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Citation

Emily M. Broad Leib, All (Food) Politics is Local: Increasing Food Access through Local Government Action, 7 Harv. L. & Pol'y Rev. 321 (2013).

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All (Food) Politics is Local: Increasing Food Access Through Local Government Action

Emily M. Broad Leib*

I. INTRODUCTION

Our national and international food system¹ has implications for a wide range of issues that are important across the political spectrum and include improving health outcomes,² reducing environmental impacts,³ increasing social justice,⁴ fostering economic development,⁵ and even improving homeland security.⁶ This article focuses on healthy-food access, one of the most urgent food policy issues because of its social and economic effects, as well as its public health impacts. In 2010, thirty-six percent of Americans were obese and another thirty-three percent were overweight,⁷ while eight percent of Americans were diabetic and thirty-five percent suffered from pre-diabetes.⁸ Though food access is not perfectly correlated with public health out-

* Director of the Harvard Law School Food Law and Policy Clinic. The author would like to thank Ona Balkus, Sarah Downer, Sarah Merrill, Toby Merrill, Carly Rush, and the editorial staff of the Harvard Law & Policy Review.

¹ Kameshwari Pothukuchi & Jerome L. Kaufman, *The Food System: A Stranger to the Planning Field*, 66 J. AM. PLAN. ASS'N 113, 113 (2000) (explaining that the food system includes "production, processing, distribution, consumption, and waste management").

² See *id.*

³ See generally William S. Eubanks II, *A Rotten System: Subsidizing Environmental Degradation and Poor Public Health With Our Nation's Tax Dollars*, 28 STAN. ENVTL. L.J. 213 (2009) (discussing the environmental impact of subsidized commercial agriculture); J.B. Ruhl, *Farms, Their Environmental Harms, and Environmental Law*, 27 ECOLOGY L.Q. 263 (2000) (discussing the negative environmental impact of farms and proposing a federal statute to address these harms).

⁴ See generally Christopher J. Curran & Marc-Tizoc González, *Food Justice as Interracial Justice: Urban Farmers, Community Organizations and the Role of Government in Oakland, California*, 43 U. MIAMI INTER-AM. L. REV. 207 (2011) (discussing various connections between the food system and racial justice).

⁵ See, e.g., STEVE MARTINEZ ET AL., U.S. DEP'T OF AGRIC., ECONOMIC RESEARCH REPORT NO. 97, LOCAL FOOD SYSTEMS: CONCEPTS, IMPACTS, AND ISSUES 43 (2010), available at http://www.ers.usda.gov/media/122868/err97_1_.pdf. See generally JEFFREY K. O'HARA, UNION OF CONCERNED SCIENTISTS, MARKET FORCES: CREATING JOBS THROUGH PUBLIC INVESTMENT IN LOCAL AND REGIONAL FOOD SYSTEMS (2011), available at http://www.ucsusa.org/assets/documents/food_and_agriculture/market-forces-report.pdf (discussing the regional economic impact of food systems).

⁶ See, e.g., A. Bryan Endres & Jody M. Endres, *Homeland Security Planning: What Victory Gardens and Fidel Castro Can Teach Us in Preparing for Food Crises in the United States*, 64 FOOD & DRUG L.J. 405, 408 (2009).

⁷ Katherine M. Flegal et al., *Prevalence of Obesity and Trends in the Distribution of Body Mass Index Among U.S. Adults, 1999–2010*, 307 JAMA 491, 493 (2012).

⁸ CTRS. FOR DISEASE CONTROL & PREVENTION, U.S. DEP'T OF HEALTH & HUMAN SERVS., NATIONAL DIABETES FACT SHEET: NATIONAL ESTIMATES AND GENERAL INFORMATION ON DIABETES AND PREDIABETES IN THE UNITED STATES, 2011, at 1 (2011), available at http://www.cdc.gov/diabetes/pubs/pdf/ndfs_2011.pdf.

comes, those with limited access to healthy foods often suffer most acutely, as people living in areas with access to a supermarket exhibit a twenty-four percent lower prevalence of obesity than those living in areas without supermarkets.⁹ Increased food access has been linked to results as diverse as improved educational outcomes¹⁰ and crime reduction.¹¹

Local governments have been particularly attentive to food policy concerns. Thirteen cities in North America now have a paid local food policy director or coordinator,¹² and more than 130 cities and counties in the United States and Canada have local food policy councils, comprised of diverse stakeholders interested in improving the way food is produced and consumed.¹³ Municipalities have enacted a range of food policy reforms, such as increasing governmental procurement of local or healthy foods,¹⁴ improving access to food in schools,¹⁵ and incentivizing consumers to purchase healthy foods.¹⁶ Many recent local actions focus explicitly on increasing healthy-food access, including amending zoning codes to increase urban agriculture,¹⁷ creating new mobile vending outlets,¹⁸ and enhancing transporta-

⁹ Kimberly Morland et al., *Supermarkets, Other Food Stores, and Obesity: The Atherosclerosis Risk in Communities Study*, 30 AM. J. PREVENTATIVE MED. 333, 335 (2006).

¹⁰ See generally Diana F. Jyoti et al., *Food Insecurity Affects School Children's Academic Performance, Weight Gain, and Social Skills*, 135 J. NUTRITION 2831 (2005).

¹¹ See generally Avi Brisman, *Food Justice as Crime Prevention*, 5 J. FOOD L. & POL'Y 1 (2009).

¹² MOLLY HATFIELD, CITY OF PORTLAND, OR. BUREAU OF PLANNING & SUSTAINABILITY, CITY FOOD POLICY AND PROGRAMS: LESSONS HARVESTED FROM AN EMERGING FIELD app. A (2012), available at <http://www.portlandoregon.gov/bps/article/416389> (including Baltimore, Boston, Los Angeles, Louisville, Minneapolis, New York City, Newark, Philadelphia, Portland, San Francisco, Seattle, Toronto, and Vancouver).

¹³ ANDREA SAUER, CMTY. FOOD SEC. COAL., FPC LIST UPDATE ANALYSIS 1 (2012), available at http://www.foodsecurity.org/FPC/doc/FPC_List_Update_Analysis-May2012.pdf.

¹⁴ See, e.g., Press Release, N.Y.C. Office of the Mayor, Mayor Bloomberg, Speaker Quinn and Deputy Mayor Gibbs Announce Local Food Procurement Guidelines (June 12, 2012), available at http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2012a%2Fpr211-12.html&cc=unused1978&rc=1194&ndi=1 (announcing a new city policy to encourage city agencies to purchase more New York products); see also Baldwin Park, Cal., Resolution No. 2008-014 (Feb. 20, 2008), available at www.baldwinpark.com/index.php?option=com_docman&task=doc_download&gid=949&Itemid=218 (requiring all city vending machines to carry only products that meet certain nutritional standards).

¹⁵ See, e.g., D.C. *Healthy Schools Act: Breakfast/Lunch Access*, D.C. HUNGER SOLUTIONS, <http://dchealthyschools.org/whats-in-the-act-2#bla> (last visited May 9, 2013) (explaining that Washington, D.C.'s 2010 Healthy Schools Act implemented universal free breakfast for all elementary schools in which forty percent of students or more qualify for free or reduced-price meals).

¹⁶ See Marice Ashe et al., *Local Venues for Change: Legal Strategies for Healthy Environments*, 35 J.L. MED. & ETHICS 138, 141 (2007); Andrew Ryan, *Vouchers Double Value of Food Stamps at Boston Farmers' Markets*, BOS. GLOBE (June 25, 2009, 2:41 PM), http://www.boston.com/news/local/breaking_news/2009/06/vouchers_double.html.

¹⁷ See, e.g., Joseph Erbentraut, *Chicago Urban Farming: City Council Approves New Ordinance*, HUFFINGTON POST (Sept. 9, 2011, 5:04 PM), http://www.huffingtonpost.com/2011/09/09/chicago-urban-farming-cit_n_956032.html; see also *Promoting Urban Agriculture: Zoning*, SUSTAINABLE CITIES INST., http://www.sustainablecitiesinstitute.org/view/page.basice/report/feature.report/Report_Zoning_Urb_Ag (last visited May 9, 2013).

tion routes to healthy-food retailers.¹⁹ In January 2012, the U.S. Conference of Mayors (USCM) convened its first ever Food Policy Taskforce,²⁰ which immediately identified increasing access to healthy foods as one of its primary areas of concern.²¹ Local governments are also beginning to acknowledge that each locality faces its own food-system challenges with differing policy solutions, meaning that local responses to local issues can be more successful than federal or state approaches.

This article aims to encourage those localities not yet active in food policy to join the field. The discussion focuses on methods of fostering access to healthy foods, such as fruits, vegetables, and other unprocessed, fresh products. Local governments are particularly well suited to increase food access because they have the unique ability to identify areas of need and then work with local constituents to craft targeted responses. Part II explains the concept of “food deserts,” or areas that lack healthy-food access, and provides historical context about their development. As described in Part II.A, the federal government has attempted to respond to the problem, but its efforts have suffered as a result of its narrow food-desert definition and limited ability to work directly with affected communities. Instead, as explained in Part II.B, local government is better suited to address food access because food is such a cultural and community-based issue, and local input is vital to successfully expand food access. This section identifies steps that local governments should take to engage the community and identify appropriate solutions. Part III highlights policy responses taken by localities around the country and across the food system, illustrating that despite the similarities in the problem of limited food access, local governments have a variety of tools to address this issue and can and should tailor responses to their specific needs in order to achieve success.

¹⁸ See, e.g., Nat'l Policy & Legal Analysis Network to Prevent Childhood Obesity & Pub. Health Law & Policy, *Mobile Vending Laws in the 10 Most Populous U.S. Cities*, CHANGE LAB SOLUTIONS (Feb. 2010), http://changelabsolutions.org/sites/default/files/MobileVending_chart_FINAL_2010.02.17.pdf; NYC Green Cart, N.Y.C. DEP'T HEALTH & MENTAL HYGIENE, <http://www.nyc.gov/html/doh/html/diseases/green-carts.shtml> (last updated Jan. 2013).

¹⁹ See, e.g., *Access to Healthy Food: Food Transport and Public Transit*, NAT'L CONF. ST. LEGISLATURES, <http://www.ncsl.org/IssuesResearch/Health/AccessToHealthyFoodFoodTransportPublicT/tabid/14318/Default.aspx> (last updated Jan. 2007) (describing how Austin created a “grocery bus” line to increase access to food retailers).

²⁰ See Press Release, U.S. Conference of Mayors, U.S. Mayors to Meet in Boston on Strategies for Local Food Systems (Apr. 17, 2012), available at <http://usmayors.org/press-releases/uploads/2012/0419-release-foodpolicy.pdf>.

²¹ See *id.*; Abigail Lundy, *Expanding Local Food Economies and Accessing Resources to Attract Grocers Discussed at USCM Food Forum*, U.S. CONF. MAYORS (June 21, 2012), <http://www.usmayors.org/foodpolicy/uploads/FoodForumArticle.pdf>.

II. FOOD DESERTS: FEDERAL VERSUS LOCAL EFFORTS TO IMPROVE LOCAL FOOD ACCESS

Rising rates of obesity and diet-related disease have increased the focus on access to healthy foods in recent years. Policy makers at all levels have tried to encourage Americans to eat healthier, but efforts to improve eating habits have been stymied due to a lack of access to fresh, nutritious items in food deserts.²² According to recent data, 9.7% of the U.S. population, or 29.7 million people, live in food deserts.²³ Because in many food deserts, full-service supermarkets are absent, while convenience stores and fast-food restaurants are ubiquitous,²⁴ the term “food swamp” is sometimes used instead of “food desert,”²⁵ but the result is the same. Food deserts formed in urban areas after many white, middle-class Americans moved to the suburbs in the 1960s and 1970s and supermarkets migrated with them.²⁶ Over time, those stores focused on business models tailored to car-borne consumers and ill suited to inner-city areas.²⁷ In addition, banks often redlined poor inner-city areas, declining to lend to grocery stores.²⁸ Many of the largest and most intractable food deserts, however, are located in rural regions, where widely dispersed populations make it a challenge to support supermarkets, particularly in low-income areas.²⁹ In the rural Mississippi Delta, over seventy percent of those enrolled in the Supplemental Nutrition Assistance Program (SNAP, formerly “food stamps”) live more than thirty miles from a

²² The term “food desert” was first used in Scotland in the 1990s. Julie Beaulac et al., *A Systematic Review of Food Deserts, 1966-2007*, PREVENTING CHRONIC DISEASE, July 2009, at 1, 1, available at http://www.cdc.gov/pcd/issues/2009/jul/pdf/08_0163.pdf. In the United States, although the lack of healthy food access has been acknowledged by those living in or working with these underserved areas for years, the issue was not addressed in a coordinated way until recently. See SARAH TREUHAFT & ALLISON KARPYN, POLICYLINK & THE FOOD TRUST, *THE GROCERY GAP: WHO HAS ACCESS TO HEALTHY FOOD AND WHY IT MATTERS* 11 (2010), available at <http://www.policylink.org/atf/cf/%7B97C6D565-BB43-406D-A6D5-ECA3BBF35AF0%7D/FINALGroceryGap.pdf>.

²³ MICHELE VER PLOEG ET AL., U.S. DEP'T OF AGRIC., ECONOMIC RESEARCH REPORT NO. 143, *ACCESS TO AFFORDABLE AND NUTRITIOUS FOOD: UPDATED ESTIMATES OF DISTANCE TO SUPERMARKETS USING 2010 DATA*, at iii (2012), available at <http://www.ers.usda.gov/media/956784/err143.pdf>.

²⁴ See TREUHAFT & KARPYN, *supra* note 22, at 7.

²⁵ See, e.g., Alice S. Ammerman, *Assessing Nutritious Food in Low-Income Neighborhoods*, 73 N.C. MED. J. 384, 384 (2012); DONALD ROSE ET AL., *DESERTS IN NEW ORLEANS? ILLUSTRATIONS OF URBAN FOOD ACCESS AND IMPLICATIONS FOR POLICY* 15–16 (2009), available at http://npc.fordschool.umich.edu/news/events/food-access/rose_et_al.pdf.

²⁶ NICKY BASSFORD ET AL., CMTY. HEALTH COUNCILS, INC., *FOOD DESERT TO FOOD OASIS: PROMOTING GROCERY STORE DEVELOPMENT IN SOUTH LOS ANGELES* 7 (2010), available at <http://www.chc-inc.org/downloads/Food%20Desert%20to%20Food%20Oasis%20July%202010.pdf>; see also TREUHAFT & KARPYN, *supra* note 22, at 11.

²⁷ Cliff Guy et al., *Food Retail Change and the Growth of Food Deserts: A Case Study of Cardiff*, 32 INT'L J. RETAIL & DISTRIBUTION MGMT. 72, 74 (2004).

²⁸ BASSFORD ET AL., *supra* note 26; see also Elizabeth Eisenhauer, *In Poor Health: Supermarket Redlining and Urban Nutrition*, 53 GEOJOURNAL 125, 127–29 (2001) (explaining that grocery stores also effectively redline themselves by refusing to build in urban areas).

²⁹ VER PLOEG ET AL., *supra* note 23, at 18.

supermarket.³⁰ More than half of the rural poor do not own cars, and one in fourteen households has no vehicle access,³¹ yet nearly seventy percent of rural counties offer limited or no public transportation.³² Apart from the entrenched economic and social barriers, a lack of consensus over the way food deserts are defined, particularly at the federal level, has impeded efforts to eliminate these areas. It is imperative that local governments step in to create local definitions and respond to local food-access needs.

A. Weaknesses in the Federal Response to Food Deserts

Rising concern about the issue of food deserts led Congress, in the 2008 federal Farm Bill, to direct the U.S. Department of Agriculture (USDA) to quantify and evaluate the problem in the United States, and to make recommendations to reduce the impacts of food deserts.³³ In order to measure food deserts, the USDA first had to define them, and did so as “low-income census tracts where a substantial number or share of residents has low access to a supermarket or large grocery.”³⁴ “Low-income census tracts” are those tracts where the poverty rate is twenty percent or higher or the median family income is at or below eighty percent of the state’s median family income (or the metropolitan area’s median family income, if the tract is in a metropolitan area). Areas with a “substantial portion of the population [with] low access” are defined as census tracts with at least thirty-three percent of the population or five hundred people residing more than one mile (ten miles in rural areas) from a supermarket or large grocery.³⁵ Despite broad consensus that many Americans suffer from a lack of access to healthy foods,³⁶

³⁰ TREUHAFT & KARPYN, *supra* note 22, at 16.

³¹ Eileen Stommes & Dennis Brown, *Opportunities and Challenges for Rural Transit: Lessons Learned From the Job Access and Reserve Commute Program*, 10 PUB. WORKS MGMT. & POLY 23, 23 (2005), available at <http://naldc.nal.usda.gov/download/37412/PDF>.

³² RURAL POLICY RESEARCH INST., RURAL AMERICA AND WELFARE REFORM: AN OVERVIEW ASSESSMENT 16 (1999), available at www.rupri.org/Forms/p99-3.pdf.

³³ FOOD, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 7527(a)–(c), 122 Stat. 1651, 2039 (codified as amended in scattered sections of 7 U.S.C. and 16 U.S.C.).

³⁴ VER PLOEG ET AL., *supra* note 23, at 4 (data based on the 2010 Census, the 2006–2010 American Community Survey, and 2010 data on locations of supermarkets, supercenters, and large grocery stores); see also *id.* at iii (“In 2010, 29.7 million people, or 9.7 percent of the population, lived in low-income areas . . . up from 23.5 million, or 8.4 percent, in 2006.”). Note that lack of access due to food deserts is measured differently from food insecurity (the new term used to describe hunger). In 2011, 14.9 percent of U.S. households were food insecure, meaning they did not have access “at all times to enough food for an active, healthy life.” *Key Statistics and Graphs*, USDA ECON. RES. SERV., <http://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/key-statistics-graphics.aspx#foodsecure> (last updated Sept. 4, 2012).

³⁵ *Food Access Research Atlas: Documentation*, USDA ECON. RES. SERV., <http://www.ers.usda.gov/data-products/food-access-research-atlas/documentation.aspx#definition> (last updated February 28, 2013). Note that a slightly modified definition was used in an updated USDA study of food deserts published in November 2012. See VER PLOEG ET AL., *supra* note 23, at 4.

³⁶ See MARI GALLAGHER RESEARCH & CONSULTING GRP., EXAMINING THE IMPACT OF FOOD DESERTS ON PUBLIC HEALTH IN CHICAGO 6 (2006), available at

critics have questioned the alleged link between food deserts and poor health outcomes.³⁷ A recent national study comparing the locations of food outlets with childhood-obesity data found that in low-income, minority census tracts with higher rates of obesity, access to grocers was actually higher than in other census tracts, but so was the prevalence of unhealthy options, such as convenience stores and fast-food outlets.³⁸ Further eroding the link between food deserts and obesity, a study comparing children's body-mass index (BMI) data with food-outlet locations found no consistent evidence showing that increased access to large supermarkets resulted in lower BMI for youth, or that greater exposure to fast-food restaurants and convenience stores increased BMI.³⁹ A similar state-level study in California also found no relationship between consumption habits and food-outlet availability.⁴⁰

These studies may fail to reveal a link between obesity and food deserts, however, because of weaknesses in the federal definition of a food desert, which is used as a basis for many such studies. The USDA definition suffers because it is both over- and under-inclusive, and thus cannot accurately identify the locations where food access is limited.⁴¹ One serious problem with the national definition is that merely assessing geographic informational system (GIS) maps of populations and national directories of food outlets—the sources utilized by the USDA—does not measure the ease with which participants can get to stores.⁴² Rather than being based solely on geographical distance, decisions about where to shop may depend on the “social distance” to stores, influenced by socio-demographic characteristics and by what residents consider to be the boundaries of their own neighbor-

lager.com/site_media/dynamic/project_files/Chicago_Food_Desert_Report.pdf; TREUHART & KARPYN, *supra* note 22; VER PLOEG ET AL., *supra* note 23, at 1.

³⁷ See, e.g., Ruopeng An & Roland Sturm, *School and Residential Neighborhood Food Environment and Diet Among California Youth*, 42 AM. J. PREVENTATIVE MED. 129, 131 (2012) (finding no significant correlation between quantity and variety of food retail outlets and children's eating habits); Paul L. Hutchinson et al., *Neighbourhood Food Environments and Obesity in Southeast Louisiana*, 18 HEALTH & PLACE 854, 858–59 (2012) (finding that higher-quality “food environments,” not just increased types of food stores, decrease the risk of obesity); V. Shier et al., *Is There a Robust Relationship Between Neighbourhood Food Environment and Childhood Obesity in the USA?*, 126 PUB. HEALTH 723, 726 (2012) (finding the only association between food outlets and children's BMI to be that “more varieties of food outlets, regardless of type, are associated with higher BMI”); *If You Build It, They May Not Come: A Shortage of Healthy Food Is Not the Only Problem*, ECONOMIST (July 7, 2011), <http://www.economist.com/node/18929190>.

³⁸ See Helen Lee, *The Role of Local Food Availability in Explaining Obesity Risk Among Young School-Aged Children*, 74 SOC. SCI. & MED. 1193, 1199–1201 (2012).

³⁹ See Shier et al., *supra* note 37, at 725–26.

⁴⁰ An & Sturm, *supra* note 37, at 131.

⁴¹ Though this article focuses on ways in which the food-desert definition is underinclusive (leaving out areas that should be classified as food deserts), identifying food deserts using national food-retailer directories may also be overinclusive, counting areas as food deserts despite the presence of outlets like street vendors, farmers markets, etc., that may play a major role in consumption habits in certain neighborhoods. See Latetia V. Moore & Ana V. Diez Roux, *Associations of Neighborhood Characteristics With the Location and Type of Food Stores*, 96 AM. J. PUB. HEALTH 325, 330 (2006).

⁴² Caitlin E. Caspi et al., *The Local Food Environment and Diet: A Systematic Review*, 18 HEALTH & PLACE 1172, 1185 (2012).

hoods.⁴³ In fact, studies have shown that residents' *perceptions* of food access, affected by factors like the built environment, safety, and familiarity, can be more highly correlated with dietary habits than GIS mapping-based measures of accessibility.⁴⁴ Similarly, linking the food desert definition with distance but ignoring vehicle ownership rates or transportation availability reduces the ability to accurately identify areas lacking food access.

Another hindrance at the national level stems from the use of food-retailer directories to locate food-retail outlets. These directories suffer from incompleteness, reporting errors, and out-of-date information.⁴⁵ Equally significant, retailer directories do not assess actual food offerings or evaluate their quality. The variety and quality of products available would likely provide better indicators of the local food environment, and more highly correlate to purchasing decisions, than geographic information alone.⁴⁶ One study found that only eighteen percent of small bodegas in a minority neighborhood stocked healthy foods, compared with fifty-eight percent of those in a predominantly white neighborhood,⁴⁷ showing that the presence of a type of food outlet alone does not demonstrate anything about the quality of the food offered therein. Capturing detail about the actual foods offered by visiting local food outlets is necessary to identify areas with lack of access,⁴⁸ but is infeasible to do at the national level.

Even USDA officials acknowledge the weaknesses in identifying food deserts at the federal level, noting "whereas straight-line distance measures are used in our study to measure access to food retailers, existing roadways, natural and manmade barriers, and other factors may extend the distance that consumers actually have to walk or drive."⁴⁹ The USDA proposes asking individuals about their perceived or experienced barriers to access as a way to improve identification of such areas,⁵⁰ a task that is virtually impossible to complete on a national level. The studies that have been critical of linking food deserts with health outcomes also recognize the pitfalls of defining healthy-food access using national or state-level data, rather than local data.⁵¹ One group of researchers noted that large-scale studies like theirs

⁴³ *Id.* at 1184.

⁴⁴ *Id.* at 1181.

⁴⁵ Bridget Kelly et al., *Measuring Local Food Environments: An Overview of Available Methods and Measures*, 17 HEALTH & PLACE 1284, 1288 (2011).

⁴⁶ *Id.* at 1285 (citing T.A. Farley et al., *Measuring the Food Environment: Shelf Space of Fruits, Vegetables, and Snack Foods in Stores*, 86 J. URB. HEALTH 672 (2009)).

⁴⁷ C.R. Horowitz et al., *Barriers to Buying Healthy Foods for People With Diabetes: Evidence of Environmental Disparities*, 94 AM. J. PUB. HEALTH 1549, 1552 (2004).

⁴⁸ Moore & Diez Roux, *supra* note 41, at 329.

⁴⁹ VER PLOEG ET AL., *supra* note 23, at 38.

⁵⁰ *Id.* (noting that other weaknesses included a lack of consistent data on availability of healthy foods by smaller vendors and the industry definition of a supermarket as having two million dollars or more in annual sales, which does not reflect inflation and thus captures stores that would not really be considered supermarkets).

⁵¹ See An & Sturm, *supra* note 37, at 134 (noting that store inventories, ratings of food quality, and measuring shelf space would be more predictive for health outcomes); Lee, *supra* note 38, at 1201–02 (noting problems that include barriers to finding accurate datasets, varying

suffer if they are not complemented by in-depth assessments of the local food environment.⁵²

The federal government has demonstrated support for increasing food access in a range of ways. Yet, challenges with the federal definition of a food desert limit the ability for innovative federal programs to be effective. In February 2010, First Lady Michelle Obama's *Let's Move!* campaign identified access to healthy, affordable food as one of five key mechanisms to reduce childhood obesity,⁵³ and in the same year, the Obama Administration launched the Healthy Food Financing Initiative (HFFI) (based on a local initiative piloted in Pennsylvania), with \$400 million in grants and loans to increase access to affordable, nutritious food.⁵⁴ The Administration created an interagency working group comprised of representatives of the USDA, Treasury Department, and Department of Health and Human Services to foster joint strategies to expand access to healthy foods.⁵⁵ Although these initiatives offer essential resources to address the lack of healthy-food access, the limitations of the federal definition weaken the effectiveness of the interventions, which prioritize areas identified using USDA's definition.⁵⁶ Because the USDA food-desert definition lacks accuracy, federal dollars are likely not allocated in the most effective way.

Local governments recently joined forces to argue, in a letter from the USCM Food Policy Task Force, that the federal food-desert definition "does not capture the reality of limited access we have found in many of our cities."⁵⁷ Instead, the mayors recommended defining food deserts using a half-mile or quarter-mile distance from a supermarket.⁵⁸ They stressed the importance of this change to the national definition to ensure that federal data is aligned with their local experiences, because discrepancies weaken the mayors' abilities to respond to the food-desert crisis by limiting the opportunity to obtain grants for areas that do not meet the federal definition.⁵⁹ They also bemoaned the negative implications of the inaccurate food-desert definition for future food-desert research.⁶⁰ Besides asking the USDA to change the

categorizations of different food outlets, factors such as vehicle ownership or public-transit access, and lack of area-specific food-access knowledge).

⁵² See Moore & Diez Roux, *supra* note 41, at 330.

⁵³ Press Release, White House, Office of the First Lady, First Lady Michelle Obama Launches Let's Move: America's Move to Raise a Healthier Generation of Kids (Feb. 09, 2010), available at <http://www.whitehouse.gov/the-press-office/first-lady-michelle-obama-launches-lets-move-americas-move-raise-a-healthier-genera>.

⁵⁴ Press Release, U.S. Dep't of Health & Human Servs., Obama Administration Details Healthy Food Financing Initiative (Feb. 19, 2010), available at <http://www.hhs.gov/news/press/2010pres/02/20100219a.html>.

⁵⁵ VER PLOEG ET AL., *supra* note 23, at 1.

⁵⁶ *How Are Food Deserts Identified?*, USDA AGRIC. MARKETING SERVICE, <http://apps.ams.usda.gov/fooddeserts/foodDeserts.aspx> (last visited May 9, 2013) (noting that the USDA and the U.S. Department of Health and Human Services "give funding priority to projects and interventions that establish healthy retail outlets in defined food deserts").

⁵⁷ Letter from USCM Food Policy Task Force to Michele Ver Ploeg, USDA Econ. Research Serv. (Dec. 18, 2012) (on file with author).

⁵⁸ See *id.*

⁵⁹ See *id.*

⁶⁰ See *id.*

definition, the mayors requested that the USDA allow city-approved food-desert maps to be posted alongside national food-desert resources.⁶¹ Despite the national scope of the food-desert problem, and the potential for federal policy to increase healthy-food access by improving the nation's food system more comprehensively,⁶² reducing the prevalence of food deserts is and will remain a predominantly local issue.

B. Responding More Effectively to Food Access at the Local Level

Because local governments are best suited to identify and respond to their own food deserts, one way that the federal government might be more successful at eradicating food deserts would be to empower and support local governments in identifying and responding to food deserts in the ways described below. Addressing access at a local level allows for more accurate identification of food deserts and the creation of successful solutions that incorporate input from affected populations. Local governments should use their greatest asset, the ability to work closely with their constituents, to learn how the community purchases and prepares food, respond to the community's unique needs, and implement targeted and effective policy interventions.

Local governments should begin by crafting a local food-desert definition that improves upon the federal definition to more accurately identify the areas in need. In just such a move, Baltimore partnered with the Johns Hopkins Center for a Livable Future to define and map food deserts.⁶³ Their resulting definition is more robust than that used at the federal level, considering four, rather than two, factors: (1) distance to supermarkets (more than one-quarter mile), (2) poverty (median household income at or below 185% of the federal poverty level), (3) vehicle availability (over forty percent of households without vehicles), and (4) the quality and availability of healthy food in all food stores (utilizing the Nutrition Environment Measurement Survey).⁶⁴ The inclusion of the metrics to measure the quality and availability of healthy food and vehicle ownership, as well as the reduction of the distance to a food outlet from one mile to one-quarter mile in this definition, reflect the experience and needs of the local community. Baltimore's experience can serve as one model for local governments, though communities can tailor the methods they use to identify areas of need.

In addition to identifying areas of need, local governments can create a process to seek community input in order to develop successful local poli-

⁶¹ *See id.*

⁶² *See* Sheila Fleischhacker & Joel Gittelsohn, *Carrots or Candy in Corner Stores?: Federal Facilitators and Barriers to Stocking Healthier Options*, 7 *IND. HEALTH L. REV.* 23, 36 (2010).

⁶³ Balt. Food Policy Initiative & John Hopkins Ctr. for a Livable Future, *2012 Baltimore City Food Environment Map Methodology*, *BALT. CITY HEALTH DEP'T* 2 (March 2012), <http://www.baltimorehealth.org/info/Food%20Desert%20Methodology%20Brief.pdf>.

⁶⁴ *Id.*

cies. Because local needs and conditions differ, priorities for food policy in different municipalities will also differ. Engaging the community is particularly important when addressing access in low-income, minority communities that may have different cultural practices around food. This is especially pertinent because areas with limited food choice and quality are predominantly ethnic- and cultural-minority communities.⁶⁵ Because different cultures often have different food norms and habits,⁶⁶ obtaining input from these communities is necessary to ensure that policy solutions are suited to the actual community setting. In other words, “[a]n essential element of a more effective food system is individual empowerment to shape it.”⁶⁷ Soliciting community input can not only help target policy interventions but also engage community leaders and make policies promoting healthy lifestyles more successful once implemented. According to one study, the most effective intervention to increase intake of fruits and vegetables in an African American community was having local churches serve more healthy foods at events.⁶⁸ Having a “community health champion” promote a policy has also been shown to increase its effectiveness.⁶⁹

When local governments do not communicate with residents or solicit input, their policies can turn out to be ineffective or fail due to community resistance. For example, in 2000, New York City decided to sell or bulldoze six hundred community gardens that were leased to residents under its Green Thumb program⁷⁰ and replace them with new community resources such as affordable housing, medical centers, and shopping areas.⁷¹ Incensed community members sued to stop the project, arguing that it would have a disproportionate impact on minority communities⁷² and that the gardens were a valuable source of healthy food and contributed to community building and lower violence.⁷³ They were unsuccessful in court, but resulting attention from the Attorney General and financial assistance from private organizations ultimately saved the gardens.⁷⁴ This is a quintessential example of the

⁶⁵ See Nareissa Smith, *Eatin' Good? Not in This Neighborhood: A Legal Analysis of Disparities in Food Availability and Quality at Chain Supermarkets in Poverty-Stricken Areas*, 14 MICH. J. RACE & L. 197, 218 (2009).

⁶⁶ See *id.* at 216; see also Katherine Unger Davis, *Racial Disparities in Childhood Obesity: Causes, Consequences, and Solutions*, 14 U. PA. J.L. & SOC. CHANGE 313, 329–31 (2011).

⁶⁷ Margaret Sova McCabe, *Reconsidering Federalism and the Farm: Toward Including Local, State and Regional Voices in America's Food System*, 6 J. FOOD L. & POL'Y 151, 161 (2010).

⁶⁸ See Karen Glanz & Amy L. Yaroch, *Strategies for Increasing Fruit and Vegetable Intake in Grocery Stores and Communities: Policy, Pricing, and Environmental Change*, 39 PREVENTIVE MED. S75, S77–S78 (Supp. 2 2004).

⁶⁹ See generally James Woodall et al., *Improving Health and Well-Being Through Community Health Champions: A Thematic Evaluation of a Programme in Yorkshire and Humber*, 133 PERSP. PUB. HEALTH 96 (2013).

⁷⁰ Dorothy A. Borrelli, *Filling the Void: Applying a Place-Based Ethic to Community Gardens*, 9 VT. J. ENVTL. L. 271, 281 (2008).

⁷¹ N.Y.C. Envtl. Justice Alliance v. Giuliani, 214 F.3d 65, 67 (2d Cir. 2000).

⁷² See *id.*

⁷³ *Id.* at n.4.

⁷⁴ See Robert Fox Elder, *Protecting New York City's Community Gardens*, 13 N.Y.U. ENVTL. L.J. 769, 784–85 (2005).

wasted time and resources that can result when municipalities make decisions without gathering community input.

By contrast, local governments that have given community members an active voice in planning efforts have achieved great success. Chicago's food-system plan includes six priorities that were created and endorsed through twenty-six public meetings over thirteen months with more than four hundred participants.⁷⁵ The draft plan was published for public comment in October 2012⁷⁶ and includes initiatives to encourage urban agriculture, increase healthy foods in underserved neighborhoods, and create nutrition standards for food served in City buildings.⁷⁷ In a similar example, after a rocky start to its pilot urban-agriculture program,⁷⁸ Boston decided to include more community input through an eighteen-month planning initiative to amend its zoning for urban agriculture.⁷⁹ In early 2013, the City released proposed changes to its zoning code, developed by a twenty-five-member working group that held monthly public meetings over the course of a year.⁸⁰ The City will gather informal feedback in a series of neighborhood meetings, and then hold formal public meetings in summer 2013 to enact a final amendment.⁸¹ Though the work is still underway, utilizing such a comprehensive and inclusive process should achieve more positive responses from the community once the changes are adopted. Boston employed a similarly inclusive process to develop its food-truck regulations in 2011, forging discussions between various city agencies, potential food-truck vendors, and the public to determine the best means of regulating these entities.⁸²

Localities may face barriers in their attempts to foster community input, as many citizens spurn local civic engagement, believing the burden and opportunity costs outweigh the minimal impact they perceive they will have.⁸³ To overcome these barriers, local governments may want to follow the lead of more than a dozen cities that now employ a food policy director or coordinator within local government.⁸⁴ Food policy directors allow local

⁷⁵ CITY OF CHI. DEP'T OF HOUS. & ECON. DEV., A RECIPE FOR HEALTHY PLACES: ADDRESSING THE INTERSECTION OF FOOD AND OBESITY IN CHICAGO 2, 39 (2012), available at <http://www.healthypaceschicago.org/food/RecipeforHealthyPlacesFinal.pdf>; see also *Food Plan: Resources*, HEALTHY PLACES CHI., <http://www.healthypaceschicago.org/food/food-plan-resources.lasso> (last visited May 10, 2013).

⁷⁶ See *Food Plan: Resources*, *supra* note 75.

⁷⁷ *Id.*

⁷⁸ Telephone Interview with Edith Murnane, Dir., Bos. Office of Food Initiatives (Jan. 24, 2013).

⁷⁹ See *Urban Agriculture Rezoning*, BOS. REDEVELOPMENT AUTHORITY, <http://www.bostonredevelopmentauthority.org/planning/PlanningInitsIndividual.asp?action=ViewInit&InitID=152> (last updated Apr. 12, 2013); Telephone Interview with Edith Murnane, *supra* note 78.

⁸⁰ Urban Agric. Working Grp., *Draft Zoning Code Article 89, Urban Agriculture*, BOS. REDEVELOPMENT AUTHORITY (Dec. 28, 2012), http://www.bostonredevelopmentauthority.org/pdf/PlanningPublications/Urban%20Agriculture%20FINAL_Draft_Article_89.pdf.

⁸¹ *Id.*

⁸² Telephone Interview with Edith Murnane, *supra* note 78.

⁸³ Matthew J. Parlow, *Civic Republicanism, Public Choice Theory, and Neighborhood Councils: A New Model for Civic Engagement*, 79 U. COLO. L. REV. 137, 142 (2008).

⁸⁴ See HATFIELD, *supra* note 12; Julia Marsh, *Cities Create 'Food Czars': Can They Get Residents to Eat Their Sprouts?*, CHRISTIAN SCI. MONITOR (Feb. 9, 2011), <http://www>.

governments to take a more process-oriented, strategic, long-term approach to food policy development, thus fulfilling many of the key recommendations described throughout this article, while demonstrating the government's commitment to addressing these important issues. As an example, after Baltimore's Food Policy Task Force discovered that several city agencies had divergent food policy agendas, the City hired its first food policy director.⁸⁵ Working out of the planning office, the director meets regularly with the Baltimore Food Policy Advisory Committee (FPAC) to solicit input,⁸⁶ and was quickly successful in achieving two of the interventions described in more detail below: virtual supermarkets and zoning for urban farming.⁸⁷ As Baltimore has done with its FPAC, local governments may forge partnerships with food policy councils or similar stakeholder groups to get input about appropriate food policy changes. Where food policy councils do not yet exist, local government can help establish such councils to serve as standing groups of diverse stakeholders that can provide input and feedback on potential policy changes.⁸⁸

III. LOCAL EXAMPLES OF POLICIES TO INCREASE HEALTHY-FOOD ACCESS

Local governments just starting out in this field have the luxury to draw on a range of examples from municipalities around the country. But to ensure that resources spent on increasing food access will be deployed in ways that foster successful and sustainable change, local governments should approach policy change by looking at the food system comprehensively.⁸⁹ This means going beyond merely increasing the number of retailers selling healthy foods and instead asking a broader set of questions about the reasons for limited access or poor health outcomes. For example, fresh fruits and vegetables are still more costly than many unhealthy food options, and simply opening new food outlets in food deserts may not change the relative cost of these items. But encouraging the cultivation of more fruits and vege-

csmonitor.com/USA/Society/2011/0209/Cities-create-food-czars-Can-they-get-residents-to-eat-their-sprouts.

⁸⁵ Peter Smith, *Baltimore Gets One of the Country's First Food Czars*, GOOD (July 1, 2010, 2:00 AM), <http://www.good.is/post/baltimore-gets-one-of-the-country-s-first-food-czars>.

⁸⁶ *Planning / Baltimore Food Policy Initiative / About*, CITY BALT. MD., <http://www.baltimorecity.gov/Government/AgenciesDepartments/Planning/BaltimoreFoodPolicyInitiative/About.aspx> (last visited May 10, 2013).

⁸⁷ Smith, *supra* note 85.

⁸⁸ *Improving Access to Healthy Food in Boston*, INST. FOR SUSTAINABLE COMMUNITIES, http://sustainablecommunitiesleadershipacademy.org/resource_files/documents/improving-access-to-healthy-food-in-boston.pdf (last visited May 10, 2013).

⁸⁹ Mustafa Koc & Kenneth A. Dahlberg, *The Restructuring of Food Systems: Trends, Research, and Policy Issues*, 16 AGRIC. & HUMAN VALUES 109, 113 (1999); Lila Finney Rutten et al., *Obesity Prevention and National Food Security: A Food Systems Approach*, 2012 ISRN PUB. HEALTH, Art. ID 539764, at 4, available at <http://downloads.hindawi.com/isrn/ph/2012/539764.pdf> (theorizing that a comprehensive food systems approach is needed to address food insecurity and obesity).

tables through urban agriculture can help to increase food security⁹⁰ and ensure that these foods are more available and affordable in the future. Similarly, introducing new supermarkets may not ensure that people will make healthier choices,⁹¹ as those with a lack of nutrition knowledge or cooking skills may continue to make the same dietary choices.⁹² Instead, providing nutrition and cooking classes may encourage consumers to choose healthier foods, as they will have the skills to prepare them.⁹³ Along the same lines, farming only in areas within a city's borders may not provide enough food to increase access significantly, but looking beyond the city borders to conduct joint urban-rural regional planning may help meet the urban food needs while providing the demand to support increased regional production and economic development.⁹⁴

One way to analyze local needs in a comprehensive and systematic way is to utilize a community food system assessment (CFSA), a tool that helps governments seek community input while analyzing all of the major elements along the food supply chain. Data collected through a CFSA can provide information about specific weaknesses in the food system, strengthen local networks, increase awareness of food-related issues, and help governments target their policy interventions.⁹⁵ A CFSA conducted in Louisville, Kentucky, in 2007 utilized a year-long process that included community meetings, food-system research, and mapping of the city's "food

⁹⁰ Robin Kortright & Sarah Wakefield, *Edible Backyards: A Qualitative Study of Household Food Growing and Its Contributions to Food Security*, 28 AGRIC. & HUMAN VALUES 39, 40 (2011); Amy Gilroy & Beth Sanders, *Urban Food Zoning: Health, Environmental and Economic Considerations*, OR. PUB. HEALTH INST. 3 (Aug. 5, 2011, 1:39 PM), <http://efiles.portlandoregon.gov/webdrawer/rec/4450557/view/urban%20food%20zoning%20supplement.pdf.PDF>.

⁹¹ Janne Boone-Heinonen et al., *Fast Food Restaurants and Food Stores: Longitudinal Associations With Diet in Young to Middle-Aged Adults: The CARDIA Study*, 171 ARCHIVES INTERNAL MED. 1162, 1168 (2011); see also Lee, *supra* note 38, at 1201–02; *supra* note 51 and accompanying text.

⁹² Angelica I. Ambrose, *A National School Garden Program: A Holistic and Sustainable Approach to Combating Food Deserts*, 21 SAN JOAQUIN AGRIC. L. REV. 51, 52 (2012).

⁹³ Martha Archuleta et al., *Diabetes Cooking Schools Improve Knowledge and Skills in Making Healthful Food Choices*, J. EXTENSION, April 2012, Art. No. 2FEA6, at 10, available at http://www.joe.org/joe/2012april/pdf/JOE_v50_2a6.pdf (finding that hands-on cooking classes are "more likely to encourage self-efficacy, which has been associated with improved diabetes self-management"); Christina Hartmann et al., *Importance of Cooking Skills for Balanced Food Choices*, 65 APPETITE 125, 128 (2013) (identifying a "positive correlation between vegetable intake and cooking skills for both genders").

⁹⁴ See Kate Clancy & Kathryn Ruhf, *Is Local Enough? Some Arguments for Regional Food Systems*, CHOICES: MAG. FOOD FARM & RESOURCE ISSUES, 1st Quarter 2010, http://www.choicesmagazine.org/magazine/pdf/article_114.pdf; see also Nevin Cohen, *How Great Cities Are Fed Revisited: Ten Municipal Policies to Support the New York City Foodshed*, 22 FORDHAM ENVTL. L. REV. 691, 693 (2011) ("[C]ities exist within interdependent regions, and a city's food infrastructure . . . spans many jurisdictions.").

⁹⁵ See KAMESHWARI POTHUKUCHI ET AL., WHAT'S COOKING IN YOUR FOOD SYSTEM? A GUIDE TO COMMUNITY FOOD ASSESSMENT (2002), available at http://foodsecurity.org/pub/whats_cooking.pdf; Ken Meter, *Regional "Finding Food in Farm Country" ("FFFC") Studies: Potential Generic Scope of Work*, CROSSROADS RESOURCE CENTER, <http://www.crcworks.org/leascope.pdf> (last visited May 10, 2013).

assets.”⁹⁶ The process identified eight broad policy recommendations for the city to improve food security, and catalyzed the creation of new community infrastructure, including a local Food Security Task Force, the Mayor’s Healthy Hometown Movement, and Active Louisville.⁹⁷ As demonstrated through the examples described below, local governments have a full menu of options to address food access, but must create appropriate infrastructure and processes to ascertain the local need and ensure targeted, effective policy interventions. Local governments should utilize strategies like Louisville’s to identify gaps across the food system and prioritize the policies that best fit their communities.

A. *Increasing the Prevalence of Healthy-Food Vendors*

Increasing long-term food access is not possible without establishing more full-service supermarkets. They are a crucial source of healthy food variety and are also more likely to offer those items at affordable prices as, according to one study, groceries in smaller stores can cost an average of ten percent more than the same items in larger supermarkets.⁹⁸ Local governments can use a range of financial and zoning incentives to encourage redevelopment of supermarkets and other healthy retailers. The Food Trust, a nonprofit organization in Philadelphia, encouraged state and local policy makers to fund the Pennsylvania Fresh Food Financing Initiative (FFFI), a public-private partnership with The Reinvestment Fund, which provides grants and loans to finance supermarkets and other food retailers in neighborhoods lacking healthy-food access.⁹⁹ In New York City, the Food Retail Expansion to Support Health (FRESH) Program, inspired by Pennsylvania’s FFFI, uses financial and zoning incentives to promote grocery development in underserved areas.¹⁰⁰ A store can be certified FRESH by (1) dedicating thirty percent of its selling area to perishable goods and (2) making a continuing commitment to the program’s goals.¹⁰¹ FRESH stores are eligible for increased floor-space allowances in mixed-use buildings, fewer parking

⁹⁶ See CMTY. FARM ALLIANCE, BRIDGING THE DIVIDE: GROWING SELF-SUFFICIENCY IN OUR FOOD SUPPLY iv–v (2007), available at <http://www.communityfarmalliance.org/BridgingTheDivide.pdf>.

⁹⁷ *Id.* at 31–34

⁹⁸ MICHELE VER PLOEG ET AL., U.S. DEP’T OF AGRIC., ACCESS TO AFFORDABLE AND NUTRITIOUS FOOD: MEASURING AND UNDERSTANDING FOOD DESERTS AND THEIR CONSEQUENCES 14 (2009), available at <http://www.ers.usda.gov/publications/ap/ap036/ap036.pdf>.

⁹⁹ *What We Do: With Supermarkets*, FOOD TRUST (last visited May 23, 2013), <http://thefoodtrust.org/what-we-do/supermarkets>.

¹⁰⁰ MARYAM ABDUL-KAREEM & DAVID THORNTON, USING ZONING TO CREATE HEALTHY FOOD ENVIRONMENTS IN BALTIMORE CITY 13 (2009), available at http://wikitbhemg.wiki.spaces.com/file/view/HarrisonInstitute_UsingZoningtoCreateHealthyFoodEnvironmentsinBaltimoreCity.pdf.

¹⁰¹ *Id.*

spaces required in pedestrian-oriented neighborhoods, real-estate tax reductions, and sales tax exemptions on building materials.¹⁰²

Baltimore created the “Baltimarket” virtual grocery store, a public-private partnership in which the city works with a local grocery chain to deliver groceries to public libraries in underserved communities. Customers can place orders from the free library computers, pay with SNAP, cash, credit, or debit, and return to the local library to pick up their food deliveries.¹⁰³ Local governments can also increase healthy-food access by compelling stores to stock certain foods. Minneapolis requires grocers to stock certain amounts of “staple foods,” such as fruits, vegetables, meat, poultry, fish, bread, and dairy.¹⁰⁴ This ordinance helps to ensure that stores in underserved neighborhoods carry minimum amounts of healthy, nutritious foods, thus improving food access.

Local governments can also increase healthy-food access by permitting food trucks and mobile food vendors. Food trucks can increase access to healthy foods that are ready-to-eat, helping to alleviate concerns about minimal cooking skills or equipment. Boston’s 2011 Food Truck Ordinance included a provision requiring food trucks operating on public land to offer at least one healthy option that does not contain fried foods, trans fats, or high fructose corn syrup and contains certain healthy, “real food” ingredients.¹⁰⁵ The food trucks are also encouraged to support the “Rethink Your Drink” campaign, which aims to reduce consumption of sugar-sweetened beverages.¹⁰⁶

Many local governments are working to help create other types of healthy vendors, such as mobile groceries or mobile farmers markets, which offer even more promise in terms of increasing access to fresh, healthy food options. Mobile vendors are less expensive to establish than full-service supermarkets and can travel to their customers, serving a wider area. New York City’s Green Carts program allocates one thousand permits to mobile food carts that sell only fresh fruits and vegetables in neighborhoods with limited access.¹⁰⁷ Using a different mobile vending model, Fresh Moves used a bus donated by Chicago’s Transit Authority to create a larger “mobile food market” that visits low-income neighborhoods and sells mostly locally

¹⁰² *Food Retail Expansion to Support Health*, NYC.GOV, <http://www.nyc.gov/html/misc/html/2009/fresh.shtml> (last visited May 10, 2013).

¹⁰³ Vanessa Barrington, *Baltimore’s Can-Do Approach to Food Justice*, GRIST (Nov. 21, 2011, 8:00 PM), <http://grist.org/urban-agriculture/2011-11-21-baltimores-can-do-approach-to-food-justice>.

¹⁰⁴ MINNEAPOLIS, MINN., CODE OF ORDINANCES ch. 203.20 (2012) (defining a grocery store as “[a] retail establishment that sells such products as staple foods, accessory food items, and household goods,” and requiring all such stores to offer at least three varieties of food in each of the four staple food groups, with some limitations).

¹⁰⁵ Press Release, Mayor’s Office, Mayor Menino Announces New Food Trucks Set to Serve Up Tasty Treats on Boston’s Streets (July 12, 2011), *available at* <http://www.cityofboston.gov/news/default.aspx?id=5182>.

¹⁰⁶ *Id.*

¹⁰⁷ *NYC Green Cart*, N.Y.C. DEPARTMENT HEALTH & MENTAL HYGIENE, <http://www.nyc.gov/html/doh/html/diseases/green-carts.shtml> (last updated Jan. 2013).

grown fruits and vegetables.¹⁰⁸ SNAP recipients receive a fifty percent discount through a state-funded grant program.¹⁰⁹ Mobile vendors are also underway in rural areas. MoGro, launched in spring 2012, is a mobile grocery serving pueblo communities in New Mexico.¹¹⁰

Finally, local governments have incentivized the creation of more farmers markets in underserved areas. The process of establishing a farmers market is far less complicated, time-consuming, and expensive than developing a traditional grocery store, meaning that farmers markets can address immediate food-access needs. Local governments have worked to ensure that more farmers markets have electronic benefit transfer (EBT) machines to accept SNAP benefits.¹¹¹ They have also helped farmers markets establish “double the dollars” programs, providing customers who use SNAP benefits at farmers markets with vouchers that double the money they can spend at the market.¹¹² The “Boston Bounty Bucks” program provides funding for a double-the-dollars program at city farmers markets.¹¹³ The county government and nonprofit organizations in Montgomery County, Maryland, contributed to a program to double SNAP, WIC, and Senior Farmers’ Market Nutrition Program dollars spent at the market in Takoma Park, Maryland.¹¹⁴ The City also offers free transportation to the market from local community centers, senior facilities, and low-income housing.¹¹⁵ As another way to encourage farmers-market development, local governments have reduced permitting costs or amended zoning codes to make the operation of markets a permitted use in as many districts as possible, as in Philadelphia.¹¹⁶

B. Reducing Transportation Barriers

Despite efforts to increase the number of outlets selling healthy foods, some neighborhoods continue to struggle with a lack of access. High costs and lack of suitable land prevent supermarkets from opening in certain

¹⁰⁸ Sandra Guy, *More Fresh Produce Coming to Chicago’s ‘Food Deserts,’* CHI. SUN TIMES (June 8, 2012, 1:46 PM), <http://www.suntimes.com/business/13059308-418/more-fresh-produce-coming-to-chicagos-food-deserts.html>.

¹⁰⁹ *Id.*

¹¹⁰ See *Philosophy*, MOGRO MOBILE GROCERY, <http://www.mogro.net/about/philosophy/p7662> (last visited May 10, 2013).

¹¹¹ See, e.g., *EBT at Farmers Markets*, MINNEAPOLIS CITY OF LAKES, <http://www.minneapolismn.gov/health/living/community-gardens> (last updated May 1, 2013); *SNAP to Your Farmers Market*, CITY OF PORTLAND, OREGON, PLANNING AND SUSTAINABILITY, <http://www.portlandoregon.gov/bps/article/310605> (last visited May 28, 2013).

¹¹² See, e.g., *DOUBLE UP FOOD BUCKS*, <http://www.doubleupfoodbucks.org/> (last visited May 10, 2013).

¹¹³ Andrew Ryan, *Vouchers Double the Value of Food Stamps at Boston Farmers’ Markets*, BOS. GLOBE, (June 25, 2009, 2:41 PM), http://www.boston.com/news/local/breaking_news/2009/06/vouchers_double.html.

¹¹⁴ RACHEL WINCH, NUTRITION INCENTIVES AT FARMERS’ MARKETS: BRINGING FRESH, HEALTHY, LOCAL FOODS WITHIN REACH 10 (2008), available at http://www.farmersmarketcoalition.org/wp-content/uploads/2008/12/ebt_matching_programs_rachel_winch.pdf.

¹¹⁵ *Id.*

¹¹⁶ See, e.g., ABDUL-KAREEM & THORNTON, *supra* note 100, at 14–15.

neighborhoods, and many low-income households do not have access to a car or to convenient public transportation, making it difficult for them to travel to food vendors. In 2010, 2.1 million households did not own a vehicle and were more than one mile from a supermarket,¹¹⁷ and a large portion of this population is unable to access public transit.¹¹⁸

To combat these barriers, several cities have worked to develop transit lines connecting food-desert neighborhoods to food vendors. In 1983, Knoxville Area Transit extended its bus routes to connect low-income areas with grocery stores and also ran a “grocery bus line” that connected residents to food outlets for one dollar roundtrip.¹¹⁹ They installed racks in buses for passengers commuting to grocery stores to address the community concern that shoppers had nowhere to place their groceries.¹²⁰ Similarly, the Austin/Travis County Food Policy Council worked with Austin Capital Metro Transit to start a grocery bus line, which now links low-income neighborhoods with two supermarkets.¹²¹

Communities can be made more conducive to other types of transit, such as walking and biking, which improves access to healthy foods while promoting physical activity. Cities can make streets safer for walkers and bikers by ensuring that they are well lit, that clear traffic signals are maintained, and that wide sidewalks and bike lanes are developed. To promote bicycle commuting to buy groceries, cities can connect bicycle racks to buses, promote installation of bicycle racks outside grocery stores, and require the creation of bicycle lanes every time a road is repaved. Washington, D.C., expanded its bike-parking requirements in D.C. commercial buildings, installed bike racks on Metrobuses, and increased the number of hours that bikes are allowed on Metro trains.¹²² Bellevue, Washington, created a transportation plan that will yield ninety miles of sidewalk, 144 miles of bikeway, and twenty miles of trail facility improvements.¹²³ Dozens of cities including Denver, Houston, Minneapolis, and New York have recently created or

¹¹⁷ VER PLOEG ET AL., *supra* note 23, at iii.

¹¹⁸ RURAL POLICY RESEARCH INST., *supra* note 32, at 16.

¹¹⁹ KNOXVILLE-KNOX CNTY. FOOD POLICY COUNCIL, SUMMARY AND HISTORY OF LOCAL FOOD POLICY 6 (2012), available at <http://www.cityofknoxville.org/boards/food/summaryhistory.pdf>; SARAH MARIE BORRON, CONG. HUNGER CTR., FOOD POLICY COUNCILS: PRACTICE AND POSSIBILITY 26–27 (2003), available at <http://hungercenter.wpengine.netdna-cdn.com/wp-content/uploads/2011/07/Food-Policy-Councils-Borron.pdf>.

¹²⁰ DAVID ZODROW, S. SUSTAINABLE AGRIC. WORKING GRP., FOOD SECURITY BEGINS AT HOME: CREATING COMMUNITY FOOD COALITIONS IN THE SOUTH 51 (2005).

¹²¹ See *Access to Healthy Food: Food Transport and Public Transit*, NAT'L CONF. ST. LEGISLATURES (Jan. 2007), <http://www.ncsl.org/IssuesResearch/Health/AccessToHealthyFood-FoodTransportPublicT/tabid/14318/Default.aspx>.

¹²² *Advocacy*, WASH. AREA BICYCLIST ASS'N, <http://www.waba.org/advocacy/index.php> (last visited May 10, 2013).

¹²³ CITY OF BELLEVUE, WASH., 2009 PEDESTRIAN AND BICYCLE TRANSPORTATION PLAN REPORT 124 (2009), available at http://www.bellevuewa.gov/pdf/Transportation/ped_bike_plan_2009.pdf; *Sample Bicycle Plans*, PEDESTRIAN & BICYCLE INFO. CENTER, <http://www.bicyclinginfo.org/develop/sample-plans.cfm> (last visited May 10, 2013).

expanded bikeshare programs, which provide low-cost bicycles for transportation throughout the city, including to supermarkets and grocers.¹²⁴

C. Encouraging Increased Local Food Production

The above strategies will begin to reduce the effects of food deserts, but these remedies may not be sufficient to ensure long-term food access. One way for local governments to boost long-term access is through improving the climate for local food production. In the past, agricultural practices were pushed outside the city limits by old-fashioned zoning codes that aimed to separate residential, commercial, manufacturing, and agricultural areas from one another.¹²⁵ But in recent years, Chicago, Cleveland, Madison, and San Diego, among others, have liberalized their zoning rules to allow urban land to be used for a range of agricultural activities.

Chicago amended its zoning ordinance to allow “community gardens” up to 25,000 square feet in residential areas without a permit, “urban farms” over 25,000 square feet in non-residential zones, and limited on-site produce sales in residential districts.¹²⁶ Cleveland encouraged urban farming by creating an urban garden overlay district,¹²⁷ which permits the use of specific areas of land throughout the city for community gardens, livestock maintenance, and beekeeping.¹²⁸ Seattle not only allows urban agriculture, its 2005 Comprehensive Plan requires at least one community garden for every 2500 households.¹²⁹ In addition to allowing community gardens and urban farms, many cities have amended their rules regarding animal husbandry and rooftop gardening. Residents of Cleveland, Madison, and San Diego may now keep chickens in residential areas,¹³⁰ and Denver and San Diego permit bee-

¹²⁴ See, e.g., DENVER BIKE SHARING, <http://www.denverbikesharing.org/> (last visited May 10, 2013); HOUS. BICYCLE, <http://houston.bicycle.com/> (last visited May 10, 2013); *Bike Sharing*, CITY MINNEAPOLIS, <http://www.ci.minneapolis.mn.us/bicycles/sharing/index.htm> (last updated Feb. 1, 2012); *New York City Bike Share*, N.Y.C. DEPARTMENT TRANSP., <http://a841-tfpweb.nyc.gov/bikeshare/> (last visited May 10, 2013); CAPITAL BIKESHARE, <http://www.capitalbikeshare.com/> (last visited May 10, 2013).

¹²⁵ Kate A. Voigt, *Pigs in the Backyard or the Barnyard: Removing Zoning Impediments to Urban Agriculture*, 38 B.C. ENVTL. AFF. L. REV. 537, 538 (2011).

¹²⁶ CHI., ILL., CODE §§ 17-2-0207, -3-0207, -4-0207, -5-0207, -6-0203-E, -0403-F, -9-0100, -10-0207, -17-0100, -17-0200 (2011); see also *Substitute Ordinance*, CITY CHI. (Sept. 1, 2011), http://www.cityofchicago.org/dam/city/depts/zlup/Sustainable_Development/Publications/Urban_Ag_Ordinance_9-1-11.pdf (explaining amendments).

¹²⁷ *Land Use & Planning*, CLEVELAND-CUYAHOGA COUNTY FOOD POLY COALITION, <http://cccfoodpolicy.org/working-group/land-use-planning> (last visited May 10, 2013).

¹²⁸ *Cleveland's Zoning for Urban Agriculture & Green Space*, CLEVELAND CITY PLAN. COMM'N, <http://planning.city.cleveland.oh.us/zoning/pdf/AgricultureOpenSpaceSummary.pdf> (last visited May 10, 2013).

¹²⁹ SEATTLE DEP'T OF PLANNING & DEV., SEATTLE'S COMPREHENSIVE PLAN app. UV-A5 (2005), available at http://www.seattle.gov/dpd/cms/groups/pan/@pan/@plan/@proj/documents/Web_Informational/cos_004510.pdf.

¹³⁰ See CLEVELAND, OHIO, ZONING CODE UPDATE § 347.02(b)(1)A, (c)(1) (2011), available at <http://planning.city.cleveland.oh.us/zoning/cpc.php>; MADISON, WIS., ZONING CODE § 28.08(9)(b)(7)(c) (1998), available at <http://www.cityofmadison.com/bi/documents/Chapter28.pdf>.

keeping on residential lots.¹³¹ Chicago, Seattle, and Portland have all amended their zoning codes to support rooftop gardening.¹³² The Chicago Department of Housing and Economic Development even requires that all projects receiving public funding, being built in a Planned Development, or being built as a Lakefront Protection Ordinance Development, include a green roof.¹³³ In Portland, development projects are awarded bonus floor area if they include a rooftop garden that takes up at least fifty percent of the roof.¹³⁴ Rooftop gardening not only provides additional land for cultivation, it also improves air and water quality by trapping pollutants, while lowering air and building temperatures by absorbing heat.¹³⁵

In addition to removing barriers to urban agriculture, cities have supported urban food production by connecting farmers to available land and providing monetary or in-kind resources. In 2010, Baltimore dedicated twenty publicly owned pieces of land greater than one acre to urban agriculture and allowed farmers to apply to lease these lands.¹³⁶ Four commercial farms and one nonprofit qualified for leases, paying only \$100 per year; the city also helped by making start-up funding available.¹³⁷ In 2009, the Austin City Council directed the City Manager to streamline the process for creating community gardens or urban farms by identifying and mapping available public lands, publicizing urban agriculture, and identifying a single agency contact person for urban farms and community gardens.¹³⁸ The Seattle Department of Neighborhoods works with a nonprofit organization, the P-Patch Trust, to secure vacant land for urban agriculture and allow community members to apply for one-year leases of “P-Patches,” which they can farm individually or with other community members.¹³⁹

Despite some of the exciting developments described above, many urban and suburban areas are still in the midst of heated debates over the role that food production should play in densely populated areas.¹⁴⁰ But it is likely that these tensions will subside as localities amend their zoning codes

¹³¹ DENVER, COLO., REV. MUNICIPAL CODE § 8-2(c) (2013).

¹³² CHI., ILL., CODE §§ 17-3-0207, 17-17-0104-H (2011); PORTLAND, OR., ZONING CODE § 33.510.210.C.4 (2010); SEATTLE, WASH., LAND USE CODE 23.45.514.J.10 (2010).

¹³³ *Sustainability Section*, CITY CHI., http://www.cityofchicago.org/city/en/depts/dcd/supp_info/sustainable_development.html (last visited May 10, 2013).

¹³⁴ PORTLAND, OR., ZONING CODE § 33.510.210.C.4. For each square foot of rooftop garden, the development receives a bonus of one square foot of additional floor area.

¹³⁵ Memorandum from Tad Read, Senior Planner III, Bos. Redevelopment Auth., et al. to the Urban Agric. Working Grp. 2 (April 11, 2012), available at http://www.bostonredevelopmentauthority.org/pdf/PlanningPublications/Urban%20Agriculture%20MEMO_Rooftop%20Agriculture.%20Module%203_4.11.12.pdf.

¹³⁶ Barrington, *supra* note 103.

¹³⁷ *Id.*

¹³⁸ Austin, Tex. Resolution No. 20091119-065 (Nov. 19, 2009).

¹³⁹ *P-Patch Community Gardens*, SEATTLE DEPARTMENT NEIGHBORHOODS, <http://www.seattle.gov/neighborhoods/ppatch> (last visited May 10, 2013).

¹⁴⁰ See, e.g., Steven Kurutz, *The Battlefront in the Front Yard*, N.Y. TIMES, Dec. 20, 2012, at D1; Steven Hoffer, *Oak Park, Michigan Resident Julie Bass Faces 93 Days in Jail for Vegetable Garden*, HUFFINGTON POST (July 8, 2011, 5:07 PM), http://www.huffingtonpost.com/2011/07/08/julie-bass-jail-vegetable-garden_n_893436.html.

to allow for more food production. They certainly have the motivation to do so—in addition to increasing food access, urban agriculture supports economic development,¹⁴¹ community building,¹⁴² and reduced environmental impacts.¹⁴³

D. Improving Healthy-Food Consumption

Finally, to help convince citizens to consume healthier foods once they are more readily available, local governments have used various methods to reduce access to unhealthy foods or make those foods less desirable or available than healthy ones. Some have used zoning to restrict access to unhealthy food options.¹⁴⁴ In January 2011, Los Angeles banned the development of new fast-food restaurants in certain low-income areas of the city.¹⁴⁵ Detroit requires a minimum distance of five hundred feet between certain carry-out, fast-food, and drive-through restaurants and the nearest school.¹⁴⁶ Other municipalities have restricted the manner in which restaurants can market and sell unhealthy foods. In May 2010, Santa Clara County, California, prohibited restaurants from offering toys, games, and other “incentive items” linked to food or meals that did not meet certain nutrition standards.¹⁴⁷ Some of these restrictive measures have been more controversial than others, and subjected cities to public dissent and even litigation.¹⁴⁸

IV. CONCLUSION

Municipalities across the nation are working to comprehensively improve their food systems as part of the overarching goal of ensuring that

¹⁴¹ See, e.g., Patricia Allen, *Reweaving the Food Security Safety Net: Mediating Entitlement and Entrepreneurship*, 16 AGRIC. & HUMAN VALUES 117, 123 (1999); Kate H. Brown & Andrew L. Jameton, *Public Health Implications of Urban Agriculture*, 21 J. PUB. HEALTH POL'Y 20, 26 (2000).

¹⁴² See, e.g., Jan E. Schukoske, *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, 3 N.Y.U. J. LEGIS. & PUB. POL'Y 351, 357 (2000).

¹⁴³ See, e.g., MAYOR'S OFFICE OF SUSTAINABILITY, OAKLAND FOOD SYSTEM ASSESSMENT 19 (2006), available at http://oaklandfoodsystem.pbworks.com/!OFSA_Production.pdf.

¹⁴⁴ JULIE SAMIA MAIR ET AL., CTR. FOR LAW & THE PUBLIC'S HEALTH AT JOHNS HOPKINS & GEORGETOWN UNIVS., *THE USE OF ZONING TO RESTRICT FAST FOOD OUTLETS: A POTENTIAL STRATEGY TO COMBAT OBESITY 20* (2005), available at <http://www.publichealthlaw.net/Zoning%20Fast%20Food%20Outlets.pdf>.

¹⁴⁵ L.A., Cal., Council File No. 10-1843 (Dec. 8, 2010).

¹⁴⁶ Detroit, Mich., Ordinance No. 9-98, § 1, 4-1-98, 92.0379B(j) (1978), available at <http://eatbettermovemore.org/sa/policies/pdf/Detroit-Zoning%20and%20Fast%20Food.pdf>.

¹⁴⁷ SANTA CLARA CNTY., CAL., CODE § A18 (2010). Restaurants have responded by marketing healthier options with toy giveaways, or ceasing to offer any toys with their products. See Jennifer J. Otten et al., *Food Marketing to Children Through Toys: Response of Restaurants to the First U.S. Toy Ordinance*, 42 AM. J. PREVENTATIVE MED. 56, 58 (2012).

¹⁴⁸ See, e.g., Michael Grynbaum & Marjorie Connelly, *60% in City Oppose Soda Ban, Calling It an Overreach by Bloomberg, a Poll Finds*, N.Y. TIMES, Aug. 23, 2012, at A19; Michael Howard Saul, *Judge Cans Soda Ban*, WALL ST. J., Mar. 12, 2013, at A19.

their citizens are healthy, safe, and productive. There are many lenses through which food-system reform can be viewed. Some local governments have used a sustainability lens to drive their food-systems work, while others have focused on food policy changes that would impact economic development. One lens of growing importance to local governments is that of improving food access. As discussed in this article, local governments are well suited to confront the challenge of eradicating food deserts because augmenting healthy-food access is best addressed by implementing tailored reforms developed at the local level. Success in this realm can have a positive impact on other local government goals, including improved public health and enhanced economic opportunity. As local governments move forward with plans to increase access to healthy foods and revitalize their local food systems, they must remember that food is a community issue, food is a cultural issue, and, most importantly, food is a personal issue. Thus, grassroots input is critical to crafting policy solutions across the food system that will be effective in increasing access. Local governments have the unique ability to give individuals a voice in redesigning the food system, and they should create mechanisms to capitalize on this strength as they work to implement successful food systems for the future.

