

Bringing Food Back Home: Revitalizing the Postindustrial American City Through State and Local Policies Promoting Urban Agriculture

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If more of us valued food and cheer and song above hoarded gold, it
would be a merrier world.

– J.R.R. Tolkien

INTRODUCTION

Though the term “urban agriculture” embodies many meanings, it is essentially the process of growing and distributing food and other edible products through plant cultivation and animal husbandry within and around city limits.¹ Urban agriculture tends to take shape in many forms, including community gardens, community supported agriculture, food production at public schools or on vacant lots, rooftop gardening, or through backyard gardening, chicken coops,

¹ KATHERINE H. BROWN & ANNE CARTER, URBAN AGRICULTURE AND COMMUNITY FOOD SECURITY IN THE UNITED STATES: FARMING FROM THE CITY CENTER TO THE URBAN FRINGE 1, 1 (2003), *available at* http://community-wealth.org/_pdfs/articles-publications/urban-ag/report-brown-carter.pdf.

and bee keeping.² Urban agriculture³ in its broadest sense may also encompass a spectrum of food interests that address aspects of producing, processing, marketing, distributing, and consuming food. An urban food system also provides a multiplicity of benefits and services for local residents. Urban food systems can improve citizens' access to outdoor recreation and leisure, economic vitality and business entrepreneurship, individual and community health and well-being, landscape beautification, and environmental restoration and remediation.⁴

The time is ripe for our local governments and private citizens to push for initiatives that support urban agriculture and reverse some of the negative effects industrialized agriculture has had on the populous. For example, our current food system actually makes it more difficult for people to access quality food, and as a result, many citizens suffer from poor diets. This has created an obesity epidemic⁵ that is driving up medical costs⁶ and reducing life expectancy.⁷ Americans' poor health is in part due to our current system of industrialized agriculture, which can be expensive and produces less

² PATRICIA E. SALKIN, TRENDS IN URBAN AGRICULTURE 621, 623 (A.L.I. 2011).

³ For purposes of this Comment, urban agriculture and urban farming are synonymous. These terms are inclusive of community gardens, nonprofit farms, private gardens, and commercial urban farming. See Dana May Christensen, *Securing the Momentum: Could a Homestead Help Sustain Detroit Urban Agriculture?*, 16 DRAKE J. AGRIC. L. 241, 245–46 (2011).

⁴ BROWN & CARTER, *supra* note 1, at 3.

⁵ See *Overweight and Obesity*, CENT. DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/obesity/data/adult.html> (last updated Aug. 16, 2013) (reporting that over one-third of Americans are classified as obese).

⁶ *Id.* (reporting that in 2008 medical costs associated with obesity were estimated at \$147 billion and that medical costs for people who were obese were on average \$1,429 more than those of a normal weight).

⁷ See Kate Randall, *U.S. Life Expectancy Lowest Among Industrialized Countries*, GLOBAL RES. (Jan. 12, 2013), <http://www.globalresearch.ca/us-life-expectancy-lowest-among-industrialized-countries/5318672> (citing that among the seventeen high-income countries examined, the United States ranked last in life expectancy for males and second to last for females in 2007).

The panel found that Americans are not only dying at younger ages than people in almost all other higher-income peer countries, but that this pattern of poor health is strikingly consistent and pervasive over the life course . . . [Infants] are less likely to survive to their first birthday than babies born in other high-income countries. Young children are less likely to survive till age five. American adolescents are in worse health than their counterparts in other countries. American adults have higher rates of obesity, diabetes and chronic disease.

Id. (internal quotations omitted).

nutritious food.⁸ On average, food travels over 1500 miles from farm to plate.⁹ For a simple breakfast, the total miles it took for food to make it from the farm to the plate was enough to wrap around the circumference of the earth.¹⁰ A food system that requires heavy transport is unsustainable—food will become more and more expensive as petroleum shortages cause the cost of gasoline to rise, further exacerbating the difficulties associated with access to nutritious food.¹¹ To add insult to injury, the fresh produce that people have access to today is less nutritious than it was fifty years ago.¹² Food scientists have reported that fresh produce can have up to twenty-five percent less iron, zinc, protein, calcium, vitamin C, and other nutrients.¹³ The reality is that the current system, which has reduced access to affordable, nutritious food, is practically killing us.¹⁴ A transition from industrialized agriculture to urban agriculture would benefit up to eighty percent of the U.S. population who live in an urban environment.¹⁵ In addition to improving citizen health,

⁸ 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); Kathryn A. Peters, *Creating a Sustainable Urban Agriculture Revolution*, 25 J. ENVTL. L. & LITIG. 203, 207-11 (2010); see also Sarah Burns, *Nutritional Value of Fruits, Veggies is Dwindling*, NBC NEWS (July 9, 2010, 5:26 PM), http://www.nbcnews.com/id/37396355/ns/health-diet_and_nutrition/#.UUOUWhl0SbI; Lisa Garber, *Nutritional Value of Food at Risk: Fruits and Vegetables Now Less Nutritious*, NATURAL SOCIETY (Dec. 9, 2012, 2:20 AM), <http://naturalsociety.com/nutritional-value-of-food-risk-fruits-vegetables-less-nutritious/>.

⁹ BROWN & CARTER, *supra* note 1, at 4.

¹⁰ RICH PIROG ET AL., *FOOD, FUEL, AND FREEWAYS: AN IOWA PERSPECTIVE ON HOW FAR FOOD TRAVELS, FUEL USAGE, AND GREENHOUSE GAS EMISSIONS* 9 (June 2001), available at <http://www.leopold.iastate.edu/sites/default/files/pubs-and-papers/2011-06-food-fuel-and-freeways-iowa-perspective-how-far-food-travels-fuel-usage-and-green-house-gas-emissions.pdf>. That study was based on the total food miles for a Swedish breakfast consisting of an apple, bread, butter, cheese, coffee, cream, orange juice, and sugar. *Id.*

¹¹ See *id.* at 3, 7; Eubanks II, *supra* note 8, at 279–83.

¹² Garber, *supra* note 8.

¹³ *Crop Yields Expand, but Nutrition is Left Behind*, WORLDWATCH INST., <http://www.worldwatch.org/node/5339> (last visited Jan. 15, 2014).

¹⁴ See generally Randall, *supra* note 7; see also Eubanks II, *supra* note 8; *Obesity Overtaking Smoking as America's Number One Killer*, MED. NEWS TODAY (Mar. 9, 2004, 12 AM), <http://www.medicalnewstoday.com/releases/6438.php> (quoting then American Health and Human Services Secretary, Tommy Thompson stating that, “poor eating habits and inactivity are on the verge of surpassing tobacco use as the leading cause of preventable death in America”).

¹⁵ See *2010 Census Urban Area Facts*, U.S. CENSUS BUREAU, <http://www.census.gov/geo/reference/ua/uafacts.html> (last visited Jan. 2, 2014).

urban farming can bridge socio-economic gaps, revitalize neighborhoods, and improve environmental quality.¹⁶

State and local municipalities¹⁷ can play a pivotal role in revitalizing fading U.S. cities by encouraging farming in urban areas. Cities like Detroit, Seattle, Portland, and Cleveland are at the forefront of the urban agriculture movement and have employed both creative and rudimentary city planning policies to facilitate the evolution of urban agriculture in their cities.¹⁸ Those cities have embraced the multifaceted, interdisciplinary nature of creating a farming-friendly city. Their success in facilitating urban agriculture is not happenstance; those cities and others have made a tactical decision to implement an assortment of planning strategies to reinvent food production and distribution within city limits.¹⁹ Effective planning strategies may include: (1) establishing city or statewide food-policy councils; (2) developing citywide or regional food-policy guides; (3) amending the city or state comprehensive plan; (4) implementing new zoning ordinances; (5) making public land available to farming enterprises; and (6) developing creative solutions that remove localized barriers to urban agriculture.

This Comment will explore the policy initiatives and legal tools that local governments can use to promote urban agriculture. Part I describes some of the most well-documented benefits of urban farming. Part II discusses how municipalities can establish local food policies that will inform city planning. Part III examines the value of comprehensive plans and land use zoning for retrofitting cities to allow urban farming. Part IV surveys how cities can put policy initiatives to work and make land available to urban gardeners. Part V highlights urban agriculture in Detroit, Michigan. Finally, Part VI recommends a framework for comprehensive local food policy reform.

¹⁶ See generally BROWN & CARTER, *supra* note 1, at 3–10; DETROIT FOOD POLICY COUNCIL, DETROIT FOOD SYSTEM REPORT 2011–2012, at 1 (2012) [hereinafter DETROIT FOOD SYSTEM REPORT], available at <http://detroitfoodpolicycouncil.net/knowledge-center/reports> (link to “DFPC Food Report Complete Version”) (discussing the multitude of benefits from urban farming programs in Detroit).

¹⁷ Municipalities will generally refer to state, county, town and city local governments.

¹⁸ See generally SALKIN, *supra* note 2; Kathryn A. Peters, *Current and Emerging Issues in the New Urban Agriculture: A Case Study*, 7 J. FOOD L. & POL’Y 297, 313 (2011).

¹⁹ See SALKIN, *supra* note 2; Peters, *supra* note 18, at 313.

I

BENEFITS OF URBAN AGRICULTURE

Policies that promote urban agriculture are dynamic enough to provide both direct and indirect benefits to a local community. Urban gardening can facilitate community interaction and collaboration, beautify neighborhoods, discourage crime and vandalism, and repurpose vacant lots. Farmers markets can draw in visitors, which effectively help improve local businesses in the surrounding neighborhoods. The indirect benefits of urban agriculture may improve property values, ease burdens associated with vacant property for city governments, relieve some problems associated with food insecurity, and improve local environmental quality. The following discussion addresses these benefits.²⁰

A. Societal Benefits

Urban agriculture benefits both individuals and neighborhoods by bringing together diverse residents, beautifying neighborhoods, encouraging outdoor recreation, and reducing crime.²¹ Community gardens, for example, can revitalize neighborhoods by creating a shared space for residents to gather and take pride in the greening of their neighborhood.²² Simultaneously, community gardens can also encourage neighborhood residents to participate in more active lifestyles and recreation.²³ Gardening can promote a person's physical, mental, and emotional wellbeing, as gardeners can benefit from the relaxation, socialization, and satisfaction derived from producing their own food.²⁴

Likewise, community food production has the added societal benefit of combating problems caused by the hunger epidemic, poor

²⁰ This Comment will not address challenges or adverse impacts associated with urban farming. For discussion regarding drawbacks of urban farming initiatives please see Patricia E. Salkin, *Regional Foodsheds: Are Our Local Zoning and Land Use Regulations Healthy?*, 22 FORDHAM ENVTL. L. REV. 599, 605–09 (2011); see also John E. Mogk et al., *Promoting Urban Agriculture as an Alternative Land Use for Vacant Properties in the City of Detroit: Benefits, Problems, and Proposals for a Regulatory Framework for Successful Land Use Integration*, 56 WAYNE L. REV. 1521, 1533–49 (2010).

²¹ See, e.g., ANNE C. BELLOWS ET AL., HEALTH BENEFITS OF URBAN AGRICULTURE 5 (2004), available at [http://www.co.fresno.ca.us/uploadedFiles/Departments/Behavioral_Health/MHSA/Health%20Benefits%20of%20Urban%20Agriculture%20\(1-8\).pdf](http://www.co.fresno.ca.us/uploadedFiles/Departments/Behavioral_Health/MHSA/Health%20Benefits%20of%20Urban%20Agriculture%20(1-8).pdf); BROWN & CARTER, *supra* note 1, at 3–10.

²² BROWN & CARTER, *supra* note 1, at 3.

²³ BELLOWS ET AL., *supra* note 21, at 5–6.

²⁴ *Id.*

health, and “food deserts.”²⁵ The Center for Disease Control defines these “food deserts” as geographic areas that “lack access to affordable fruits, vegetables, whole grains, low-fat milk,” and other healthy foods.²⁶ The lack of access to healthy foods is also one of the leading causes of obesity, heart disease, and type 2 diabetes—the leading causes of preventable death in the United States.²⁷ The food desert reality, compounded with the nation’s growing rate of poverty, has resulted in over fifty million Americans living in food insecure²⁸ households, including 16.7 million children.²⁹ Urban gardening can help decrease hunger while ensuring that households have access to fresh and nutritious food.³⁰ Also, people engaged in urban gardening tend to consume a more balanced diet, consisting of fewer sugar-based substances.³¹ In sum, giving citizens access to high-quality, nutritious, and locally-grown food alleviates various problems associated with food deserts, encourages healthier lifestyles, and provides communities with a secure food source.³²

²⁵ Jane E. Schukoske, *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, 3 N.Y.U. J. LEGIS. & PUB. POL’Y 351, 359 (2000).

²⁶ *A Look Inside Food Deserts*, CENT. DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/features/fooddeserts/> (last updated Sept. 24, 2012). See also 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 (2009), available at http://www.ers.usda.gov/media/242675/ap036_1_.pdf.

²⁷ Sarah B. Schindler, *Of Backyard Chickens and Front Yard Gardens: The Conflict Between Local Governments and Locavores*, 87 TUL. L. REV. 231, 268 & n.196 (2012); see also *Overweight and Obesity*, *supra* note 5.

²⁸ “Food insecurity is limited or uncertain availability of nutritionally adequate and safe foods or limited or uncertain ability to acquire acceptable foods in socially acceptable ways.” *Food Security in the United States*, ECON. RES. SERV., U.S. DEP’T OF AGRIC., <http://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/measure-ment.aspx#security> (last updated Aug. 19, 2013). The USDA has four tiers of food insecurity and defines the lowest tier of food security, very low food security, as “reduced quality, variety, or desirability of diet” with “multiple indications of disrupted eating patterns and reduced food intake.” See *Definitions of Food Security*, ECON. RES. SERV., U.S. DEP’T OF AGRIC., http://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/definitions-of-food-security.aspx#.UsYseTn_RUQ (last updated Sept. 4, 2013).

²⁹ *Hunger & Poverty Statistics*, FEEDING AM., <http://feedingamerica.org/hunger-in-america/hunger-facts/hunger-and-poverty-statistics.aspx> (last visited Jan. 2, 2014).

³⁰ HEATHER WOOTEN & AMY ACKERMAN, SEEDING THE CITY: LAND USE POLICIES TO PROMOTE URBAN AGRICULTURE 4 (2011), available at http://changelabsolutions.org/sites/phlpnet.org/files/Urban_Ag_SeedingTheCity_FINAL_20111021.pdf.

³¹ *Id.*

³² See, e.g., DETROIT FOOD SYSTEM REPORT, *supra* note 16, at 3–4 (discussing urban farming solutions to food insecurity and food deserts in Detroit).

Furthermore, urban agriculture can put vacant land to good use.³³ Between 1950 and 1990, when cities were succumbing to the impacts of suburban sprawl,³⁴ some abandoned lots in inner-city areas remained vacant for upwards of twenty to thirty years.³⁵ Many of the United States' most iconic cities are hampered by the burden of vacant land: Chicago, Illinois is estimated to have 70,000 vacant parcels; Philadelphia, Pennsylvania has around 31,000 vacant parcels;³⁶ and Detroit, Michigan has nearly 30,000 acres of vacant land.³⁷ These vacant parcels are eye-sores that degrade the character of the city and the morale of its citizens. Vacant parcels accumulate trash, invite illegal dumping, and are breeding grounds for crime and loitering.³⁸ Urban agriculture can have a regenerative effect on these vacant lots and create a safe, inviting place for community gatherings.

Urban farming can serve as a catalyst for revitalizing and reconnecting urban communities. Community gardens, for example, encourage neighbors from diverse cultures of different generations to engage, interact, and collaborate with one another.³⁹ “[C]ommunity building should strive to increase the capacity of metropolitan residents to live in a world composed of people different from themselves.”⁴⁰ Urban gardens do just that—bring together diverse individuals by removing barriers like language, economics, and education that otherwise impede neighbors from interacting with one another.⁴¹ The societal and socioeconomic benefits of urban farming are wide-ranging and have the potential to inspire a better, healthier way of living.

³³ Mogk et al., *supra* note 20, at 1532.

³⁴ BROWN & CARTER, *supra* note 1, at 7; see also Joshua Yellin, *The Intersection Between Urban Agriculture and Form-Based Zoning: A Return to Traditional Planning Techniques*, 19 HASTINGS W.-NW. J. ENVTL. L. & POL’Y 83, 94–95 (2013) (discussing the effects of Euclidean zoning on suburban sprawl).

³⁵ BROWN & CARTER, *supra* note 1, at 7.

³⁶ *Id.*

³⁷ Mogk et al., *supra* note 20, at 1529.

³⁸ See generally BROWN & CARTER, *supra* note 1, at 8–9; Schukoske, *supra* note 25, at 356; Mogk et al. *supra* note 20, at 1534.

³⁹ Schukoske, *supra* note 25, at 357.

⁴⁰ *Id.* (citing GERALD E. FRUG, CITY MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS 115 (1999)) (internal quotations omitted).

⁴¹ *Id.*

B. Economic Benefits

Inner-city farming provides new opportunities for entrepreneurs and new commercial enterprises. For example, farmers markets can effectively generate income for local residents and keep money spent within the community.⁴² West Virginia farmers markets have been estimated to generate \$656,000 in annual labor income.⁴³ Research has also shown that when patrons come to neighborhood farmers markets, the same patrons are more likely to also spend money in neighboring businesses.⁴⁴ In Denver, Colorado, one reporter found that the demand for locally-grown⁴⁵ produce had “hit a high point,” as urban cities were looking to save money, support local businesses, and not contribute to industrialized agriculture.⁴⁶ Similarly, local restaurants and grocery stores are participating in the urban and local food movements. Farm Fresh, a nonprofit organization located in Rhode Island, has connected nearly 500 restaurants in the state with local farmers.⁴⁷

With increased demand for local food, investing in an urban farm may be a wise business decision:

Approximately every \$1 invested in a community garden yields \$6 worth of fruits and vegetables. Researchers in Ohio estimate that urban farmers can gross up to \$90,000 per acre by selecting the right crops and growing techniques. In Philadelphia it is estimated that urban-market gardeners earn up to \$68,000 per half acre. Projections are that locally grown fruits and vegetables in Detroit

⁴² Mogk et al., *supra* note 20, at 1531.

⁴³ STEVE MARTINEZ ET AL., ECON. RES. SERV., U.S. DEP’T OF AGRIC., LOCAL FOOD SYSTEMS: CONCEPTS, IMPACTS, AND ISSUES 1, 45 (2010), available at <http://www.ers.usda.gov/publications/err-economic-research-report/err97.aspx>.

⁴⁴ *Id.* (citing Larry Lev et al., *How Do Farmer’s Markets Affect Neighboring Businesses?*, OR. SMALL FARMS TECHNICAL REP. 1 (Or. St. Univ. Extension Serv./Or. Small Farms ed., 2003)).

⁴⁵ Generally speaking, “locally” grown food is food grown within 100 miles of one’s residence. See *Locavores*, LOCAVORES.COM, <http://www.locavores.com/home.php> (last updated Dec. 2, 2010). The so-called “locavore” ideal is broader than the concept of urban farming and readers are cautioned to not conflate the two. For a lengthy discussion on how the locavore movement is influencing sustainable agriculture see Schindler, *supra* note 27.

⁴⁶ Jennifer Oldham, *Demand for Locally Grown Produce Spurs Rise of Urban Farms*, BOS. GLOBE (Aug. 22, 2011), http://www.boston.com/news/nation/articles/2011/08/22/demand_for_locally_grown_produce_spurs_rise_of_urban_farms/.

⁴⁷ See *Local Food Guide to Rhode Island*, FARM FRESH, <http://www.farmfresh.org/food/restaurants.php?zip=02909> (last visited Jan. 3, 2014) (displaying a Google map listing 486 farms, farmers markets, food stores, and restaurants selling local food and related products).

could⁴⁸ generate \$200 million in sales and approximately 5,000 jobs.

In Detroit, Michigan, Hantz Farm—a large-scale, for-profit commercial farm—is looking to create “the largest urban farm in the world.”⁴⁹ John Hantz, the farm’s owner, expects that in time the farm will restore a large portion of tax-delinquent property, create employment opportunities, supply local markets and restaurants with produce, attract tourism, and stimulate development throughout the city.⁵⁰

Urban agriculture and local food initiatives help to boost hometown economies in part by creating an “economic multiplier” effect—the theory that direct and indirect effects of one market (i.e., local food) improves other economic markets resulting in overall regional economic growth.⁵¹ For example, one study found that, collectively, the addition of 152 farmers markets in Iowa led to an increase of 576 jobs, \$59.4 million in sales, and an increase of \$17.8 million in total household income.⁵² Additionally, farmers markets encourage people to visit towns with farmers markets, leading to those visitors spending money in neighborhood shops, further improving economic development.⁵³

C. Environmental Benefits

Many of the environmental benefits that come from urban agriculture stem from consumers purchasing locally-produced food rather than food produced farther away from home or by industrialized agriculture methods. Most obviously, local food travels a shorter distance, which gives the product a lighter carbon footprint than food transported from hundreds to thousands of miles away. A lighter carbon footprint, in turn, means the consumer is contributing

⁴⁸ Mogk et al., *supra* note 20, at 1531 (citations omitted).

⁴⁹ David Whitford, *Can Farming Save Detroit?*, CNN MONEY (Dec. 29, 2009, 11:37 AM), http://money.cnn.com/2009/12/29/news/economy/farming_detroit.fortune/index.htm.

⁵⁰ *Id.*

⁵¹ JEFFREY K. O’HARA, MARKET FORCES: CREATING JOBS THROUGH PUBLIC INVESTMENT IN LOCAL AND REGIONAL FOOD SYSTEMS 16 (Union of Concerned Scientists, 2011), available at http://www.ucsusa.org/food_and_agriculture/solutions/expand-healthy-food-access/market-forces.html.

⁵² *Id.* at 18 (explaining the methodologies associated with studies reporting on the economic impact of farmers markets in three states).

⁵³ *Id.* at 21.

less to carbon emissions that impact climate change.⁵⁴ Backyard gardens eliminate the need for food transport altogether and provide other benefits:

For example, chickens that roam in a backyard consume bugs, weeds, and slugs, reducing the need for [petrochemical-based] commercial slug bait, pesticides, and herbicides, and the pollution associated with these products. Chickens also consume food scraps, which reduces the amount of food waste thrown away. In contrast, many processed foods are also packaged foods. This means that the packaging must be created, which uses energy, and once the food is used, the packaging must be disposed of or recycled⁵⁵

Food transportation is not the only byproduct of industrialized agriculture that contributes to climate change. Farming and processing equipment, the manufacturing of fertilizer and pesticides, producing animal feed, and irrigating also contribute to the greenhouse gas emissions associated with intensive food production.⁵⁶ Urban farming, on the other hand, is generally performed without heavy machinery and much of the work is done by hand.⁵⁷ Furthermore, widespread use of fertilizers and pesticides in intensive agriculture contributes to water pollution when chemicals run off the land and into local waterways or groundwater systems.⁵⁸ In contrast, small urban garden plots use fewer petrochemicals and the likelihood of those products washing into waterways is greatly reduced.⁵⁹

Looking at environmental benefits on a more narrow scale, urban gardens can aid in improving air quality and reducing excessive heat associated with a landscape dominated by concrete and asphalt.⁶⁰ Farming in a city can also improve water quality by reducing the number of contaminants that are picked up by storm water runoff and by using water more efficiently, such as using gray-water to water

⁵⁴ See Schindler, *supra* note 27, at 274–75.

⁵⁵ *Id.*

⁵⁶ See, e.g., CITY OF EUGENE, A COMMUNITY CLIMATE & ENERGY ACTION PLAN FOR EUGENE 1, 22 (2010) [hereinafter CLIMATE & ENERGY ACTION PLAN], available at http://www.eugene-or.gov/archives/48/00_CEAP_FINAL_10%2018%2010_no%20appendices.pdf.

⁵⁷ Peters, *supra* note 8, at 220–21.

⁵⁸ Schindler, *supra* note 27, at 277.

⁵⁹ *Id.*

⁶⁰ See, e.g., Melanie J. Duda, *Growing in the D: Revising Current Laws to Promote a Model of Sustainable City Agriculture*, 89 U. DET. MERCY L. REV. 181, 184 (2012).

gardens.⁶¹ Additionally, urban agriculture can generate and encourage composting and recycling, which reduces individual waste, eases the problems of limited landfill space, and may reduce the cost of waste management.⁶²

As citizens and cities move toward localized and urban agriculture, the locale's contribution to industrialized agriculture diminishes, thus reducing negative impacts to climate change and water quality.⁶³

D. Food Security

The United States relies on an industrial agriculture system, which is unstable and puts the American people at risk of substantial food shortages. Our system of food distribution and production, which is transport intensive and relies heavily on fossil fuels for food growth, may prevent people's access to food in times of oil shortage or natural disaster.⁶⁴

To begin, the current system of industrial agriculture is dependent on oil to function, which places the nation's food supply in a precarious position.⁶⁵ Should there be an oil shortage, food transportation could become prohibitively expensive; additionally, increased transportation costs would contribute to increased food prices.⁶⁶ A local agriculture system, in contrast, is not dependent on oil to produce chemical fertilizers or to fuel farm equipment and trucks for transportation.⁶⁷ In turn, a community's food supply would be less susceptible to global dynamics.⁶⁸

Climate change and natural disasters also threaten our food supply. In the summer of 2012, farmers in the Midwest suffered one of the worst droughts our country has experienced since the 1950s.⁶⁹ As a result, corn and soybean production was reduced by twenty-seven

⁶¹ *Id.*

⁶² See, e.g., Mogk et al., *supra* note 20, at 1534. But see *id.* at 1535 ("Some agricultural wastes, if properly managed, can be beneficially recycled through composting or transformation into fuel. The management process can be costly, however.").

⁶³ Schindler, *supra* note 27.

⁶⁴ See, e.g., Duda, *supra* note 60, at 183.

⁶⁵ Peters, *supra* note 8, at 229.

⁶⁶ *Id.*

⁶⁷ *Id.* at 230.

⁶⁸ *Id.*

⁶⁹ U.S. Drought 2012: Food and Farm Impacts, ECON. RES. SERV., U.S. DEP'T OF AGRIC., <http://www.ers.usda.gov/topics/in-the-news/us-drought-2012-farm-and-food-impacts.aspx> (last updated July 26, 2013).

percent and seven percent, respectively.⁷⁰ This further resulted with increased retail food prices in 2013 for beef, pork, poultry, dairy, and processed foods containing wheat or corn.⁷¹ The 2012 drought has even contributed to sluggish economic growth.⁷² According to an economist at Morgan Stanley, the drought has slowed down the U.S. GDP by one-half of a percentage point, a figure that is expected to increase as drought conditions continue to worsen.⁷³ Further, the drought is estimated to have cost fifty billion dollars in productivity due to loss of crops and livestock, increased transportation costs, and lost working hours.⁷⁴

Despite record-breaking drought, looming climate change, and political turbulence, our country already suffers from a defective food distribution system that causes food insecurity. The United States Department of Agriculture (USDA) reported that during 2009, 14.7% of all American households were food insecure⁷⁵ at some point during the year.⁷⁶ Municipalities can help to insulate local communities from the possibility of food shortages and food insecurity through zoning, land use regulations, and urban agricultural initiatives that allow communities to develop and stabilize their own local food sources.⁷⁷

II

PLANNING FOR THE FUTURE: ESTABLISHING LOCAL FOOD POLICY

Municipalities can reap the full range of benefits from urban agriculture by developing comprehensive, multidisciplinary policies

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Mark Koba, *Drought Still Plagues US: Food Prices 'Going Up,'* CNBC (Jan. 11, 2013, 12:00 AM), http://www.cnbc.com/id/100372886/Drought_Still_Plagues_US_Food_Prices_039Going_Up03.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ See *Definitions of Food Security*, *supra* note 28 (defining food insecurity).

⁷⁶ Duda, *supra* note 60, at 183 (citing ALISHA COLEMAN-JENSEN ET AL., U.S. DEP'T OF AGRIC., HOUSEHOLD FOOD SECURITY IN THE UNITED STATES IN 2010, at 4 (2011), available at http://www.ers.usda.gov/publications/err-economic-research-report/err125.aspx#.UssCIzn_RUQ).

⁷⁷ See CAITLIN LOFTUS, AN APPLE A DAY—IF YOU CAN FIND ONE—KEEPS THE DOCTOR AWAY: HOW FOOD DESERTS HURT AMERICA'S HEALTH AND HOW EFFECTIVE LAND USE REGULATION CAN ELIMINATE THEM, 35 NO. 3 ZONING AND PLANNING LAW REPORT 1 (Patricia Salkin & Lora Lucero eds., 2012).

that address local food systems.⁷⁸ The time is ripe for city and state governments to get in on the local food trend.⁷⁹ As people become more conscious about the quality of their food, the increasing cost of food, and the environmental harms of the current intensive agriculture system, more consumers are interested in supporting seasonal, organic, and local produce through their food choices.⁸⁰ Local governments can utilize the momentum of this trend to establish food policy councils—councils dedicated to researching and analyzing regional food systems.⁸¹ Those councils can make policy recommendations that stimulate state, city, and independent action that will enhance and develop local food distribution.⁸²

Regional food councils and food policies can foster a locale's understanding of the food systems network, from a small community garden that serves only its plot-renters to large-scale farm-to-table programs that supply school cafeterias and big-box grocery stores with local produce. Some of the policy initiatives that have emerged from the local and urban food movement around the country include⁸³:

1. Local Food Systems. These policies focus on improving direct farm marketing, incentivizing the purchase of local food products, and creating opportunities for new markets.
2. Institutional Purchasing. Most prevalent as “farm-to-school” programs, these policies encourage the purchase of local food products by state institutions that include schools and hospitals.
3. Food Security and Anti-Hunger Initiatives. Efforts to assure that local communities have access to healthy, unprocessed foods through feeding assistance programs.
4. Farmland Preservation. Preserving a state's ability to harness local food production and increase citizen awareness of the need for healthy, nutrient-rich farmland.

⁷⁸ See Patricia E. Salkin & Amy Lavine, *Regional Foodsheds: Are Our Local Zoning and Land Use Regulations Healthy?*, 22 FORDHAM ENVTL. L. REV. 599, 609–15 (2011) (discussing strategies for comprehensive food system planning).

⁷⁹ See generally Neil D. Hamilton, *Putting a Face on Our Food: How State and Local Food Policies Can Promote the New Agriculture*, 7 DRAKE J. AGRIC. L. 407, 414 (2002).

⁸⁰ See, e.g., *id.*; Stephanie Clifford, *Wal-Mart to Buy More Local Produce*, N.Y. TIMES, Oct. 14, 2010, at B1, http://www.nytimes.com/2010/10/15/business/15walmart.html?_r=0.

⁸¹ See, e.g., Hamilton, *supra* note 79, at 442; *Guiding Principles*, PUGET SOUND REGIONAL COUNCIL, <http://www.psrc.org/assets/6436/FoodPolicyOnePager.pdf> (last visited Jan. 5, 2014).

⁸² See DETROIT FOOD SYSTEM REPORT, *supra* note 16, at 2–4; Hamilton, *supra* note 79, at 414–17.

⁸³ Hamilton, *supra* note 79, at 419.

5. Eco-Labeling. Using branding and marketing tools to create an identity for locally grown, produced, and manufactured food items, which will encourage consumers to buy local and support agriculture in their state.

6. New Farmers. Creating economic incentives that encourage beginning farmers that are interested in small-scale agriculture or urban farming as a new occupation or a supplement to their current employment.⁸⁴

Innovative programs like those mentioned above symbolize a realization by state and local governments: federal law and policy is only one dimension of food systems, and federal law alone cannot provide a localized response to local food issues.⁸⁵

The purpose of this section is not to discuss the intricacies of food policy initiatives, but to discuss how food policies and food policy councils play an integral role in promoting localized food systems that may ultimately compliment urban agriculture development. The discussion that follows will explain what food policies are and how those policies are created, and will highlight a few food policy councils from around the country.

A. What is a Food Policy?

A food policy is a set of recommendations that are usually generated by a food policy council. These food policies address concerns of how food is produced, processed, distributed, and purchased.⁸⁶ Food policies can influence administrative and legislative decisions that shape the operation of agricultural systems and food distribution for a designated geographic area.⁸⁷ State and local food policy can take shape in a variety of ways and can influence farmland preservation, urban development, economic markets, community health, and other aspects of food manufacture, production, and distribution.⁸⁸

Arguably, the most notable policy initiatives that food policy councils promote are institutional purchasing programs and anti-hunger initiatives. For example, Michigan's food policy—the Good

⁸⁴ *Id.* at 419–40 (providing a comprehensive look at each one of these categories).

⁸⁵ *Id.* at 416.

⁸⁶ *Food Policy*, WIKIPEDIA, http://en.wikipedia.org/wiki/Food_policy (last modified Jan. 5, 2014).

⁸⁷ Hamilton, *supra* note 79, at 417

⁸⁸ See, e.g., *Why Food Policy Matters*, FOOD POL'Y ACTION, <http://www.foodpolicyaction.org/whyitmatters.php> (last visited Jan. 5, 2014).

Food Charter—identified institutional food purchasing as one of its top agenda priorities. The Good Food Charter called for financial incentives, food infrastructure development, and school cafeteria grants to increase institutional purchasing of local produce by twenty percent by 2020.⁸⁹ Institutional food purchasing was also a key item at the Michigan Good Food Summit in 2010, which brought together stakeholders and policymakers throughout Michigan that have an interest in improving Michigan food systems.⁹⁰

Additionally, state and citywide anti-hunger programs aim to address issues associated with food deserts, food insecurity, and obesity.⁹¹ San Francisco's Healthy and Sustainable Food Policy has identified nutritional standards and food security as two key components to a holistic citywide food policy.⁹² The San Francisco Food Policy Task Force—the city's de facto food policy council—has continued to promote the hunger and food security initiative identified in the Healthy and Sustainable Food Policy.⁹³ The Food Security Task Force implemented various initiatives that included home-delivery programs for low-income seniors, food stamp programs, and school nutrition programs.⁹⁴

Food policies can also appear not as comprehensive documents, but as piecemeal efforts by cities to address food system issues. Food policies may be embedded in sustainability action plans, comprehensive plans, and other policy documents.⁹⁵ Governments that are incorporating these urban agriculture policies into their

⁸⁹ K. COLASANTI ET AL., MICHIGAN GOOD FOOD CHARTER 1, 15 (2010), available at <http://www.michiganfood.org/assets/goodfood/docs/MI%20Good%20Food%20Charter%20Final.pdf>.

⁹⁰ MICH. GOOD FOOD SUMMIT, <https://www.michiganfood.org/> (last visited Jan. 5, 2014).

⁹¹ See THE U.S. CONFERENCE OF MAYORS & SODEXO, CHILDHOOD ANTI-HUNGER PROGRAMS IN 24 CITIES, at 3 (City Policy Associates ed., 2009).

⁹² See *San Francisco Healthy and Sustainable Food Policy*, CITY AND COUNTY OF S.F., <http://www.sfgov3.org/index.aspx?page=754> (last visited Jan. 5, 2014). The Healthy and Sustainable Food Policy is a comprehensive food policy for San Francisco that is designed to create a thriving local food system by creating policies that set nutritional standards in vending machines, increase access to farmers markets, improve fish markets, improve school lunch programs, encourage wholesale markets of local products, identify land for urban farming, etc. *Id.*

⁹³ See THE U.S. CONFERENCE OF MAYORS & SODEXO, *supra* note 91, at 38.

⁹⁴ See *generally* SAN FRANCISCO FOOD SECURITY TASK FORCE, FOOD SECURITY FOR ALL: A STRATEGIC PLAN TO END HUNGER IN OUR CITY (2008).

⁹⁵ Schindler, *supra* note 27, at 291.

broader city planning documents recognize that city food production can help to serve broader sustainability goals.⁹⁶

The City of Eugene, Oregon, has adopted two food related policies: the Climate and Energy Action Plan (CEAP) and the Food Security Scoping and Resource Plan (FSS).⁹⁷ The CEAP identifies food and agriculture as one component of the city's sustainability efforts and identifies broad objectives that include reducing greenhouse gas emissions associated with agriculture and food waste; increasing food security by preserving the productive capacity of the local and regional foodsheds;⁹⁸ and increasing availability of home-grown and locally-sourced food in Eugene.⁹⁹ The FSS, on the other hand, is a non-binding, policy document (i.e., steering document) that identifies the different aspects of the Eugene food system that must be addressed in order to effectuate components of the CEAP.¹⁰⁰ The FSS food system elements include: (1) food production; (2) direct markets; (3) food transportation, storage and distribution; (4) food processing; (5) food retailing; (6) consumer interaction, education and networking; (7) food assistance; (8) community health; (9) food waste processing; and (10) government role.¹⁰¹

Food policies serve as guides for cities and states that are looking to improve and stabilize their local food networks, whether those networks are on a statewide, regional, or citywide basis. By creating a food policy, cities can better visualize the many aspects of a food system that can be addressed to strengthen food production and distribution as a whole. Through these comprehensive methods, states and cities are better able to reap the benefits associated with local agriculture.

⁹⁶ *Id.* at 292.

⁹⁷ In addition to the City's efforts to address food systems, Lane County, which encompasses the City of Eugene, has a Food Policy Council with its own food policy; however, the food council does not have board members from the City of Eugene, making it a council independent from city government. See LANE COUNTY FOOD POL'Y COUNCIL, <http://www.fpclanecounty.org/> (last visited Jan. 5, 2014).

⁹⁸ "A [local] foodshed is a geographic area in reasonably close proximity to where an urban community receives agricultural commodities." Salkin & Lavine, *supra* note 78, at 600.

⁹⁹ CLIMATE & ENERGY ACTION PLAN, *supra* note 56, at 22–26.

¹⁰⁰ See CITY OF EUGENE, EUGENE FOOD SECURITY SCOPING AND RESOURCE PLAN i, at 1–3 (2010) [hereinafter FOOD SECURITY SCOPING], available at www.eugene-or.gov/DocumentView.aspx?DID=1087.

¹⁰¹ *Id.* at 2.

B. Food Policy Councils

Municipalities may establish a food policy council to serve as the primary channel for all issues relating to local food systems. Food policy councils examine the food system in designated geographic areas and research issues associated with food distribution and production. Additionally, food policy councils will often consider land use planning, economic development, and food deserts to develop recommendations on how to improve a food system.¹⁰²

State, county, or local governments can establish food policy councils.¹⁰³ Alternatively, food policy councils may be established independently of local government. The Lane County Food Policy Council in Eugene, Oregon, for example, operates as a non-governmental advocacy effort.¹⁰⁴ There are currently more than 200 food policy councils nationwide.¹⁰⁵ Food policy councils will often address regional needs by developing their own mission statements that are specific to a particular community. Further, council members are generally experts in public health, farming, city planning, primary education, or social services.¹⁰⁶ If the council is established by state law or city ordinance, the composition of the council is usually defined by the ordinance in order to assure that various interests are represented.¹⁰⁷ For example, Detroit's Food Policy Council members are appointed by the mayor and must include members that represent sustainable agriculture, retail food stores, food industry workers,

¹⁰² See, e.g., *Food Policy Councils*, AM. PLAN. ASS'N, <http://www.planning.org/nationalcenters/health/briefingpapers/foodcouncils.htm> (last visited Jan. 9, 2014); DAVID ZODROW, *FOOD SECURITY BEGINS AT HOME: CREATING COMMUNITY FOOD COALITIONS IN THE SOUTH* 1, 47 (2005), available at http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-a-livable-future/_pdf/projects/FPN/how_to_guide/getting_started/How%20Food%20Policy%20Councils%20Are%20Organized%20and%20Operate.pdf.

¹⁰³ See Salkin & Lavine, *supra* note 78 (recommending that local governments establish food policies); *Food Policy Councils*, *supra* note 102.

¹⁰⁴ See Nina Mukherji & Alfonso Morales, *Zoning For Urban Agriculture*, 3 ZONING PRACTICE 2, 3 (Mar. 2010), available at <http://www.planning.org/zoningpractice/2010/pdf/mar.pdf>.

¹⁰⁵ See *CFSC List of Food Policy Councils in North America*, COMMUNITY FOOD SECURITY COALITION (May 2012), available at <http://www.markwinne.com/wp-content/uploads/2012/09/fp-councils-may-2012.pdf> (listing nine statewide food policy councils and nineteen local food policy councils).

¹⁰⁶ *Id.*

¹⁰⁷ See, e.g., DETROIT FOOD POL'Y COUNCIL, <http://detroitfoodpolycouncil.net/who-we-are/council-members> (last visited Jan. 5, 2014) (listing board member positions).

urban planners, and Detroit residents.¹⁰⁸ If the council is established independent of a government agency, then the council has discretion to choose its members.¹⁰⁹ Food policy councils established by local governments are the focus of this section.

To better understand how food policy councils function, this Comment will explore the Michigan Food Policy Council, the Portland-Multnomah Food Policy Council, and the Puget Sound Food Policy Council. Each council represents an example of a state, regional, or county-wide food policy initiative.

C. Food Policy Profiles

1. Statewide Planning: Michigan

The Michigan Food Policy Council (MFPC), which was established in 2005, operates within the Department of Agriculture and serves as an advisory board to the governor.¹¹⁰ The MFPC consists of twenty-one members representing the interests of a number of state departments, including Community Health, Environmental Quality, Labor and Economic Growth, as well as appointed individuals that represent Michigan schools, anti-hunger organizations, and other various food industries.¹¹¹ The primary goal of the MFPC is to foster “a healthy and available food supply to all of Michigan’s residents while enhancing the state’s agricultural and natural resources, encouraging economic growth, expanding the viability of small- to mid-scale farms, and improving the health of . . . communities and Michigan residents.”¹¹²

The MFPC created the Good Food Charter, which serves as a roadmap for the activities of the MFPC and sets specific goals for Michigan’s food system.¹¹³ By 2020, Michigan hopes to achieve the following:

¹⁰⁸ DETROIT FOOD POL’Y COUNCIL, DETROIT FOOD POLICY COUNCIL BYLAWS § 1(1) (2011), *available at* http://detroitfoodpolicycouncil.net/sites/default/files/pdfs/DFPC_Bylaws_Final.pdf.

¹⁰⁹ *See, e.g., Overview*, LANE COUNTY FOOD POL’Y COUNCIL, <http://www.fpclane.org/overview/> (last visited Jan. 5, 2014).

¹¹⁰ State of Mich., Exec. Order No. 2005-13, MICHIGAN.GOV, <http://www.michigan.gov/granholm/0,4587,7-168-21975-119526--,00.html> (last visited Jan. 11, 2014).

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *See* MICHIGAN GOOD FOOD CHARTER, *supra* note 89, at 4.

1. Michigan institutions will source 20 percent of their food products from Michigan growers, producers and processors;
2. Michigan farmers will profitably supply 20 percent of all Michigan institutional, retailer and consumer food purchases and be able to pay fair wages to their workers;
3. Michigan will generate new agri-food businesses at a rate that enables 20 percent of food purchased in Michigan to come from Michigan;
4. Eighty percent of Michigan residents . . . will have easy access to affordable, fresh, healthy food, 20 percent of which is from Michigan sources;
5. Michigan Nutrition Standards will be met by 100 percent of school meals and 75 percent of schools selling food outside school meal programs; and
6. Michigan schools will incorporate food and agriculture into the pre-K through 12th grade curriculum for all Michigan students and youth will have access to food and agriculture entrepreneurial opportunities.¹¹⁴

The council structure includes five work groups that are delegated with the responsibilities associated with certain policies.¹¹⁵ Each work group has its own agenda and duty to report on its progress.¹¹⁶ Some of the council's accomplishments include doubling the amount of school food purchased directly from farmers or through distributors and increasing economic activity associated with the agri-food business by fifty-two percent (for a total of \$91.4 billion in gross economic activity).¹¹⁷

2. Citywide Planning: Portland-Multnomah Food Council

Oregon, unlike Michigan, does not have a statewide food policy council, though Oregon legislators have been trying to establish one since 2003.¹¹⁸ Instead, Oregon has four regional food councils in

¹¹⁴ *Id.* at 2.

¹¹⁵ *Id.* at 6.

¹¹⁶ *Id.*

¹¹⁷ MICHIGAN GOOD FOOD, GOOD FOOD REPORT CARD (2012), available at http://www.michiganfood.org/assets/goodfood/docs/2012_Michigan_Good_Food_Report_Card.pdf.

¹¹⁸ See H.R. 2761, 76th Leg., Reg. Sess. (Or. 2011). The first bill introduced to address a unified food policy was in 2003 with the "Buy Oregon" bill, but it has been in committee since its inception. See S.B. 589, 72nd Leg., Reg. Sess. (Or. 2003).

separate geographic areas—only one of which is run by a local government; the other three councils are independently run.¹¹⁹

This government-run food council is the Portland-Multnomah Food Council (PMFC), a citizen advisory group within the City of Portland's Bureau of Sustainability.¹²⁰ The PMFC does not have specific set goals, like those of the Michigan Good Food Charter, but instead guides its work by a set of general principles.¹²¹ For example, one of the principles states that "[e]very . . . resident has the right to an adequate supply of nutritious, affordable and culturally appropriate food."¹²² Another guiding principle includes recognition that "a strong commitment should be made to" food and agricultural economies, and that regional food systems protect natural resources and support city and county sustainability goals.¹²³

With these principles in mind, PMFC has focused its efforts on three critical areas: (1) School Food and Institutional Purchasing; (2) Food Access and Education; and (3) Land Use and Food Policy. Under the umbrella of the third critical area, Portland created the Diggable City initiative.¹²⁴ The goal of Diggable City is to identify and inventory city-owned lands suitable for agricultural use.¹²⁵ The city land inventory directed by a group of Portland State University students identified more than 400 viable city parcels.¹²⁶ However, most of the sites are not ultimately available for urban agriculture, as many of those are subject to other city plans such as wetlands preservation, wastewater treatment, or other city park needs like playgrounds and sports facilities.¹²⁷ As such, the list of suitable sites has been whittled down to a few dozen.¹²⁸ Nonetheless, this program

¹¹⁹ *Id.*

¹²⁰ See *Portland-Multnomah Food Policy Council*, CITY OF PORTLAND OR., <http://www.portlandoregon.gov/bps/42290> (last visited Jan. 5, 2014).

¹²¹ *Governing Principles*, CITY OF PORTLAND OR., <http://www.portlandoregon.gov/bps/article/116812> (last visited Jan. 5, 2014).

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Diggable City*, CITY OF PORTLAND, <http://www.portlandoregon.gov/bps/article/121596> (last visited Jan. 5, 2014).

¹²⁵ *Id.*

¹²⁶ MEGHAN MACKENZIE & STEVE COHEN, *THE DIGGABLE CITY, PHASE III: IMPLEMENTATION STRATEGIES AND RECOMMENDATIONS 1, 2* (2007), available at <http://www.portlandoregon.gov/bps/article/171174>.

¹²⁷ *Id.* at 3.

¹²⁸ *Id.* at 12.

is a strong example of how food policy councils can inform city governments and create a framework for urban agriculture.

3. Regional Planning: Puget Sound Regional Food Policy Council

Washington, like Oregon, does not have a statewide food policy council.¹²⁹ Instead, Washington has three food policy councils, including the Clark County Food Policy Council, the Spokane Food Policy Council, and the Regional Food Policy Council (RFPC) of Puget Sound.¹³⁰

The RFPC, formed in 2010, is a county-wide council that serves King, Snohomish, Pierce, and Kitsap Counties.¹³¹ Like the PMFC, the RFPC has established broad principles that guide its initiatives, which fall into categories like health, policy, economic development, and agriculture.¹³² The board is comprised of various city officials, local tribes, and stakeholders from the waste/recycling/energy sector, restaurants, higher education, and the farming community.¹³³

Funding is critical to any organization's success. One of the ways RFPC secured funds for 2012 was by contracting with the City of Seattle to develop a comprehensive report on how Seattle could incorporate food policy into its comprehensive plan.¹³⁴ The RFPC identified six elements that should be expanded upon in Seattle's comprehensive plan in order to promote a holistic food policy: (1)

¹²⁹ S. B. 6343, 61st Leg., Reg. Sess. (Wash. 2010) (vetoed by Governor Christine Gregoire on Apr. 2, 2010). Despite vetoing the Food Policy bill, two months later Governor Gregoire issued an executive order directing the "Departments of Health, Agriculture, and Social and Health Services to work collaboratively with other agencies and non-governmental organizations to examine state food policy, food-related programs, and food-related issues" to inform policy makers on how to address issues of food security, nutrition, and health. Seattle, Wash. Exec. Order No. 10-02 (June 22, 2010). As a result, the Inter Agency Working group developed the "Report on Washington's Food System Response to Executive Order 10-02" in January 2012. REPORT ON WASHINGTON'S FOOD SYSTEM RESPONSE TO EXECUTIVE ORDER 10-02 (Jan. 2012), *available at* <http://county.wsu.edu/thurston/agriculture/Documents/Agriculture%20background/2012%20Report%20on%20WA%20Food%20System%20-%20Response%20to%20EO%2010-02.pdf>.

¹³⁰ *CFSC List of Food Policy Councils in North America*, *supra* note 105.

¹³¹ *Guiding Principles*, *supra* note 81.

¹³² *Id.*

¹³³ *Regional Food Policy Council*, PUGET SOUND REGIONAL COUNCIL, <http://www.psrc.org/about/advisory/regional-food-policy-council/> (last visited Jan. 7, 2014).

¹³⁴ PUGET SOUND REGIONAL COUNCIL, INTEGRATING FOOD POLICY IN COMPREHENSIVE PLANNING: STRATEGIES AND RESOURCES FOR THE CITY OF SEATTLE 1 (2012) [hereinafter *STRATEGIES AND RESOURCES*], *available at* http://www.psrc.org/assets/8593/FINAL_seattle_food_comp_plan_082012.pdf.

Land Use; (2) Transportation; (3) Housing; (4) Economic Development; (5) Human Development (i.e., food assistance programs, emergency planning, etc.); and (6) Environment.¹³⁵ In developing the Seattle plan, RFPC looked to Seattle's existing comprehensive plan policies and surveyed regional and national comprehensive plans that included food policies.¹³⁶ Seattle reviewed RFPC's recommendations and amended the comprehensive plan to include a "Healthy Food" component.¹³⁷ Among the amendments, the plan mandates that the City increase access to local, nutritious produce by creating access to healthy food "for all areas"; "preserve active farms" that are located near the city; and expand its capacity to "grow, process, distribute, and access local foods."¹³⁸ The plan's healthy food policies also improve the City's sustainability goals by requiring that the City "pursue the long-term goal of diverting 100 percent of the city's solid waste from disposal by . . . preventing food waste," and "encourage residents to reduce food waste as a strategy to decrease" utility expenses, fertilizer and pesticide use, and greenhouse gas emissions.¹³⁹

D. Conclusion

Food policy councils can play a meaningful role in influencing the progression of state and city comprehensive plans that will be favorable to the development of urban agriculture. By developing guiding principles or goals, food policy councils can promote initiatives and activities that are consistent with general city planning. Furthermore, councils established by local governments can be confident that their efforts will be rewarded, as their efforts are reviewed and sanctioned by government authorities.¹⁴⁰ Finally, food policy councils promote holistic approaches to urban agriculture that

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ See DEP'T OF PLANNING & DEV., CITY OF SEATTLE, DIRECTOR'S REPORT ON THE MAYOR'S RECOMMENDED COMPREHENSIVE PLAN 2013 ANNUAL AMENDMENTS 9 (2013) [hereinafter DIRECTOR'S REPORT], available at http://www.seattle.gov/dpd/cms/groups/pan/@pan/documents/web_informational/dpdp025835.pdf; see also Seattle, Wash., Ordinance 124177 § 1(C) (May 13, 2013).

¹³⁸ Seattle, Wash., Ordinance 124177 attach. C. UV10.5, LU5.5, HD 13.7 (May 13, 2013).

¹³⁹ Seattle, Wash., Ordinance 124177 attach. C. U12, U12.5 (May 13, 2013).

¹⁴⁰ See, e.g., STRATEGIES AND RESOURCES, *supra* note 134; DIRECTOR'S REPORT, *supra* note 137.

will likely generate stable food systems, resulting in wide-ranging benefits for the whole community, which may include improved citizen health, reduced greenhouse gas emissions, and economic revitalization for local businesses.

III

PROMOTING URBAN AGRICULTURE THROUGH COMPREHENSIVE PLANNING & PROGRESSIVE LAND USE STRATEGIES

Food policies are recommendations that form the legal framework in which urban agriculture may exist, but local governments must be proactive about effectuating those policies. One effective strategy may include revising comprehensive plans and updating the zoning code to eliminate existing barriers to urban agriculture.¹⁴¹ Common roadblocks to urban agriculture activities include restrictions on raising livestock, allowing food gardens as primary uses, and the sale of farm products.¹⁴² Progressive zoning can resolve some of these issues by allowing rooftop gardens, greenhouses and hoop houses, and farmers markets that are equitably distributed in various neighborhoods.¹⁴³ Additionally, improvements to zoning ordinances that allow for urban agriculture can alleviate urban blight, decrease crime, beautify decaying neighborhoods, and increase citizens' access to healthy food.¹⁴⁴ Comprehensive plans and land use zoning are essential for promoting urban agriculture initiatives that will enhance the development of a secure local food system.¹⁴⁵

A. Comprehensive Plans

The policies identified by a food policy council should be incorporated into comprehensive plans in order to be most effective.¹⁴⁶ Such comprehensive plans consider the current and future land use needs of the locale and outline goals and objectives for each land use.¹⁴⁷ Because food system planning by its very nature

¹⁴¹ Schindler, *supra* note 27, at 287.

¹⁴² Kate A. Voigt, *Pigs in the Backyard or the Barnyard: Removing Zoning Impediments to Urban Agriculture*, 38 B.C. ENVTL. AFF. L. REV. 537, 548–55 (2011).

¹⁴³ See, e.g., SALKIN, *supra* note 2, at 633, 635, 638–39.

¹⁴⁴ See, e.g., Duda, *supra* note 60, at 183–84.

¹⁴⁵ See, e.g., Salkin & Lavine, *supra* note 78, at 601.

¹⁴⁶ *Id.* at 611.

¹⁴⁷ See, e.g., LANE COUNCIL OF GOVERNMENTS, EUGENE-SPRINGFIELD METROPOLITAN AREA GENERAL PLAN 2004, at II-A-1 (2010), available at http://www.lcog.org/documents/metro/METROPLAN_currentto12-31-10.pdf.

encompasses a large geographic area and requires long-term vision, foodshed policies are the precise kind of policies that should be included in comprehensive plans.¹⁴⁸

Some local comprehensive plans contain policy objectives that address regional food initiatives.¹⁴⁹ For example, Detroit, Michigan's Master Plan specifically provides that the City will "[s]upport and promote the reuse of vacant land for community and school gardens and urban agriculture."¹⁵⁰ Currently, Detroit is in the process of revitalizing the city by allowing private investors, particularly Hantz Farm, to purchase vacant parcels for a commercial farm.¹⁵¹ Despite the fact that land sales for agriculture support the City's land use goals, Hantz Farm's development of some 20,000 parcels of vacant land has been controversial.¹⁵² Nonetheless, the comprehensive plan validates the use of urban agriculture as a viable and preferable land use, encouraging Detroit to enact ordinances that promote a dynamic urban food system.¹⁵³ Seattle also recently updated the city's comprehensive plan to accommodate urban agricultural initiatives.¹⁵⁴

¹⁴⁸ Salkin & Lavine, *supra* note 78, at 614.

¹⁴⁹ *Id.* at 611.

¹⁵⁰ CITY OF DETROIT, MASTER PLAN OF POLICIES 1, 48 (July 2009), available at http://www.detroitmi.gov/Portals/0/docs/planning/planning/MPlan/MPlan_%202009/Master%20Plan%20Text.pdf (see citywide policies regarding "Parks, Recreation and Open Space").

¹⁵¹ See, e.g., Whitford, *supra* note 49.

¹⁵² Matthew Dolan, *New Detroit Farm Plan Taking Root*, WALL ST. J. (July 6, 2012, 12:01 AM), <http://online.wsj.com/article/SB10001424052702304898704577479090390757800.html>. Skeptics are concerned that the new project will not create jobs, will give public land to a private enterprise to the detriment of the community, and that the project will not actually further the City's farming policies since the farm's owner has indicated that he may use the land for a tree farm. *Id.* Others claim that the sale of land to a private enterprise is a corporate land grab. See John Gallagher et al., *Council Oks Sale of 1,500 lots for Urban Farming Project*, DETROIT FREE PRESS (Dec. 11, 2012, 5:19 PM), <http://www.freep.com/article/20121211/NEWS01/121211061/detroit-city-council-hantz-woodlands-land-sale>. The City of Detroit sold that land below fair market value to Hantz Farm, and some citizens claim that they have been trying to purchase the land from the City for the same cost for years, but their efforts have been fruitless. *Id.* The land, located near the waterfront, is prime land for development and citizens are concerned that Hantz Farm could sell the land for profit in the future. *Id.*

¹⁵³ KATHRYN COLASANTI ET AL., GROWING FOOD IN THE CITY: THE PRODUCTION POTENTIAL OF DETROIT'S VACANT LAND 1, 12 (2010), available at http://www.fairfoodnetwork.org/sites/default/files/growing_food_in_the_city.pdf.

¹⁵⁴ See SEATTLE'S COMPREHENSIVE PLAN, CITY OF SEATTLE, available at http://www.seattle.gov/dpd/cs/groups/pan/@pan/documents/web_informational/dpdd016610.pdf; see also Seattle, Wash., Ordinance 124,177 (May 13, 2013) (detailing the comprehensive plan's recent amendments).

As discussed earlier, the plan amendments mandate that the City implement policies that promote citizen access to local food produced in the city, preserve nearby farmland, and improve the city's air quality by reducing greenhouse gas emissions associated with transportation of food.¹⁵⁵

The policies in Detroit and Seattle help create regional foodsheds: "a geographic area in reasonably close proximity to where an urban community receives agricultural commodities."¹⁵⁶ Regional foodshed planning helps strengthen community food networks, lowers food prices, reduces greenhouse gas emissions, strengthens local economies, and creates healthier diets.¹⁵⁷ City zoning regulations must be consistent with the city's comprehensive plan; therefore, city zoning is the mechanism by which the city realizes the policies embodied in its comprehensive plan.¹⁵⁸

B. City Zoning

1. Introduction

Land use zoning is one of the means by which comprehensive plans may be put into effect.¹⁵⁹ As such, urban agriculture initiatives will be most successful if cities amend their land use codes to permit small-scale farming activity within city limits. Zoning codes, as they exist today, may unintentionally create barriers that impede agricultural development, such as imposing height restrictions on vegetation, dictating fencing requirements, and prohibiting the sale of backyard grown produce.¹⁶⁰ Updating zoning codes will remove these barriers and create a framework for urban agriculture in the city by identifying districts that allow farmers markets, designating zones that permit structures like greenhouses and hoop houses, or amending permitted uses in residential areas to include animal husbandry or beekeeping.¹⁶¹

Municipalities should be cognizant of the scope and extent of urban agriculture that will be promoted by changes to the zoning

¹⁵⁵ *Id.*

¹⁵⁶ Salkin & Lavine, *supra* note 78, at 600.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 611.

¹⁵⁹ JOHN R. NOLON & PATRICIA E. SALKIN, LAND USE IN A NUTSHELL 53–54 (West ed. 2006).

¹⁶⁰ See Peters, *supra* note 18, at 313.

¹⁶¹ *Id.* at 312–13.

ordinance.¹⁶² The American Planning Association (APA) recommends that city planners categorize urban agricultural activities into four intensity schemes:

The first category, extensive/intensive agriculture, includes rural and periurban farming and associated activities. The second category, less extensive/intensive urban agriculture, describes urban farms and farmers markets. The third category, extensive/less intensive urban agriculture, applies to backyard and community gardens. The fourth category implies little urban agricultural activity . . . [where] home gardening is contingent on personal interest but is neither encouraged nor discouraged; community gardens exist, but irregularly and often outside regulatory regimes.¹⁶³

The intensity and scope of agricultural activities that a city will allow is also influenced by municipal ordinances, zoning and building codes, animal control regulations, and health codes.¹⁶⁴ Generally, agricultural activities may be permitted as-of-right, as a conditional use, as an accessory use, or as an explicitly prohibited use.¹⁶⁵ An activity permitted as-of-right is one that does not require a permit, variance, or other governmental approval and may be best suited for APA categories three and four.¹⁶⁶ Accessory uses are those uses that compliment as-of-right uses and can only occur in conjunction with those uses.¹⁶⁷ Conditional uses require that the city approve the activity through a permitting process before the activity can begin on the property in question.¹⁶⁸

City zoning ordinances that can expansively enhance urban agriculture can range from the creation of an agricultural zone to permitting rooftop gardens to regulating height and setbacks of structures on farming plots.¹⁶⁹ This Comment will only address a few select zoning issues: creation of urban agriculture districts, zoning for livestock, and farm sales.

¹⁶² See WOOTEN & ACKERMAN, *supra* note 30, at 6.

¹⁶³ Mukherji & Morales, *supra* note 104, at 4.

¹⁶⁴ Peters, *supra* note 18, at 312.

¹⁶⁵ *Id.*

¹⁶⁶ See WOOTEN & ACKERMAN, *supra* note 30, at 7.

¹⁶⁷ NOLON & SALKIN, *supra* note 159, at 70.

¹⁶⁸ *Id.* at 86–88.

¹⁶⁹ See, e.g., SALKIN, *supra* note 2, at 634–38; Peters, *supra* 18, at 312–53.

2. Urban Agriculture Districts

Instead of creating agricultural components to zoning ordinances, some cities have established independent agriculture districts to facilitate urban farming.¹⁷⁰ Agriculture districts can serve a number of purposes.¹⁷¹ First, those districts allow and promote intensive urban agriculture—such as urban farms, farmers markets, and composting operations.¹⁷² Presumably, these districts will benefit more members of the community, as opposed to only individuals who own a community garden plot or grow vegetables in their backyard for their own consumption.¹⁷³ Second, designated agricultural districts help to protect community gardens and urban farms from future developments.¹⁷⁴ Currently, many urban farms and community gardens are established on leased land, making these operations susceptible to future changes.¹⁷⁵ A zoning ordinance that designates an area of the city for urban farming activities creates disincentives for developers to want to claim a piece of land in those areas, and makes it administratively difficult for the city to approve such sales.¹⁷⁶ Third, urban agriculture districts that are part of a comprehensive city plan will help to avoid nuisance issues like noises and smells associated with farm animals or traffic congestion related to farmers markets.¹⁷⁷

Cleveland, Ohio has had an agriculture district in its zoning code since 2007.¹⁷⁸ The Urban Garden District allows for community

¹⁷⁰ See, e.g., CLEVELAND, OHIO, CODE OF ORDINANCES § 336.01 (2007) (establishing an Urban Garden District); CHICAGO, ILL. ZONING ORDINANCE § 17-2-0207 (2011) (allowing rooftop gardens, community gardening, and indoor/outdoor urban farms in zones that previously prohibited such activities); Boston, Mass., Draft Ordinance to Regulate Urban Agriculture, Art. 89 (Dec. 18, 2013), available at <http://www.bostonredevelopmentauthority.org/getattachment/8405c72c-7520-43ad-a969-0e27dddade7a2>.

¹⁷¹ Cleveland, Ohio's proposed Urban Agriculture Overlay District's stated purposes include providing appropriately located and sized land for urban agriculture use, ensuring safe and sanitary conditions for urban agriculture, protecting nearby residents from adverse impacts associated with agriculture, and ensuring that land suited for non-agricultural use remains available for those uses. Cleveland, Ohio, Draft Chapter 336A, § 336A.01(a)-(g), available at <http://planning.city.cleveland.oh.us/zoning/cpc.php> (last visited Jan. 7, 2014) (pending before City Council).

¹⁷² Mukherji & Morales, *supra* note 104, at 5.

¹⁷³ See Voigt, *supra* note 142, at 565–65.

¹⁷⁴ Mukherji & Morales, *supra* note 104, at 5.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Peters, *supra* note 18, at 321; see also CLEVELAND, OHIO, CODE OF ORDINANCES §§ 336.01-05 (Mar. 5, 2007).

gardens and market gardens to be established as a primary use.¹⁷⁹ Both types of gardens are defined broadly, allowing for individuals, organizations, or groups of organizations to grow and harvest food and non-food items for sale, consumption, or donation.¹⁸⁰ The Urban Garden District also allows for a number of accessory uses, enabling gardens to be productive year-round and to encourage community involvement.¹⁸¹ Garden parcels may install greenhouses, cold frames, play areas, public restrooms, garden art, and other accessory uses.¹⁸² Gardens may also include chicken coops and beehives.¹⁸³ Cleveland is also in the process of considering an amendment to this ordinance to include an Urban Agriculture Overlay District, which would allow more intensive agriculture in the city and designate space for permanent farmers markets.¹⁸⁴

Denver, Colorado amended the City's zoning code in 2010 to accommodate agricultural uses within the city.¹⁸⁵ Under the new code, urban gardening, along with aquaculture and plant nurseries, is a permitted primary use within all zoning districts in the city.¹⁸⁶ Urban gardens are defined as "[l]and that is (1) managed by a public or nonprofit organization, or by one or more private persons, and (2) used to grow and harvest plants for donation, for personal use consumption, or for off-site sales by those managing or cultivating the land and their households."¹⁸⁷ A unique feature of Denver's code is that it allows for commercial agriculture throughout the city.¹⁸⁸ Interestingly, Denver chose to promote urban agriculture through rezoning prior to amending the City's comprehensive plan or its sustainability plan.¹⁸⁹

¹⁷⁹ CLEVELAND, OHIO, CODE OF ORDINANCES § 336.03 (Mar. 5, 2007).

¹⁸⁰ *Id.*

¹⁸¹ *Id.* § 336.04 (outlining permitted accessory uses).

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Cleveland, Ohio, Draft Chapter 336A § 336A.01(a)-(g), *available at* <http://planning.city.cleveland.oh.us/zoning/pdf/urbanAgOverlayDraft.pdf>.

¹⁸⁵ Peters, *supra* note 18, at 322.

¹⁸⁶ *Id.*

¹⁸⁷ DENVER, COLO., DENVER ZONING CODE 11.12.6 (2010) (defining "primary agriculture uses").

¹⁸⁸ JEFFREY JOHN ET AL., PLANNING AND POLICIES TO ENCOURAGE URBAN AGRICULTURE IN DENVER: A PATH TO HEALTHY COMMUNITIES, EQUAL FOOD ACCESS, AND SUSTAINABLE URBAN DEVELOPMENT 1, 3 (2011), *available at* <http://www.law.du.edu/documents/rmlui/smart-growth-projects/urbanagriculture-report.pdf>.

¹⁸⁹ *Id.*

Boston, Massachusetts, is currently piloting an urban agriculture rezoning initiative in its Dorchester Neighborhood.¹⁹⁰ The rezone initiative began in fall 2011 by testing an Urban Agriculture Overlay District on two city-owned properties, which led to the establishment of two farms—one operated by a private company and the other by a nonprofit organization.¹⁹¹ The development of the City's agriculture overlay zone will address six "modules" or considerations for comprehensive rezoning: (1) soil safety, pesticides and fertilizers, and composting; (2) growing of produce and accessory structures; (3) rooftop and vertical agriculture; (4) hydroponics and aquaculture; (5) keeping of animals and bees; and (6) farmers markets, winter markets, farm stands and sales.¹⁹²

Rezoning for urban farms will mark a dramatic shift for the City of Boston. The current zoning code forbids urban farms, but the rezone initiative would allow farms in nearly every zoning district in the city.¹⁹³ The recommended urban agriculture rezoning distinguishes between ground level and rooftop zoning and distinguishes between small, medium, and large urban farms.¹⁹⁴ If the recommendations are accepted as proposed, small to medium ground level or rooftop urban farming will be allowed as-of-right in residential, neighborhood/commercial, community/commercial, and industrial zones.¹⁹⁵ Likewise, ground level or rooftop, large urban farms will be allowed as a conditional use.¹⁹⁶

3. Zoning for Microlivestock

Ordinances currently banning livestock production should be reconsidered in order to promote a more stable and well-rounded food

¹⁹⁰ *Urban Agriculture Rezoning Initiative*, BOS. REDEVELOPMENT AUTHORITY, <http://www.bostonredevelopmentauthority.org/news-calendar/news-updates/2013/11/14/mayor-menino-announces-new-planning-zoning-initiat> (last visited Jan. 11, 2014).

¹⁹¹ *Mayor Merino Announces Start of Community Meetings on Urban Agriculture in Boston*, CITYOFBOSTON.GOV, <http://www.cityofboston.gov/news/default.aspx?id=6163> (last visited Jan. 11, 2014).

¹⁹² *Urban Agriculture Working Group*, CITYOFBOSTON.GOV, <http://www.cityofboston.gov/food/urbanag/workinggroup.asp> (last visited Jan. 11, 2014).

¹⁹³ See Boston, Mass., Draft Ordinance to Regulate Urban Agriculture, Art. 89 (last updated Dec. 18, 2013), available at <http://www.bostonredevelopmentauthority.org/getattachment/8405c72c-7520-43ad-a969-0e27dddae7a2>.

¹⁹⁴ The recommendations provide that a small urban farm be defined as less than 10,000 square feet, a medium urban farm as 10,000 square feet to one acre, and a large urban farm as greater than one acre. *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

system, so long as a city can do so without causing nuisance conflicts.¹⁹⁷ In particular, backyard chicken coops and beekeeping have recently become more prevalent in urban centers.¹⁹⁸ A number of cities around the country have revisited their livestock regulations to permit a limited number of chickens in certain residential areas. These cities include Austin; Cleveland; Houston; Nashville; New York; Portland, Oregon; San Francisco; Seattle; St. Louis; and Tulsa.¹⁹⁹ Many cities that allow backyard chickens explicitly prohibit roosters due to noise concerns.²⁰⁰

Beekeeping has also become a popular hobby of city dwellers, and bees can play an important role in aiding with the productivity of urban gardens.²⁰¹ Cities with beekeeping ordinances can alleviate public concerns by imposing setbacks and limits on the number of hives allowed, prohibiting apiaries near schools and public parks, and requiring on-site access to water to prevent bees from seeking water on neighboring parcels.²⁰² In Baltimore, for example, one hive containing no more than one swarm may be kept on each parcel of 2500 square feet.²⁰³ Hives must be registered with the city, inaccessible to the public, and may not “unreasonably interfere with the proper enjoyment of the property of others, with the comfort of the public, or with the use of any public right-of-way.”²⁰⁴

Some cities permit a limited number of microlivestock such as pygmy goats, pigs, emus, and rabbits in certain residential zones.²⁰⁵ Eugene, Oregon, for example, adopted an urban animal keeping ordinance in February 2013 to permit properties in various residential zones to raise livestock.²⁰⁶ Properties less than 20,000 square feet are permitted to have two of the following categories of animals: (1) up to six female domestic fowl; (2) up to six rabbits; (3) up to three

¹⁹⁷ See FOOD SECURITY SCOPING, *supra* note 100, at 30–31.

¹⁹⁸ See, e.g., Peters, *supra* note 18, at 329.

¹⁹⁹ See generally SALKIN, *supra* note 2, at 634–35; Peters, *supra* note 18, at 331.

²⁰⁰ FOOD SECURITY SCOPING, *supra* note 100, at 45.

²⁰¹ SALKIN, *supra* note 2, at 634–35.

²⁰² *Id.*

²⁰³ Peters, *supra* note 18, at 334.

²⁰⁴ *Id.* at 335 (internal quotations omitted).

²⁰⁵ See generally *id.* at 328–44 (discussing livestock ordinances in Milwaukee, Cleveland, Baltimore, Denver, Portland, Oregon, Seattle, and Los Angeles).

²⁰⁶ Eugene, Or., Ordinance 20507 (Feb. 20, 2013), available at www.eugene-or.gov/documentcenter/view/10753.

miniature goats; and (4) one miniature pig.²⁰⁷ Properties larger than 20,000 square feet can house all categories of animals, and may additionally have cows, horses, sheep, goats, emus, alpacas and llamas subject to minimum space requirements.²⁰⁸ Either property size may have a limited number of honeybee hives.²⁰⁹ The ordinance strictly prohibits roosters, geese, turkeys, and peacocks.²¹⁰ The code also addresses issues associated with fencing, noise, waste, smell, and harvesting.²¹¹ Each city has unique demographics, landscapes, traffic patterns, neighbor vicinities and other considerations that will shape its decision on how best to manage livestock within city limits, should the city choose to permit such an activity.²¹²

4. Zoning for Sale of Farm Goods

Stale city planning that does not allow for the sale of farm products may also be a hindrance to urban agriculture initiatives.²¹³ When unintentional, these restrictions usually take the form of a generic restriction on retail and commercial activity in certain zones.²¹⁴ In some cities, only commercial gardens are zoned to sell farm products, precluding farm sales by community gardens.²¹⁵ In other circumstances, the City simply overlooks the limits of its own ordinance. For example, Los Angeles's "Truck Gardening Ordinance" allowed for the off-site sale of vegetables grown in residential areas, but the ordinance was "narrowly interpreted to prohibit residents from growing fruits, nuts, flowers, or seedlings to sell off-site because the ordinance specifies only vegetables."²¹⁶ This ordinance prevented at least one Los Angeles resident from selling flowers at a local farmers market, even though it took six years for the local inspector to

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² See Mary Wood et al., *Promoting the Urban Homestead: Reform of Local Land Use Laws to Allow Microlivestock on Residential Lots*, 37 *ECOLOGY L. CURRENTS* 68, 75–76 (2010).

²¹³ Voigt, *supra* note 142, at 553.

²¹⁴ *Id.*

²¹⁵ Peters, *supra* note 18, at 343.

²¹⁶ Voigt, *supra* note 142, at 556.

prohibit her illegal activity.²¹⁷ The zoning code was amended in 2009 to correct this unintentional consequence.²¹⁸

Zoning ordinances that allow agriculture sales as-of-right may be one way for cities to prevent conflict arising from those sales or avoid problems associated with ambiguity in the zoning codes. For example, Portland, Oregon, allows agriculture retail as-of-right in all industrial and low-density residential districts, but requires a permit for similar sales in medium-density residential and some commercial districts.²¹⁹ San Francisco and Seattle also allow urban agriculture and retail sales as-of-right in most zoning districts.²²⁰

IV

POLICY IN ACTION: MAKING LAND AVAILABLE FOR URBAN AGRICULTURE

A. Land Acquisition

Even with food polices imbedded in comprehensive plans and progressive urban agriculture ordinances, municipalities cannot create sustainable local food systems if farmers do not have sufficient land to farm.²²¹ Cities are getting creative when it comes to finding space for urban agriculture. Seattle, for example, allows residents to plant edible plants in planting strips abutting their property.²²² Seattle's program is resourceful, but somewhat limited in terms of the surface area available for planting. Another strategy is to utilize brownfields²²³ for urban farm development.²²⁴ Through an EPA

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ Peters, *supra* note 18, at 338–39.

²²⁰ S.F., Cal. Bd. of Supervisors Ordinance 66-11, File No. 101537 (Apr. 5, 2011), available at <http://www.sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances11/o0066-11.pdf>; Peters, *supra* note 18, at 340–41, 355; *Mayor Lee Signs Urban Agriculture Legislation for Greater Local Food Production in SF*, OFFICE OF THE MAYOR (Apr. 20, 2011), <http://sfmayor.org/index.aspx?page=353> (last visited Jan. 12, 2014).

²²¹ Peters, *supra* note 18, at 298.

²²² *Street Use Permits: Gardening in Planting Strips*, SEATTLE.GOV, http://www.seattle.gov/transportation/stuse_garden.htm (last visited Jan. 7, 2014).

²²³ A brownfield is “real property [for which] the expansion, redevelopment, or reuse of . . . may be complicated by the presence or potential presence of hazardous substance[s], pollutant[s], or contaminant[s].” *Brownfields and Land Revitalization*, U.S. EPA, <http://www.epa.gov/swerosps/bf/overview/glossary.htm> (last updated Oct. 4, 2011).

Brownfields Clean Up Grant, Somerville, Massachusetts, established a unique community garden that includes fifteen plots.²²⁵ Rooftops have also become a popular space for urban gardening, especially where land is in short supply.²²⁶ For example, in New York City, roof top gardens are quite popular and even posh.²²⁷ The Brooklyn Grange Farm is a commercial urban farm and is the largest roof top garden in the world with over two acres of rooftop in production.²²⁸

Private land owners are also coming together to make space for urban farms.²²⁹ Portland, Oregon's Yard Sharing program connects landowners willing to share garden space with individuals interested in gardening.²³⁰ A map of garden hosts is available for those looking to yardshare.²³¹ A similar program, Urban Garden Share, was started by a group of eager gardeners in Seattle and has expanded to eight cities throughout the country.²³² This program connects gardeners with landowners willing to share space.²³³

Finding space in cities for urban agriculture can be one of the most challenging tasks for urban farmers. However, a number of cities are creating space for urban farms by making publicly owned land available to private, public, and commercial enterprises, endorsing land trust programs, leasing public lands to gardening projects, and repurposing vacant land.

1. Publicly Owned Land

Publicly owned garden plots are typically utilized by cities to implement community gardens.²³⁴ Community garden programs may be run by the City's department of parks and recreation or by an

²²⁴ ENVIRONMENTAL PROTECTION AGENCY, HOW DOES YOUR GARDEN GROW? BROWNFIELDS REDEVELOPMENT AND LOCAL AGRICULTURE (2009), available at www.epa.gov/brownfields/success/local_ag.pdf.

²²⁵ *Id.*

²²⁶ Peters, *supra* note 18, at 301.

²²⁷ Marian Burros, *Urban Farming, a Bit Closer to the Sun*, N.Y. TIMES (June 16, 2009), at D1, http://www.nytimes.com/2009/06/17/dining/17roof.html?pagewanted=all&_r=0.

²²⁸ *About the Farm*, BROOKLYN GRANGE FARM, <http://brooklyngrangefarm.com/about/> (last visited Jan. 7, 2014).

²²⁹ Peters, *supra* note 18, at 301.

²³⁰ PORTLAND YARD SHARING, <http://yardsharing.org/> (last visited Jan. 7, 2014).

²³¹ *Id.*

²³² URBAN GARDENSHARE SEATTLE, <http://www.urbangardenshare.org/seattle/gardens/about> (last visited Jan. 7, 2014).

²³³ *Id.*

²³⁴ Peters, *supra* note 18, at 302.

extension service.²³⁵ Portland's Community Gardens program has been in operation since 1975 and is run by the City's Parks and Recreation Department.²³⁶ Gardeners may rent 100, 200, or 400 square foot plots.²³⁷ Despite having over 1300 plots throughout the city, about 1000 people are currently on the waiting list.²³⁸ In response to this demand, the City launched the "1,000 Gardens Initiative," and included that initiative in the City's Climate Action Plan,²³⁹ as well as in Portland and Multnomah County's Climate Action Plans.²⁴⁰ The City succeeded in meeting that goal by fall 2012, but there is still a hefty waiting list for plots.²⁴¹

2. Land Trusts and Other Partnerships

Land may also be acquired through land trust organizations. Land trusts may acquire property by mobilizing the community and raising funds through community action or by partnering with cities.²⁴² By creating and holding conservation easements²⁴³ on public or private land, land trust organizations "allow owners to keep, sell, and bequeath their land, subject to agreed-upon permanent restrictions for

²³⁵ *Id.*

²³⁶ *Id.*; see also *Community Garden Facts*, PORTLAND PARKS & RECREATION, <http://www.portlandoregon.gov/parks/article/388440> (last visited Jan. 7, 2014).

²³⁷ *Community Garden Facts*, *supra* note 236.

²³⁸ *Id.*; Peters, *supra* note 18, at 303.

²³⁹ Climate action plans can vary widely in their scope and depth, but may be adopted by cities to work alongside food policies. See, e.g., *supra* Part II (discussing Eugene, Oregon's action plan and food security document). Generally speaking, a climate action plan identifies policies that will allow a city, state, or country to reduce greenhouse gas emissions and other environmental inputs that may negatively affect climate change. See *Climate Change Action Plans*, EPA, <http://epa.gov/statelocalclimate/state/state-examples/action-plans.html> (last updated Sept. 25, 2013). To see President Obama's climate action plan for the United States please visit, <http://www.whitehouse.gov/share/climate-action-plan>.

²⁴⁰ See *Multnomah Food Initiative Celebrates New Action Plan*, PORTLANDONLINE.COM (Jan. 28, 2011), <http://www.portlandonline.com/fish/index.cfm?c=53380&a=335625>; *We Reached Our 1,000 Gardens Goal!* PORTLANDONLINE.COM (Oct. 24, 2012), <http://www.portlandonline.com/fish/index.cfm?c=47686&a=417341>.

²⁴¹ *Community Garden Facts*, *supra* note 235.

²⁴² Peters, *supra* note 18, at 304.

²⁴³ "A conservation easement is a right or interest in property that imposes restrictions or obligations on the property's owner or lessee to retain or protect natural, scenic, or open space values of the property and ensure its availability for agricultural, forest, recreational, or open space use." WOOTEN & ACKERMAN, *supra* note 30, at 11.

certain uses like urban agriculture.”²⁴⁴ Conservation easements can effectively conserve land for agricultural purposes in the long-term.²⁴⁵ Lands protected by conservation easements provide urban farmers and gardeners with a sense of security, as gardens on these plots are less vulnerable to displacement than gardens on vacant public land that may be subject to sale.²⁴⁶

Seattle’s P-Patch Community Gardening Program exemplifies the kind of partnership that a city can engage in to secure land for urban agriculture. The P-Patch Program is a collaboration between P-Patch Land Trust, a nonprofit organization, and the Seattle Department of Neighborhoods.²⁴⁷ The P-Patch Program oversees the operation of seventy-eight plots that collectively make up 44.5 acres of city land.²⁴⁸ Though the majority of the land in the P-Patch Program is on city, county, or state land that cannot be considered a permanent gardening site, the P-Patch Trust has purchased six permanent sites since 1979.²⁴⁹ The P-Patch Trust acquires land by raising funds from private donations and contributions from the city.²⁵⁰ Those funds provide capital for different trust objectives such as land acquisition, improvements to garden plots, purchase of garden tools, or to subsidize low-income gardeners.²⁵¹ Additionally, through a matching fund, the P-Patch Trust receives donations that aid the trust in purchasing new parcels.²⁵² Finally, the Parks and Green Spaces Levy

²⁴⁴ Dana May Christensen, *Securing the Momentum: Could a Homestead Act Help Sustain Detroit Urban Agriculture?*, 16 DRAKE J. AGRIC. L. 241, 250 (2011).

²⁴⁵ WOOTEN & ACKERMAN, *supra* note 30, at 10.

²⁴⁶ See *id.* at 10–11; see also *How Neighborhoods Benefit*, BALTIMORE GREEN SPACE, <http://baltimoregreenspace.org/pages/how-neighborhoods-benefit.html> (last visited Jan. 6, 2014).

²⁴⁷ See Peters, *supra* note 18, at 304; see also P-PATCH COMMUNITY GARDENING PROGRAM, SEATTLE.GOV, available at <https://www.seattle.gov/neighborhoods/ppatch/>. The Department of Neighborhoods is responsible for preserving and enhancing the character of Seattle’s neighborhoods by engaging people in civic participation. *Seattle Department of Neighborhoods*, SEATTLE.GOV, <http://www.seattle.gov/neighborhoods/> (last visited Jan. 7, 2014).

²⁴⁸ P-PATCH COMMUNITY GARDENING PROGRAM, *supra* note 247.

²⁴⁹ See, e.g., *P-Patch Community Gardens*, SEATTLE.GOV, <http://www.seattle.gov/neighborhoods/ppatch/locations/29.htm> (last visited Jan. 9, 2014); *NMF Projects*, SEATTLE.GOV, <https://www.seattle.gov/neighborhoods/nmf/nmfprojects.htm> (last visited Jan. 9, 2014).

²⁵⁰ *Id.*

²⁵¹ *Our Work*, PPATCHTRUST.ORG, <http://ppatchtrust.org/our-work/> (last visited Jan. 9, 2014).

²⁵² Laura Raymond, *Levy Update: World’s Strongest Community Gardeners*, P-PATCH POST 1, 2 (Autumn 2011), available at <http://ppatchtrust.org/pppost/2011-Fall-P-Patch-Post.pdf>.

is a monetary contribution given to the P-Patch program from the City of Seattle.²⁵³ The Levy provided over \$2 million in funding and will continue to help the P-Patch community grow.²⁵⁴

Milwaukee Urban Gardens (MUG) in Wisconsin is a nonprofit land trust that not only acquires and preserves land, but also aids community groups in negotiating long-term lease agreements with the City.²⁵⁵ MUG holds title to five properties within the city limits²⁵⁶ and manages twenty-eight gardens on land leased from the City of Milwaukee under leases of up to three-years or seasonal permits.²⁵⁷ The seasonal garden permits allow neighbors to garden on city-owned vacant land for free, while MUG pays for insurance that protects the property and its gardeners from liability.²⁵⁸ Seasonal permits run from the application date until the end of October.²⁵⁹ The Oregon Sustainable Agriculture Land Trust (OSALT) operates similarly to MUG through its Urban Farm Collective, located in Portland, Oregon.²⁶⁰ In addition to owning title to a handful of properties in Portland,²⁶¹ OSALT provides liability coverage for private landowners who dedicate their land to agricultural use.²⁶²

²⁵³ *Parks and Green Space Levy*, SEATTLE.GOV, <http://www.seattle.gov/parks/levy/default.htm> (last updated Apr. 18, 2013).

²⁵⁴ Raymond, *supra* note 252.

²⁵⁵ *What We Do*, MILWAUKEE URBAN GARDENS, http://milwaukeeurbangardens.org/?page_id=24 (last visited Jan. 7, 2014).

²⁵⁶ *Id.*

²⁵⁷ *See Our Gardens*, MILWAUKEE URBAN GARDENS, http://milwaukeeurbangardens.org/?page_id=27 (last visited Jan. 10, 2014) (providing a Google map of owned and managed property); *see also* Peters, *supra* note 18, at 306.

²⁵⁸ *Start a Garden*, MILWAUKEE URBAN GARDENS, http://milwaukeeurbangardens.org/?page_id=176 (last visited Jan. 10, 2014) (see 2013 MUG Application for Seasonal Permit).

²⁵⁹ *Id.*

²⁶⁰ *Urban Farm Collective*, OR. SUSTAINABLE AGRIC. LAND TR., <http://fhsws.com/OSALTweb/programs/urban-farm-collective/> (last visited Jan. 7, 2014); *Share Land*, THE URBAN FARM COLLECTIVE, <http://urbanfarmcollective.com/get-involved/share-land/> (last visited Jan. 7, 2014).

²⁶¹ *See, e.g., Emerson Garden*, OR. SUSTAINABLE AGRIC. LAND TR., <http://fhsws.com/OSALTweb/land-in-trust/emerson-garden/> (last updated June 23, 2011).

²⁶² Telephone Interview with Todd Birzer, OSALT board member (Nov. 12, 2012); *see also Land Sharers*, THE URBAN FARM COLLECTIVE, <http://urbanfarmcollective.com/people/land-sharers/> (last visited Jan. 7, 2014).

3. Leasing Options

Because outright ownership of land can be a greater investment of capital than many community garden organizations can support,²⁶³ leasing publicly or privately owned land may be a desirable option.²⁶⁴ However, gardens require huge investments of labor and other resources to get started,²⁶⁵ and cities would be wise to offer gardeners leases of a minimum of five years to successfully encourage urban agriculture²⁶⁶ and protect gardens from changing economic circumstances.²⁶⁷ Gardeners also have the option of leasing land from private landowners that are tapped into a local network of urban farmers.²⁶⁸

The option of leasing public land is becoming readily available in many cities across the country. Lease options can range from as long as five years, as with the Seattle P-Patch program, to as short as a single growing season, like New York's Green Thumb program.²⁶⁹ The City of Richmond, Virginia has a unique and well-developed community garden-leasing program.²⁷⁰ The Richmond Grows Garden Program has two distinct leasing programs for community²⁷¹ and

²⁶³ Schukoske, *supra* note 25, at 366. "For example, unless relief by means of tax exemption is provided, paying property taxes on garden land can be a major obstacle to ownership for fledgling garden organizations." *Id.* at 366–67.

²⁶⁴ See, e.g., *id.* at 365–67; Peters, *supra* note 18, at 307–12; SALKIN, *supra* note 2, at 631–32.

²⁶⁵ Mogk et al., *supra* note 20, at 1555–56.

²⁶⁶ See, e.g., S.H. Olsen, *Leasing County Owned Land for Urban Farming: Developing a Protocol*, 4 J. NAT'L ASS'N COUNTY AGRIC. AGENTS (2011), <http://www.nacaa.com/journal/index.php?jid=77> (last visited Jan. 15, 2014) (reporting that "[m]ost commercial agriculture and CSA operations will want a lease commitment of more than five years"); Mogk et al., *supra* note 20, at 1555.

²⁶⁷ In Eugene, Oregon, a community garden located on just under two acres of land was displaced when the land it had leased for three years was sold. See Edward Russo, *Council Oks Garden Site Sale*, THE REGISTER-GUARD, Nov. 1, 2012, available at <http://www.thefreelibrary.com/Council+OKs+garden+site+sale.-a0310883241>. The Courthouse Garden grew 6,000 pounds of food each year and donated produce to local organizations serving the homeless and hungry; additionally, the property served as an educational tool for University of Oregon students, and was an outlet for at risk youth who aided with planting and garden harvest. Ted Taylor, *Paving Paradise: Courthouse Garden Running Out of Time*, EUGENE WEEKLY (Oct. 31, 2012), <http://www.eugeneweekly.com/article/paving-paradise>. The garden was displaced when the land was sold for \$1.23 million dollars to a local credit unit union. See Russo, *supra*.

²⁶⁸ See, e.g., PORTLAND YARD SHARING, *supra* note 230.

²⁶⁹ Schukoske, *supra* note 25, at 365; SALKIN, *supra* note 2, at 632.

²⁷⁰ See Peters, *supra* note 18, at 311–12.

²⁷¹ The City of Richmond defines a community garden as "[a] portion of city owned property used to grow fruits, vegetables, flowers, herbs, [etc.] . . . where there is no

commercial gardens.²⁷² For community gardens, only an incorporated, unincorporated, or government organization may apply for a community garden lease.²⁷³ Community gardens may lease property from the city for a maximum of twelve months, while commercial gardens can lease land for up to five years.²⁷⁴ Additionally, community gardens are prohibited from raising livestock on the property, while commercial gardens may have livestock, as permitted under the city code and within the terms of the lease.²⁷⁵

Salt Lake County, Utah has a discretionary-based approach to leasing land for urban farming.²⁷⁶ After the county decided to move forward with the Urban Farming Initiative in 2009, the county took one year to review various sites and select preferable locations for community and commercial gardens.²⁷⁷ After identifying thirty-six different parcels²⁷⁸ that could be leased, the county issued a request for proposals to identify ideal applicants for the parcels.²⁷⁹ The county awarded leases to four parcels of land for a total of fifty acres.²⁸⁰ Each farmer received a three-year contract with an option to renew for two more years, but leases were intentionally kept short because the county planned to develop the parcels for recreation within the next few years.²⁸¹ In addition, Salt Lake City entered into a partnership with a local nonprofit group to create community garden

exchange of goods for monetary value.” *Community Gardens*, RICHMOND VA., <http://www.richmondgov.com/CommunityGarden/index.aspx> (last visited Jan. 7, 2014). A commercial garden, on the other hand, is a garden that exchanges goods for monetary value. *Id.*

²⁷² Peters, *supra* note 18, at 311 & n.92.

²⁷³ *Frequently Asked Questions*, RICHMOND VA., <http://www.richmondgov.com/content/CommunityGarden/FAQ.aspx> (last visited Jan. 7, 2014); Peters, *supra* note 18, at 311–12.

²⁷⁴ Peters, *supra* note 18, at 311–12.

²⁷⁵ Peters, *supra* note 18, at 312.

²⁷⁶ See Olsen, *supra* note 266.

²⁷⁷ Editorial, *Urban Farming*, SALT LAKE TRIBUNE (Nov. 4, 2009, 5:55 PM), http://www.sltrib.com/opinion/ci_13714040.

²⁷⁸ The parcels were divided into two categories: parcels greater than and less than five acres. See Olsen, *supra* note 266.

²⁷⁹ *Id.* (explaining that applicants were selected based on (1) relevant farming experience; (2) willingness to provide a public benefit; (3) the presence of a farm business plan; (4) diversity of crops to be grown; and (5) financial capability).

²⁸⁰ *Id.*

²⁸¹ *Id.*

plots and assigned a 200-acre piece of non-irrigable property for biofuel development.²⁸²

4. Vacant Land

The average U.S. city has twenty-three percent of its land vacant.²⁸³ Cities across the U.S. are dealing with this issue by instituting programs that repurpose vacant land.²⁸⁴ Converting vacant lots to urban agricultural use can reduce costs for law enforcement and grounds maintenance while beautifying and revitalizing depressed urban areas.²⁸⁵ Maintaining vacant property can also be expensive.²⁸⁶ For example, one study showed that it costs the City of Philadelphia \$20 million a year to “provide basic services for vacant lots . . . [and] the city loses some \$2 million a year in uncollected tax revenue.”²⁸⁷ Additionally, “vacant lots cost nearby property owners an estimated \$3.6 billion in lost value.”²⁸⁸

In 2000, nearly 300,000 properties were vacant across the state of Pennsylvania, with 40,000 of those located in Philadelphia.²⁸⁹ In 2008, Pennsylvania passed the Abandoned and Blighted Property Conservatorship Act, which aimed to provide “a mechanism to transform abandoned and blighted buildings into productive reuse.”²⁹⁰ The Act allows a court to appoint a conservator to maintain and improve deteriorating buildings where the building’s owner has failed to “maintain the property in accordance with applicable municipal codes or standards of public welfare or safety.”²⁹¹ Utilizing this new law, the Urban Tree Connection secured a two-third acre lot

²⁸² *Id.*

²⁸³ Schukoske, *supra* note 25, at 353.

²⁸⁴ See, e.g., Peters, *supra* note 18, at 299–300; Voigt, *supra* note 142, at 537.

²⁸⁵ Peters, *supra* note 18, at 299–300.

²⁸⁶ See, e.g., Kristin Choo, *Plowing Over: Can Urban Farming Save Detroit and Other Declining Cities? Will the Law Allow It?*, 97 A.B.A. J. 43, 47 (2011).

²⁸⁷ *Id.*

²⁸⁸ *Id.* (citing ECONSULT CORP., VACANT LAND MANAGEMENT IN PHILADELPHIA: THE COSTS OF THE CURRENT SYSTEM AND THE BENEFITS OF REFORM 7 & n.8 (2010) (stating that \$3.6 billion is a conservative estimate and that the analysis was based only on single-family units, so the expected magnitude of the blighting effect of vacant land is estimated to be higher).

²⁸⁹ Kia Gregory, *Under New Pa. Law, Neighbors Control Abandoned Lot*, PHILLY.COM (Nov. 4, 2010), http://articles.philly.com/2010-11-04/news/24953207_1_wiener-conservator-community-groups.

²⁹⁰ The Abandoned and Blighted Property Conservatorship Act, 68 P.S. §§ 1101, 1102(5) (2008).

²⁹¹ 68 P.S. § 1102(6).

for an urban farm project.²⁹² Neighborhood residents were excited about the assignment.²⁹³ The plot of land contained “rusty barrels from the old Polselli construction business” and “oil and unknown chemicals seeped into the dirt.”²⁹⁴ Now UTC uses this property, along with other transformed lots, to engage in community programming, working with children and adults to teach healthy eating habits, cooking classes, and gardening techniques.²⁹⁵

The City of Baltimore, Maryland, also has a plan to put vacant land to agricultural use.²⁹⁶ In 2011, Baltimore issued a request for qualifications for “Urban Agriculture in the City of Baltimore” with the goal of leasing up to thirty-five acres of city-owned vacant land over three years.²⁹⁷ By 2013, the City agreed to a five-year lease with two organizations—Big City Farms and Strength to Love II—utilizing seventy-five vacant lots and creating a one and a half acre farm.²⁹⁸ Big City Farms plans to devote 100 acres of Baltimore land to produce food under hoop houses and to create 600 jobs.²⁹⁹

The City of Minneapolis, Minnesota, recently adopted an Urban Agriculture Policy Plan, designed to “support[] residents’ efforts to grow, process, distribute, and consume more fresh, sustainably produced and locally grown foods.”³⁰⁰ The plan has many lofty goals that aim to (1) develop an inventory of public and private land available for suitable urban agriculture; (2) reduce the burden of liability insurance and property taxes associated with lands used to

²⁹² Gregory, *supra* note 289.

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ See generally *Programs & Services*, URBAN TREE CONNECTION, <http://urbantreeconnection.org/programs.html> (last visited Jan. 7, 2014).

²⁹⁶ Peters, *supra* note 18, at 310.

²⁹⁷ *Id.*

²⁹⁸ Luke Broadwater, *Large Urban Farm Planned for Sandtown-Winchester*, BALTIMORE SUN (Oct. 24, 2012), http://articles.baltimoresun.com/2012-10-24/news/bs-md-ci-urban-farm-20121024_1_sandtown-winchester-big-city-farms-food-deserts.

²⁹⁹ Missy Smith, *Baltimore-based Urban Farming Co. With Goal of 100 Acres Under Hoop Houses Hopes to Create 600 Jobs*, SEED STOCK (Dec. 18, 2012), <http://seedstock.com/2012/12/18/baltimore-based-urban-farming-co-with-goal-of-100-acres-under-hoop-houses-hopes-to-create-600-jobs/>.

³⁰⁰ CITY OF MINNEAPOLIS, URBAN AGRICULTURE POLICY PLAN: A LAND USE AND DEVELOPMENT PLAN FOR A HEALTHY, SUSTAINABLE LOCAL FOOD SYSTEM 1, 4 (2011). The Plan has been incorporated into the city’s comprehensive plan, “The Homegrown Minneapolis Report” and “The Minneapolis Plan for Sustainable Growth.” *Id.* at 2, 4. The full plan is available at http://www.minneapolismn.gov/cped/planning/plans/cped_urban_ag_plan (last updated Mar. 8, 2012).

produce food; and (3) make more land accessible for urban farming (i.e., vacant lots and foreclosed properties).³⁰¹ Stone's Throw Urban Farm is one organization that has taken full advantage of the City's new planning strategy.³⁰² Stone's Throw has identified one of its "biggest challenges" as land scarcity, because much of the vacant land is "valued for residential and commercial development, not agriculture."³⁰³ In 2012, the farm had a goal to convert ten vacant lots into thriving urban farms.³⁰⁴ Currently, Stone's Throw farms on sixteen formerly vacant lots between Minneapolis and Saint Paul that in total make up just shy of two acres of farmed urban land.³⁰⁵ Stone's Throw produces enough food to support a Community Sustainable Agriculture (CSA) group of seventy-two members, sell its produce at a weekly farmers market, and provide produce to a handful of local restaurants.³⁰⁶

V

A CASE STUDY: DETROIT, MICHIGAN

A. Detroit: Then and Now

Detroit, the "Motor City," was the nation's fifth largest city in 1950 and home to nearly 2,000,000 people.³⁰⁷ Urbanites moving to suburban neighborhoods combined with the decentralization of the car industry caused the decline of Detroit during the latter half of the twentieth century.³⁰⁸ Today, Detroit is home to a little more than 700,000 residents³⁰⁹ and has some of the highest unemployment and

³⁰¹ *Id.* at 5.

³⁰² See *Lookin' for Land*, STONE'S THROW URBAN FARM (Jan. 16, 2013), <https://stonesthrowurbanfarm.wordpress.com/2013/01/16/lookin-for-land/>.

³⁰³ *Id.*

³⁰⁴ Alex Davies, *Turning Vacant Lots into Profitable Urban Farms in Minnesota*, TREEHUGGER.COM (Mar. 3, 2012), <http://www.treehugger.com/green-food/stones-throw-urban-farm-minnesota.html>.

³⁰⁵ *Frequently Asked Questions*, STONES THROW URBAN FARM, <https://stones-throw.herokuapp.com/faq> (last visited Jan. 14, 2014).

³⁰⁶ *Id.*; see also Jessica Lee, *Urban Farming Thrives After Changes to Minneapolis' Urban Agriculture Plan, but Farmers Want More*, TWIN CITIES DAILY PLANET (Oct. 2, 2012), <http://www.tcdailyplanet.net/news/2012/10/02/urban-farming-thrives-after-changes-minneapolis-urban-agriculture-plan-farmers-want->.

³⁰⁷ Thomas J. Sugrue, *Motor City: The Story of Detroit*, THE GILDER LEHRMAN INSTITUTE OF AMERICAN HISTORY, <http://www.gilderlehrman.org/history-by-era/politics-reform/essays/motor-city-story-detroit> (last visited Jan. 6, 2014).

³⁰⁸ *Id.*

³⁰⁹ *Detroit, Michigan Quick Facts*, U.S. CENSUS BUREAU, <http://quickfacts.census.gov/qfd/states/26/2622000.html> (last revised Dec. 17, 2013).

poverty rates in the country.³¹⁰ Additionally, the combination of a declining population, combined with a stagnant economy has led to crippling expanses of empty lots and empty buildings.³¹¹

“The enormity of Detroit’s vacant land is overwhelming even to urban experts, and there is little to no market demand for new residential, commercial or industrial developments.”³¹² Detroit currently has 30,000 acres of vacant land,³¹³ or in other terms, fifty square miles of vacant land within the city limits.³¹⁴ Maintaining vacant properties costs the City \$800,000 annually and lowers adjacent property values leading to even more abandonment.³¹⁵ Additionally, the City has over 67,000 foreclosed properties, of which sixty-five percent are vacant.³¹⁶

Urban agriculture can serve as a powerful tool to rebuild and revitalize Detroit.³¹⁷ Citywide policy initiatives that promote urban agriculture can address many of the city’s problems associated with food deserts, high rates of crime and vandalism, and vacant land.³¹⁸ Urban gardens contribute to building a sense of pride in hard-hit communities by enhancing the aesthetic and integrity of neighborhoods while simultaneously alleviating some of a city’s financial costs associated with maintaining blighted and vacant lots.³¹⁹

B. Detroit Food Policy Council

In 2008, Detroit’s City Council unanimously passed a resolution to create the Detroit Food Policy Council (DFPC). DFPC has been actively researching, analyzing, and developing a food policy for Detroit that incorporates a multitude of economic and societal forces that shape a comprehensive food system. DFPC was established as a

³¹⁰ Mogk et al., *supra* note 20, at 1525.

³¹¹ Sugrue, *supra* note 307.

³¹² Mogk et al., *supra* note 20, at 1523.

³¹³ *Id.* at 1529.

³¹⁴ Duda, *supra* note 60, at 185.

³¹⁵ Mogk et al., *supra* note 20, at 1523–24.

³¹⁶ Duda, *supra* note 60, at 185 (citing ROBERT ANDERSON & MARJA M. WINTERS, PLANNING AND DEVELOPMENT DEPARTMENT NEIGHBORHOOD STABILIZATION PROGRAM 3 (NSP3) PLAN, at 2 (2011), available at <http://www.detroitmi.gov/portals/0/docs/planning/pdf/NSP3/City%20of%20Detroit%20NSP3%20Application.pdf>).

³¹⁷ See Mogk et al., *supra* note 20, at 1530.

³¹⁸ *Id.* at 1567.

³¹⁹ *Id.*

direct result of the Detroit Black Community Food Security Network's (DBCFSN) lobbying efforts that began in 2006.³²⁰ As a result, the DFPC was established, and DBCFSN was appointed to head a task force to develop a food security policy for the City of Detroit.³²¹ DBCFSN developed a policy that incorporated public feedback and recommendations from a well-known food policy expert, Dr. Kami Pothukuchi.³²² The City Council's Neighborhood and Community Service Standing Committee approved the food policy in March 2008.³²³

The food policy establishes the Council's mission stating that "[t]he [DFPC] is committed to nurturing the development and maintenance of a sustainable, localized food system and a food-secure City of Detroit in which all of its residents are hunger-free, healthy and benefit economically from the food system that impacts their lives."³²⁴ The current food policy goals direct DFPC to:

1. [A]dvocate for urban agriculture and composting being included as part of the strategic development of the City of Detroit;
2. [W]ork with various City departments to streamline the processes and approvals required to expand and improve urban agriculture in the City of Detroit including acquisition of land and access to water;
3. [R]eview the City of Detroit Food Security Policy and develop an implementation and monitoring plan that identifies priorities, timelines, benchmarks, and human, financial and material resources;
4. [P]roduce and disseminate an annual City of Detroit Food System Report that assesses the state of the city's food system, including activities in production, distribution, consumption, waste generation and composting, nutrition and food assistance program participation, and innovative system programs;
5. [R]ecommend new food-related policy as the need arises;
6. [I]nitiate and coordinate programs that address the food-related needs of Detroiters;

³²⁰ DETROIT BLACK COMMUNITY FOOD SECURITY NETWORK, <http://detroitblackfoodsecurity.org/about.html> (last visited Jan. 6, 2014).

³²¹ *Id.*

³²² *Id.*

³²³ *Id.*

³²⁴ *Organizing Documents*, DETROIT FOOD POLICY COUNCIL, <http://detroitfoodpolicy.council.net/who-we-are/organizing-documents> (last visited Jan. 6, 2014).

7. [C]ongress an annual “Powering Up the Local Food System” conference.³²⁵

As a part of those goals, DFPC is committed to developing an effective food system that takes into consideration retail and wholesale food outlets, restaurant purchasing, school lunch programs, and other food distribution components.³²⁶

By continuously reviewing, analyzing, and assembling research on Detroit’s food system, DFPC is able to prioritize policy recommendations, identify state institutions and community organizations that can actively participate in the promotion of those policies, and educate the urban agriculture community about Detroit’s food system.³²⁷

For example, DFPC has identified Detroit as a city suffering from the growing problem of food deserts.³²⁸ Detroit citizens’ access to affordable nutritious food is compromised by two major factors. First, Detroit does not have national chain supermarkets.³²⁹ As a result, there is an inadequate supply of independent supermarkets to serve the city. This means the most accessible food is in “party stores, dollar stores, fast-food restaurants, and gas stations.”³³⁰ Second, one in three Detroit households does not have a vehicle, according to the 2010 census, and public transportation remains unreliable.³³¹ This inability to travel compounds the problem, limiting the city residents’ access to food to only those grocery stores within a reasonable distance of their homes; “[m]ost city stores have a very limited variety of unprocessed (fresh) vegetables and fruits.”³³²

With those realities in mind, DFPC has made a strategic decision to focus its efforts on (1) urban agriculture, to help encourage neighborhood access to nutritional food; and (2) public school food,

³²⁵ KAMI POTHUKUCHI, THE DETROIT FOOD SYSTEM REPORT 2009-2010 EXECUTIVE SUMMARY, at 6 (2011), available at http://www.clas.wayne.edu/SEEDWAYNE/ExecSum_final.pdf.

³²⁶ *Organizing Documents*, *supra* note 324.

³²⁷ See, e.g., DETROIT FOOD SYSTEM REPORT, *supra* note 16; see Reports, DETROIT FOOD POLICY COUNCIL, <http://detroitfoodpolicycouncil.net/knowledge-center/reports> (last visited Jan. 6, 2014) (listing DFPC Annual Food Reports and Special Reports).

³²⁸ DETROIT FOOD SYSTEM REPORT, *supra* note 16, at 3.

³²⁹ *Id.*

³³⁰ *Id.* (citing a report created by the Detroit Food Justice Task Force, a non-governmental, community organization).

³³¹ *Id.*

³³² *Id.*

which “represents one of the single largest providers of nutrition in the city, and the most important group of food consumers.”³³³ DFPC has made progress toward both of these goals. DFPC serves as a coordinator for many urban farming and gardening programs throughout the city, many of which are collaborations between Michigan State University, local soup kitchens, and the Detroit Black Community Food Security Network.³³⁴ By promoting these programs, DFPC hopes to create models for appropriately scaled urban agriculture, engage in community outreach and education, and encourage neighborhood self-sufficiency.³³⁵ DFPC worked with the City Planning Commission’s Urban Agriculture Work Group to develop the city Agriculture Zoning Policy, which was recently passed and will be discussed in the following section.³³⁶ DFPC is also working with forty-five of Detroit’s public schools to create school gardens as a part of a “food-based education system.”³³⁷ The goals of the school garden program are ambitious. The City of Detroit hopes to not only address the most obvious issues, like childhood health and obesity, but to also reconnect students with agriculture, sustainable living, individual responsibility, and careers in farming.³³⁸ The City also hopes to see a domino effect, where students will teach their parents about healthier food options and gardening.³³⁹

C. Urban Agriculture in Detroit Today

The City of Detroit has taken notice of the role urban farming can play in the revitalization of the city.³⁴⁰ Many of Detroit’s policies and choices for establishing a sustainable food system have been informed by its food policy. Detroit’s policies have allowed for the investment and expansion of its urban farming network, and the city may be

³³³ *Id.* at 3–4. “Detroit Public Schools . . . [serve] more than 100,000 meals each day to about 68,000 students . . .” *Id.* at 5.

³³⁴ *Id.* at 17–19.

³³⁵ *Id.* at 17–20.

³³⁶ *Id.* at 4.

³³⁷ *Id.* at 10.

³³⁸ *Id.* at 10–12.

³³⁹ *Id.* at 12.

³⁴⁰ See, e.g., DETROIT WORKS PROJECT, DETROIT FUTURE CITY: DETROIT STRATEGIC FRAMEWORK PLAN (2012) (identifying productive landscapes, including agriculture and urban farms, as providing economic, environmental, and societal benefits). The Detroit Works Project is a long-term planning committee that was assembled by Mayor Dave Bing. *Project Team*, DETROIT WORKS PROJECT, <http://detroitworksproject.com/about-us-2/project-team/> (last visited Jan. 6, 2014); Gallagher et al., *supra* note 152 (discussing Mayor David Bing’s support of the Hantz Farm project).

home to as many as 355 urban gardens and farms.³⁴¹ The Earthworks Urban Farm produces over 6,000 pounds of fresh food every day on a mere three-quarters of an acre of land, and much of this produce is donated to programs such as Women, Infants, and Children (WIC).³⁴² Detroit is also making progress towards repurposing a portion of its 60,000 vacant lots. Detroit recently sold 1,500 city lots to Hantz Farm, a commercial farm enterprise with plans to develop a woodland-beautification project in Detroit.³⁴³ The Hantz Woodlands will replace fifty blighted buildings and repurpose the remaining vacant lots that the city acquired through tax foreclosures.³⁴⁴ City support for Hantz farm serves as recognition that commercial farming enterprises may contribute to rebuilding Detroit, but some community agriculture groups are skeptical of these projects.³⁴⁵ “Detroit agriculturists don’t want to see what they’ve been working so hard to build—a food system that is just, equitable, healing, empowering and sustainable—diverted by corporate interests that may not care about developing the local community.”³⁴⁶ Nonetheless, skeptics recognize that city support for commercial farming contributes to the evolving vision of Detroit and confirms that “urban agriculture is a viable route to recreating Detroit.”³⁴⁷

In terms of city planning, Detroit recently approved the development of an Urban Agriculture Zoning ordinance.³⁴⁸ The ordinance proposes to allow urban agriculture either as-of-right or as a conditional use for almost every land use zone within the city.³⁴⁹ The Urban Agriculture Zoning ordinance differentiates between urban gardens and urban farms.³⁵⁰ Urban gardens may be located on zoning lots up to one acre, while urban farms may be located on lots greater

³⁴¹ Duda, *supra* note 60, at 184–85.

³⁴² *Id.* at 186.

³⁴³ Gallagher et al., *supra* note 152.

³⁴⁴ *Id.*

³⁴⁵ DETROIT FOOD SYSTEM REPORT, *supra* note 16, at 4.

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Detroit Urban Agricultural Ordinance Approved by City Planning Commission!*, GREENINGDETROIT.COM (Dec. 8, 2012, 2:40 PM), <http://www.greeningdetroit.com/2012/12/08/detroit-urban-agricultural-ordinance-approved-by-city-planning-commission/>. To see the final version of the urban agriculture ordinance see DETROIT, MICH., ZONING ORDINANCE ch. 61 (2012), available at http://www.detroitmi.gov/Portals/0/docs/legislative/cpc/pdf/Urban_Ag_Ordinance_Abridged_Apr2013.pdf.

³⁴⁹ *Id.*

³⁵⁰ DETROIT, MICH., ZONING ORDINANCE § 61-16-191 (2012).

than one acre; either enterprise can be for commercial purposes.³⁵¹ The ordinance also allows for aquaculture, aquaponics, hydroponics, hoop house and greenhouse installation, and farmers markets in one or more zones within each zoning category (i.e., business, industrial, and residential).³⁵² Furthermore, urban farm and garden locations are permitted to have a farm stand³⁵³ located on the lot for the sale of farm products.³⁵⁴ This provision will allow urban farmers to confidently produce and sell farm products on their property, an activity that has proven to be a barrier for some urban farmers.³⁵⁵ The drafters of the ordinance were also careful to assure that agriculture activities in the city would not cause a nuisance by including a requirement that an urban farm or garden must notify abutting properties of the farm's installation,³⁵⁶ provisions addressing stormwater runoff³⁵⁷ and trash storage,³⁵⁸ as well as a provision explicitly prohibiting the farm's operation as a nuisance.³⁵⁹ The ordinance also explicitly prohibits farm animals, certain tree species, and growing rye, oats, or wheat to maturity.³⁶⁰

D. Barriers to Detroit Agriculture: The Michigan Right to Farm Act

Detroit's Urban Agriculture Zoning ordinance removes some of the barriers associated with city farming, but the Michigan Right to Farm Act (RTFA) may remain a stumbling block for some urban farm projects. When the Michigan RTFA was passed in 1981, it was designed to protect existing farms in rural areas from nuisance lawsuits caused by the encroachment of urban sprawl;³⁶¹ however,

³⁵¹ *Id.*

³⁵² DETROIT, MICH., ZONING ORDINANCE § 61-12-77 (2013).

³⁵³ Farm stand is defined as “[a] temporary structure, accessory to an urban garden or urban farm for the display and sale of vegetables or produce, flowers, orchard products, . . . produced on the general property of the urban garden or urban farm.” *Id.* § 61-16-81.

³⁵⁴ *Id.* § 61-12-327.

³⁵⁵ See Voigt, *supra* note 142, at 553 (“Regulations that discourage . . . entrepreneurial urban agriculture often take the form of generic restrictions on retail and commercial activities in certain zones.”). Narrowly interpreted ordinances can also be problematic for people looking to sell farm products. *Id.* at 556. For example, Los Angeles’s “Truck Gardening Ordinance,” which allowed the off-site sale of vegetables grown in residential areas, prevented a local resident from selling flowers at a local farmers market. *Id.*

³⁵⁶ DETROIT, MICH., ZONING ORDINANCE § 61-12-332 (2013).

³⁵⁷ *Id.* § 61-12-334.

³⁵⁸ *Id.* § 61-12-328.

³⁵⁹ *Id.* § 61-12-335.

³⁶⁰ *Id.* § 61-12-326.

³⁶¹ Mogk et al., *supra* note 20, at 1557.

with the advent of urban agriculture, some urban-farm advocates are concerned that the Act may effectively prevent intensive urban farming projects.³⁶² The RTFA provides that “[a] farm or farm operation shall not be found to be a public or private nuisance if the farm or farm operation alleged to be a nuisance conforms to generally accepted agricultural and management practices [(GAAMPs)].”³⁶³ A farm is defined as “the land, plants, animals, buildings, structures, . . . used in the *commercial production* of farm products.”³⁶⁴ Prior to 2000, the RTFA did not prohibit local municipalities from adopting zoning ordinances that regulate farms and other agricultural activities;³⁶⁵ however, the RTFA was amended in 2000 to make explicit that “a local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that conflicts in any manner with [the] act or generally accepted agricultural and management practices developed under [the] act.”³⁶⁶

The amendment may have negative implications for urban agriculture.³⁶⁷ The extent of RTFA’s impact on urban agriculture in Detroit and other urban areas remains an open question, but the statute implicitly prevents Detroit from amending local ordinances to regulate urban agriculture in a way that conflicts with the RTFA.³⁶⁸ As a result, city officials may be hesitant to adopt ordinances that promote urban agriculture and protect citizens from the potential nuisances that agriculture in the city can create (i.e., noise from tractors, odors from farm animals, fertilizer runoff that negatively effects water quality, etc.)³⁶⁹ because such an ordinance would

³⁶² See Duda, *supra* note 60, at 192–93.

³⁶³ MICH. COMP. LAWS § 286.473(1) (1981), available at <http://legislature.mi.gov/documents/mcl/pdf/mcl-Act-93-of-1981.pdf>.

³⁶⁴ *Id.* § 286.472(a) (emphasis added).

³⁶⁵ Cliff Bloom & Crystal Morgan, *Urban Farming and the Michigan Right to Farm Act*, MICH. TOWNSHIP NEWS 26 (2012), available at http://www.bsmlawpc.com//municipal_law/PDF/Municipal_Articles/Urban_Farming_the_Michigan_Right_to_Farm_Act.pdf.

³⁶⁶ MICH. COMP. LAWS § 286.474(6).

³⁶⁷ See generally Mogk et al., *supra* note 20, at 1557–63. (“[I]f [Detroit] is found to permit [commercial production of farm products], they may not be able to be regulated nor will they constitute a public or private nuisance, as long as they conform to GAAMPs); Duda, *supra* note 60, at 194–98; Bloom & Morgan, *supra* note 365, at 26–27.

³⁶⁸ Duda, *supra* note 60, at 194.

³⁶⁹ See *Cities Struggle with Right to Farm Rules that Do Not Fit Neighborhoods*, AGENDA BRIEF SERIES (Jan. 2012) [hereinafter *Cities Struggle*], available at https://www.michiganfood.org/assets/goodfood/docs/Agenda_Briefs_Priority6_FoodAccessPlanning.pdf (“Detroit Mayor Dave Bing . . . doesn’t want to address urban agriculture until it’s

conflict with RTFA and would be invalid. Furthermore, a municipality that permits urban agriculture opens itself up to the possibility that it will be unable to regulate a farm that complies with GAAMPS, such as a concentrated animal feeding operation (CAFO), within city limits.³⁷⁰

In 2012, the Michigan Department of Agriculture and Rural Development attempted to lift impediments to agriculture in Detroit by further amending the RTFA to exempt municipalities with a population of 100,000 or more from GAAMPS.³⁷¹ This change may help to “facilitate urban agriculture because now cities can open their doors to urban farmers without fearing encroachment by a CAFO or other intensive agriculture pursuit, which would comply with GAAMP[s] but would be distasteful to those who live, work, and play in the city.”³⁷² Post-GAAMP exemption, the RTFA only protects existing farms within the city limits from nuisance suits.³⁷³ The City of Detroit, however, is still dissatisfied with this result and demands the ability to regulate existing farms that exist as current nonconforming uses.³⁷⁴ Ultimately, it is important for the development of urban agriculture in Detroit that the city is exempt from the RTFA all together.³⁷⁵

E. Farming in Detroit: What Will the Future Hold?

The progress that Detroit has made toward facilitating a local food system may eventually aid the city in promoting healthier lifestyles for its residents, improve community aesthetics and sense of pride, create educational and tourism opportunities, reduce crime, and improve environmental quality.³⁷⁶ Additionally, commercial farm

clear that the Right to Farm Act will not make Detroit’s regulations of city farms irrelevant.”).

³⁷⁰ Gregory Gamalski et al., *Farm Law Changes May Produce More Fruitful Urban Agriculture*, ENEWSLETTER REAL PROP. SEC. (State Bar of Mich., Apr. 2012), http://www.michbar.org/realproperty/eNews/eNews_April12.cfm.

³⁷¹ MICH. DEP’T OF AGRIC. & RURAL DEV., GENERALLY ACCEPTED AGRICULTURAL AND MANAGEMENT PRACTICES FOR SITE SELECTION AND ODOR CONTROL FOR NEW AND EXPANDING LIVESTOCK PRODUCTION FACILITIES, at iii (2012), *available at* http://www.michigan.gov/documents/mda/2011_DRAFT_SITE_SELECTION_GAAMPS_339407_7.pdf.

³⁷² Duda, *supra* note 60, at 197.

³⁷³ *Id.*

³⁷⁴ *See Cities Struggle*, *supra* note 369.

³⁷⁵ Duda, *supra* note 60, at 197; Mogk et al., *supra* note 20, at 1563.

³⁷⁶ *See Mogk et al.*, *supra* note 20, at 1530–34.

projects like Hantz Farm may provide the city with options for making vacant lots productive again and eliminating one financial drain on the city's resources. With the City's recent adoption of the urban agriculture ordinance, time will tell if conflicts between farming in Detroit and the RTFA will deprive Detroit of the thriving urban farming environment its citizens are eager to cultivate.

VI

CREATING A COMPREHENSIVE FOOD POLICY

The components and aspects of a comprehensive food policy that will effectively serve urban communities are wide-ranging and should address aspects of socioeconomics, environmental quality, community development, land-use planning, and statewide food system initiatives, such as institutional purchases and farmland preservation. Each state and city will have unique needs, demands, and demographics that will inform the development of an individualized food policy.

With those considerations in mind, a comprehensive food policy at a minimum should consider:

1. Food System Components: (a) food production in rural and urban communities (considerations such as soil and water quality, access to machinery, business models, labor force, etc.); (b) direct markets and local purchasing facilitated through farmers markets; (c) food transportation, storage and distribution; (d) food processing; (e) food retailing; (f) consumer interaction, education, and networking; (g) food assistance and anti-hunger initiatives; (h) community health; (i) food waste processing; and (j) the municipality's role in stabilizing food systems.³⁷⁷

2. Statewide Initiatives: These policies can increase citizens' access to food grown in-state by traditional, rural farms that produce food sufficient to meet large demands. Policies to consider may include (a) local food systems; (b) institutional purchasing programs; (c) food security and anti-hunger initiatives; (d) farmland preservation; (e) eco-labeling; and (f) incentives for new farmers.³⁷⁸

3. Comprehensive Planning: Comprehensive plans should explicitly identify urban agriculture as a component of urban

³⁷⁷ See generally FOOD SECURITY SCOPING, *supra* note 100, at 2–14.

³⁷⁸ See Hamilton, *supra* note 79, at 419–20.

development to assure that city codes facilitating agriculture do not conflict with comprehensive plans.

4. Zoning Ordinances for Urban Planning: The extent and scope of agricultural activities that will be allowed within city limits is a highly particularized inquiry. City planners should ask the following questions when developing an urban agriculture ordinance³⁷⁹:

a. Should the ordinance permit, whether as-of-right or as a conditional use, urban farming and/or keeping of livestock? Will urban farming encompass commercial, community, and private farms? What farm products, if any, will be prohibited? If animal husbandry is permitted, what animals will be allowed? Will beekeeping be permitted? What safety and nuisance precautions need to be taken to assure that livestock do not create displeasing noise or odor?

b. Should the city amend individual zones to permit urban agriculture or would those activities be best regulated by the creation of an agricultural district or overlay zone?

c. Is there sufficient space in the city for effective urban farming projects? Should the city inventory public lots, vacant or within the parks system, that can be made available for community, commercial, or public farms and gardens? How will the city make public lands available for urban farming (i.e., through leasing, land trust agreements, etc.)? Should the ordinance address vertical, rooftop, or right-of-way gardens to create additional space?

d. Are there ordinances in effect that may prevent the sale of farm goods? If so, should the ordinance be amended to allow for the commercial sale of farm produce, livestock products, or homemade, local goods (such as honey, granola bars, etc.)?

e. How will the ordinance regulate agriculture infrastructure, such as hoop houses, greenhouses, walkways, benches, lighting, fencing, etc.?

f. For any of the above-mentioned activities, what size lot will be required? Will the number of users involved with the activity impact the ordinance? Will traffic patterns be affected by the activity? What purpose does the activity serve and how will it further the city's food policy goals?

³⁷⁹ See generally WOOTEN & ACKERMAN, *supra* note 30, at 21–37; Mogk et al., *supra* note 20, at 1567–79; Mukherji & Morales, *supra* note 104, at 4–7; *Guiding Principles*, *supra* note 81, at 9–29.

5. Particular Issues: Each city has its own unique strengths and weaknesses that should be considered in developing a comprehensive food policy. Socioeconomic considerations like employment, poverty, education, and public health may be important factors that should permeate the city's food policy. Infrastructure considerations like vacant land, adequate roads for food transport, soil contamination, and water access will dictate which food policy initiatives can be effective. Lastly, community value considerations including a commitment to sustainability, open space and recreation, and edible landscaping may indicate which activities should be promoted to assure community involvement.

CONCLUSION

Many local governments have the authority, resources, and duty to assure that people within its jurisdiction have the choice to eat nutritious, local food. Post-industrialized cities in America are at a crossroads. With the outsourcing of industry, the American populist's shift from city living to suburban living, and the recent economic downturn, many cities have fallen into disrepair, left with vacant lots, dilapidated buildings, and crumbling infrastructure. Furthermore, local economies are looking for ways to breathe new life into the market to increase tax revenue, create new industries, improve employment opportunities, and reinvigorate their citizens to innovate.

Urban agriculture may be one piece of the puzzle that helps to reinvent cities suffering from the plights of post-industrialism. The choice to promote local food systems can alleviate some of the strains on these fading cities by putting vacant lots to work, improving the health of their citizens, creating viable new markets for local food, fueling the restaurant economy, and drawing in tourism. Beautifying a city through urban agriculture has benefits beyond the tangible. The rebirth of a city as a self-sustaining hub of delicious food promotes community involvement and allows citizens to take pride in their neighborhoods, improving mental and physical health.

Food is one of the basic elements of survival and one of the great joys of life. The Irish playwright George Bernard Shaw once said, "There is no love sincerer than the love of food."³⁸⁰ A city that instills

³⁸⁰ See *George Bernard Shaw*, WIKIQUOTE, http://en.wikiquote.org/wiki/George_Bernard_Shaw (last updated Dec. 29, 2013).

this happiness in its citizens through urban agriculture can once again become a thriving city.