sup>157</sup> The provision requires that restaurants put a designated sodium warning sign next to menu items or combination items (e.g., a fast food “combo meal”) that contain 2,300 mg sodium or more per serving.<sup>158</sup> By requiring a warning label on high-sodium foods, the city hopes to increase awareness and decrease the purchase and consumption of high-sodium foods.<sup>159</sup> The National Restaurant Association filed a lawsuit to stop the resolution from taking effect, but the label was upheld by New York’s Supreme Court.<sup>160</sup>
- ❖ **Warning labels on packaged food items:** The NLEA’s preemption of state and local food labeling requirements does not apply to labels “concerning the safety of the food or a component of the food.”<sup>161</sup> This has opened the door for states and localities to pass laws requiring warning labels related to food safety. **California’s** Proposition 65, passed in 1986, imposes warning requirements for products, including food items that contain chemicals “known to the state to cause cancer or reproductive toxicity.”<sup>162</sup> Food warning labels may appear 1) on the product itself, 2) on a shelf sign or shelf tag, or 3) via an electronic device that automatically provides the warning (e.g. not a barcode scanner). Updated regulations also extend the warning label to internet purchases.<sup>163</sup> Proposition 65 has resulted in litigation concerning whether various foods—from staple foods to more processed items—cause cancer.<sup>164</sup>

Some states have attempted to extend food safety warning labels to unhealthy foods. Bills have been introduced in California,<sup>165</sup> New York,<sup>166</sup> Hawaii,<sup>167</sup> Vermont,<sup>168</sup> and Washington<sup>169</sup> to require labels on sugar-sweetened beverages that warn consumers of the health risks posed by drinking beverages with added sugars. While none of these bills have passed, they increasingly garnered attention from advocates and opponents alike. Municipal governments can show their support for such measures. For example, **Berkeley, CA** City Council passed a unanimous resolution in support of a 2017 state senate bill requiring health warning labels on sugar-sweetened beverages.<sup>170</sup>

## **Taxes**

Taxes can alter consumer behavior by making foods more or less expensive than other alternatives. For example, a higher tax on soda or junk food might dissuade consumers from making that purchase, whereas a reduced tax rate on healthier foods may entice consumers to make that purchase. Advocates can help pass the following tax measures, which can have a public health benefit and increase revenue for their locality.

- ❖ **Eliminate Sales Tax on Food for Home Consumption:** Local governments can help stretch consumer dollars and encourage more at-home meal preparation. Most states already reduce or exempt taxes on food for home consumption; however, some states do not offer any reductions or exemptions for these



items.<sup>171</sup> For example, in **Georgia**, food and beverages sold for home consumption are exempt from the state's 4% sales tax, but may be subject to local county sales taxes.<sup>172</sup> Thus, advocates can push for tax changes on both the local and state level, depending on the existing landscape.

- o The City Council in **Eloy, AZ** passed an ordinance eliminating city sales tax on food purchased for home consumption.<sup>173</sup>

❖ **Increase taxes on unhealthy foods and beverages:** Taxing unhealthy foods, particularly sugar-sweetened beverages (SSBs), is a policy strategy that has gained momentum in recent years, but has also stirred controversy. Opponents argue that such taxes are regressive, placing a larger financial burden on low-

### Formulating SSB Taxes

At the time of publication, eight municipalities and one county had successfully passed sugar-sweetened beverage taxes: Berkeley, San Francisco, Oakland, and Albany (CA), Seattle (WA), Philadelphia (PA), Cook County (IL), and Boulder (CO). Advocates interested in pursuing a sugar-sweetened beverage tax should consider the following:

- ❖ **What is being taxed?** Existing ordinances impose a tax per fluid ounce (ranging from 1-2 cents) on SSBs with exemptions for milk, juice, formula, alcoholic beverages, and others. Some apply to diet sodas (e.g. **Cook County, IL**), while others exempt diet sodas (e.g. **Berkeley, CA**). In some cities and states, taxes have been proposed that would impose higher tax rates on beverages with a greater concentration of added sugars – for example, a bill in **Massachusetts** would impose a tax of 1 cent per ounce for beverages with 5 grams or more but less than 20 grams of sugar per 12 fluid ounces and 2 cents per ounce for beverages with 20 grams of sugar or more per 12 fluid ounces.
- ❖ **Where is the tax collected?** Existing ordinances impose an excise tax on wholesale distributors. While these taxes are generally passed on to retailers and consumers, imposing the tax at the distributor level has helped such taxes withstand legal challenges.
- ❖ **How much revenue is likely to be generated?** The oldest tax, **Berkeley, CA**'s, generates about \$1.5 million annually. The most recently-passed tax, Seattle, WA's, is expected to generate an estimated \$15 million annually. While **Philadelphia, PA**'s mayor estimated that the tax would generate \$46 million for fiscal year 2017, it ultimately generated around \$39 million.
- ❖ **Where will it go?** When **San Francisco, CA** first put a SSB tax on the ballot in 2014 (Proposition E), it earmarked revenue for physical education and nutrition programs for children; this meant that it needed support from two-thirds of voters to pass. The 2016 version, which did pass, directed tax revenue to the city's general fund; this meant that it only needed support from a simple majority of voters. In **Philadelphia, PA**, tax revenue goes towards funding universal pre-kindergarten. In **Berkeley, CA**, a commission of health and nutrition experts make annual recommendations for how revenue will be used.
- ❖ **How will the tax be messaged?** **Cook County, IL** presented the tax as necessary to balance the budget and avoid other tax increases, while Boulder, CO focused on children's health.
- ❖ **Who will support it?** Advocates in **Berkeley, CA** built a broad, grassroots coalition that included the NAACP, Latinos Unidos, and the Berkeley school board.

**Sources:** BERKELEY MUN. CODE ch. 7.72; S.F. BUS. AND TAX REG. CODE art. 8; OAKLAND MUN. CODE ch. 4.52; CITY OF ALBANY ORD. No. 2016-02; SEATTLE MUN. CODE ch. 5.53; PHILA. CODE ch. 19-4100; COOK COUNTY CODE art. XXII; BOULDER MUN. CODE tit. 3, ch. 16; Massachusetts Gen Assem Bill S. 1562, 190<sup>th</sup> Session (2017), <https://malegislature.gov/Bills/190/S1562>.





income individuals. Some also argue that decreases in SSB sales will result in a loss of jobs for retailers, distributors, and manufacturers. On the other side, advocates argue that obesity and diabetes, which can result from SSB consumption, are regressive, disproportionately affecting low-income individuals. They also point to the fact that such taxes can generate revenue, which municipalities can then invest in health, education, and housing in low-income communities. Moreover, there is mounting evidence that such taxes are effective at curbing the purchase of SSBs. Following the implementation of Mexico's SSB tax at the start of 2014, SSB sales were down 5.5% by the end of 2014 and 9.7% in 2015.<sup>174</sup>

- ♦ In **Berkeley, CA**, the first municipality in the U.S. to implement a SSB tax, sales fell by 9.6% and sales of untaxed water increased by 15.6% in the first year.<sup>175</sup>

Advocates can also look beyond SSBs. For example, **Navajo Nation** enacted the country's first and only junk food tax. The two-percent sales tax applies to SSBs, fruit juice, chips, candy, and all "minimal-to-no nutritional value food," as defined by the law.<sup>176</sup> Revenue generated by the tax supports wellness programs across the reservation.<sup>177</sup> Navajo Nation passed the junk food tax shortly after it passed another law eliminating the 5% sales tax on fresh fruits and vegetables.<sup>178</sup> Taken together, these measures disincentivize the purchase of unhealthy foods and remove barriers for the purchase of healthy foods, while continuing to generate revenue.

### **Food Marketing Restrictions**

Marketing is a powerful tool used to shape consumer preferences and create brand loyalty. Passing policies to limit marketing of unhealthy food have become increasingly difficult as modern courts have strengthened commercial speech rights, making it more difficult to limit how corporations advertise their products. Therefore, particularly in this area of policy, advocates should consult a lawyer before making an effort to pass any policy restricting food marketing in their communities. Some local governments have taken on this important issue, working on policies such as:

- ❖ **Restricting Toy Giveaways:** Cities can influence consumer purchasing by targeting marketing to children by fast food restaurants. Advocates can consult the Model Ordinance for Toy Giveaways at Restaurants, published by ChangeLab Solutions,<sup>179</sup> in addition to the examples below from California.
- ♦ **Santa Clara, CA** passed an ordinance that prohibits fast food restaurants in the county from including a toy or other "incentive item" with meals that exceed specified limits on calories, calories from fat, calories from added sugar, and sodium.<sup>180</sup>
- ♦ **San Francisco, CA** passed a similar ordinance which imposed nutritional requirements and a

#### **Resource: Fighting Junk Food Marketing to Kids**

ChangeLab Solutions and Berkley Media Studies Group have published helpful toolkits for advocates working to limit junk food marketing to kids. Solutions include banning or regulating products, promoting local legislation requiring candy to be placed behind the counter, and asking retailers not to display in-store promotions that feature cartoon characters selling unhealthy foods.

**Source:** FIGHTING JUNK FOOD MARKETING TO KIDS: A TOOLKIT FOR ADVOCATES, BERKLEY MEDIA STUDIES GROUP (Jan. 2016), [http://www.bmsg.org/pdfs/BMSG\\_Junk\\_Food\\_toolkit.pdf](http://www.bmsg.org/pdfs/BMSG_Junk_Food_toolkit.pdf) [<https://perma.cc/2NWX-4YBB>].



requirement that meals contain a certain amount of fruits and vegetables in order to include a free incentive item.<sup>181</sup> Some fast food restaurants in San Francisco found a way around the nutritional requirements by adding an additional charge for toys, thus placing them out of the purview of the ordinance.<sup>182</sup> However, some fast food chains did make changes in order to meet the nutritional requirements and offer free toys in kids' meals.<sup>183</sup> For example, some restaurants began offering apple slices as a default side instead of French fries.<sup>184</sup>

❖ **Restricting Marketing in Schools:** Advocates can work with their school districts to limit unhealthy food marketing in schools. One way to limit food marketing is through the school wellness policy. The USDA has proposed guidelines for school wellness policies that recommend restricting unhealthy food marketing in schools, noting that currently only 10% of public schools have a strong policy on marketing.<sup>185</sup> For more information on school wellness policies, see [Section VII: School Food and Nutrition Education](#).

- ♦ In **San Francisco, CA**, the Commercial-Free Schools Act prohibited the school district from entering into exclusive contracts with soft drink or snack food companies and forbids the purchase or use of curriculum materials with brand names on them.<sup>186</sup>
- ♦ The state of **Maine** has banned food advertisements in schools since 2007.<sup>187</sup>
- ♦ In **Palm Desert, CA**, food vending trucks are not permitted to park within 1,500 feet of a school, which limits the incidental exposure students have to them.<sup>188</sup>

❖ **Asking Local Retailers to Restrict Marketing:** Advocates can work with local businesses and retailers to restrict junk food marketing in their stores, particularly marketing targeting children. Retailers can create a "candy-free zone" check out aisle for parents that want to avoid waiting in check-out lanes lined with candy.<sup>189</sup>

- ♦ The large-scale grocery chain **Aldi** has implemented Healthier Checklanes, which stock nuts and dried fruit instead of candy.<sup>190</sup>
- ♦ **CVS** has committed approximately 25 percent of checkout shelf space to healthy snacks.<sup>191</sup>

### **Restrictions on Fast Food and Unhealthy Ingredients**

Another way to influence consumer behavior is through banning or restricting the sale of certain foods. These restrictions can take a variety of forms, depending on a city's goals.

❖ **Restricting Fast Food:** In 2008, the **Los Angeles** City Council passed an ordinance that banned the opening of new fast food restaurants in certain areas of the city for one year.<sup>192</sup> By instituting the ban, the city hoped to reduce obesity rates and encourage food businesses that carry healthier items to move into underserved areas. In 2010, the ban became a permanent fixture in the city's General Plan.<sup>193</sup> Although one study suggests that the ban has been unsuccessful in lowering obesity rates,<sup>194</sup> a ban can serve other purposes, such as representing a city's values and commitment to addressing community health concerns.<sup>195</sup> It may also take a long time to see noticeable changes in consumer behavior<sup>196</sup> and for new stores to come into the neighborhood and change the food environment. When considering instituting a ban, advocates should examine their community's unique goals, legal landscape, and physical infrastructure.

❖ **Restricting Ingredients:** Localities can also place restrictions on ingredients that are correlated with diet-related diseases. For example, the Board of Health in **New York, NY** enacted a policy that prohibited the sale of sugary drinks in containers larger than 16 ounces; however, the New York State Court of Appeals struck down the policy.<sup>197</sup> While the Board of Health's policy did not survive, the Court suggested that the City Council would have the authority to pass such a law.<sup>198</sup> Although the



sugary beverage restriction has yet to pass, New York City led the way in 2006 for banning trans-fats—an ingredient associated with increased risk for cardiovascular disease—in food sold at food service establishments.<sup>199</sup> Other localities, such as **Philadelphia, PA**<sup>200</sup> and **King County, WA**,<sup>201</sup> later enacted similar bans. In 2015, the FDA announced that partially hydrogenated oils (the oils that make up trans fats) are no longer “generally recognized as safe,” and must be phased-out and eventually removed from foods.<sup>202</sup> This example shows that local innovation and leadership can be a powerful model for national change.



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## SECTION VI: PROCUREMENT

*Advocates can work together with local government and institutions to adopt procurement policies that favor local and regional producers, as well as fair labor practices, environmentally-sustainable production methods, and humane treatment of animals. This section focuses specifically on encouraging the purchase of local and regional foods via farm to institution programs that connect local and regional farms to institutions that purchase and prepare large quantities of food, such as schools, universities, prisons, and hospitals. Farm to institution offers a variety of benefits, including economic support for farmers, fresh food for institutions, and opportunities for the public to learn about nutrition, seasonal eating, and local and regional agriculture.*

In this section . . .

1. Procurement Basics
2. Farm to Agency
3. Farm to School
4. Farm to College/University
5. Farm to Hospital
6. Farm to Jail/Prison

### 1. Procurement Basics

The term “procurement policy” refers to an entity’s or agency’s guidelines for how it obtains products (including food), how different vendors can compete for its business, and what standards it considers when sourcing materials. School districts and municipal governments have their own procurement policies, which can establish certain preferences as long as the applicable federal and state rules—such as the federal rules for school meals, in the case of school districts and state rules on competitive bidding—are also met.

Procurement policies can be used to establish a range of preferences for sourcing food, particularly with a focus on the following factors:

- ❖ **Geography:** Policies that favor local and regional producers seek to reduce food miles and keep food dollars within the local and regional economy. Such policies can include a specific geographic radius (e.g., “grown within 150 miles”) or a more fluid definition of region (e.g., New England). In addition, these





policies may seek to ensure freshness and may include a temporal requirement (e.g., “harvested within 48 hours”).

- ❖ **Production methods:** Policies that favor certain production methods generally seek to support producers that use agroecological and humane practices as a way of investing in a more healthful, environmentally-sustainable food system. In addition, preferencing certain production methods can be a way of ensuring the quality and taste of the product (e.g., grass-fed) or reducing health risks (e.g., organic or antibiotic-free).
- ❖ **Labor practices:** Policies that favor certain labor practices seek to acknowledge the human dimension of food production and ensure that individuals at every level of the food system are provided healthy, safe working conditions and fair compensation. This can be one of the most difficult factors to ascertain and verify. As a result, buyers interested in preferencing fair labor may want to look to third-party certification programs, such as the **Equitable Food Initiative**,<sup>1</sup> **Food Justice Certification**,<sup>2</sup> or **Fair Trade Certification**.<sup>3</sup>

### **Stakeholders for Better Procurement Policies**

The procurement preferences discussed above can benefit a wide range of stakeholders. In general, changing the procurement policies of institutions, whether to purchase more local/regional food or to support more sustainable production methods, can benefit many different stakeholders. The consumers of the food benefit from safer, healthier, and fresher food, while the food system benefits by the institution using its large purchasing power in order to support better food production. Advocates should be prepared to explain these benefits when advocating for policy change.

- ❖ Consumers can gain greater access to fresh, nutritious, and healthy food. In addition, consumers can feel better about their institutions supporting food system values such as environmental sustainability and fair pay. Farm to institution procurement policies can be particularly transformative in settings, such as hospitals or prisons, where individuals are dependent on an institution for all of their food needs; farm to institution can help promote greater dietary diversity and nutritional quality.
- ❖ Institutions can use procurement to publicly commit to—and invest in—institutional values, such as environmental sustainability or supporting small businesses. Institutions can also ask employees what food system values are important to them, and then honor those values through procurement policies. Farm to institution policies, in particular, can support employee, patient, and inmate wellbeing; this, in turn, can lead to decreased medical expenses and, among employees, greater productivity.
- ❖ Students can learn about how purchasing decisions shape the food system and the role that they play as consumers, both individually and as part of an institution. Farm to institution policies can allow students to consume more nutritious food, which can promote better educational outcomes. Farm to school programs can also provide hands-on opportunities for students to learn about food and agriculture, as well as a whole range of subjects—e.g., math, science, and history—as they relate to the food system.
- ❖ Producers can form relationships with high-volume, consistent customers. Establishing these relationships can help producers to scale up their production, increasing their income. Producers also benefit from increased community awareness and engagement around local and regional agriculture, or certain production methods and values.

### **Local and Regional**

This section focuses specifically on sourcing more from local and regional producers, as this is a common priority for food policy councils and food advocates, and also a great way to support the local food system. Advocates should keep in mind that there is **no standardized—or legal—definition of “local”** for food procurement. Rather, policymakers and institutions may choose to define the term in the way that best fits the characteristics and





goals of the community. This section uses “local” and/or “regional” in the broadest possible sense, representing a geographic preference that favors local, regional, and/or in-state producers. Indeed, “local” could refer to a maximum mileage radius, a geographic region, a state, or a group of states; it is up to the local government or procuring agency to define it.

### **Public Institutions**

Public and government institutions must comply with specific procurement requirements when making food purchases in order to maintain transparency and foster competition. The key first step is to determine the source of the public institution’s funds because federal, state, and local funds can have different restrictions and requirements attached to their use.

For example, when looking at opportunities to increase local purchases by a public institution, federal funds include a restriction on “statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bid proposals, **except in those cases where applicable federal statutes expressly mandate or encourage geographic preference.**”<sup>4</sup> One such case is school food – federal law explicitly allows state agencies and local school food authorities to use a geographic preference when procuring unprocessed agricultural products.<sup>5</sup> Federal law also allows for price preferences for agricultural commodities from qualifying small businesses.<sup>6</sup>

For state funds, however, different procurement procedures will apply based on state law. At least 37 states have laws requiring state agencies and universities to preference foods grown or processed within the state.<sup>7</sup> These laws are described in greater detail below, in *Farm to Agency*. Advocates should first determine whether their state has such a law and whether or not it applies to local agencies. This will depend on the law itself, as well as the state’s constitution and what powers it gives to local governments.

### **Formal vs. Informal Bidding**

Procurement procedures using public funds can also vary depending on the size of the expenditure. A **formal bidding process** typically involves public solicitation for bids, written criteria for the evaluation of bids, consideration of all bids, and a requirement that the contract be awarded to the lowest bid.<sup>8</sup> An **informal bidding process**, on the other hand, relaxes many of these requirements, which can be beneficial for both institutions and bidders. Informal procurement requires less paperwork on both sides; this can be especially helpful for producers who are new to public procurement and may otherwise find the paperwork requirements overwhelming. In addition, institutions can solicit a smaller number of bids and do not necessarily have to award the contract to the lowest bid, making it easier to preference local producers.<sup>9</sup>

The federal government sets a “simplified acquisition threshold,” often also referred to as the “small purchase threshold.” For aggregate expenditures at or below this threshold, institutions can employ informal bidding processes, while aggregate expenditures above this amount require a formal bidding process.<sup>10</sup> The simplified acquisition threshold is currently set at \$150,000.<sup>11</sup> The federal government also sets a “micro-purchase threshold.”<sup>12</sup> For aggregate expenditures below the simplified acquisition threshold or small purchase threshold but above the micro-purchase threshold, institutions still need to obtain price quotes from “an adequate number of qualified sources.”<sup>13</sup> (Note: for school food procurement, discussed below, USDA requires bids from at least three suppliers.)<sup>14</sup> However, for aggregate expenditures below the micro-purchase threshold, institutions can purchase directly from a supplier without soliciting other bids.<sup>15</sup> The micro-purchase threshold is currently set at \$3,000.<sup>16</sup>

Advocates should note that state and local governments can set small purchase thresholds lower than those set by the federal government, and the lower, more restrictive threshold will always be applied.<sup>17</sup> **Utah**, for example, has a small-purchase threshold of \$5,000 per transaction from a single producer;<sup>18</sup> however, institutions can purchase up to \$50,000 from the same producer in the span of a year.<sup>19</sup> The individual purchase threshold (similar to the federal micro-purchase threshold) is \$1,000.<sup>20</sup> Further, school districts can also set their own small purchase thresholds.<sup>21</sup>



## Helpful Resources

**ChangeLab Solutions** published an overview of how state and local government agencies can source more local and regional foods: **Local Food for Local Government**.

**Farm to Institution New England** published a toolkit to help food service management companies (FSMCs) source more local and regional foods: **Setting the Table for Success: A Toolkit for Increasing Local Food Purchasing by Institutional Food Service Management**. FSMCs are commercial or non-profit organizations that contract with institutions to provide services, such as food procurement, menu planning, and food preparation and service.

**The Johns Hopkins Center for a Livable Future** published a comprehensive review of the current literature on institutional food service procurement: **Instituting Change: An Overview of Institutional Food Procurement and Recommendations for Improvement**. The report includes an analysis of the current institutional food service landscape, identifying the top institutional food service providers and estimating how much money is spent on food procurement. Further, the report examines the potential benefits of food procurement, from individual and population health impacts to community economic development.

**PolicyLink** published a short toolkit that includes an extensive list of other resources and guides, to promote equitable procurement among state and local agencies: **Equitable Development Toolkit: Local Food Procurement**. The toolkit describes equitable procurement policies as those that “improve food systems by supporting entrepreneurs of color, opening new markets for small family farmers, and providing better quality jobs for farmworkers and other food chain workers, all while revitalizing local communities.”

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The distinction between formal and informal bidding processes can be helpful when advocates want to help local agencies, institutions, and producers make purchases that meet geographic, sustainability, or labor-related goals. Informal purchasing helps to facilitate connections between producers and institutions by making it easier for local and regional producers to submit bids and easier for institutions to accept those bids. These “small” purchases—though they may be significant for producers – can also help producers better understand the specific food needs of public agencies and institutions and determine whether and how they can meet those needs. Advocates should be sure to research their state, local, and school district purchase thresholds before working with small purchases. Moreover, when advocates encounter purchase thresholds that are more restrictive than what is allowed under federal law, they should seek to increase them to the federal limit.

### Private Institutions

Private institutions have more flexibility to alter procurement policies than public institutions, in part because they are not required to select the lowest bid for procurement contracts and are not bound by any thresholds. Private institutions can generally choose the food they wish to purchase, according to their own preferences and limitations. Advocates should tailor their messaging to the institution’s activities, values, and goals. For example, serving fresh, locally and regionally-sourced food in hospitals can promote patient health. Alternatively, for large employers, improving food service can increase employee wellbeing, which is correlated with higher productivity and reduced absenteeism from work.<sup>22</sup> Bon Appétit Management Company, which provides food service for institutions like corporations and universities, found that serving delicious and healthy meals and



inviting local chefs and farmers to the workplace made employees more likely to come together during lunch and feel a sense of community and motivation.<sup>23</sup>

The rest of this toolkit section will focus on local and regional purchases, often called “farm to agency,” “farm to school,” etc. Local and regional procurement policies are a common way that food advocates are using procurement to benefit institutional consumers with fresh, healthy food, while utilizing the large purchasing potential of these institutions to support the local food system. Examples of other procurement preferences and values utilized by different institutions are included throughout as well, where relevant to those institutions.

## 2. Farm to Agency

Advocates can push state and local governments to amend food procurement policies to preference locally and regionally-grown food for public agencies and institutions. These institutions and agencies, which include government buildings, universities, hospitals, senior living facilities, and prisons, regularly serve large numbers of people. Advocates can pursue a number of policy strategies to build awareness around the importance of procurement, building demand for more regional and sustainably-sourced foods in large institutions.

### **Geographic Preference Policies**

Geographic preference policies give preference to foods that are grown or produced locally and regionally. Such policies make it easier for local and regional farmers to compete with larger distributors, as locally-sourced foods, particularly from smaller farms, may cost more or may not meet other conventional bid specifications. Advocates can encourage local and state governments to provide financial support for increased local food procurement. For example, **Woodbury County, IA** passed a procurement policy requiring that the county purchase local, organic food when available and offered at competitive prices. The county also authorized a 10% increase in its \$300,000 food budget.<sup>24</sup>

- ❖ **Mandated Price Preference:** Under a mandated price preference law, agencies are required to purchase locally-grown food when the cost of such food is within a certain percentage of the price of similar food from non-local sources. This is generally accomplished through a bid discount for local producers during a formal or informal bidding process. A bid discount lowers the price of a business’ bid for the purposes of selection only, increasing the likelihood that a bid from a local producer will be accepted, but also resulting in increased costs for the institution.
  - ♦ In **Cleveland, OH**, the Cleveland-Cuyahoga County Food Policy Coalition successfully advocated for a local purchasing ordinance, which provides a 2% price preference each on all applicable City contracts for companies that are (1) locally-based, (2) sustainable, (3) or purchase at least 20% of their food regionally.<sup>25</sup> These criteria can be combined for a bid discount of up to 4%.<sup>26</sup>
  - ♦ **Alaska** requires a 7% price preference for state-grown agricultural products purchased using state funds.<sup>27</sup> 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, and will allow them to compete with the prices of larger distributors.
- ❖ **Discretionary Geographic Price Preference or General Geographic Preference:** Ordinarily, agencies must accept the lowest bid for a food contract. However, under a discretionary geographic price preference law, agencies have discretion to purchase local and regional products even if they cost more.
  - ♦ The City of **Albany, CA** adopted an Environmentally Preferable Food Policy, requiring the purchase of fruits and vegetables grown within 250 miles of the city for city-sponsored public events whenever “logistically and financially feasible.”<sup>28</sup> Additionally, the policy allows the city



to make food selections based on the seasonal availability of produce in the region as a means of increasing local food purchases. Although this policy resembles a mandated price preference, it is considered discretionary because city purchasers can decide when local purchases are “logistically and financially feasible.”<sup>29</sup>

- ❖ **Benchmark Laws:** A benchmark law or resolution either encourages or requires agencies to purchase a certain percentage of food from local and regional vendors. Even when there are no penalties for failing to meet the benchmark, passing a law or resolution can demonstrate a local government’s support of local and regional procurement.
  - ♦ **Santa Monica, CA** passed a Sustainable City Plan, declaring that 15% of all produce served in city and community institutions should be organic and locally-produced by the year 2020.<sup>30</sup>
- ❖ **“Tie-goes-to-local” Laws:** Under a tie-goes-to-local law, agencies must award a contract to a local food vendor when the quality, cost, and quantity of the products are equivalent with non-local sources.<sup>31</sup> These laws have limited impact since small local producers have trouble competing in price with national wholesalers; however, several states have enacted tie-goes-to-local laws that allow for some flexibility.<sup>32</sup>
  - ♦ Under **Iowa’s** law, agencies “shall use only those products and provisions grown...within the state of Iowa, when they are found in marketable quantities in the state and are of a quality reasonably suited to the purpose intended, and can be secured without additional cost over foreign products or products of other states.”<sup>33</sup> Advocates can lobby local government to enact a flexible tie-goes-to-local law as a first step in acknowledging the benefits of purchasing local foods.

### **Additional Strategies**

In addition to pushing for geographic preference policies, advocates should help to build awareness and buy-in around using their local institutions’ purchasing power to support local and regional producers, as well as producers that use environmentally-sustainable, healthy, and equitable practices. Some of the strategies enumerated below can be helpful to lay the foundation for a geographic preference policy, while others can be helpful to continue to build demand for more local, regional, sustainable, and ethically-sourced food.

- ❖ **Tracking Laws:** A tracking law requires that agencies monitor and report on their purchasing practices. The law can require that agencies track different metrics, including purchases from local producers or producers that have received other types of certification, such as Organic, Animal Welfare Approved, or Fair Trade. Tracking can be done by the agency itself or the vendors selling to the agency. The government then can use this information to determine a reasonable baseline for a benchmark policy or other procurement programs. The government can also publicize agencies’ purchasing activities to increase public awareness, foster competition among agencies, and engender a sense of accountability among agencies.<sup>34</sup>
  - ♦ In 2013, **New York** passed the Food Metrics Bill, under which NY state agencies may require solicitations for food procurement contracts to “mandate that all or some of the required food products are grown, produced, or harvested in New York state.”<sup>35</sup> Under the law, vendors must report the price of each required food product as well as the origin of the food (in-state or out-of-state) to the agency.<sup>36</sup> Advocates can encourage local governments to pass a similar tracking law to gather data that can be used to set a reasonable price preference or benchmark for local food procurement.
- ❖ **Public Awareness and Engagement:** An “Eat Local” day, week, or month raises awareness and sends a message that the local government supports local foods.



- ♦ **Kansas City, MO** encourages community members to participate in the “KC Local Week Challenge,” a week-long event in the summer that highlights the city’s restaurants, farmers markets, and shops that sell local goods.<sup>37</sup> The city provides an online guide that lists the vendors and encourages the community to spread the word and share their experiences on social media.<sup>38</sup>
- ♦ Cities can also participate in existing campaigns, such as **Food Day**, a national initiative started by the Center for Science in the Public Interest. Food Day seeks to bring local communities together each year on October 24 to discuss issues related to food systems.<sup>39</sup> Celebrations of Food Day can be tailored to each city’s unique resources and objectives. Celebrations may involve the community in discussions about the health and economic benefits of sourcing local foods and showcasing local farmers, or about other food system priorities that can be fostered via institutional procurement, such as sustainability or fair labor practices.

### Philadelphia Good Food Caterer Guide

The **Philadelphia, PA** Food Policy Advisory Council includes a Good Food Procurement Subcommittee. In 2014, the subcommittee decided to better understand how city agencies and departments made decisions about smaller-scale purchases, such as for meetings and events. Over several months, the subcommittee surveyed agencies and departments about when they purchased food, what types of food they purchased, and how much it cost. The subcommittee conducted a basic analysis and then used this information to create a **Good Food Caterer Guide**, released in 2016. The Guide identifies four standards for “good” food—healthy, sustainably-sourced, locally-owned, and produced by fair labor—and elaborates criteria for each.

*Good Food Procurement*, PHILADELPHIA FOOD POLICY ADVISORY COUNCIL, <https://phillyfpac.org/subcommittees/good-food-procurement> [<https://perma.cc/GBQ9-SXA2>] (last visited Aug. 16, 2017); PHILADELPHIA FOOD POLICY ADVISORY COUNCIL, PHILADELPHIA GOOD FOOD CATERER GUIDE (2016), <https://phillyfpac.files.wordpress.com/2016/12/gfcg-2016-final3.pdf> [<https://perma.cc/LEK4-ZEVA>].

- ❖ **Forward Contracting:** Government agencies and/or school districts can use forward contracting, also called “contract growing,” to establish the price and quantity of food to be purchased at a future, later date.<sup>40</sup> This form of contracting can be beneficial for both institutions and producers. For institutions, forward contracting ensures that they get the quantities that they need—farmers will often change what they plant in accordance with a forward contract’s specifications.<sup>41</sup> In addition, institutions know what they are getting and when they will receive it, which can aid in menu planning and effectively incorporating more local and regional produce into meals.<sup>42</sup> Prices may also be more favorable if they are established ahead of time.<sup>43</sup> For producers, forward contracting provides them with a guaranteed market, which can aid in business planning and reduce the amount of time they have to spend on marketing.<sup>44</sup> Forward contracting also helps build relationships between institutions and producers because it requires communication and trust.<sup>45</sup> Advocates should first check to be sure that state procurement laws allow for an extension of the contracting timeline.<sup>46</sup> Advocates can then help craft strong forward contracts which include important provisions for both institutions and producers, such as allowing for ranges for both quantity and price and allowing for suitable substitutions.<sup>47</sup>
- ♦ In **North Carolina**, the Department of Agriculture and Consumer Services works with an advisory board of school districts to come up with a list of products that will be needed the following year.<sup>48</sup> The Department then helps to facilitate forward contracts for these products.<sup>49</sup> For example, the Department helps school districts establish forward contracts for watermelon—while the season would typically end in August, farmers delay planting in order to meet the schools’ needs and students can enjoy fresh watermelon when they start back at school in September.<sup>50</sup>



3. Farm to School

Farm to school can encompass a range of activities and programs. While the primary goal of farm to school is to incorporate more local produce into school meals and encourage students to eat more fresh food, farm to school programs also often involve educational components such as school gardens, field trips to farms, and nutrition and agriculture education. This sub-section will emphasize farm to school procurement, but will also touch on these other components, as robust farm to school programs foster a greater appreciation of—and connection to—local food. A further discussion of some of these other components, such as nutrition education, can also be found in [Section VII: School Food and Nutrition Education](#).

While farm to school uses public funds to procure food for public institutions, it differs from traditional farm to agency in a few key ways. First, the vast majority of funding for school meals comes through per-meal reimbursements from the federal government’s National School Lunch Program (NSLP) and School Breakfast Program (SBP). In addition, school districts can set their own procurement policies, opening up opportunities for advocates to work directly with their local school districts to increase local procurement.

The School Food Procurement Process

Advocates must first identify their state, local, and school district procurement laws and policies, keeping in mind that state and local laws may be more restrictive than what is allowed at the federal level. School districts generally have the freedom to employ one of four different methods to procure local foods – two are formal bidding processes and two are informal bidding processes (see *Formal vs. Informal Bidding*, above, for an overview of this distinction). School districts also have the freedom to decide how they define local.<sup>51</sup> [Table VI-2](#) provides an overview of each method as well as the strategies that advocates can employ to improve local food procurement under each method.<sup>52</sup>

For more information, advocates should consult the USDA Food & Nutrition Service’s guide, **Procuring Local Foods for Child Nutrition Programs**,<sup>53</sup> which provides detailed explanations of the processes under each method.

Table VI-2: Helping Schools With Any Bid Method to Procure More Local Food		
PROCUREMENT METHOD	SELECTION PROCESS	RECOMMENDATIONS
<p><b>Formal Procurement:</b></p> <p><b>Requests for Proposals (RFP)<sup>54</sup></b></p> <p><i>*aggregate amount exceeds applicable simplified acquisition or small purchase threshold*</i></p> <p><b>[Competitive proposals]</b></p>	<p>RFPs are a formal process schools may use to procure foods.</p> <p>RFPs consider additional factors besides price when deciding which bid is most advantageous to the program. RFPs allow for price negotiations.</p>	<ul style="list-style-type: none"><li>♦ Amend the 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.<sup>55</sup></li></ul>



**Table VI-2: Helping Schools With Any Bid Method to Procure More Local Food**

PROCUREMENT METHOD	SELECTION PROCESS	RECOMMENDATIONS
<p><b>Formal Procurement: Invitation for Bid (IFB)<sup>56</sup></b></p> <p><i>*aggregate amount exceeds applicable simplified acquisition or small purchase threshold*</i></p> <p><b>[Sealed bids or formal advertising]</b></p>	<p>IFBs are a formal process school districts may use to procure foods.</p> <p>Under IFBs, schools must choose the lowest bidder. IFBs have to include detailed specifications for what is needed and how bids will be assessed. IFBs do not allow for price negotiations.</p>	<ul style="list-style-type: none"> <li>♦ Include specifications in the IFB that preference 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.<sup>57</sup></li> <li>♦ Include specifications in the IFB that apply a discount for local foods, effectively lowering bids from local producers and making it easier for them to compete. For example, <b>Omaha</b> Public Schools applies a 1% reduction in bid price for local (defined as within 240 miles), all-natural chicken drumsticks.<sup>58</sup></li> </ul>
<p><b>Informal Procurement: Small Purchases</b></p> <p><i>*aggregate amount is at or below applicable simplified acquisition or small purchase threshold but above micro-purchase threshold*</i></p>	<p>Small purchases are an informal process school districts may use to procure foods.</p> <p>Under federal regulations, a school district must put the number, quality, and type of goods in writing and obtain price quotes from at least three bidders; however, state, local, and district procurement policies may have additional requirements.<sup>59</sup></p>	<ul style="list-style-type: none"> <li>♦ Advocate for schools to utilize the simplified acquisition or small purchase process, as it makes it easier for local farmers to sell to schools by relaxing paperwork requirements and making it easier for schools to award contracts to more expensive bids.</li> <li>♦ If the state, locality, or district has a more restrictive small purchase threshold, advocate for an increase. The federal “simplified acquisition threshold” sets an upper limit of \$150,000; however, state, local, and school district procurement laws and policies can set much lower thresholds.<sup>60</sup> For example, <b>Wyoming</b>’s small purchase threshold is \$10,000.<sup>61</sup></li> </ul>
<p><b>Informal Procurement: Micro-Purchases</b></p> <p><i>*aggregate amount is below applicable micro-purchase threshold*</i></p>	<p>Micro-purchases are an informal process school districts may use to procure foods.</p> <p>School districts can purchase food directly from a producer without soliciting bids if the price is “reasonable.”<sup>62</sup></p>	<ul style="list-style-type: none"> <li>♦ Advocate for individual schools to utilize the micro-purchase process, as this is the simplest way for local farmers to sell to schools. Farmers do not have to submit bids and schools can purchase from them directly without having to consider price or other specifications.</li> <li>♦ If the state, locality, or district has a more restrictive micro-purchase threshold, advocate for an increase. The federal micro-purchase threshold sets an upper limit of \$3,000; however, state, local, and school district procurement laws and policies can set lower thresholds.<sup>63</sup></li> </ul>



## Food Safety

Concerns about food safety among school districts can serve as an impediment to local procurement. At the same time, burdensome food safety requirements can make it hard for local producers, particularly smaller farms, to sell to schools. Advocates can help school districts and producers navigate these conflicting priorities by identifying appropriate best practices and helping to make certification programs affordable for local producers.

While the federal government regulates the food safety practices of school food authorities<sup>64</sup> and the food safety practices of farms that sell produce for human consumption (though with some notable exemptions for smaller farms),<sup>65</sup> the federal government does not, specifically, regulate food safety for school procurement or school gardens. USDA has published tip sheets and best practices on topics such as handling fresh produce in school cafeterias<sup>66</sup> and food safety in school gardens,<sup>67</sup> but this guidance is voluntary. USDA also offers a one-week training course for food service directors called Produce Safety University, which focuses on managing safety risks associated with produce, including produce used in farm to school programs.<sup>68</sup>

States, localities, and school districts can also set their own food safety requirements, such as requiring that vendors carry a certain amount of liability insurance or that schools only purchase from farms that have obtained Good Agricultural Practices (GAP) and Good Handling Practices (GHP) certification.<sup>69</sup> GAP and GHP are voluntary audit programs to ensure that fruits and vegetables are produced, packed, handled, and stored as safely as possible to minimize risk of microbial contamination.<sup>70</sup> However, these certifications can be cost-prohibitive and infeasible for smaller farms.

In order to receive GAP or GHP certification, a USDA auditor must visit the farm and conduct an audit. USDA currently charges a \$50 administrative fee and a \$92/hour rate for an auditor's time.<sup>71</sup> Farms are charged not only for the time that the auditor spends on the farm, but also for travel and any paperwork.<sup>72</sup> Audits often require that follow-up measures be taken by the farm and that an auditor conduct a follow-up visit, further increasing costs.<sup>73</sup> While certification costs will vary from farm to farm, a study of small, diversified farms (less than 30 acres in production) in North Carolina found that the average cost of an audit was \$925.<sup>74</sup> These certifications also last only one year.<sup>75</sup> In addition, the audit process itself is time-consuming, requiring significant paperwork and implementation of safety protocols that may not be necessary—or feasible—for smaller farms.<sup>76</sup>

While GAP/GHP may be a good option for some farms, advocates should reassure school districts that GAP/GHP certification is not necessary and can serve as a significant barrier to increased local procurement. There are other food safety protocols which reflect the realities of smaller farms while ensuring the safety of produce for school meals. Advocates can encourage school districts to utilize alternative protocols, or develop their own.

- ❖ Many farm to school programs have utilized the **Iowa State University Extension and Outreach Food Safety Checklist**, which provides a comprehensive list of factors designed to assess the safety of small farms' growing practices.<sup>77</sup> School food service directors may find it helpful to visit farms in-person to discuss the checklist and observe growing practices.
- ❖ Some states have developed their own state food safety certification programs that are more tailored and realistic for small farmers than GAP/GHP certification. For example, the **Massachusetts** Department of Agricultural Resources developed the Commonwealth Quality Program, which certifies that products grown within Massachusetts use safe and environmentally responsible practices.<sup>78</sup>

If the state or local rules require GAP/GHP and cannot be changed, advocates can help to develop cost-share programs for GAP/GHP certification to help relieve the financial burden on small farms.

- ❖ **Mississippi's** Department of Agriculture and Commerce will reimburse farmers who have successfully



attained GAP/GHP certification for 75% of the cost, up to \$500 per year.<sup>79</sup>

### **School Gardens**

School gardens serve the dual purpose of engaging students with hands-on education and providing fresh, local produce to the school cafeteria and community members. Though most school gardens do not generate enough produce for full meals, they can yield enough that schools can reliably incorporate garden produce into school meal service or make generous donations to local food banks or other non-profits in the community.

- ❖ At Woodland Elementary West in **Gages Lake, IL**, second and third grade students take part in the full lifecycle of the school garden: they plant the seeds, water the plants, weed the garden, and harvest fruits and vegetables.<sup>80</sup> Students also learn how growing food can help their community; the school has donated over 5,700 pounds of produce to a local food bank in the garden's eleven years of operation.<sup>81</sup>
- ❖ **Denver, CO** Public Schools (DPS) works with Slow Food Denver, Denver Urban Gardens, Learning Landscapes, and the Kitchen Community to establish school and community gardens on school property.<sup>82</sup> DPS's Garden to Cafeteria Program specifically focuses on growing fresh produce for use in school meal service.<sup>83</sup> In the 2015-2016 school year, school gardens sold over 900 pounds of produce to school cafeterias. Schools then reinvested this money in their school garden programs.<sup>84</sup> In order to promote food safety, DPS worked with the Denver Health Department to adopt protocols modeled on GAP and GHP.<sup>85</sup>

The federal government generally supports the use of garden produce in school meals and snacks, and to this end, USDA has published voluntary food safety guidelines for school gardens.<sup>86</sup> States may have their own laws and regulations that specifically address the use of produce from school gardens in school meals. A number of states—such as **Alaska, California, and Washington**—expressly grant permission to schools to use produce from school gardens in school food, provided that they comply with state and local safety and sanitation requirements.<sup>87</sup>

In addition to state and local laws, school district policies can demonstrate support for school gardens and provide clarity around best practices.<sup>88</sup> Even if there are no laws restricting the use of garden produce, it can be reassuring for schools to have agency guidance clearly stating that it is permitted. Advocates should work with state and local governments and school districts to enact or amend laws to promote the use of produce from gardens in school meals.

- ❖ Postville Community School District in **Postville, IA** incorporates school gardens throughout its Wellness Policy and explicitly endorses the use of school garden produce in school meal service. First, it states that the school “shall source locally grown or raised agricultural foods within 150 miles, including school-grown products (from school gardens) to the greatest extent possible.”<sup>89</sup> Further, it calls on food service to market locally-grown food through a variety of activities, including “featuring food grown in the school garden in the cafeteria, through sampling and inclusion in school meals based upon availability and acceptability.”<sup>90</sup>

### **Technical Assistance**

The **National Farm to School Network** provides “vision, leadership, and support at the state, regional, and national levels to connect and expand the farm to school movement.”<sup>91</sup> The Network's website has an extensive, up-to-date resource library that advocates can search by state, type of school, and topic.<sup>92</sup> In addition, the Network has state chapters and/or partner organizations in all fifty states, Washington D.C., and U.S. Territories.<sup>93</sup> Advocates should connect with the Network partners in their state and/or region in order to connect with farmers, other schools, and key resources.

**School Food Focus** is another national organization that provides resources for helping schools source healthier, more sustainable food. In addition to working with school districts and school food advocates, the organization



also works with producers to provide healthier ingredients and products for school meals.<sup>94</sup> The organization's website includes a variety of tools, including a Getting Started Toolkit and an Ingredient Guide for Better School Purchasing.<sup>95</sup>

In addition, some state and local governments have farm to school coordinators. These coordinators are knowledgeable and experienced in the regional particulars of farm to school programs, and can help schools establish programs at any scale.

- ❖ The **Massachusetts Farm to School Project** has two regional directors who support programs statewide.<sup>96</sup> In addition, **Boston Public Schools** has its own Farm to School Coordinator, who works with local schools and farms to procure more local produce and organize hands-on educational programs for students.<sup>97</sup>
- ❖ The state of **Washington's** Farm to School Coordinator has hosted trainings for school food service workers on how to prepare local produce, convened a statewide farm to school summit, and piloted a farm to prison pilot program.<sup>98</sup>

There are also a number of dedicated resources specifically for school gardens. For example, **Slow Food USA's National School Garden Program** has local chapters throughout the country that support schools in starting and maintaining gardens; the Program currently supports over a thousand school gardens around the country.<sup>99</sup> The Program website also features a number of resources, including monthly webinars and the recently-updated Good, Clean, and Fair School Garden Curriculum.<sup>100</sup>

### **Increasing Demand for Local Food in Schools**

Advocates are more likely to succeed in increasing local food procurement for schools if there is active demand for local food among students, teachers, food service staff, and school administrators. Advocates can expose students to local foods and help drive demand for increased local food procurement using the following strategies:

- ❖ A number of states, including **New Jersey**,<sup>101</sup> **Virginia**,<sup>102</sup> and **Mississippi**,<sup>103</sup> have passed legislation to officially designate a **Farm to School Week**. Schools participate by serving local foods, hosting guest speakers, and participating in educational activities that emphasize agriculture and nutrition. These weeks can also give food service directors and farmers a chance to try local procurement, addressing challenges like delivery, storage, and preparation. Advocates can encourage their local schools to participate in farm to school week if they live in a state with an officially-designated week, or to establish their own farm to school week.
  - ♦ **Georgia** took the concept of farm to school week one step further with its "Feed My School" program. Since 2011, the Georgia Department of Agriculture (GDA) has run a competitive application process each year, selecting up to five school districts to receive support from GDA in running one week of farm to school programming.<sup>104</sup> Over the course of the week, selected schools serve lunches featuring 75-100% Georgia-grown food; host a guest speaker; hold taste tests of Georgia-grown foods; conduct an essay contest; and conduct an art contest.<sup>105</sup>
- ❖ Similarly, **Harvest of the Month programs** feature a local food each month, exposing students to the diversity and seasonality of foods that can be grown nearby. Participating in Harvest of the Month can cultivate awareness and generate excitement about a school's efforts to source local, healthy foods for school meals. Involving students, parents, community members, and local and state organizations can also generate support and future funding.<sup>106</sup>
  - ♦ School Districts in **Montana** have Harvest of the Month programs that feature diverse foods grown in the state, such as winter squash, kale, and lentils.<sup>107</sup> In addition to serving these items



## Standards for the Use of Antibiotics in School Meals

The use of antibiotics in animal agriculture contributes to the spread of antibiotic-resistant bacteria, not just in the meat itself, but in soil, water, and air as well. Antibiotics are often used in meat and poultry production to speed up animal growth or compensate for unsanitary conditions, rather than to treat sick animals. Leading public health, medical, and scientific organizations have noted that curbing the misuse and overuse of antibiotics in animal agriculture is critical to preventing the rise of antibiotic resistance in humans and the subsequent public health crises.

Schools purchase large quantities of meat—mostly chicken—and, increasingly, are seeking to source meat from producers that either do not use antibiotics or adhere to rigorous standards for responsible antibiotics use.

- ❖ In 2011, Chicago Public Schools became one of the first large, metropolitan school districts to purchase antibiotic-free chicken for school meals.
- ❖ In 2014, the Urban School Food Alliance, a coalition of the country's largest public school districts, announced a standard for procuring chicken for school meals: 1) no animal by-products in feed, 2) raised on all vegetarian diet, 3) humanely raised as outlined in the National Chicken Council Animal Welfare Guidelines, and 4) no antibiotics, ever. The Alliance includes New York City, Los Angeles, Chicago, Miami-Dade, Dallas, and Orlando.
- ❖ In 2015, School Food Focus and Pew Charitable Trusts established the Certified Responsible Antibiotic Use (CRAU) standard for suppliers who sell chicken to institutional food providers. The CRAU standard is verified by USDA and, as of 2017, managed by the Antibiotic Resistance Action Center.

**Sources:** *Nation's Largest School Districts to Procure Antibiotic-Free Chicken*, NAT. RESOURCES DEFENSE COUNCIL (Dec. 9, 2014), <https://www.nrdc.org/media/2014/141209-0> [<https://perma.cc/962P-LKM4>] (last visited Aug. 15, 2017); *Pew, School Food Focus Announce Antibiotic Standard for Poultry*, PEW CHARITABLE TRUSTS (May 7, 2015), <http://www.pewtrusts.org/en/about/news-room/press-releases/2015/05/07/pew-school-food-focus-announce-antibiotic-standard-for-poultry> [<https://perma.cc/PW4F-SD2H>] (last visited Aug. 15, 2017); *Certified Responsible Antibiotic Use*, ANTIBIOTIC RESISTANCE ACTION CENTER, <http://battlesuperbugs.com/crau-standard> [<https://perma.cc/UG4B-6ZHT>] (last visited Aug. 15, 2017).

in cafeteria meals, schools introduce each item to students through taste tests and classroom activities.<sup>108</sup>

- ❖ **Taste Tests** allow students to try new foods regularly throughout the year, exposing them to new flavors that can later be incorporated into school menus. Schools often worry that students, particularly young children, will not actually eat foods brought in as part of a farm to school initiative. However, research suggests that farm to school programs increase students' fruit and vegetable consumption both at school and at home.<sup>109</sup> In order to introduce students to new foods, schools can conduct taste tests throughout the school year and have the students vote on the type of local produce that should be included on the menu.
  - ♦ The **Vermont FEED** (Food Education Every Day) program helps schools to work with local farmers to organize taste tests of new foods during snack or lunchtime.<sup>110</sup>

### Farm to Preschool

In 2011, the National Farm to Preschool Network became a part of the National Farm to School Network.<sup>111</sup> Similar to K-12 farm to school initiatives, these programs seek to increase children's exposure to fresh, healthy foods through meals, taste tests, and hands-on learning experiences. Preschool and family childcare programs offer a unique opportunity to instill healthy habits during early developmental years. Further, preschools are uniquely suited for farm to school programs in two ways. First, because they are generally smaller than K-12 schools, small farms are more likely to be able to meet preschools' demand. Second, typical preschool curricula



are heavily focused on hands-on activities, which are an ideal component of any farm to school program.<sup>112</sup>

- ❖ In **Bonnors Ferry, ID**, a farmer makes weekly summer deliveries of fresh produce to Gabby Goose Preschool and Child Care, where kids ages 0-7 taste test the fruits and vegetables and learn about their origins.<sup>113</sup> Children also participate in the on-site garden, and families are invited for an end-of-summer harvest dinner and garden tour.<sup>114</sup>
- ❖ **San Diego, CA** has established farm to school programs in 26 Head Start schools.<sup>115</sup> Using a central kitchen, the program uses local ingredients to make an average of 5,750 meals a day.<sup>116</sup> Despite initial concerns, the young students have embraced healthy foods, such as salmon tacos and hummus.<sup>117</sup> Head Start's program also includes Harvest of the Month and school field trips to gardens and farmers markets, which parents are encouraged to join.<sup>118</sup>
- ❖ **New York, NY**'s farm to preschool initiative brings local produce to 11 preschools across the city.<sup>119</sup> The program utilizes USDA's **Grow It, Try It, Like It** curriculum to expose young children to hands-on learning about nutrition.<sup>120</sup> The City's Health Department also provides on-site demonstrations and lessons for caregivers to teach children the importance of eating fruits and vegetables and the skills to prepare them.<sup>121</sup> In addition, the program offers a weekly box of locally-grown produce for purchase by parents and preschool staff. The boxes cost between \$10 and \$12 (less than what similar items would cost in a store), and each site accepts Supplemental Nutrition Assistance Program (SNAP) benefits.<sup>122</sup>

### **Summer Meals**

Eating nutritious meals year-round can further the development of healthy eating habits among children.<sup>123</sup> Once the school year ends, access to nutritious meals can be a challenge, especially for children from low-income households.<sup>124</sup> The Summer Food Service Program (SFSP) reimburses providers (including schools, churches, community centers, etc.) for serving meals during the summer months to low-income children. To qualify, children must receive free or reduced-price meals during the regular school year.<sup>125</sup> Although SFSP is a great resource for increasing access to healthy foods for children, it is currently underutilized: nationally, only one out of seven children who receive free or reduced-price meals during the school year continues to receive meals during the summer months.<sup>126</sup> For more information on SFSP, refer to [Section VII: School Food & Nutrition Education](#).

Summer meal sites can take advantage of the abundance of fresh produce in the summer when prices tend to be more competitive.<sup>127</sup> Since summer meal programs are generally smaller than school year programs, summer can also be a good time to establish the logistics of incorporating more local foods into meals.<sup>128</sup>

- ❖ In **Kalispell, MT**, the summer meals program emphasizes local foods, including a variety of fresh vegetables, fruits, and herbs, as well as local meats for hot dogs and breakfast patties.<sup>129</sup> The summer meals program is able to do this, in part, by using produce from school gardens and partnering with local community gardens and nearby colleges with sustainable agriculture programs.<sup>130</sup>

### **Funding**

When starting or expanding farm to school programs, schools often need funding and support. Advocates can help schools seek funding for farm to school programs from the local, state, and federal government as well as private foundations. Advocates can work with their local school districts to obtain funding through the following strategies:

- ❖ **Support local and state legislation** to increase government support and funding for local farm to school initiatives, whether through grant funding or increased reimbursements for school meals that incorporate local produce.
  - ♦ Many states—such as **Mississippi**,<sup>131</sup> **Minnesota**,<sup>132</sup> and **Vermont**<sup>133</sup>—offer competitive grants





for schools that are starting or strengthening a farm to school program. The Mississippi grant program specifically supports school gardens, while the Minnesota and Vermont grants are available for planning and implementing a range of farm to school activities.

- **Washington, D.C.** passed the Healthy Schools Act of 2010, which reimburses schools an additional five cents a day if the school offers at least one locally grown and unprocessed option as a component of a breakfast or lunch meal.<sup>134</sup>

❖ **Apply for federal farm to school grants**, which are funded by the USDA and administered through state or local agencies to support farm to school programs.<sup>135</sup> Advocates can work together with the school to determine which grants best suit the school's educational goals and financial needs. While these grants have supported many farm to school programs, the application process is very competitive,<sup>136</sup> so schools should not wait to receive a USDA grant before starting a farm to school program. There are several types of grants offered through the USDA Farm to School Grant Program, each of which can be used to help fund a variety of farm to school endeavors. Applicants for each of the four grants must match the funds by at least 25% through either cash or in-kind contributions.<sup>137</sup>

- ♦ **Planning grants** (\$20,000-45,000) are for schools working to start a farm to school program.
  - Independent School District 197 in **Mendota Heights, MN** received a \$20,693 USDA planning grant in 2014, to help establish a planning committee of school and community members and build relationships with local farmers and distributors.<sup>138</sup>
- ♦ **Implementation grants** (\$65,000-100,000) are for schools that would like to expand an existing program.
  - FirstLine Schools in **New Orleans, LA**, received a \$100,000 implementation grant to support its Edible Schoolyard program.<sup>139</sup> The program is part of the national Edible Schoolyard Project, which supports schools from pre-kindergarten through high school that are working to build and share an edible education curriculum that utilizes school gardens and kitchens for interactive and interdisciplinary learning about healthy foods and core academic subjects.<sup>140</sup>
  - Through a \$99,895 implementation grant, **Portland, ME** public schools purchased equipment to process and freeze local foods, enabling schools to serve local foods throughout the year.<sup>141</sup> In the 2013-2014 school year, Portland schools were able to locally source 36% of school foods, including produce, meat, chicken, and fish.<sup>142</sup>
- ♦ **Support service grants** (\$65,000-100,000) are for state and local agencies and non-profits that want to provide support for a range of school districts implementing farm to school programs.
  - The Center for EcoLiteracy in **Berkeley, CA** received a \$100,000 support service grant to support two initiatives: a new two-day training program to build capacity and technical knowledge among nutrition services leaders and a website to improve communication with the community and facilitate the sharing of knowledge and resources among school districts.<sup>143</sup>
- ♦ **Training grants** (\$15,000-50,000) are designed for state and local agencies and non-profits that want to support "trainings that provide technical assistance in the area of local procurement, food safety, culinary education, and/or integration of agriculture-based curriculum."<sup>144</sup>
  - **Massachusetts Farm to School** received a \$25,000 training grant to organize the Massachusetts Farm to School conference. This conference annually brings together people across the movement to learn best practices for local procurement, effective menuing, etc. and advance farm to school efforts statewide.<sup>145</sup>



## 4. Farm to College/University

Focusing on increasing local and regional sourcing for colleges and universities can significantly increase a community's consumption of fresh, locally and regionally produced foods given the large number of students, professors, and staff who live and work at these institutions. Some components of farm to university programs are similar to those in K-12 schools (for example, school or campus gardens), but universities have different funding structures, which may affect procurement practices. For example, while K-12 schools receive federal reimbursements for school meals, many students at colleges and universities pay for meal plans, giving universities more funds to allocate toward local sourcing and more procurement flexibility. Advocates should still look at distinctions between public and private colleges and universities, as public colleges and universities are subject to state procurement laws, while private colleges and universities may set their own procurement processes.

### REAL FOOD CHALLENGE

Real Food Challenge (RFC) is a national campaign in which universities pledge to buy at least 20% “real food” by 2020. RFC’s definition of “real food” is multi-faceted and focuses on four factors: community-based sourcing, fair, ecologically sound, and humane.

Currently, 35 colleges and universities as well the entire University of California System (10 campuses) and the California State University System (23 campuses) have signed onto the RFC. Although the program seeks to engage a variety of stakeholders, RFC particularly encourages students to act as leaders in the food movement and to play an active role in each campaign. Real Food Challenge hosts regional strategy retreats where students gather to participate in workshops, discuss strategies, and share stories and experiences

So far, RFC has obtained pledges worth more than \$60 million toward the goal of shifting \$1 billion of current university food budgets to real food.

**Source:** *About Real Food Challenge*, REAL FOOD CHALLENGE, <http://www.realfoodchallenge.org/about-real-food-challenge> [https://perma.cc/99TX-DR94] (last visited July 11, 2016).

Many colleges and universities across the country are making an effort to source local foods. There are two primary organizational structures for food service on college and university campuses:

- ❖ **Food service management companies** are employed by some universities to handle food procurement and preparation; food service management companies account for 60% of North America’s \$72 billion industrial food service industry.<sup>146</sup> Advocates can work with these companies to alter their procurement policies, or encourage local institutions to switch to companies that have a demonstrated commitment to local and sustainable sourcing. For example, **Bon Appétit Management Company**, a California-based food management company that serves many universities and other institutions across the country, places an emphasis on local sourcing and sustainability. Bon Appétit has a company-wide “farm to fork” program, which requires that all company chefs purchase at least 20% of their ingredients from small farmers and producers within 150 miles of their kitchens.<sup>147</sup> A number of the schools that employ Bon Appétit’s services have been recognized for their efforts to serve local, healthy, and sustainable food on campus.
- ♦ The Bon Appétit Management Team at **Reed College** in Portland, OR recently achieved gold certification in Portland’s Sustainability at Work Program, which recognizes leaders who go the extra mile in environmental sustainability.<sup>148</sup> In addition to working with local farmers and fisherman to locally source the College’s beef and seafood, chefs at the College also hold cooking classes for students.<sup>149</sup>



❖ **Self-operated foodservice programs** are run by the universities themselves, with university employees making key decisions about procurement and preparation. Advocates can talk with the management staff directly to encourage them to change their procurement practices and utilize locally and regionally-sourced foods.

- ♦ **The University of Massachusetts - Amherst** has the largest self-operated university foodservice program in the country, and has become a leader for local sourcing in university dining. Each year, the university spends more than \$1 million on local foods.<sup>150</sup> Currently, UMass Amherst Dining serves 30% local produce, 100% sustainable seafood, 100% antibiotic-free chicken, and 100% cage-free eggs.<sup>151</sup> UMass Amherst is actively working with other schools and institutions in the region to share advice and information gained from their success—the University is passionate about increasing the demand for local and regional food.<sup>152</sup>
- ♦ **Virginia Polytechnic Institute and State University** in Blacksburg, VA spent 13% of its food and beverage budget on local items in the 2014-15 school year.<sup>153</sup> The University defines “local” as “grown and produced within the state of Virginia or within 250 miles of Blacksburg, VA,” a definition adapted from the **Association for the Advancement of Sustainability in Higher Education**.<sup>154</sup>

## 5. Farm to Hospital

Because hospitals are already invested in the health and wellbeing of patients, they are ideal institutions for advocates to engage around increasing purchasing of fresh, local and regional foods and beyond. Currently, many hospitals serve highly processed foods, despite the related health concerns. Advocates can push for policy changes that improve the nutritional quality of food served in hospitals, in part by encouraging increased sourcing of local and regional produce, meats, and dairy.

Advocates who want to increase local and regional procurement in hospitals should first determine the type(s) of hospitals in their community—public, private, or non-profit. For public hospitals, advocates should determine whether the hospital is owned by the city, county, or state, and what procurement policies apply as a result. For private and non-profit hospitals, advocates should approach the institution directly to educate the administration about the benefits of local and regional sourcing and other procurement policies.

### **Health Care Without Harm**

Some hospitals have already instituted local procurement policies through **Health Care Without Harm’s Healthy Food in Health Care Pledge**, a commitment to serve nutritious, sustainable foods to patients.<sup>155</sup> Since 1996, Health Care Without Harm has been supporting and promoting the healthcare industry’s role in improving environmental and public health.<sup>156</sup> When hospitals sign the Pledge, they commit, among other things, to increase the availability of locally-sourced food served within the hospital.<sup>157</sup> They also commit to increase the supply of food that is produced without synthetic pesticides, hormones, or antibiotics; to increase fruits, vegetables, and minimally-processed foods; and to promote and source from producers “which uphold the dignity of family, farmers, workers and their communities, and support sustainable and humane agriculture systems.”<sup>158</sup>

- ❖ At least ten of Vermont’s healthcare organizations have signed the Pledge.<sup>159</sup> One of them, Fletcher Allen Healthcare in **Burlington, VT**, works with 70 farmers and producers and spends about 37% of their annual food budget, or \$1.5 million, on locally sourced food.<sup>160</sup> Nearly 50 percent of meat is raised without antibiotics.<sup>161</sup> The hospital also has a rooftop garden that provides some of the fresh produce used in the cafeteria and cafes.<sup>162</sup>



- ❖ Health Care Without Harm also instituted a one-year local foods challenge in **Rhode Island** designed to incentivize hospitals in the area to focus on local procurement.<sup>163</sup> Participating hospitals tracked their progress based on a set of provided metrics and the winner received a \$1,000 award.<sup>164</sup> Through the challenge, participating hospitals collectively spent over \$314,000 on local foods, held 17 educational events, and 251 employees received local foods through Farm Fresh Rhode Island's Veggie Box program.<sup>165</sup> In addition, two institutions that had never previously focused on local purchasing joined the challenge and invested in local purchasing.<sup>166</sup>

### **On-Site Gardens and Farmers Markets**

Some hospitals are bringing local foods to the hospital and greater community via on-site farms and farmers markets. In many instances, such programs can help hospitals fulfill their community benefit requirements (described in the textbox below).

- ❖ Harborview Medical Center and Virginia Mason Hospital in **Seattle, WA** host summer farmers markets to support healthier eating habits among patients, visitors, and staff.<sup>167</sup>
- ❖ St. Jude Children's Research Hospital in **Memphis, TN** also hosts an on-site farmers market, which was so successful that it inspired the creation of St. Jude's Garden in 2009. The garden is located in a once-vacant lot across the street, and supplements the produce purchased for the hospital café; it is largely maintained by donations and the volunteer efforts of hospital employees.<sup>168</sup>
- ❖ Union Hospital in **Terre Haute, IN** identified a vacant lot in a low-income neighborhood with limited transportation options to start a community garden.<sup>169</sup> The Hospital works in partnership with a local community coalition and mental health center to run the garden, providing plots to community members and employees.<sup>170</sup>
- ❖ In 2014, Rodale Institute partnered with St. Luke's University Health Network to start an organic farm that will feed patients, visitors, and staff at six hospitals across **Pennsylvania**.<sup>171</sup> In its first year, the farm produced over 44,000 pounds of organic produce.<sup>172</sup>

#### **COMMUNITY BENEFIT REQUIREMENTS AND LOCAL FOOD**

Non-profit hospitals are required to meet specific community benefit standards in order to maintain their federal tax-exempt status. The 2010 Patient Protection and Affordable Care Act (ACA) mandated that these standards be updated and strengthened and, in 2014, the Internal Revenue Service (IRS) implemented the ACA's mandate and issued its Final Rule. Notably, the updated standards require that tax-exempt hospitals 1) conduct a Community Health Needs Assessment (CHNA) every three years; 2) in developing a CHNA, include input from individuals who represent the broad interests of the community; and 3) adopt an implementation strategy to meet the needs identified in the CHNA.

These community benefit requirements represent an important opportunity for advocates to encourage hospitals to engage with food and nutrition issues. Indeed, the IRS's Final Rule explicitly includes nutrition-related activities under the list of activities that can fulfill the community benefits requirement. Programs that support local and regional food can benefit both the immediate, hospital community (including patients, patient families, and employees) and the broader community, including producers and those who live nearby. Advocates should get involved with the CHNA process at the outset and ensure that food and nutrition are addressed and, moreover, prioritized. Once the assessment has been completed, advocates can then help to identify appropriate food and nutrition activities and partners.

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## 5. Farm to Jail/Prison

Correctional facilities also offer an opportunity to use local and regional procurement to increase the quality of food served in the institution. Inmates suffer chronic health conditions, such as diabetes and hypertension, at higher rates than the general population.<sup>173</sup> Advocates can encourage correctional facilities to prioritize local, healthy food procurement as a means of improving nutrition and mitigating high health care costs associated with these diseases.<sup>174</sup> Some institutions have already adopted measures that seek to improve the health of inmates. For example, the **Indiana** Department of Corrections worked with ARAMARK, its foodservice provider, to design a new menu with an emphasis on reducing salt and fat content while increasing servings of fruits and vegetables.<sup>175</sup> Such an interest in providing healthier food can be an important first step for greater local food procurement.

Like hospitals, the first step to achieving local procurement policy change in jails and prisons is to determine who owns the facility. For public institutions, advocates can work with local or state government to encourage increased procurement of local foods in correctional facilities. Advocates should remember that federal, state, and local procurement laws will apply. For private facilities, the management can be approached directly to suggest policy changes.

- ❖ **Woodbury County, IA** instituted a local food procurement policy that requires the local jail and juvenile detention facilities to serve food produced within a 100-mile radius of the county courthouse whenever possible.<sup>176</sup> The policy was designed to serve as an example, in hopes that local schools and other institutions would create their own local procurement policies.<sup>177</sup>
- ❖ In 2012, **New York City** released guidelines to encourage agencies to purchase products grown or produced in the state of New York.<sup>178</sup> In response to these guidelines, the City's Department of Citywide Administrative Affairs, which purchases food for the city's Department of Corrections, implemented a local purchasing preference resulting in the purchase of \$250,000 worth of local produce from farms in Orange County, NY.<sup>179</sup>

In addition to enacting local food procurement policies, correctional facilities can source food from on-site farms and greenhouses. In many of these facilities, complementary programs teach inmates to work on the farm and grow and harvest crops. While effective, these types of programs must be designed thoughtfully to provide optional skills and job training for inmates, rather than punishing them with mandated manual labor.

- ❖ **Sonoma County** Jail in California has a two-acre farm tended by inmates, which provides food for the jail and local food banks.<sup>180</sup> The County Sheriff's Office partners with Sonoma County Department of Education to provide inmates with classroom instruction on a range of food-related topics, including: irrigation, sustainable agricultural methods, soil conservation, composting, and greenhouse production.<sup>181</sup>



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## SECTION VII: SCHOOL FOOD & NUTRITION EDUCATION

*As institutions where children and adolescents spend large amounts of time, schools are in a unique position to ensure that kids get healthy meals. Advocates can encourage a range of policy changes for school districts and individual schools, from increasing access to healthy school meals and decreasing the prevalence of unhealthy junk foods to incorporating nutrition education into existing curricula. This section also explores how advocates can help to increase participation in summer meals.*

In this section . . .

1. Overview
2. School Meal Access
3. School Nutrition Standards
4. School Procurement Policies
5. Improving the Cafeteria Environment
6. School Wellness Policies
7. Food Education Initiatives
8. Summer Meals

### 1. Overview

In 2016, over 30 million children participated in the National School Lunch Program (NSLP) and nearly 15 million participated in the School Breakfast Program (SBP).<sup>1</sup> Many of these students consume over 50% of their daily calories at school.<sup>2</sup> Because eating habits and preferences are formed early in life, what children eat in school can have both an immediate and lifetime impact on their nutrition and health.<sup>3</sup>

Overall, children from low-income households account for a significant majority of those consuming school meals: 73% in the NSLP and 85% in the SBP during 2016.<sup>4</sup> Children from low-income households are not only more likely to consume school meals, but also receive more of their total food and nutrient intake from these meals.<sup>5</sup> Healthy school meals, therefore, can be particularly effective at increasing fruit and vegetable consumption among children from low-income households.<sup>6</sup>

In addition to the meals children consume during the school year through the NSLP and SBP, many children from low-income households receive meals during the summer break through the Summer Food Service Program (SFSP). Like the NSLP and SBP, the SFSP is a federally-funded, state-implemented food service program





that reimburses schools for providing meals to students in low-income areas while school is on summer recess.<sup>7</sup> Though the program is state-administered, schools, local government agencies, and non-profit organizations can serve as “sponsors” which includes managing SFSP sites and receiving reimbursements for the meals served to kids.<sup>8</sup>

As this section will explore, many decisions concerning the nutrition and foods served in schools and educational programs are made at the local level. Advocates should work with their local school districts to improve access to school meals, the nutritional quality of the food served, and the wellness and nutrition education programs provided in schools.

**TABLE VII-1: POLICY CHANGE AT THE INSTITUTIONAL & GOVERNMENTAL LEVEL**

<b>SCHOOL DISTRICT CHANGE</b>	<p>Chetek-Weyerhaeuser School District in <b>Wisconsin</b> reported a 30.2% decline in combined overweight and obesity in its students grades K-12 between 2009 and 2015 after the school district implemented a number of changes, including:</p> <ul style="list-style-type: none"> <li>- Implemented the Healthy, Hunger-Free Kids Act (HHFKA) nutrition standards;</li> <li>- Rarely served flavored milk; and</li> <li>- Retrofitted drinking fountains with water bottle filling stations to encourage students to drink more water.<sup>9</sup></li> </ul>
<b>LOCAL POLICY CHANGE</b>	<p>In <b>Washington, D.C.</b>, local food policy advocates established a working group with staff members from the office of D.C. Councilmember Mary Cheh to draft the <i>D.C. Healthy Schools Act</i>,<sup>10</sup> which requires:</p> <ul style="list-style-type: none"> <li>- funding to support schools in achieving HHFKA nutrition standards;</li> <li>- all schools to serve a universal free breakfast;</li> <li>- all schools to incorporate nutrition education into the curriculum; and</li> <li>- minimum levels of physical education for all students each week.<sup>11</sup></li> </ul> <p>The working group’s feedback played a significant role in the creation and modification of the provisions. The D.C. City Council passed the bill unanimously in May 2010,<sup>12</sup> and D.C. schools have since seen increases in physical activity and the availability of healthy food in their facilities.</p>

### **Federal Policy and Funding for School Meals**

Every five years, the federal government establishes the policies and funding for the NSLP, SBP, and SFSP, along with other key child nutrition programs, through the Child Nutrition Reauthorization (CNR). At the time of publication, the most recent CNR was the 2010 **Healthy, Hunger-Free Kids Act (HHFKA)**.<sup>13</sup> The HHFKA brought some transformative, positive changes: among other things, it updated nutrition standards for the first time in 15 years; regulated so-called “competitive foods” (school foods that “compete” with meals, e.g., vending machine snacks, a la carte items, and fundraiser foods) for the first time; and improved eligible schools’ ability to offer universal free meals.<sup>14</sup> Despite the introduction of bills in both the House and the Senate in 2016, a CNR bill was not passed. Some of the provisions of the HHFKA expired on September 30, 2015, but most of the child nutrition programs continue to receive funding through the appropriations process.<sup>15</sup> It is unclear when a new CNR bill may be passed, but until then, it is likely that current programs will remain in place as outlined by the HHFKA.<sup>16</sup> Despite improvements in the federal framework through the HHFKA, there is still a great deal of room for further improvement by states and localities in school nutrition programs.

Most of the federal funding for school food comes in the form of per-meal cash reimbursements for NSLP and SBP meals. Federal reimbursement rates for meals are set by legislation and adjusted annually for inflation.<sup>17</sup> In addition to these cash reimbursements, the federal government also provides in-kind commodity distributions



through the USDA Foods Program.<sup>18</sup> These distributions, which include fruits, vegetables, meats, and other staples,<sup>19</sup> make up between 15 and 20 percent of the food served to students.<sup>20</sup>

Reimbursement rates vary depending on whether a student receives a free meal or a reduced-price meal, or pays for the meal. In addition, rates vary depending on whether the school is in a high-poverty area (with 60% or more of students qualifying for free and reduced-price meals)<sup>21</sup> and whether the school is in compliance with the 2010 Healthy, Hunger-Free Kids Act nutrition standards—schools that are in compliance get an extra \$0.06 per NSLP meal.<sup>22</sup>

## 2017-2018 NSLP & SBP REIMBURSEMENT RATES\*

\*These rates reflect schools currently meeting the HHFKA standards with 60% or more students qualifying for free or reduced-price meals. Reimbursement rates are lower for schools that are not meeting the HHFKA standards and that have less than 60% students qualifying for free or reduced-price lunch. Reimbursement rates are higher for Alaska, Hawaii, and Puerto Rico.

Source: USDA, *School Programs: Meal, Snack and Milk Payments to States and School Food Authorities*, <https://www.gpo.gov/fdsys/pkg/FR-2017-07-28/pdf/2017-15956.pdf> [<https://perma.cc/D5DF-7NEZ>].

	<b>Paid</b>	<b>Reduced Price</b>	<b>Free</b>
<b>National School Lunch Program</b>	\$0.39	\$2.91	\$3.31
<b>School Breakfast Program</b>	\$0.30	\$1.79	\$2.09

## 2. School Meal Access

Advocates should work to increase participation in the NSLP and SBP as this achieves two important goals. First, increased participation provides more students with the food that they need to thrive in the classroom and beyond. Further, increased participation initiates a virtuous cycle wherein schools receive more federal revenue and are therefore able to invest more money in providing healthy, nutritious, and delicious meals, increasing children's enjoyment and further increasing participation.

Advocates may want to focus on increasing SBP participation as SBP participation rates tend to be lower than NSLP participation rates. During the 2015-2016 school year, only 56 low-income students participated in SBP for every 100 low-income students who participated in NSLP.<sup>23</sup> SBP faces some unique challenges. First, students cannot always make it to school in time to eat breakfast before the bell.<sup>24</sup> Students also sometimes forgo breakfast to avoid the stigma of participating in a program that tends to serve mostly low-income students.<sup>25</sup> Finally, some schools may not serve breakfast; currently 10% of schools participating in the NSLP do not participate in the SBP.<sup>26</sup>

Advocates should encourage their local school districts to increase school meal participation by implementing the community eligibility provision for eligible schools, providing universal breakfast, and implementing alternative breakfast service models.

### **The Community Eligibility Provision (CEP)**

Created under the 2010 HHFKA, CEP makes it possible for schools in high-poverty areas to provide universal meals—that is, free breakfast and lunch to all students, regardless of whether they individually qualify for free or reduced-price meals.<sup>27</sup> Initial results are overwhelmingly positive as schools across the country roll out



CEP.<sup>28</sup> One analysis of CEP schools in Illinois, Kentucky, and Michigan found a combined 47% higher NSLP participation rate and 184% higher SBP participation rate when compared with non-CEP schools.<sup>29</sup>

In order to qualify for CEP, a school must meet a minimum level (40%) of students who are identified as eligible for free meals through means other than individual applications.<sup>30</sup> These **identified students** are largely students who are directly certified.<sup>31</sup> **Direct certification** is the process by which students are certified as eligible for free meals by matching school enrollment data against enrollment data for certain means-tested programs, such as Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), or Food Distribution on Indian Reservations (FDPIR) benefits.<sup>32</sup> Under current law, SNAP is the only means-tested program that states and school districts are *required* to use for direct certification.<sup>33</sup>

The percentage of identified students is multiplied by a factor of 1.6 to determine the percentage of meals reimbursed at the federal free rate (between \$3.23 and \$3.31), with the remaining percentage reimbursed at the federal paid rate (between \$0.31 and \$0.39).<sup>34</sup> Schools with 62.5% or more identified students are reimbursed at the federal free rate for all students.<sup>35</sup>

Advocates can play an active role in encouraging their local schools and/or school district to adopt CEP:

- ❖ **Investigate whether your school district, or schools in your district, are eligible for CEP.** Individual schools, groups of schools, or school districts may elect to participate in CEP.<sup>36</sup> Each year, state educational agencies must post lists of eligible (40% identified students) and near-eligible (30% identified students) schools and districts on their websites by May 1.<sup>37</sup> Advocates can use this information to push eligible schools that are not already participating to adopt CEP.
- ❖ **Strengthen direct certification to increase the number of eligible schools.** As mentioned above, SNAP is the only means-tested program that school districts are *required* to use for direct certification. However, advocates can work with state agencies to use data from other means-tested programs to conduct direct certification,<sup>38</sup> thereby increasing the number of identified students and, likely, the number of CEP-eligible schools. Local advocates can also work with other advocates across the state to push for legislative or administrative action requiring that school districts use other means-tested programs for direct certification.

### **Universal Breakfast**

As mentioned above, advocates may want to focus on increasing breakfast participation as SBP participation often significantly lags behind NSLP participation. Moreover, 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.<sup>39</sup>

Schools that are not CEP-eligible or have not implemented CEP should consider implementing universal breakfast. At least nine states provide funding to support schools wishing to offer universal breakfast.<sup>40</sup> Some states go even further and mandate that schools in high-poverty areas (as measured by a percentage of students receiving free and reduced-price meals) serve universal breakfast.<sup>41</sup> Advocates can work with their local school district to take advantage of funding for universal breakfast if it exists at the state level, or push the local government to enact similar laws that incentivize or require universal breakfast, particularly for schools in high-poverty neighborhoods.

- ❖ Passed in 2010, **Washington, D.C.**'s Healthy Schools Act established universal breakfast in all public and public charter schools.<sup>42</sup> In addition, the Act mandated that all schools with 40% or more students receiving free and reduced-price meals also implement breakfast in the classroom (for elementary schools) or alternative breakfast models (middle and high schools).<sup>43</sup> D.C. has one of the highest breakfast participation rates in the country, largely because of these policies.<sup>44</sup>



- ❖ **New York City** schools began offering universal breakfast in 2003.<sup>45</sup> The district subsidized the cost by raising the price of lunches for students who did not qualify for free or reduced-price meals.<sup>46</sup> The district also piloted a universal lunch program in 285 middle schools, which is funded, in part, by City Council.<sup>47</sup>
- ❖ **Wake County, NC** has gradually implemented universal breakfast in its public schools. In 2016, the Wake County Public School System increased the number of schools offering universal breakfast from 12 to 25 with the help of a \$90,000 budget allocation from the Wake County Board of Commissioners.<sup>48</sup>

### **Alternative Breakfast Service Models**

In addition to offering universal free breakfast, schools can implement innovative breakfast models to address some of the underlying challenges with breakfast service and further increase participation in SBP. While universal breakfast addresses challenges associated with stigma, alternative breakfast models—such as grab-and-go breakfast or breakfast after the bell—can address challenges associated with the timing of breakfast.<sup>49</sup> Some states have passed legislation requiring that schools in high-poverty areas (as measured by a percentage of students receiving free and reduced-price meals) provide breakfast after the bell.<sup>50</sup> Other states provide funds for implementing alternative breakfast models.<sup>51</sup> Advocates can work with their local school district to take advantage of such funding if it exists at the state level, or push the local government to enact similar laws that incentivize or require alternative breakfast models.

#### **Re-Thinking Breakfast**

The following models have proven successful in increasing SBP participation in school districts across the country. Advocates should work with their local schools to determine which models are best given resources, infrastructure, schedules, and attitudes towards breakfast.

- **Grab-and-Go:** Students pick up a prepackaged breakfast from a mobile cart as they arrive at school. Depending on school rules, students can eat their breakfast in the classroom, in the hall, or outside. This model decreases the time associated with getting breakfast in the cafeteria and allows students more time and freedom to enjoy breakfast.
- **Breakfast in Classroom:** Food service staff and/or student volunteers deliver breakfast directly to the classroom. By moving breakfast to the classroom and integrating it into the school day, schools make breakfast more convenient and decrease the stigma related to getting to school early to eat breakfast.
- **Second Chance Breakfast:** Students eat breakfast during mid-morning break. This model eliminates tardiness concerns, allows students more time to feel hungry, and incorporates breakfast into the school day.

**Source:** NEA HEALTHY FUTURES & SHARE OUR STRENGTH, A GUIDE TO INCREASING SCHOOL BREAKFAST PARTICIPATION (2015), <http://healthyfutures.nea.org/wp-content/uploads/2015/05/hin-sos-for-web-final.pdf> [<https://perma.cc/7WSF-X6D9>].

- ❖ The **Elcho, WI** School District provides students with breakfasts that are packaged in paper bags, boxes, or trays.<sup>52</sup> Students pick up their breakfast from a central location and eat it when and wherever they would like (within school guidelines).
- ❖ **Liberal, KS**'s public high school leveraged a grant from the Midwest Dairy Council to administer a "Second Chance Breakfast" program.<sup>53</sup> The program features a kiosk in the school's common area where students can pick up or purchase a "grab and go breakfast bag" that includes breakfast items meant to be easy to handle on the go or in the classroom.<sup>54</sup> The school engaged students to help them



promote the program, allowing them to design breakfast posters and develop a promotional video that aired every day as part of the school announcements.<sup>5</sup>

### 3. School Nutrition Standards

Schools must meet the nutrition standards required by the HHFKA, but states, localities, and school districts can exceed the federal standards and set their own, stricter nutrition standards. Notably, there are two main categories of school food, each regulated by separate nutrition standards mandated under the HHFKA:

- ❖ **Reimbursable meals** are funded through per-meal reimbursements from the federal SBP and NSLP. The HHFKA updated the nutrition standards for school meals for the first time in 15 years, increasing the servings for fruits, vegetables, and whole grains while setting limits on fats, sugars, and sodium.<sup>56</sup> The HHFKA standards also set a limit on total calories per average meal for the first time.<sup>57</sup> (See Table VII-2)

**Table VII-2: HHFKA Nutrition Standards for SBP and NSLP**

Meal Pattern	Breakfast			Lunch		
Grades	K-5	6-8	9-12	K-5	6-8	9-12
<b>Amount of food per week (minimum per day)</b>						
Fruits (cups)	5 (1)	5 (1)	5 (1)	2½ (½)	2½ (½)	5 (1)
Vegetables (cups)	0	0	0	3 (¾)	3 (¾)	5 (1)
Grains (ounces)	0	0	0	1	1	1 ½
Meats/Meat alternatives (ounces)	0	0	0	8-9 (1)	8-10 (1)	10-12 (2)
Fluid milk (cups)	5 (1)	5 (1)	5 (1)	5 (1)	5 (1)	5 (1)
<b>Other specifications</b>						
Min-max calories	350-500	400-550	450-600	550-650	600-700	750-850
Saturated fat (as % of total calories)	< 10	< 10	< 10	< 10	< 10	< 10
<b>Source:</b> Nutrition Standards in the National School Lunch and School Breakfast Programs: Final Rule, 7 C.F.R. §§ 210, 220 (2012), <a href="https://www.gpo.gov/fdsys/pkg/FR-2012-01-26/pdf/2012-1010.pdf">https://www.gpo.gov/fdsys/pkg/FR-2012-01-26/pdf/2012-1010.pdf</a> [ <a href="https://perma.cc/NT9L-P6SA">https://perma.cc/NT9L-P6SA</a> ].						

- ❖ **Competitive foods** are sold “in competition” with reimbursable meals. Competitive foods include “a la carte” food items sold in cafeterias (e.g., pizza), food sold in vending machines, and food sold at school fundraisers. Schools are not reimbursed for these foods, and thus students or parents pay full price. The HHFKA regulated competitive foods for the first time; however, the nutrition standards for competitive foods are less stringent than those for reimbursable meals. (See Table VII-3)



## Table VII-3: HHFKA Nutrition Standards for Competitive Foods, or the “Smart Snacks Rules”

### A snack or a la carte item must meet the following general nutrition standards:

- Be a grain product that contains 50 percent or more whole grains by weight (have a whole grain as the first ingredient); or
- Have as the first ingredient a fruit, a vegetable, a dairy product, or a protein food; or
- Be a combination food that contains at least ¼ cup of fruit and/or vegetable

### In addition, the food must meet the nutrient standards for calories, sodium, sugar, and fats:

Nutrient	Snack	Entree
Calories	200 calories or less	350 calories or less
Sodium	200 mg or less	480 mg or less
Total Fat	35% of calories or less	35% of calories or less
Saturated Fat	Less than 10% of calories	Less than 10% of calories
Trans Fat	0 g	0 g
Sugar	35% by weight or less	35% by weight or less

**Source:** Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010: Final Rule, 7 C.F.R. §§ 210, 215, 220 (2016), <https://www.gpo.gov/fdsys/pkg/FR-2016-07-29/pdf/2016-17227.pdf> [<https://perma.cc/RUV3-D2TP>].

### Healthy Meals

The USDA reports that, as of 2016, 98% of schools are meeting the 2010 HFFKA nutrition standards.<sup>58</sup> However, schools also report challenges in meeting these standards. In particular, schools report concerns about preparing foods that are appetizing to students and, relatedly, having the equipment and training to prepare such meals.<sup>59</sup> Advocates can help their local governments and school districts pursue the following strategies to ensure that they are successfully meeting the 2010 HFFKA nutrition standards and ensuring students eat these healthy meals.

- ❖ **Provide additional per-meal reimbursements:** School districts have long struggled to make nutritious and delicious meals under the federal reimbursement rates, and the HHFKA nutrition standards only amplified this strain.<sup>60</sup> While the HHFKA provided an extra \$0.06 per lunch for schools meeting the new standards, even the Government Accountability Office estimated that the new standards could cost schools, at minimum, an additional \$0.10 per lunch and \$0.27 per breakfast.<sup>61</sup> Local governments can fill this gap and offer additional reimbursements for schools meeting the federal standards (at this point, most schools). For example, **Washington D.C.**’s 2010 Healthy Schools Act authorized an additional \$0.10 per reimbursable breakfast and per reimbursable lunch for schools meeting the 2010 HFFKA standards.<sup>62</sup>
- ❖ **Promoting “scratch” cooking:** Transitioning to cooking more food from scratch has many benefits. School food service staff can better control the ingredients in a dish, helping them meet federal sodium and fat standards.<sup>63</sup> Scratch cooking generally tastes better than pre-packaged food and can lead to higher student satisfaction. It also makes it easier to adjust recipes to address student feedback.<sup>64</sup> However, transitioning to scratch cooking can be expensive as it often requires investments in equipment, infrastructure, staff, and training.

Advocates can work with their schools’ food service programs to develop plans for gradually making these investments, balancing budget constraints, anticipated returns on investment, and meal service needs. In addition, advocates can help to identify grant opportunities for school kitchen upgrades. Since 2009, USDA has awarded around \$30 million annually in **Equipment Assistance Grants** to help schools





meet the HHFKA standards.<sup>65</sup> Grants are disbursed to state agencies and then awarded to individual schools and school food authorities through a competitive process.<sup>66</sup> USDA also awards about \$5.5 million annually for staff training through its **Team Nutrition Training Grants**.<sup>67</sup> Foundations and state governments may also offer funding opportunities for kitchen equipment upgrades and training.<sup>68</sup>

- ❖ **Involving chefs in recipe development:** Research has demonstrated that schools that hire a trained chef to create healthier menus experience a significant increase in fruit and vegetable consumption among students.<sup>69</sup> As this may be a prohibitively expensive investment for some districts, advocates can help them explore alternatives. For example, neighboring school districts have sometimes partnered and split the costs of hiring a chef.<sup>70</sup> There are also volunteer organizations, such as the **Chefs Move to Schools** program, which connect local chefs with schools interested in working with a chef.<sup>71</sup> Schools can also partner with culinary training programs to develop recipes and train food service staff.<sup>72</sup>
- ❖ **Involving students and parents in recipe development:** Schools can draw upon students and parents to create healthy, tasty menu options. In the national student cooking competition, **Cooking Up Change**, students compete to design a meal that is nutritious enough to meet the USDA nutrition requirements and inexpensive enough to meet the federal reimbursement rate.<sup>73</sup> School districts can host their own student recipe competitions.<sup>74</sup> Schools can also involve parents. In **St. Paul, MN**, schools post their recipes to the school district's website and invite parents to submit family recipes for use in school meal service.<sup>75</sup>
- ❖ **Celebrating different cultures through school food:** Schools should seek to use culturally- appropriate foods and recipes when encouraging students to try new, healthy menu items. Advocates can help schools use food to celebrate different backgrounds and cultures within the school and region.
  - ♦ In **Minneapolis, MN**, public schools have worked to integrate foods that reflect the city's growing immigrant population from Somalia, Laos, Cambodia, and Ethiopia. With help from local volunteer chefs, the schools have incorporated more menu items reflecting these cultures.<sup>76</sup>
  - ♦ In **White Earth Nation, MN**, the local elementary school has replaced much of the highly-processed foods on their menus with traditional, locally-grown foods.<sup>77</sup> In implementing these changes, the school experienced a \$12,000 reduction in food spending.<sup>78</sup> Alongside the menu changes, the school introduced a curriculum that taught students about White Earth language, culture, and nutrition.<sup>79</sup>

### **Competitive Foods**

Competitive foods are prevalent in schools;<sup>80</sup> indeed, one study found that 40% of children consumed at least one competitive food on a typical school day.<sup>81</sup> These foods tend to be junk food, which not only lack nutritional value, but also displace the consumption of healthier school meals.<sup>82</sup> Fortunately, for the first time ever, the USDA began regulating competitive foods with the passage of the HHFKA. These federal regulations leave ample room for local advocates to impose additional restrictions and experiment with creative strategies.

Advocates should start by seeing what policies have already been enacted at the state level. Some states have enacted laws that are more stringent than the HHFKA or expand the scope of the law. For example, **Arkansas** prohibits vending machines in elementary schools.<sup>83</sup> **Massachusetts** has expanded the definition of competitive foods to include not just those *sold*, but also those *provided* at school, including foods offered at celebrations and other school events.<sup>84</sup> States have also taken different approaches to the federal exemption for "infrequent school-sponsored fundraisers."<sup>85</sup> This gives states a great deal of leeway to define "infrequent," both in terms of the total number of fundraisers and the length of each fundraiser. As of 2016, 4 states have no policy on exempt fundraisers; 20 states have eliminated the exemption altogether; 21 states regulate the number of exempt fundraisers; 5 states regulate the length of exempt fundraisers; and 1 state regulates the number of school events at which any food or beverages can be sold.<sup>86</sup>



- ❖ **Narrowing the fundraiser exemption:** School districts can always go above the state fundraiser regulations and set even stricter limits.
  - ♦ For example, while **Texas** allows up to six exemption days per school year,<sup>87</sup> the **Dallas** Independent School District only allows three exemption days.<sup>88</sup>
- ❖ **Providing financial incentives for stricter guidelines:** Schools often look to competitive foods as a means to generate additional revenue and worry that restrictions will adversely affect their bottom lines. While many schools that implement healthy competitive foods and fundraiser models see little difference in their revenue, it can still be helpful to provide schools with an added financial incentive to restrict competitive foods.
  - ♦ The State of **Connecticut** has its own school nutrition standards, the Connecticut Nutrition Standards (CNS), which exceed some of the federal standards for competitive foods.<sup>89</sup> Schools certified by the Connecticut Department of Education as meeting the CNS receive an additional \$0.10 per reimbursable lunch.<sup>90</sup>
- ❖ **Changing the items sold in vending machines or restricting access to vending machines:** Schools can decide to only sell certain, healthy items in vending machines. Alternatively, schools make it harder for students to access competitive foods by limiting vending machine hours or moving vending machines to more remote locations.
  - ♦ The Old Orchard Beach School District in **Old Orchard Beach, ME** implemented a district-wide vending machine policy that required the replacement of all soft drinks in vending machines with juice, water, and milk, and replacement of candy and high-fat snacks with healthier snacks, like trail mix and fruit snacks.<sup>91</sup>
- ❖ **Using pricing strategies to favor healthier options:** Schools can lower the prices of healthy competitive food items, such as water and fruit, and increase the prices of less healthy items.
  - ♦ Marshall County Schools in **Guntersville, AL** ensured that water sold in schools cost less than water sold in stores.<sup>92</sup> Schools may wind up subsidizing healthier items—**Boston** Public Schools surveyed students to determine the appropriate price point for healthier items and sought grant funding to cover the subsidy.<sup>93</sup>
- ❖ **Providing healthy, free snacks through the federal Fresh Fruit and Vegetable Program:** The Federal Fresh Fruit and Vegetable Program (FFVP) gives elementary schools \$50-\$75 per student, per school year, to provide fresh fruit and vegetables to students outside of regular meal times.<sup>94</sup> Schools design their own implementation plans, including what produce is served and when it is served.<sup>95</sup> Advocates can help their local school district apply for the FFVP if they do not already participate in the program. Applications must include: (1) the total number of students and those eligible for free and reduced-price meals; (2) certifications of support from the school food manager, school principal, and district superintendent; and (3) an implementation plan that includes integration with other health and nutrition efforts.<sup>96</sup>

## 4. School Procurement Policies

Procurement policies are the procedures schools follow to order food and other products. These policies can play an important role in increasing the quality and nutrition of school meals. School districts have the option



to amend their procurement policies to preference certain foods, such as locally and regionally-grown produce or antibiotic-free meat. This can be one way of ensuring that schools are purchasing—and serving—more fruits and vegetables, as well as higher-quality, healthier meats and other food products. In addition, schools can support local and regional producers, as well as producers who prioritize certain environmental, labor, and animal welfare standards.

Please refer to [Section VI: Procurement](#) for information about increasing local procurement for school meals. Key recommendations from that section include:

- ❖ Amending local and school district procurement policies to include a geographic preference for foods that are grown or produced locally and regionally. This can make it easier for local and regional farmers to compete with larger distributors, as locally and regionally-sourced foods may cost more or may not meet other conventional bid specifications.
- ❖ Working with local and regional farmers to facilitate small and micro-purchases. For purchases below a certain dollar amount, bidders do not have to adhere to many of the procurement formalities required for schools and other public institutions. This can make it easier for smaller local and regional producers to supply schools and can also serve as a trial for larger purchases, helping schools understand what regional and local producers can supply and helping producers understand the needs of schools.
- ❖ Clarifying regulations and best practices for the use of school garden produce in school meals, whether through formal guidance from local agencies or school wellness policies. Even if there are no state and local laws restricting the use of garden produce, it can be reassuring for schools to have local agency guidance clearly stating that it is permitted. School districts themselves can also formalize their support for school gardens and provide clarity around food safety best practices.

## 5. Improving the Cafeteria Environment

The cafeteria environment plays an important role in encouraging healthy eating at school. Advocates can work with schools to alter the time allocated for eating, food presentation, and food location in order to “nudge” students to make healthier food choices. Subtle changes in the way that a cafeteria is structured—for example, by changing room seating and organization—can improve the promotion of healthier options.

### **Lunch Timing and Duration**

One significant way in which advocates can improve the cafeteria environment is by helping schools reconsider the timing and length of meal times. Research suggests that, when possible, recess should be scheduled before lunch, as students who are physically active prior to meal time tend to eat more fruits and vegetables, drink more milk, waste less food, and behave better in the cafeteria.<sup>97</sup>

- ❖ The Watersmeet Township School District in **Watersmeet, MI** adopted recess before lunch for elementary school students.<sup>98</sup> This policy is reflected in the District’s Wellness Policy.<sup>99</sup>
- ❖ In **Montana**, dozens of schools started putting recess before lunch (RBL) in 2003.<sup>100</sup> Students, staff, and parents were so pleased with the results of this change that the Montana Office of Public Instruction compiled a RBL toolkit, ***Recess Before Lunch: A Guide for Success***, to help other schools make the transition.<sup>101</sup>

The length of time that students have to eat also influences student nutrition. Many students currently have to rush through lunch because, in an attempt to raise students’ test scores, schools have increased class time by reducing lunch periods.<sup>102</sup> Shortened lunches can lead students to choose unhealthy, quicker-to-eat food



products or to skip lunch altogether.<sup>103</sup> Advocates can encourage local schools to set lunch periods such that children have at least twenty minutes to eat their food after being served, as recommended by the Journal of Child Nutrition & Management.<sup>104</sup> Advocates might also encourage schools to tailor meal times to student age groups based on other available research literature, curriculum needs, and parent input.

- ❖ In 2017, the **Seneca Valley, PA** School Board voted to extend the high school lunch period from 30 minutes to 41 minutes.<sup>105</sup> In order to create more time for lunch, school officials took time away from each period and the activity period.<sup>106</sup>

These strategies are also discussed in [Section VIII: Decreasing and Recovering Wasted Food](#).

### **Cafeteria Layout**

Advocates can also encourage schools to improve the cafeteria environment by reorganizing layout. There are numerous ways to do this. For example, students are likely to be drawn to the food that they see first and can access most easily.<sup>107</sup> Schools should therefore try to make produce one of the first items that students see when they walk through the lunch line and offer less-healthy options last. Schools could also attempt to make healthier options more appealing by giving them exciting names, such as “broccoli bites” which, as one study found,<sup>108</sup> can increase the likelihood that students will choose those options.

- ❖ Placing a nutritious entrée first in the lunch line at a high school in **Corning, NY** significantly increased the selection of that option.<sup>109</sup>
- ❖ In **Los Angeles, CA** public schools, implementing product displays of healthier items and having food service staff suggest certain choices has resulted in increased fruit and vegetable consumption.<sup>110</sup>
- ❖ The layout of the cafeteria at the junior high school in **Exeter Township, PA** was creating traffic flow problems that resulted in long lines.<sup>111</sup> In addition, the salad bar did not have a place for students to rest their trays, so they had to balance their trays while taking items from the salad bar. The school changed the layout so that students could choose between three different serving lines marked with colorful signage: hot grab-and-go meals, cold grab-and-go meals, and salad. The school also revamped the salad bar to make it easier to access items and rest trays while building a salad.

Advocates can also push schools to focus on tables, plates, and food disposal as areas for improvement, as all of these things can contribute to the amount of food that students eat and waste. Some of these strategies are discussed in greater detail in [Section VIII: Decreasing and Recovering Wasted Food](#).

## **6. School Wellness Policies**

The federal government requires that all schools receiving federal funding for school meals develop wellness policies.<sup>112</sup> A school wellness policy is a written document, developed in close collaboration with key stakeholders (students, parents, school food service staff, etc.), that addresses how a school or district promotes student wellness and, specifically, ensures that federal nutrition standards and policies are being met. As described in some of the examples above, a wellness policy can be a powerful tool for setting local policy and implementing creative strategies that go above federal and state requirements. Under the federal regulations, a school wellness policy must contain, at minimum (paraphrasing the USDA’s **Local School Wellness Policy Implementation Final Rule**,<sup>113</sup> which advocates should review), the following:

- (1) Specific goals for nutrition promotion and education, physical activity, and other school-based activities that promote student wellness;
- (2) Standards for all foods and beverages provided, but not sold, to students during the school day (e.g.,



classroom celebrations and school fundraisers);

- (3) Standards and nutrition guidelines for all foods and beverages sold to students during the school day (these standards must be consistent with all applicable federal standards and must promote student health and reduce childhood obesity);
- (4) Identification of the school official(s) responsible for implementation, oversight, and compliance with the wellness policy;
- (5) A description of the manner in which key stakeholders can participate in the development, implementation, and periodic review and update of the wellness policy; and
- (6) A description of the plan for measuring implementation of the wellness policy, and reporting content and implementation issues to the public.

### Drafting an Effective Wellness Policy

The **Burlington, VT** School District's Wellness Policy is one example of how key stakeholders, including teachers, parents, administrators, and district health care workers, can develop a wellness policy that focuses on student nutrition as one way to improve overall student health. In particular, the policy provides that the district will establish and implement a sequential K-12 comprehensive health and nutrition curriculum; establish and maintain school gardens; procure locally-produced food; and empower staff to integrate experiential nutrition education into existing curricula at all levels.

**Source:** *Burlington School District F 6R - Wellness Policy*, BURLINGTON SCH. DIST., <http://www.bsdt.org/wp-content/uploads/2017/07/F-6R-Wellness-Policy.pdf> [<https://perma.cc/XYW5-9K8S>].

The USDA also sets requirements for how a wellness policy is created, implemented, and assessed. USDA specifically identifies which stakeholders *must* be allowed to participate in the creation of the policy: parents, students, representatives of the school food authority, teachers of physical education, school health professionals, the school board, school administrators, and the general public.<sup>114</sup> Schools must make the policy publicly available and provide updates on policy implementation and progress.<sup>115</sup> In addition, schools must undertake an assessment of the policy every three years.<sup>116</sup> The assessment must cover compliance with the policy, comparison with model wellness policies, and progress towards the goals of the policy.<sup>117</sup>

The USDA's requirements—in particular, broad participation, information sharing, and regular assessment—provide advocates with important opportunities for shaping and strengthening school wellness policies. In particular, advocates can pursue the following strategies:

- ❖ **Participating in wellness policy creation:** Policies are generally created by local school wellness committees.<sup>118</sup> Advocates can seek to join the local school wellness committee, or ask to speak to the committee regarding policy creation, implementation, or oversight. While the USDA does not set specific requirements for the makeup of a school wellness committee or who must be involved in policy creation, it does make clear that key stakeholders—everyone from students to the general public—must be able to participate in review of the policy.
  - ♦ The advocacy organization **Real Food for Kids – Montgomery** (RFKM) in **Montgomery County, MD** was instrumental in both creating the school district's Wellness Regulation (like a wellness policy) and establishing a new district wellness committee. RFKM's executive director sat on the committee that created the Wellness Regulation and successfully pushed for a prohibition on the sale of products with aspartame and acesulfame potassium.<sup>119</sup> Following the release



of the Wellness Regulation, the school district created a wellness committee, which includes school district employees (50%) and parents (25%).<sup>120</sup> RFKM's executive director also sits on the wellness committee.<sup>121</sup>

- ❖ **Identifying model policies:** Advocates can research model school wellness policies and help tailor them to their district's needs and specifications. There are a number of model policies, created by research and policy organizations and state agencies, which can serve as a starting point for local school districts. Advocates should look at differences across different model policies and identify the provisions that they feel are most important and potentially effective for their district.
  - ♦ The USDA website features a model policy created by the **Alliance for a Healthier Generation**.<sup>122</sup> This model policy was updated in 2016 to reflect the release of the USDA's Local School Wellness Policy Implementation Final Rule.<sup>123</sup> In addition, the Alliance for Healthier Generation also published a *School Wellness Committee Toolkit* (in 2013, before the Final Rule was released).<sup>124</sup> The Toolkit includes a number of helpful resources, like sample invitation letters and meeting agendas.<sup>125</sup>
  - ♦ The **State of Alaska Obesity Prevention and Control Program** and the **Alaska Department of Education & Early Development Child Nutrition Program** released an Alaskan Gold Standard Wellness Policy.<sup>126</sup>
  - ♦ Rather than create a single model policy, the **Minnesota Department of Education** and the **Minnesota Department of Health** published *From Policy to Action: A Guide for Developing Effective Wellness Policies and Practices*.<sup>127</sup> The guide outlines seven steps for enacting and implementing a wellness policy and includes a host of helpful resources for each step.<sup>128</sup>
- ❖ **Ensuring the policy is forward-looking:** Wellness policies should help districts phase in positive changes over time, planning for those changes and laying the necessary groundwork. Advocates can push districts to adopt specific requirements—such as introducing stricter nutrition standards or eliminating certain foods—and incorporate benchmarks to measure progress towards those requirements.
  - ♦ The **San Francisco** Unified School District updated its Wellness Policy in 2015 and included a provision to “explore ways to phase out chocolate milk and. . . share findings . . . within a year.”<sup>129</sup> Over the next year, the District tested a chocolate milk ban in five schools to see if students consumed less milk, finding no decrease in two schools and only a minor decrease in three schools.<sup>130</sup> In 2017, the District decided to implement the ban on chocolate milk, district-wide.<sup>131</sup>
- ❖ **Ensuring policy implementation and compliance:** While the USDA requires that policies undergo an assessment every three years, advocates can monitor the policy's progress on a more regular basis and take steps to ensure its success. Advocates should ensure that the policy is published on the district's website, promoted through social media, and incorporated into the parent handbook. Advocates can also help to publicize the policy's successes and push for annual, informal assessments of the policy's progress using any one of a number of wellness policy assessment tools.<sup>132</sup>

## 7. Food and Nutrition Education Initiatives

Food education initiatives introduce young people to principles of nutrition, agriculture, and food production processes, increasing students' appreciation of healthy foods. Students who are exposed to such initiatives are more likely to care about their food environment and food choices throughout their lives.<sup>133</sup> While schools have to teach traditional subjects such as math, science, and language arts, nutrition or health courses may





not be mandatory. The state government has primary authority for the operation of public schools, but many states give local authorities the power to develop their own curricula, so long as they align with state standards.

Advocates can encourage schools to:

- ❖ Incorporate food and nutrition education into the existing health or physical education courses or push schools to add these courses if they do not already exist.
  - ♦ The **National Association of State Boards of Education** offers a model policy for incorporating nutrition education into school health curricula.<sup>134</sup>
- ❖ Incorporate food and nutrition education into traditional academic courses, such as math or science. 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.<sup>135</sup>

### FoodCorps

Advocates should see if **FoodCorps** is active in their state. FoodCorps places AmeriCorps volunteers with state, local, and school district partners to deliver programming that centers around 1) hands-on learning, 2) healthy school meals, and 3) a schoolwide culture of health. At the time of publication, FoodCorps was active in 18 states. Public schools or school districts, community-based agencies, and local 501(c)(3) non-profits can inquire about becoming a designated service site on the FoodCorps website.

**Source:** FOODCORPS, foodcorps.org [https://perma.cc/U8Y7-RFU2] (last visited Aug. 24, 2017).

- ♦ The **California Department of Education** provides useful strategies for introducing nutrition education into existing curricula.<sup>136</sup>
- ♦ The Johns Hopkins **Center for a Livable Future** developed a food system curriculum for high school students called **FoodSpan**.<sup>137</sup> Aligned with national education standards, the curriculum is designed to engage students in active problem solving to deepen their understanding of the food system and the challenges that it faces.<sup>138</sup> The curriculum includes individual lesson plans and can be downloaded, for free, on the FoodSpan website.<sup>139</sup>
- ♦ The **Let's Move!** website also provides useful resources for bringing nutrition education into the classroom.<sup>140</sup>
- ♦ The nonprofit **Growing Minds Farm to School** helps schools integrate gardening and nutrition education into state and national curriculum.<sup>141</sup> The organization's website includes lesson plans for all grade levels.<sup>142</sup>
- ❖ Partner with local non-profit organizations and extension services to offer after-school nutrition and health classes.
  - ♦ The **Coordinated Approach to Child Health (CATCH)** is a non-profit that provides after-school physical activity and nutrition education programs designed for elementary and middle school students.<sup>143</sup>



- ❖ Offer cooking classes or partner with non-profit organizations that provide cooking classes.
  - ♦ In **Tulsa, OK**, schools have a variety of hands-on programs to engage students in preparing healthy meals. Bread in the Bag, for example, gives elementary school students experience in bread making, from mixing and kneading to baking.<sup>144</sup>
  - ♦ Public schools in **St. Louis, MO** partnered with Operation Food Search, a local food bank, to implement **Cooking Matters** during after school programming.<sup>145</sup> Cooking Matters is a national program that provides parents and students with instruction on smart grocery shopping and easy, healthy meal preparation.<sup>146</sup> St. Louis also works with the **Chef 2 School** program, bringing over 60 chefs to work with students.<sup>147</sup>
- ❖ Use taste testing to introduce students to new foods and ingredients.
  - ♦ Weston Public Schools in **Weston, MA** runs a weekly taste test program called “Taste Test Tuesday” that introduces students to new foods.<sup>148</sup> In May 2015, the school featured jicama and, each Tuesday, the school offered students a different preparation of jicama.<sup>149</sup>

## 8. Summer Meals

Summer can be a particularly challenging time for children from households who rely on school meals.<sup>150</sup> Without nutritious meals over the summer, these children are at a higher risk of weight gain and may develop behaviors that contribute to health complications and poor performance once school begins again.<sup>151</sup>

Schools and other organizations can apply for reimbursements for summer meals through the USDA **Seamless Summer Option (SSO)** and **Summer Food Service Program (SFSP)**.<sup>152</sup> SSO is only available to schools that participate in the NSLP, allowing for a more streamlined administration process.<sup>153</sup> Through SSO, these schools can keep their kitchens open over the summer to prepare meals and snacks to serve in the school cafeteria or at community sites that may not have the resources or infrastructure to prepare food.<sup>154</sup> SFSP is available to a wider range of program sponsors, such as local government agencies, community and faith-based organizations, and other private non-profits with the capacity to operate a food service program.<sup>155</sup> SFSP provides a higher reimbursement rate than SSO; however, each sponsor organization must go through an application and training process to operate the program and receive reimbursements.<sup>156</sup>

Summer meal programs are underutilized. Nationally, only one out of six children who receive free or reduced-price meals during the school year receives meals through a summer meal program.<sup>157</sup> Advocates can help increase participation in summer meal programs and strengthen the program itself with some of the following strategies:

- ❖ Help secure additional state and local funding for summer meals.
  - ♦ Some states provide grant funding for starting or expanding summer meal sites. For example, **Massachusetts** awards grants of between \$2,500 and \$70,000 (depending on average daily participation) to summer meal sites that seek to increase their participation.<sup>158</sup> Advocates can work with their local meal sites to apply for such grants if they exist, or team up with other advocates across the state to push for similar state-funded grant programs.
  - ♦ In 2017, the City of **San Antonio, TX** passed an ordinance authorizing a \$250,000 grant to support the San Antonio Food Bank’s summer meal service.<sup>159</sup> The Food Bank sought to reach



an additional 3,500 families through a variety of strategies, including a mobile food pantry program.<sup>160</sup>

- ❖ Help assess the need for summer meal sites in different communities and identify potential host sites.
  - ♦ The Food and Health Network of South Central New York, a community coalition in **Broome County, NY**, undertook a Summer Food Service Program Assessment.<sup>161</sup> The Assessment sought to “establish the number, capacity, and location of all summer meal sites in Broome County, identify unique characteristics and needs of summer meal programs, and determine the current and potential ability to serve additional children.”<sup>162</sup> The assessment includes population data and maps and concludes with concrete recommendations for strengthening summer meal programs through outreach, transportation, capacity-building, and community and agency support.<sup>163</sup>
  - ♦ Some states also require that schools in high poverty areas (with at least 50% of students qualifying for free or reduced-price meals) provide meals through summer nutrition programs.<sup>164</sup> Advocates should see if such legislation exists in their state and, if not, can work with other advocates across the state to push for this change. In **Maine**, the **Preble Street Maine Hunger Initiative** worked with advocates across the state to pass a bill in 2015 requiring that high poverty schools provide summer meals.<sup>165</sup> Following passage of this legislation, the state’s average participation rate grew by 28%.<sup>166</sup>
- ❖ Identify existing summer programs such as day camps, library reading groups, and other education and recreation programs that can benefit from free meals and encourage them to serve as host sites.
  - ♦ **Yuma County, AZ** runs a summer meal program at the Public Library in conjunction with their Children’s Summer Reading Program.<sup>167</sup> Participants check out a book, go outside, and pick up a lunch to picnic at the adjacent park.<sup>168</sup>
  - ♦ **Clark County, NV**’s School District added 20 meal sites between 2015 and 2016. Meals were paired with existing activities, such as athletic practices, Reserve Officers’ Training Corps programs, and Special Olympics camps.<sup>169</sup> The district also kept school sites open longer into August, which resulted in an increase of 42% in the number of lunches served in August.<sup>170</sup>
- ❖ Work with their local government to help conduct outreach through advertisements and direct outreach to families.
  - ♦ The **USDA’s summer meals website** provides digital files for a variety of tools—such as flyers, post-cards, social media graphics, and audio public service announcements—that advocates can use to notify families about the availability and location of SFSP sites.<sup>171</sup>
- ❖ Work with their local government, or other partners, to provide transportation to summer meal sites.
  - ♦ The City of **Huntsville, AL** provides children and their parents with free shuttle rides to and from summer meal sites.<sup>172</sup> Children can get bus passes from any of the meal sites or by calling the city’s Child Nutrition Department.<sup>173</sup>
- ❖ Encourage meal sites to offer lunch to parents and caregivers. The USDA does not allow reimbursements for meals served to parents or guardians and even explicitly prohibit adults from consuming any meal from a student’s plate.<sup>174</sup> However, sites can prepare non-reimbursable meals for parents and caregivers and charge a minimal cost for these meals. The additional income from these meals can then be re-invested in the summer meal program, or the school meal program.



- ♦ Sites in **Gettysburg, PA** and **Tucson, AZ**, offer meals for parents at a minimal cost.<sup>175</sup> They use the revenue from these meals to cover the costs of the meals and even generate some income.<sup>176</sup>

USDA provides a host of resources through its *Summer Meals Toolkit*, including resources on planning, budgeting, and administration; partnering with government and non-government groups; marketing and communication; increasing participation; and serving quality meals.<sup>177</sup> Advocates who are interested in helping support the SFSP in their community should consult the USDA Toolkit for further guidance.



## Endnotes

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- <sup>5</sup> See ELIZABETH POTAMITES & ANNE GORDON, *supra* note 3.
- <sup>6</sup> See Meghan Longacre, et al., *School Food Reduces Household Income Disparities in Adolescents' Frequency of Fruit and Vegetable Consumption*, 69 AM. J. PREV. MED. 202 (2014).
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- <sup>10</sup> Healthy Schools Act of 2010, D.C. CODE §§ 38-821.01 – 38-828.02 (2015).
- <sup>11</sup> *What's in The Act: D.C. Healthy Schools Act*, D.C. HUNGER SOLUTIONS, <http://dchealthyschools.org/whats-in-the-act-2> [<https://perma.cc/J73G-HFPL>] (last visited Jun. 13, 2016).
- <sup>12</sup> *Healthy Schools Act*, D.C. HUNGER SOLUTIONS, [http://www.dchunger.org/currentbills/healthy\\_schools\\_act.htm](http://www.dchunger.org/currentbills/healthy_schools_act.htm) [<https://perma.cc/J3S7-ZDQS>] (last visited Jun. 17, 2016).
- <sup>13</sup> Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296 (2010).
- <sup>14</sup> *See id.*
- <sup>15</sup> CONGRESSIONAL RESEARCH SERVICE, *TRACKING THE NEXT CHILD NUTRITION REAUTHORIZATION: AN OVERVIEW* (May 23, 2017), [https://www.everycrsreport.com/files/20170523\\_R44373\\_29ddb7257eeee3c64669a7ec5ab553d07c1a6bb5.pdf](https://www.everycrsreport.com/files/20170523_R44373_29ddb7257eeee3c64669a7ec5ab553d07c1a6bb5.pdf) [<https://perma.cc/3BY8-8LMZ>].
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- <sup>21</sup> U.S. Dep't of Agric., *School Programs: Meal, Snack and Milk Payments to States and School Food Authorities*, <https://www.fns.usda.gov/sites/default/files/cn/SY2015-16table.pdf> [<https://perma.cc/A79B-EQQ2>].
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## SECTION VIII: DECREASING AND RECOVERING WASTED FOOD

*From the farm to the household level, food is wasted all along the supply chain. Given the problem of food insecurity in the United States, it is particularly troubling that so much edible, wholesome food is heading to the landfill, rather than to people's plates. Wasted food also degrades the environment and wastes resources such as fresh water and fertilizer. Advocates can take several steps to minimize wasted food at all levels of the food chain.*

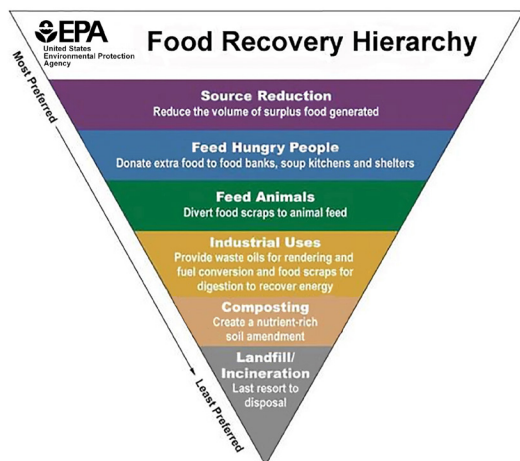
In this section . . .

1. Overview
2. Food Waste Prevention
3. Food Recovery: Increasing Donations by Farms, Food Manufacturers, Retailers, and Restaurants
4. Feeding Food Scraps to Animals
5. Food Waste Recycling: Composting and Anaerobic Digestion
6. Food Waste Reduction in Schools

### 1. Overview

While there is an abundance of food produced in the U.S., approximately 40 percent of it goes uneaten.<sup>1</sup> Each year, 52.4 tons of food is sent to the landfill by households, retailers, and manufacturers, and an additional 10.1 million tons is left unharvested on farms; overall, it costs the U.S. \$218 billion each year to grow, process, transport and dispose of food that is never eaten.<sup>2</sup> The enormity of wasted food in the United States is even more troublesome when one considers the prevalence of hunger. Forty-two million individuals, including thirteen million children, were food insecure in 2015, meaning that at some point during the year they lacked access to a sufficient amount of food to lead an active, healthy lifestyle.<sup>3</sup> It has been estimated that recovering and redistributing just 30% of our nation's surplus food would provide enough food to feed all food insecure Americans their total diet.<sup>4</sup> Wasted food also harms the environment. Food decomposing in landfills produces methane, a greenhouse gas that contributes to global warming and is 20 times more potent than carbon dioxide.<sup>5</sup> When food is wasted, so are those resources—including time, labor, fossil fuels, land, fertilizers, and water—that went into producing the food in the first place.





Food is wasted at all levels of the food system for a variety of reasons, from difficulty selling cosmetically imperfect fruits and vegetables, to confusion over “best by” or “sell by” date labels, to a consumer culture that encourages grocery stores to overstock shelves, even when the food will not be sold. Despite the many challenges, food waste is also a problem with solutions on the national level as well as on the state and local levels. In 2015, the U.S. Department of Agriculture (USDA) and U.S. Environmental Protection Agency (EPA) announced the nation’s first ever food waste reduction goal, seeking to halve U.S. food waste by 2030.<sup>6</sup> Several pieces of federal legislation and policy activities at the agency level have been introduced to reduce waste, but the involvement of local advocates and policy makers will be vital to reaching this goal. Food systems vary significantly by region and

locality, as do the causes of waste and challenges facing food recovery, so policy solutions are strongest when crafted with those regional and local differences in mind. Local advocates and policy makers are best-positioned to identify local needs, and create new policies and programs to support regional success.

As advocates consider opportunities to reduce food waste, they should utilize the EPA Food Recovery Hierarchy, which helps to prioritize among food recovery activities.<sup>7</sup> According to the Hierarchy, food waste reduction is the most important goal, followed by feeding surplus food to people in need, providing food scraps to animals, diverting food waste to industrial uses, and finally composting. This section is intended to equip and empower localities by providing suggestions for implementing the strongest possible food recovery policies, while sharing existing policies and programs from across the country.

## 2. Food Waste Prevention

Waste reduction efforts aim for early intervention at the root causes of food waste; they locate and address inefficiencies in our food system before excess food is produced or transported to places where it will not be used. Source reduction is a high priority on the Food Recovery Hierarchy and among food waste experts because it can have several times the environmental impact of food recovery and recycling solutions.<sup>8</sup> This section will discuss several methods of source reduction that local advocates can utilize to reduce food waste.

### **Food Waste Audits**

The first step to reducing food waste is to measure and track how much food is being wasted in your local food stream. Advocates should encourage their local government to conduct a city-wide food waste audit or provide grant funding for a private organization to conduct one. Localities across the country have undertaken food waste audits, using them as an opportunity to identify how much food is being wasted in different parts of the supply chain.

For example, **Lafayette, CA** conducted waste audits in 20 single-family homes over a period of approximately 6 weeks and found that 44% of the waste in the trash bin could have been composted and that the average person generated 5.8 pounds of wasted food.<sup>9</sup> In **Boulder, CO**, Boulder Food Rescue, a nonprofit that redistributes excess food via bicycles and trailers,<sup>10</sup> conducted a city-funded audit of 49 retailers and 20 restaurants in the city to understand food waste, food donation, and composting practices and determine areas for improvement, collaboration, and education.<sup>11</sup> Advocates can follow these models to encourage their local government to conduct a city-wide food waste audit and use the findings to identify ways to improve and address the amount of food waste in their communities.





### Food Waste Tracking Technology

The increasing interest in tracking wasted food has catalyzed the development of technology that can help waste-generating facilities begin this practice. **LeanPath** is the food industry's first-ever fully automated wasted food tracking system. LeanPath has partnered with retailers, universities, and other food producers such as University of North Dakota and MGM Grand Buffet in Las Vegas to track and subsequently reduce the amount of excess food that these facilities generate.

**Source:** Food Waste Prevention, LEAN PATH, <http://www.leanpath.com> [<https://perma.cc/JNE3-982E>].

### Consumer Education & Awareness Campaigns

American consumers and consumer-facing businesses, such as supermarkets and restaurants, together are the source of about 80% of all the food that goes to waste in the U.S.<sup>12</sup> Households alone are responsible for 43% of all U.S. food waste.<sup>13</sup> Research shows that while consumers understand the importance of food waste reduction in the U.S., they generally do not recognize their own role in reducing food waste.<sup>14</sup> Because consumers unknowingly contribute a massive amount to our food waste problem, local advocates should push local governments to launch food waste education campaigns to help raise awareness about the issue and change behavior across all sectors of the food chain.

There are several resources available to help local governments and advocates launch a consumer education campaign. For example, **EPA** has launched a “**Food: Too Good to Waste**” campaign which provides consumers with simple strategies for preventing and reducing wasted food at home, such as properly storing foods, preparing perishable foods soon after purchasing them, and measuring the amount of food households throw away.<sup>15</sup> The campaign also includes an Implementation Guide, designed to teach local governments and community organizations how to implement the campaign, and a Toolkit, providing behavior change suggestions and outreach tools.<sup>16</sup> Local governments and advocates can use the EPA's program to conduct outreach and raise awareness in their localities. For instance, the **Rhode Island** Food Policy Council partnered with EPA to launch a Food: Too Good to Waste campaign in their state.<sup>17</sup> As part of the campaign, the Rhode Island Food Policy Council hosted a workshop series focused on teaching people how to cut down the amount of food they throw away.<sup>18</sup>

The **Ad Council** and the **Natural Resources Defense Council** have also launched “**Save the Food,**” a public awareness campaign that encourages Americans to reduce food waste through TV, radio, and billboard advertisements, food waste facts, and tips for food storage and making use of leftovers.<sup>19</sup> Several local governments have partnered with the campaign to spread the message of food waste reduction in their communities. For instance, in **Nashville, TN**, the Metro Government placed Save The Food ads on digital billboards around the city.<sup>20</sup> In **Bellevue, WA** and **Redmond, WA**, the cities purchased ad space in local movie theaters to run the Save The Food PSA video for 10 weeks and purchased 6 bus ads to run for 8 weeks.<sup>21</sup> Advocates can push their local governments to collaborate with the Save the Food Campaign to run similar ad campaigns in their localities.

In addition to launching a public education campaign, advocates can partner with their local government to help disseminate information about food waste reduction by publishing guides on government websites, hosting educational seminars and conferences, and providing training sessions. For example, in **Washington County, OR** the Oregon Department of Health and Human Services has a section on its website called “Food Scraps Management” with information on preventing food waste, contact information for food recovery organizations, and a description of what types of foods are and are not allowed in the county's food scraps collection program (which processes the scraps through composting or anaerobic digestion).<sup>22</sup>

Lastly, advocates can push local government to launch a food waste challenge. A food waste challenge encourages businesses and institutions to reduce their waste and quantify it publicly. For example, in **New**



**York City, New York**, Mayor de Blasio challenged businesses to cut food waste by 50%.<sup>23</sup> A number of large retailers, including Whole Foods, the Waldorf Astoria, and the Barclays Center participated, and diverted 36,910 tons of food waste (including 322 tons donated for human consumption) from February to June 2016.<sup>24</sup> Businesses that participated in the challenge received training and networking opportunities and garnered positive press for their commitment to reducing food waste.<sup>25</sup> By challenging businesses to reduce their waste and quantify it publicly, advocates can both promote the issue of food waste and reward those taking steps to reduce their waste.

### **Standardizing Date Labels**

Advocates should partner with their local and state governments to standardize and clarify the confusing date labels on food products. Date labels are those dates stamped onto food items with accompanying phrases such as “sell by,” “use by,” or “best by.” With the exception of infant formula<sup>26</sup>, there are no federal laws regulating these dates, leaving room for each state and locality to decide individually whether and how to regulate them. Manufacturers generally have broad discretion over how the dates on foods are selected, and these dates typically reflect quality and freshness, rather than safety. Yet businesses, consumers, and even state regulators frequently misunderstand the dates and interpret them to be indicators of safety, leading to the unnecessary waste of wholesome, past-date food.<sup>27</sup> Research conducted by the Harvard Law School Food Law and Policy Clinic, Johns Hopkins Center for Livable Future, and National Consumers League found that 84 percent of consumers throw food away at least occasionally once the date passes, due to safety concerns.<sup>28</sup> Even though most date labels are not safety indicators, some states and localities even restrict or forbid the sale or donation of past-date foods, causing much of this safe, wholesome food to unnecessarily go to waste.<sup>29</sup>

Though many advocates have pushed for federal legislation to standardize date labels nationally, local advocates can take incremental steps toward clarity and uniformity that would reduce confusion and waste. Local governments can work on repealing unnecessary date labeling laws at the local level. For example, although the state of New York does not have any date labeling requirements, **New York City, NY** had a law requiring a “sell by” date on milk and prohibiting sale of milk past the date.<sup>30</sup> In 2010, New York City repealed this law, noting that this requirement was not necessary to protect public health, since milk is safe to consume past the date if handled properly (and if not handled properly, the date would then be irrelevant).<sup>31</sup>

Advocates can also work with state and local policy makers to standardize date labels by adopting a dual labeling system that clarifies the important distinction between safety-based and quality-based date labels. The Grocery Manufacturers Association (GMA) and the Food Marketing Institute (FMI), two major trade associations for retailers and consumer products manufacturing, have endorsed this approach.<sup>32</sup> In February 2017, they launched a voluntary initiative, asking producers to use only one of the following two labels on food products: “BEST If Used By,” which denotes a date used to indicate quality, and “USE By,” which is reserved for the few products that could constitute a safety risk if consumed past the date.<sup>33</sup> Local advocates can codify this voluntary initiative.

Because of the confusion and inconsistency surrounding date labels, advocates should also push local government to educate consumers, food vendors, and state and local agencies about what date labels mean. Educational tools can come in the form of date labeling information on state or local agency websites, legal factsheets outlining state and federal date labeling law, or any other easily-accessible, comprehensible explanation of the true meaning of date labels and the relevant state laws. Some localities have already made efforts to educate consumers about the intersection between date labeling and food waste and the resources they have created could be used as models. For example, **San Diego County, CA** published an FAQ on the meaning behind date labels to explain the date labeling system within the county.<sup>34</sup> The **Florida** Department of Agriculture and Consumer Services disseminates a handout explaining that date labels are generally not regulated and are not indicators of safety.<sup>35</sup> The **Connecticut** Department of Energy and Environmental Protection has posted an easy-to-use legal fact sheet on date labeling on its website.<sup>36</sup>



### 3. Food Recovery: Increasing Donations by Farms, Food Manufacturers, Retailers, and Restaurants

Food recovery and anti-hunger organizations across the U.S. currently recover and redistribute nearly 1.7 million tons of food each year, yet barriers to food donation still prevent millions more from being recovered.<sup>37</sup> Potential exists to recover surplus food from all levels of the food supply chain, and reducing barriers to food donation could result in the donation of roughly 5.8 million additional tons of safe, wholesome food each year.<sup>38</sup> Advocates can push for several local policies that divert excess, edible food to individuals instead of the waste stream.

#### Tax Incentives

Food donation is costly and can be challenging; it is not as simple as just taking surplus food from one place to another. Businesses and organizations must bear the cost of harvesting or preparing food for donation, storing it, transporting it, and ensuring it complies with relevant federal, state, and local food safety and labeling laws. Advocates can work to strengthen or create a state level tax incentive for food donation to help offset the cost associated with food recovery. Although tax incentives that could support food donation are generally state, not local, incentives, local advocates can work together with their counterparts in other localities in the state to push for a state incentive that would support donations in all parts of the state.

#### Additional Resource

More detailed information about state tax incentives can be found in the Harvard Law School Food Law and Policy Clinic's 2016 *Keeping Food Out of the Landfill: Policy Ideas for States and Localities* toolkit.

**Source:** HARVARD FOOD LAW AND POLICY CLINIC, KEEPING FOOD OUT OF THE LANDFILL: POLICY IDEAS FOR STATES AND LOCALITIES 15-23 (Oct. 2016), [http://www.chlpi.org/wp-content/uploads/2013/12/Food-Waste-Toolkit\\_Oct-2016\\_smaller.pdf](http://www.chlpi.org/wp-content/uploads/2013/12/Food-Waste-Toolkit_Oct-2016_smaller.pdf) [<https://perma.cc/TS2J-TCVR>].

Currently, the federal government and 12 states (Arizona, California, Colorado, Iowa, Kentucky, Maryland, Missouri, Oregon, South Carolina, Virginia, New York, and West Virginia)<sup>39</sup> offer tax incentives to help defray a portion of the cost of food donation. At the federal level, food donors are eligible for either a general deduction (deducting the basis value of the charitable contribution)<sup>40</sup> or an enhanced deduction (based on the fair market value, and often nearly double the general deduction) for qualified food donations.<sup>41</sup> Federal tax incentives have been extraordinarily successful in motivating food donation. For example, when the federal enhanced deduction was temporarily expanded to cover more businesses in 2005, food donations across the country rose by 137% in the following year.<sup>42</sup> Although federal tax incentives have been largely successful, they face certain challenges. For example, tax deductions generally favor large, high-income businesses; thus, low-

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margin businesses, like farms, struggle to claim a deduction because they do not make enough money. By contrast, states are better equipped to perceive the needs and ideal incentives for businesses in the state, as well as specific types of donors the state hopes to incentivize, such as farmers.

A state-level tax incentive for food donations could support the local agricultural economy, reduce the amount of wasted food, and improve the healthy options donated and thus made available to those in need. There are several things advocates should consider when working to create or strengthen a state tax incentive for food donations.

- ❖ **Offer a tax credit rather than a tax deduction:** A tax deduction reduces taxable income, whereas a tax credit lowers the overall amount of taxes owed.<sup>43</sup> Because the value of a deduction is contingent on the amount of taxable income, a deduction is typically a less effective incentive for businesses that operate with a low profit margin, like many small farms.<sup>44</sup> Because a tax credit equally benefits taxpayers in low and high tax brackets, it is relatively more generous to small, low-income businesses than a tax



deduction. **Virginia's** tax credit can serve as a model for state level tax incentives for food donations. Virginia's Food Crop Donation Tax Credit is available to individuals and corporate entities engaged in the business of farming food crops and donating such crops to nonprofit food banks.<sup>45</sup> The amount of the credit is equal to 30% of the fair market value of the crops, and no taxpayer can claim more than \$5,000 in credits each year.<sup>46</sup>

- ❖ **Tailor the tax incentive to support donations of the types of food or from the types of entities most applicable to the state:** In crafting tax incentives, advocates should consider the types of businesses they hope to incentivize and support. For example, many farmers struggle to benefit from the federal enhanced tax deduction, which leaves room for states to provide additional incentives that can help to support farms and get more fresh food to those in need. State tax incentives vary significantly in terms of what types of individuals or businesses are eligible to claim benefits. **Iowa, Kentucky, and Missouri** allow any state taxpayer to claim their tax credits for food donation.<sup>47</sup> On the other hand, **Arizona** limits its deduction to restaurants and farmers,<sup>48</sup> **California** limits one of its credits to farmers,<sup>49</sup> and **Colorado** limits one of its tax credits to C-corporations.<sup>50</sup> **Virginia** limits its credit to people engaged in farming.<sup>51</sup> Advocates should identify the types of taxpayers in their state that are most in need of additional incentives in order to encourage and offset the cost of their donations.
- ❖ **Provide tax incentives even when nonprofit food recovery organizations charge end recipients:** The federal enhanced tax deduction and most state tax incentives for food donations are only available to food donors when the organization receiving the donation gives the food away for free to the end recipients.<sup>52</sup> Restrictions like this mean that when food recovery organizations want to charge end recipients for the food, even at a reduced rate, donors are not able to claim tax incentives. Yet allowing nonprofit organizations to experiment with new models that charge a reduced fee for donated food can promote food recovery. Such models can help to offset operating expenses and other costs for the nonprofit organization associated with receiving and distributing surplus food. They can also provide a low-cost alternative for low-income customers who cannot or do not utilize food pantries, or are looking for ways to supplement their pantry use. As an example of how to structure this, in **Virginia**, food donors are eligible for the food donation tax credit even if “the donated food crops, if sold by the donee nonprofit food bank, are sold to the needy, other nonprofit food banks, or organizations that intend to use the food crops to provide food to the needy.”<sup>53</sup> This explicitly allows for donors to claim the tax credit even if the recipient food recovery organization sells the donated food to end recipients. To encourage innovative food recovery models, advocates should work with policy makers to ensure that those donating to these models are eligible for a state tax incentive.
- ❖ **Offer an additional tax credit for transportation costs associated with donating food:** The cost of transporting donations from businesses to recipients is a major barrier to food donation. Especially in rural states, farms and other potential donors are often located far from metropolitan areas, meaning transportation costs to food recovery organizations can be substantial. **California** is the only state that offers tax incentives specifically intended to offset the expenses of transportation. California's “Transportation Credit” covers the transportation costs directly associated with donating agricultural products. The credit amounts to 50% of the transportation costs paid or incurred by the taxpayer in connection with the transportation of the donated food.<sup>54</sup> Transportation is an expensive and very real cost associated with donating food, so providing a tax credit to cover the transportation cost is a significant benefit that helps to incentivize additional food donation.

### **Liability Protections for Food Donations**

Donating safe, edible food to those in need can significantly reduce the amount of food being sent to landfills and support food security goals in the state or locality. However, many potential food donors, including grocers and retailers, are deterred from donating food because they fear incurring liability risk.<sup>55</sup> A 2016 survey from the Food Waste Reduction Alliance found that 25% of food retailers and wholesalers and 50% of food manufacturers cite liability concerns as a primary barrier to donating food.<sup>56</sup>



### Additional Resource

More detailed information about federal and state liability protection can be found in the Harvard Law School Food Law and Policy Clinic's *2016 Keeping Food Out of the Landfill: Policy Ideas for States and Localities* toolkit.

**Source:** HARVARD FOOD LAW AND POLICY CLINIC, KEEPING FOOD OUT OF THE LANDFILL: POLICY IDEAS FOR STATES AND LOCALITIES 8-12 (Oct. 2016), [http://www.chlpi.org/wp-content/uploads/2013/12/Food-Waste-Toolkit\\_Oct-2016\\_smaller.pdf](http://www.chlpi.org/wp-content/uploads/2013/12/Food-Waste-Toolkit_Oct-2016_smaller.pdf) [<https://perma.cc/TS2J-TCVR>].

Fortunately, all fifty states and the federal government already provide liability protections for food donations. At the federal level, the Bill Emerson Good Samaritan Food Donation Act (Emerson Act) aims to encourage food donation by providing comprehensive civil and criminal liability protection that extends across the nation to food donors and nonprofit organizations that donate, recover, and distribute excess food to those in need.<sup>57</sup> The Emerson Act protects donors from civil and criminal liability, absent gross negligence and/or intentional misconduct,<sup>58</sup> so long as certain requirements are met.<sup>59</sup> The protections afforded by the Emerson Act are significant and have enabled many food donations; yet, numerous existing and prospective donors remain unaware of these protections.

Similar to the federal Emerson Act, state laws provide liability protection to in-state donors and distributing food recovery organizations, generally when food is donated to a nonprofit organization and distributed for free.<sup>60</sup> State statutes can play an important role in improving upon the Emerson Act's shortcomings by providing additional protections and better aligning with the current food recovery landscape. For example, some states go above the Emerson Act by allowing donors to charge consumers for food, providing liability protection when donors donate directly to the final recipients, offering protection for food even if it has minor labeling flaws, or explicitly protecting donors that donate past-date foods.

Advocates can push state policy makers to expand the Emerson Act's protections by providing the following additional liability protections in their state statutes.

❖ **Provide liability protection when nonprofit food recovery organizations charge a low price for food:**

The Emerson Act, and the majority of state liability protections for food donations, only protect food donors and food recovery organizations when the food is given away for free to end recipients. This means that they do not provide liability protections to food donors or food recovery organizations when the end recipients pay for the food, even at a reduced rate. Excluding such models from the liability protection discourages food donors from donating to these organizations, hampering development of new models and constraining existing food recovery organizations from broadening their offerings. Yet, these food recovery organizations must be nonprofit organizations to receive the protection, so allowing them to recuperate costs by selling some of the donated food will help them to serve more needy individuals. Going above the protections in the Emerson Act, several state laws already provide liability protection even when the food is sold to the end recipient. They vary in their wording, but all provide a similar blanket of protection. For example, **Arizona's** law provides liability protection for nonprofit food recovery organizations that charge final recipients for food by defining donation as giving food "for a fee significantly less than the value of the item."<sup>61</sup> **Wisconsin's** law provides liability protection to food recovery organizations who "sell at a price not to exceed overhead and transportation costs."<sup>62</sup> To encourage innovative food recovery models, advocates should push state legislators to provide liability protection to food donors and food recovery organizations, even when the food recovery organization charges end recipients a low cost for donated food.

❖ **Provide liability protection for food service establishments and retail stores donating directly to final recipients:**

The majority of state statutes provide liability protection only for food donated to a nonprofit food recovery organization that then distributes the food to end users. Likewise, the Emerson Act only provides protections when nonprofit food recovery organizations serve as middlemen between donors and recipients.<sup>63</sup> This means that direct donations from donors to recipients generally do not receive liability protection under state or federal law. Extending protections to direct donations could help increase efficiency and enable timely use of perishable food. If food has to be donated through a food recovery organization, donors may be discouraged from donating certain food items, such as perishable foods, because the food recovery organization may not have the capacity to get that food





to those in need before it spoils. While the majority of states require food to be distributed through a food recovery organization, several state statutes serve as models for providing liability protection for direct donation. For example, **Arizona's** law contains a provision that provides liability protection to donors donating "to a charitable or nonprofit organization or to any other person."<sup>64</sup> The statute thus extends liability protection beyond donations made to a nonprofit food recovery organization, offering protection for direct donations as well.

- ❖ **Clearly provide liability protection for the donation of past-date food:** State statutes are generally silent about whether past-date food receives liability protection. This silence creates ambiguity for potential donors about whether or not they will be protected from liability if they donate past-date food, even if they are knowledgeable enough about date labels to know that past-date food is generally safe. Advocates can push states to remove this ambiguity by explicitly stating that donations of past-date food will be protected. For example, in its liability protection statute, **Massachusetts** explicitly protects the donation of past-date food, stating "No person who donates food, including open-dated food whose date has passed, . . . shall be liable for civil damages."<sup>65</sup> Such clear guidance in the liability protection statute can reduce food waste and ensure that wholesome, safe, past-date food can be shared with those in need.
- ❖ **Publish guidance about federal and state liability protection for food donations:** Despite the federal Emerson Act and state liability protection statutes, many potential donors still do not donate because of fear of liability. This fear may stem from confusion over the scope of liability protection offered by federal and state laws, or it may result from the lack of clear guidance from government authorities about this protection. In order to minimize confusion over the scope of liability protection offered by federal and state laws, advocates should push governmental agencies to publish guidance about federal and state liability protection for food donations. Some state and local governments already offer guidance to dispel concerns about food donation liability that can be used as models. For example, **Washington County, OR** developed an informational flyer explaining how businesses can donate surplus food, outlining relevant liability protections, and providing reminders about safe handling practices.<sup>66</sup> This flyer serves as a good model for other advocates interested in educating local food donors. **New York City, NY** provides guidance to food retailers, grocers, and other food organizations about federal and state donation liability protections and encourages such groups to donate surplus food to food pantries and soup kitchens in the city.<sup>67</sup>

### **Support for Food Recovery Programs**

The costs of creating and running food recovery programs often act as a barrier to food waste reduction, despite the significant amount of surplus food and the widespread demand for that food. There are a number of significant costs associated with starting and maintaining food recovery programs. Food that is donated rather than sold must still be harvested, processed or prepared for donation, stored, and transported to the eventual recipient, and sometimes reconditioned to ensure it complies with federal, state, and local quality and labeling laws.<sup>68</sup> Farmers in particular face steep costs because they must pay labor costs to harvest, wash, sort, and pack crops that might otherwise remain in the field. For all donors or recipients picking up donations, transportation costs can be significant, and include a vehicle (occasionally one with refrigeration), a driver, gas, and other vehicle maintenance and repairs.<sup>69</sup> Grants and direct appropriations from local governments can help support the development of food recovery programs and the creation and maintenance of necessary food recovery infrastructure. Advocates can push local government agencies to provide financial support to help support and coordinate food donation.

Localities across the country have allocated financial resources to improve and expand the food recovery systems in their communities. For example, **Thurston County, WA** provides Food Recovery Enhancement grants to food pantries, churches, and feeding programs leading projects to enhance the countywide capacity of food donation, collection, and distribution.<sup>70</sup> In **Montgomery County, MD**, the Montgomery County Council provided funding and resources to create an organization, Community Food Rescue, that helps match food





available for donation in the County to an appropriate food recovery agency.<sup>71</sup> The County also helps awards small grants (\$5,000–\$20,000) to organizations looking to increase their capacity and infrastructure for food recovery.<sup>72</sup>

In addition to providing financial support, advocates can work with local government agencies to create food donation programs for city departments and elected offices. Government agencies taking the lead on food donation can help make prospective food donors less apprehensive about legal ramifications associated with food donation. For example, **Los Angeles, CA** created a Surplus Food Policy, which requires all city departments and elected offices to donate surplus food to food banks and other aid organizations.<sup>73</sup> Advocates could encourage their local government to pass a similar policy in order to model food donation and raise awareness of the opportunities it affords.

## 4. Feeding Food Scraps to Animals

Many restaurants, grocery stores, food manufacturers, and small and large farms have food scraps that are no longer edible for humans but are still safe and wholesome for animals. Using food scraps as animal feed offers a safe, resource-efficient way to divert food scraps from landfills, with multiple benefits for both farmers and businesses with excess food. Local and regional farmers could reap the benefits of lower costs for animal feed, and food businesses can save money on hauling and garbage disposal cost. Feeding food scraps to animals also has environmental benefits. It has been estimated that “feeding food waste to pigs saves 20 times more carbon than the next-best recycling method...”<sup>74</sup> Advocates can take an active role in encouraging the practice of feeding of food scraps to animals by strengthening state feed laws, providing guidance and education on the practice, encouraging partnerships with local farms, and helping to launch pilot food waste programs focused on diverting food scraps for animals.

Several federal and state laws regulate the practice of feeding food scraps to animals. Both the federal government and state governments set restrictions that vary based on the type of animals that may be fed food scraps and the kind of food scraps they may be fed. The federal statutes and regulations on feeding food scraps to animals are encompassed in the Swine Health Protection Act,<sup>75</sup> the Bovine Spongiform Encephalopathy Ruminant Feed Ban Rule,<sup>76</sup> and the Food Safety Modernization Act Rule for Preventive Controls for Animal Food.<sup>77</sup> Although there are several federal laws applicable to the feeding of food scraps to animals, in general the practice is legal under federal law, though there are restrictions on feeding of food scraps with animal-derived by-products. Feeding of food scraps with animal-derived by-products to swine is allowed so long the feed is properly labeled<sup>78</sup> and heat-treated by a licensed facility before being fed to swine.<sup>79</sup> However, food scraps containing animal-derived by-products are not allowed to be fed to ruminant animals, including cows, sheep, goats, deer, elk, and antelopes.<sup>80</sup>

The federal regulations function as a floor, and most state regulations, though they vary widely, impose stricter rules. For instance, some states prohibit individuals and facilities from feeding food scraps that contain any animal parts or material to swine, and some go a step further and ban even the feeding of vegetable waste to swine.<sup>81</sup> States that go above the federal floor and enforce stricter laws on feeding food scraps to animals may prevent safe and wholesome food scraps from being fed to animals. Advocates should push state policy makers to review their feed laws and make necessary changes to ensure they are not overly burdensome and do not discourage the practice of safely feeding food scraps to animals. There are a few necessary changes advocates should consider to encourage feeding food scraps to animals.

- ❖ **Eliminating any laws that ban the feeding of food scraps to animals:** Even though the practice of feeding food scraps to animals is safe for human and animal health, several states ban the feeding of animal-derived and even vegetable-derived food scraps to all animals. These bans are unnecessary because animal and non-animal-derived food scraps can safely be fed to most animals, so long as they



have been heat treated in accordance with federal law. Advocates should encourage policymakers to eliminate state bans on feeding food scraps to animals.

- ❖ **Eliminating requirements for heat-treating non-animal-derived waste:** Several states require the heat treatment of non-animal derived waste, yet most non-animal derived waste is generally safe for consumption by most animals. Requiring that this waste be heated may discourage farms from feeding food scraps to animals, due to the expense of having to get the necessary equipment to heat non-animal-derived waste or to pay another entity to do this heating. Advocates should urge policymakers to eliminate these unnecessary rules.
- ❖ **Replace the pejorative term “garbage” with a more neutral term such as “food scraps”:** Garbage is a pejorative term used in both state and federal laws and regulations denoting food scraps used as animal feed. Calling food scraps used as animal feed “garbage” connotes trash and unsafe food and could discourage businesses and individuals from partaking in the process altogether. Thus, advocates should partner with policy makers to change the term in their laws and use a different term like “food scraps” to convey the safety of such products.

Since several federal and state laws regulate the practice of feeding food scraps to animals, compliance with these laws can be daunting. Advocates can encourage the feeding of food scraps to animals by partnering with local governments to provide guidance, technical assistance, and education on applicable laws and regulations. This information can be aimed at farmers, food businesses, facilities involved in treating food scraps for animal feed, and other involved parties, including consumers. For example, The **New Mexico** Recycling Coalition produced a report directed at restaurants that outlined guidelines on feeding food waste to animals, including applicable state and federal laws and regulations, benefits and challenges of the practice, and contact persons for further information.<sup>82</sup>

### Additional Resource

For more information on federal and state laws related to feeding food scraps to animals, advocates can consult *Leftovers for Livestock*, a legal guide produced by the Harvard Law School Food Law and Policy Clinic and the University of Arkansas School of Law Food Recovery Project, which summarizes the legal requirements mandated by the federal law, as well as all fifty states' laws on feeding excess food to animals.

**Source:** EMILY BROAD LEIB, ET AL., *LEFTOVERS FOR LIVESTOCK: A LEGAL GUIDE FOR USING FOOD SCRAPS AS ANIMAL FEED* 8 (2016), [http://www.chlpi.org/wp-content/uploads/2013/12/Leftovers-for-Livestock\\_A-Legal-Guide\\_August-2016.pdf](http://www.chlpi.org/wp-content/uploads/2013/12/Leftovers-for-Livestock_A-Legal-Guide_August-2016.pdf) [<https://perma.cc/YH22-F87J>].

Local advocates are also well positioned to encourage partnerships between food waste generators and local farms in order to facilitate the process of diverting food scraps to animal feed. Advocates can help facilitate these partnerships by reaching out to local businesses and farmers to see if they are interested in collecting, receiving, or distributing food scraps for livestock, and then supplying that information online or in an easily accessible location. For example, the **New Hampshire** Pollution Prevention Program teamed up with the New Hampshire Lodging and Restaurant Association's Sustainability Program to connect hospitality facilities with local farmers interested in collecting food scraps.<sup>83</sup> Farmers were notified through a posting in the New Hampshire Department of Agriculture's Weekly Market Bulletin and were then listed in a database, leading to ten farmers partnering with food service facilities to receive food scraps and the diversion of 97,200 pounds of food waste from landfills.<sup>84</sup> In addition to helping connect businesses with local farms, advocates could encourage their local governments to develop a pilot program for collecting and delivering food scraps to local farms. For example, the city of **San Jose, CA** undertook a one-year pilot program that provided 6,500 San Jose households with garbage carts for food scraps which were then turned into nutrient-rich animal feed that was given to local pigs, chickens, and dogs.<sup>85</sup>

## 5. Food Waste Recycling: Composting and Anaerobic Digestion

Food waste is the largest component of municipal solid waste in landfills nationwide. Food waste in landfills



produces at least 113 million tons of greenhouse gases each year.<sup>86</sup> Even as food waste prevention efforts and recovery initiatives are scaled up, there will always remain some portion of food that needs to be discarded. Thus, it is important for advocates to support methods of food disposal that are sustainable and economically beneficial for such food. This section will discuss several methods of food waste recycling that local advocates can utilize to reduce food waste.

### **Organic Waste Bans and Waste Recycling Laws**

Advocates can push for the passage of organic waste bans or waste recycling laws to support food waste reduction. A growing number of states and localities have created organic waste bans or waste recycling laws to restrict the amount of food waste an entity can dispose of in a landfill, to push businesses and consumers to reduce their food waste. Organic waste bans prohibit food waste generators, including businesses, institutions, and sometimes even households, from sending particular types of organic waste, including food scraps, to a landfill. Waste recycling laws require entities to take specific action with their organic waste, generally sending it to composting or anaerobic digestion. By limiting the amount of organic waste that entities can dispose of in landfills, these bans are transformative, compelling food waste generators to implement new practices to prevent food waste, like streamlining food purchasing orders, repurposing ingredients and leftovers into new dishes, offering flexible portion sizes, and donating or recycling surplus food instead of putting it in the trash. States that have passed organic waste bans can have seen increased food donation as well as economic development. In Vermont, for example, food rescue was estimated to increase by 60% in the year following the implantation of an organic waste ban,<sup>87</sup> while in Massachusetts, the passage of a waste ban led to the creation of more than 500 jobs within two years.<sup>88</sup>

Five states and several localities have passed either waste bans or waste recycling laws for food waste. Four states—Connecticut,<sup>89</sup> Massachusetts,<sup>90</sup> Rhode Island,<sup>91</sup> and Vermont,<sup>92</sup>—structure their laws as organic waste bans, while one state—California<sup>93</sup>—has instituted a waste recycling law requiring commercial generators of organic waste to either compost or anaerobically digest organic waste. Each of the five states prohibits certain entities that generate specified amounts of food waste from sending this waste to landfills, subject to exceptions. For example, **Vermont**’s Universal Recycling Law bans disposal of food scraps, in addition to “blue bin” recyclables and leaf and yard debris.<sup>94</sup> All residents and businesses must divert food scraps by 2020, while larger businesses and institutions are subject to the ban at earlier dates, depending on the amount of food waste generated annually.<sup>95</sup> Waste bans in other states share many structural similarities with the Vermont law. However, each waste ban differs in important details.

Several localities have also passed either a waste ban or waste recycling law, including **New York City, NY**,<sup>96</sup> **Austin, TX**,<sup>97</sup> **San Francisco, CA**,<sup>98</sup> **Seattle, WA**,<sup>99</sup> and **Boulder, CO**.<sup>100</sup> These laws all share structural similarities, but take many different forms. For example, they vary with regard to the types of entities covered under the law, how much organic waste an entity must produce in order to be covered, and whether exceptions exist for entities located far from a certified recycling or composting facility that accepts food scraps. The differences have a significant impact on the reach of these laws, and therefore on the amount of food waste diverted from landfills. In order to reduce food waste in landfills, increase food donation, and support jobs in food recovery, advocates should consider working with local policymakers to implement an organic waste ban or waste recycling law.

Advocates should work with businesses, institutions, and local government agencies to help tailor the law to address the unique contexts of their localities, using existing state and local laws as a guide. For example, some localities might want to start with an organic waste ban that only applies to a narrow set of businesses or institutions, since composting or anaerobic digestion infrastructure may be limited, or existing facilities may be unable to accommodate a large increase in food scraps in the short term; other localities that have the necessary infrastructure to support a waste ban may want it to apply to anyone in the city who produces organic waste. Implementing an organic waste ban or waste recycling law can also help drive the creation of new infrastructure and better management of waste and litter.



Localities not ready to implement a waste ban or waste recycling law can instead pursue zero food waste goals or food waste prevention plans, which often consist of a compilation of policies and programs designed to divert food waste from landfills. These goals and plans can help municipalities address their specific food waste challenges from multiple directions. For instance, **Philadelphia, PA** set a goal to reduce the city's waste to zero by 2035, and in addition to hiring a Zero Waste and Litter Director, formed a Zero Waste and Litter Cabinet of 16 experts from city agencies, local businesses, and nonprofit organizations to develop an action plan to meet the city's zero waste goal.<sup>101</sup>

Localities can also provide financial incentives to encourage households and businesses to reduce and divert their food waste. One incentive method is unit-based pricing (UBP) systems, also known as pay-as-you-throw (PAYT), variable-rate pricing (VRP), user pay, or SMART.<sup>102</sup> Under these systems, a person pays for waste collection (if they receive curbside collection through their municipality or a private subscription) or drop-off (if they haul waste to facilities themselves) by volume or weight. Because of the increased costs of disposing of larger amounts of trash, UBP systems are effective at incentivizing both waste reduction and the diversion of recyclable and compostable materials, and have been found to reduce residential waste disposal.<sup>103</sup> For example, as a result of the PAYT program in **Natick, MA**, trash tonnage has decreased by 30% and recyclables have increased by 30%.<sup>104</sup> Localities implementing UBP systems should ensure that the cost to residents of recycling and composting is less than the cost of disposing of garbage under the UBP system, in order to maximize the financial incentive for residents to reduce their waste disposal.<sup>105</sup> States and localities can express support for such programs by urging legislators to implement them, or creating grant programs to support their implementation. For example, as part of their Municipal and Regional Recycling Assistance Program, **Connecticut** awarded grants for communities to implement PAYT programs.<sup>106</sup>

### **Composting and Anaerobic Digestion**

Composting and anaerobic digestion (AD) are widely recognized as effective approaches to disposing of food waste that is not suitable for consumption by humans or animals. Composting is the "controlled aerobic, or oxygen-requiring, decomposition of organic material by microorganisms under controlled conditions."<sup>107</sup> When applied to fields and gardens, compost improves soil quality and reduces the need for chemical fertilizers.<sup>108</sup> Compost can also reduce water use and help prevent soil erosion.<sup>109</sup> Anaerobic digestion is a recycling process that can turn food waste into biofuels through a series of biological processes.<sup>110</sup> AD can be used to produce on-site heat, natural gas, vehicle fuel, electricity, biofertilizer, or compost.<sup>111</sup> To support creation of the necessary infrastructure, advocates can urge local governments to create municipal composting programs and allocate funding for composting and anaerobic digestion facilities.

Localities across the country have utilized various models to incentivize and encourage composting. As discussed in the previous section, several municipalities mandate the collection of organic waste. **San Francisco, CA** mandates the collection of wasted food and other compostable materials,<sup>112</sup> which has led to a 45% increase in composting rates.<sup>113</sup> Rather than mandating composting, several communities have instead implemented voluntary composting programs. For example, the city of **Cambridge, MA** launched a curbside composting program that includes free weekly curbside pickup of food scraps from 5,000 households, and expects to expand compost collection citywide in the future.<sup>114</sup> During the first year of the pilot program, over 600 participating households collected over 170,000 pounds of food scraps using free curbside bins, in-house containers, and compostable bags.<sup>115</sup> Advocates could follow these models to push their local governments to create similar composting programs in their communities.

Localities and states across the country are also assisting in the creation of composting programs and AD facilities by providing financial support. For example, in **New York City, NY**, the Manhattan Solid Waste Advisory Board funded and administered grants for small-scale composting projects.<sup>116</sup> These small grants (\$100-\$700 per awardee) are geared towards funding small-scale, community organic diversion programs in the five boroughs of New York.<sup>117</sup> The **California** Department of Resources Recycling and Recovery (CalRecycle) offers a number of grant programs to help the state reach its goal of reducing 75% of its solid waste by 2020.<sup>118</sup>



CalRecycle's Greenhouse Gas Reduction Organics Grant Program granted \$14,521,000 during the 2014/2015 grant cycle to five projects aimed at reducing greenhouse gas emissions by expanding or creating facilities to separate green materials from food materials.<sup>119</sup>

## 6. Food Waste Reduction in Schools

Advocates should partner with schools and school districts to implement several proven strategies to reduce food waste in schools. Elementary and secondary schools waste about two pounds of food per student each month.<sup>120</sup> With more than 30 million school children enrolled in federal meal programs,<sup>121</sup> this could add up to more than 360,000 tons of food wasted each year in U.S. elementary and secondary schools that participate in federal meal programs. Because household-level food waste comprises 43% of all food waste in the U.S.,<sup>122</sup> schools represent an important venue for change, as the training grounds for a new generation of consumers with a greater understanding of food waste and how to avoid it. Students generally have too little time to eat,<sup>123</sup> and rushed students eat less and throw away more.<sup>124</sup> Additionally, many schools erroneously believe that every child must take milk with their lunches, leading to a great deal of milk wasted.<sup>125</sup> Further, school administrators often mistakenly believe the federal government prohibits school food donation, and therefore throw away wholesome food that could otherwise be donated to an emergency food provider or to those in need.<sup>126</sup>

The federal government plays an active role in regulating school foods, particularly those procured using funds under the National School Lunch Program (NSLP)<sup>127</sup> and the School Breakfast Program (SBP), which provide school children lunch and/or breakfast during the school day.<sup>128</sup> Because these programs use federal money to procure food, school districts that participate in the NSLP and SBP must also follow certain nutrition standards and food safety standards, including implementing a written food safety program and undergoing a health inspection twice a year.<sup>129</sup> The National School Lunch Act explicitly allows schools to donate food not consumed from the NSLP and SBP as long as the unconsumed food is donated to a food bank or charitable organization that is exempt from federal tax under Section 501(c)(3) of the Internal Revenue Code following requirements.<sup>130</sup>

States also play a role in regulating school foods. States and localities can go above and beyond the health and nutrition standards required by the federal government for both NSLP/SBP meals and a la carte meals and snacks. In addition, each state adopts its own food safety regulations and enforces food safety at schools.<sup>131</sup> Generally, state agencies draft the food safety regulations and either the state agency itself conducts health inspections or, depending on their authority, the local departments of health enforce state regulations or pass and enforce their own regulations.<sup>132</sup> This section discusses the policies that advocates can push municipalities, school districts, and schools to implement to decrease food waste. The section suggests methods for schools to reduce the amount of waste produced, recover food for the school and broader community, and recycle, via compost, whatever they cannot reduce or recover. For more information on school foods generally, and the variety of ways local advocates can improve school meals, see *Section VII: School Food and Nutrition Education*.

### **Reduce Food Waste in Schools**

As mentioned earlier, the EPA Food Recovery Hierarchy prioritizes prevention of food waste above all other recovery methods. Similarly, USDA asserts that the best way to avoid food waste is through prevention, preparation, and thoughtful serving practices.<sup>133</sup> This section will discuss several proven strategies advocates can use to reduce food waste in schools.

- ❖ **Conduct a food waste audit:** Food waste audits can help schools track and determine how much food they waste and at what point in the chain. There are two main types of food waste audits that can be conducted in schools. A back-of-the-house kitchen waste audit, also known as a pre-consumer food waste audit, allows schools to determine how much food gets wasted before leaving the kitchen. A plate





waste audit, or a post-consumer audit, allows schools to determine what students are not consuming. During a plate waste audit, businesses or institutions can track and record characteristics of the trash by visual estimation, sorting, weighing, or photographing the food. Food waste audits can help schools identify the most-wasted food items and create a plan to address that waste. For example, a post-consumer audit of student food waste at **Washington Elementary School in Fayetteville, AR** revealed that milk was one of the most wasted items.<sup>134</sup> On average, 10-15 unopened milks were thrown in the trash each day.<sup>135</sup> The audit results led the school to take the following measures: posting a sign in the serving area stating that students do NOT have to take milk, providing 8oz cups for water, and providing a share table for students to place unopened milks, all of which led to a 20% decrease in overall milk waste.<sup>136</sup>

- ❖ **Establish an “Offer Versus Serve” policy for all grade levels:** USDA encourages schools to adopt a method called “Offer Versus Serve” (OVS), which allows students to decline up to two of the five required components of NSLP, so long as they take a fruit or a vegetable.<sup>137</sup> By contrast, students in schools without an OVS policy would receive a tray full of each food component offered that day. USDA requires OVS in high schools, but it is currently optional for other grade levels;<sup>138</sup> more widespread adoption could reduce food waste in schools by allowing students to take only what they will eat. Advocates can work with schools to establish OVS as the official lunch service method for *all* grade levels.
- ❖ **Enact longer lunch periods and schedule lunch after recess:** Students often waste food when they do not have enough time during the lunch period.<sup>139</sup> Elementary school students in particular discard a great deal of their food due to a lack of sufficient time to eat.<sup>140</sup> USDA encourages schools to offer at least thirty minutes of lunchtime, which could reduce plate waste by nearly one-third.<sup>141</sup> To give students enough time to select and eat their meals, advocates can work with state and local government, or directly with school districts to mandate longer lunch periods. In addition, research suggests that students who are physically active before lunch waste less food.<sup>142</sup> Advocates can also work with school districts to change the timing of the lunch period to come after recess.

### **Recover Surplus Food**

When food waste cannot be prevented, the federal government encourages the reuse or donation of leftover food as the next best way to fight food waste. This section will discuss several proven strategies advocates can use to push schools and school districts to recover surplus food.

- ❖ **Create share tables:** “Share tables” enable students to place uneaten food still in its original wrapper or peel on a designated table where other students can take the food for free or the food can be donated after the meal. Share tables are allowed under federal law and are promoted by USDA.<sup>143</sup> However, schools often face concerns over whether share tables are allowed under state law. Advocates can help encourage the use of share tables by encouraging local government agencies to issue guidance and disseminate information about the applicable health rules and regulations. For example, the **Wisconsin Department of Public Instruction** created a food safety protocol and monitoring program for schools to use when setting up a share table,<sup>144</sup> and the **Massachusetts Department of Elementary and Secondary Education** released guidance on setting up a share table, along with a list of allowable and unallowable foods.<sup>145</sup>
- ❖ **Donate surplus food:** Surplus school food can be donated to food recovery organizations, and schools are encouraged to make such donations. USDA supports the donation of surplus food to food banks or similar charitable organizations,<sup>146</sup> and the NSLP explicitly allows schools to donate leftovers from the NSLP/SBP.<sup>147</sup> Additionally, schools receive liability protection for food donation under the federal Bill Emerson Good Samaritan Food Donation Act, which grants liability protection to those who donate food.<sup>148</sup> Setting up a school food donation program can be laborious, but advocates can leverage resources, such as the Parent Teacher Association, to round up volunteers to assist in donation. Many municipalities, school districts, and schools currently operate food donation programs. For example,





**Wichita, KS** has operated a donation program for several years in which a local food mission stops by each school twice a week to pick up leftover foods that the school kitchen prepared but never served.<sup>149</sup> The schools may freeze leftovers to aid with their donation.<sup>150</sup> **Sanborn Elementary School in Andover, MA** established a food donation program for food already served that students declined to eat.<sup>151</sup> Parent volunteers set up donation bins next to the trash and supervise students to ensure that only permissible foods are donated.<sup>152</sup> The volunteers then deliver the leftover food to local families.<sup>153</sup> Advocates can encourage schools and school districts to create similar food donation programs and can push local government to provide guidance and encouragement for school food donation.

- ❖ **Create guidance for school food donation:** Advocates can push municipalities, school districts, and schools to support the creation of food donation programs by creating guidance documents encouraging school food donation, explaining liability protections and applicable food safety requirements. For example, **Oakland, CA Unified School District's Green Gloves program** created a comprehensive guide to food donation by schools.<sup>154</sup> The guide includes an overview of liability protection, safe food handling requirements, and educational opportunities to discuss food waste.<sup>155</sup> Advocates can work with schools and school districts to adopt this tool or work to develop district-specific materials to encourage food donation.
- ❖ **Pass resolutions in favor of school food donation:** Advocates can push local governments to pass resolutions in favor of school food donation, which can ensure that schools know that donation is not only legal, but also encouraged. For example, the **Los Angeles, CA School Board** passed a resolution stating that it "supports the children, families, and community of Los Angeles, and shall direct the Office of the Superintendent to identify and partner with outside organizations and non-profits that will deliver leftover, non-reusable food to those in need at no cost to the District."<sup>156</sup> The nearby **Anaheim City, CA School District** also passed a resolution in favor of food donations.<sup>157</sup>

### ***Recycle Wasted Food via Composting***

Some food scraps are simply not suitable for donation. Rather than sending this food waste to the landfill, schools can recycle this excess food by turning it into compost. Food can be composted on site at the school or sent to a local composting facility. While the USDA encourages schools to compost food that would otherwise go in the trash, schools should treat compost as the last option, after reducing and recovering.<sup>158</sup> This section will discuss proven strategies advocates can use to push schools and school districts to support composting programs.

- ❖ **Provide funding to encourage on-site school composting:** Advocates can push local governments to make funding available to schools that would like to begin composting programs. For example, Cuyahoga County Solid Waste Management District in **Cuyahoga County, OH** provides various grants to local schools to begin or expand composting programs.<sup>159</sup> School budgets are often tight, and removing the cost barrier can make it possible for schools to move forward with creating composting programs.
- ❖ **Create composting programs at schools:** Advocates can push schools or school districts to create on-site composting programs that utilize school food waste to produce compost. The compost can be used on the school grounds or given or sold to nearby farms or home gardeners. Even if schools cannot compost on-site, schools can contract with a waste hauler to take their food scraps for off-site composting. For example, **Thurston County, WA** has implemented a school lunch composting program called Food to Flowers (F2F), which collects leftover food and empty milk cartons in the school cafeteria and converts them to compost.<sup>160</sup> **Charleston County, SC School District** has twenty-one schools participating in a composting program, where the school sends food scraps off site to a local composting facility who returns some of the completed compost to the schools for use in gardens.<sup>161</sup> Since the implementation of the composting program the school has saved \$58,000 in disposal fees.<sup>162</sup>



## Endnotes

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