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Reducing Community Food Insecurity:

A Review of Options

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Executive Summary

Community food insecurity is defined as a community's lack of reasonable access to affordable quality food. The condition disproportionately affects minority and lower economic status communities and is a major contributor to health risks affecting these groups. The factors contributing to the lack of access to quality, affordable food are varied and include the flight of large grocery store chains from inner city neighborhoods and a proliferation of unhealthy eating options.

Under the power reserved by local units of government under the Constitution to regulate for the general health and welfare of their citizens, some cities and counties have tried regulatory approaches in an attempt to improve access to healthier foods. Minneapolis recently enacted an ordinance mandating a minimum selection of perishable food items be offered for sale in grocery stores in the city. The City of Los Angeles passed an interim control ordinance (ICO) prohibiting the approval of new fast food restaurants or the expansion of existing fast food restaurants in selected areas of the city. Both approaches could potentially improve the food insecurity issues in their communities, but would likely be more successful if combined with related positive incentives that involve and have the support of the local community in efforts to increase healthy eating options.

Another approach that is gaining attention is the incorporation of the issue of community food insecurity in a city or county comprehensive land use plan. The comprehensive planning process involves consideration of multiple community elements that affect and involve local food systems and engages a variety of constituencies in review and recommendation. As such, it incorporates many of the elements that have proven to be effective with other options in alleviating food insecurity.

Introduction

The United States Department of Agriculture (USDA) has included the lack of reasonable access to affordable, healthy food under the general term of food insecurity. The USDA defines food insecurity in the following ways:

Household Food Insecurity – “Limited or uncertain availability of nutritionally adequate and safe foods or limited or uncertain ability to acquire acceptable foods in socially acceptable ways.”¹

Community Food Security – “the underlying social, economic, and institutional factors within a community that affect the quantity and quality of available food and its affordability or price relative to the sufficiency of financial resources to acquire it.”²

Certain types of household were associated with higher than the national average food insecurity (11.1%): households with incomes below the official poverty line (37.7%); households with children headed by a single woman (30.2%) or single man (18%); African-American households (22.2%); Hispanic households (20.1%); and households with children (15.8%).³ Several factors may contribute to this, including the flight of larger grocery stores to the suburbs, lack of transportation to reach stores offering lower prices and wider variety of produce, and a greater presence of fast food restaurants in low income neighborhoods.⁴ The health consequences of a lack of access to healthy food are severe: “more frequent and severe sickness, reduced ability to concentrate and learn, and impaired social functioning. At the same time, many of the people who are experiencing hunger or food insecurity also are caught in the newly recognized and rapidly intensifying obesity epidemic. According to the United States Surgeon General, more than 60 percent of the U.S. adult population is obese or overweight.”⁵

The options to address this problem are varied, including incentive programs to attract supermarkets back to inner city locations, improving the quality of food offerings at smaller, neighborhood stores, providing transportation to better food outlets, and encouraging alternative food supply options, such as community gardens or food cooperatives.⁶ One approach to categorizing the different alternatives is by their level of government involvement, ranging from public policy options that would involve strict and direct government action in the form of legislation or ordinances (such as restrictive zoning measures excluding fast food restaurants) to minimal governmental involvement in the case of community gardens (*See Appendix B – Continuum of Options to Address Community Food Insecurity*).

This brief will review two options that come under the category of direct government involvement. Within this category, the type of involvement can vary from legislation mandating certain performance to prohibitory or restrictive policies. This paper will look at one of each that has recently been used in two cities in an attempt to improve the food insecurity issue in their respective communities. The first section will review the recently enacted Minneapolis ordinance that requires certain grocery stores to carry a minimum selection of perishable food items. The second section will examine prohibitory zoning ordinances, such as one recently passed in Los Angeles, that prohibit or restrict the number of fast food restaurants in select communities.

Another alternative to these governmental approaches is briefly presented in the final section. Some cities and counties are starting to include consideration of regional food systems in their comprehensive land planning process. The resulting strategies and plans incorporated by Madison, Wisconsin and Marin County, California, are reviewed and compared with the proposed plans for the Scott County, Minnesota 2030 Comprehensive Plan.

Establishing Minimum Healthy Food Offerings

One food security issue confronting lower income neighborhoods is lack of convenient access to affordable, healthy foods. After larger grocery store chains migrate to the suburbs, small neighborhood grocery stores or convenience stores frequently become the sole source of food for community residents. “These are the only available nearby food resource for residents with limited or no access to cars, and they generally do not provide the same selection, quality, and prices of larger grocery stores.”⁷

The City of Minneapolis recently amended Chapter 203 of the Minneapolis Code of Ordinances, relating to grocery stores and specialty food stores, adding a definition for “perishable foods”⁸ and establishing minimum selection requirements for certain perishable foods:

All grocery stores licensed under this chapter must offer for sale food for home preparation and consumption, on a continuous basis, at least three (3) varieties of qualifying, non-expired or spoiled, food in each of the following four (4) staple food groups, with at least five (5) varieties of perishable food in the first category and at least two (2) varieties of perishable food in all subsequent categories:

- (1) Vegetables and/or fruits.
- (2) Meat, poultry, fish and/or vegetable proteins.
- (3) Bread and/or cereal.
- (4) Dairy products and/or substitutes.⁹

This was a unique approach, as most communities that have attempted to improve community health by regulating food offerings in convenience stores or fast food restaurants have opted to impose higher taxes on unhealthy foods.¹⁰

Supporting the approach of improving food security in lower income neighborhoods by enhancing the offerings in neighborhood grocery stores, a study from California found that physical changes to a corner or neighborhood store to accommodate the stocking of perishable foods does not impose significant additional expenses on the store owner.¹¹ For the case study cited in the report, the estimate to modify the corner store and prepare it to handle more fresh produce was \$22,500.¹² This study also found that a related concern was baseless—whether populations in low-income communities would purchase the healthier foods if it was made available. Surveys of lower income shoppers found that this group was just as interested in purchasing healthy foods as the more affluent.¹³

Experience with Minneapolis Ordinance

The Minneapolis ordinance has only been in effect for a few months, so the city does not have extensive experience with the law to determine how effective it may be in helping to alleviate community

food insecurity issues. The Business Licensing Division’s understanding is that 95% of the grocery stores in the city that are subject to the ordinance are already well in compliance.¹⁴ The ordinance requires that the stores offer perishable food “for home preparation and consumption” which limits the requirements as far as washing and preparing food on site because the food does not have to be made available for in-store consumption. Most stores already had the minimal refrigeration requirements necessary to store the required perishable food items.

The primary objection that the City of Minneapolis has received from store owners in regard to the ordinance is that it is confusing. The language in the ordinance describing the number of the different types of perishable food items does appear to be contradictory:

...at least three (3) varieties of qualifying, non-expired or spoiled, food in each of the following four (4) staple food groups, with at least five (5) varieties of perishable food in the first category and at least two (2) varieties of perishable food in all subsequent categories.

Are the store owners required to stock three (3) varieties of food in each group, or five in one and two in others? In addition, the ordinance does not specify stocking quantities, so the provision of the ordinance could be fulfilled with one item of each required type.

Challenges

- **Mandated Approach.** The approach adopted in the Minneapolis ordinance is, in a sense, an “unfunded mandate”— a requirement imposed on a business without providing any financial support or positive incentives. The only incentive is a negative one; failure to stock the required items could result in a store being fined or potentially losing its license. Several studies mention the importance of community involvement and support in efforts to improve food insecurity issues and the Minneapolis ordinance approach appears to be lacking that element.¹⁵
- **Store Modification Costs.** The study cited above found that modifying the neighborhood store to handle perishable, healthy foods added little cost (\$22,520), however most of the funding to cover these costs was donated by a non-profit organization.¹⁶ Another report put the estimate to adapt a neighborhood store as higher: “Re-outfitting a corner store to sell fresh produce can cost less than \$100,000 in technical assistance, equipment, and initial inventory.”¹⁷ Either of these estimated amounts, if borne solely by a small store owner, could be excessive.
- **Produce Cost.** The ordinance also mandates a certain variety of foods be offered, but it does not address the retail pricing of those foods. Food prices in inner city neighborhood stores tend to be higher because of lack of economies of scale available to larger grocery stores.¹⁸ If the foods are made available, but are priced too high when compared to cheaper, less healthy options, the local consumers still may not purchase them.¹⁹

Recommendations

While the approach adopted by Minneapolis is one option for a solution, it may be more effective if combined with supportive strategies being utilized in other cities. For example, in Oakland, California's Fruitvale district, a corner grocery store, School Market, was approached by California Food Policy Advocates (CFPA)²⁰ to collaborate in a project to start selling fresh produce and increase the sales of dairy and other food.²¹ "CFPA offered School Market technical assistance, training, and equipment."²² The results have been impressive: gross sales of produce items have increased from \$50 per week to around \$600-700 per week.²³

The study documenting the store's transition identified five key factors for success: 1) technical assistance and training provided by a mentor with extensive experience in produce markets; 2) interest on the part of the store owner in increasing fresh produce sales; 3) space that could be used for produce and fresh food displays; 4) strong existing customer base; and 5) sufficient population density in the neighborhood to provide potential customers within walking distance.²⁴ The results for School Market suggest that a targeted approach with various types of assistance may improve the likelihood of a neighborhood store successfully modifying its retail structure.

Another success in changing the food offerings in low income neighborhood stores comes from the San Francisco area. In Bayview Hunters Point, a low-income community, the Good Neighbor Program, started by the Literacy for Environmental Justice (LEJ) organization, worked with local organizations, businesses and the city government to improve food offerings at local stores. The program developed a list of criteria defining a "good" store neighbor, and if a store agreed to these guidelines, then it received technical assistance and training, energy efficiency upgrades, and marketing assistance.²⁵ The criteria included "devoting at least 10 percent of inventory to fresh produce and an additional 10 to 20 percent of inventory to other healthy foods; accepting food stamps; limiting tobacco and alcohol promotion; and adhering to environmental and health standards."²⁶

In a pilot of the program, Super Save Grocery received free technical assistance from Whole Foods Market and LEJ is helping with "outreach and promotion, [and] encouraging the community to patronize the store through activities such as nutrition education and food tasting.... Since initiation of the program, sales of produce have increased by 15 percent."²⁷ Similar to the School Market example, success here may well require combining multiple methods of assistance to the store and enlisting support from the community.

Restricting Access to Fast Food

"A typical meal at a fast food restaurant may account for over eighty percent of the recommended daily allowance for fat, and a single menu item may provide for nearly half of a day's total caloric

requirements.”²⁸ To counter the link between excessive access to fast food restaurants, obesity and a range of associated health problems, on July 29, 2008, the Los Angeles City Council passed an Interim Control Ordinance (ICO) preventing establishment of new fast food restaurants or the expansion of existing fast food restaurants in South Los Angeles, Southeast Los Angeles, West Adams, Baldwin Hills and Leimert Park community planning areas for the period of one year.²⁹ This was prompted by a finding, stated in the ordinance preamble, that “45% of the 900 restaurants in South L.A. are fast food outlets . . . compared with 16% of 2,200 restaurants in the west side of the city.”³⁰ The intent of the ordinance is to “allow time for City planners to study the economic and environmental effects of the over-proliferation of fast-food restaurants in these communities and develop permanent solutions.”³¹

Several communities around the country have enacted zoning ordinances to restrict the presence of fast food restaurants in their communities. The City of Concord, Massachusetts has completely prohibited fast food or drive-in restaurants “to lessen congestion in the streets . . . [and] to preserve and enhance the development of the natural, scenic and aesthetic qualities of the community.”³² Westwood Village, California regulates the density of fast foods restaurants by restricting the number that may be located on each street.³³ The St. Paul suburb of Arden Hills takes a somewhat different approach in that it restricts the location of fast food restaurants in relation to schools, churches, public recreational areas and residential lots.³⁴

Ordinances such as the Los Angeles ordinance and others will likely withstand any legal challenge because zoning ordinances come within a government’s police power,³⁵ and are generally upheld if the enacting municipality can demonstrate a connection between the law and the promotion of the health and general welfare of community.³⁶ While zoning ordinances are usually upheld and courts avoid inserting their judgment over that of a city council, at least one court has held that a zoning decision involving fast food restaurants was arbitrary, capricious and unreasonable and overturned the city council decision.³⁷ In that twenty-five-year-old case, the Kansas Supreme Court found that the restaurants were “arbitrarily singled out to be eliminated for no reason. . . . There was no consideration of the financial hardship to the landowners by the zoning change, no consideration of the public welfare, or consideration of the overall feasibility of such changes.”³⁸

Ordinances specifically enacted to address the issue of food insecurity or obesity are rare, however, and have not been tested in court as of yet, so challenges may be raised to ordinances enacted for that purpose.³⁹ As an example, even though one reason provided for offering the Los Angeles ICO was to alleviate “serious public health problems through poor nutrition for children,”⁴⁰ the ordinance does not contain language specifically referencing that in its preamble. The preamble contains general references to “quality of life” and “health and welfare of the people of the community,” while, on the other hand, specifically referring to “excessive signage, little or no landscaping, large expanses of surface parking, drive-through windows . . . all which impact pedestrian activity, traffic, neighborhood aesthetics and the environment through heat release into the air and air pollution.”⁴¹ Leaving the health rationale out of the

ordinance may possibly provide an opening to a challenge if the neighborhood in which a prospective fast food company wishes to place a restaurant does not appear to be “aesthetically” challenged by another chain restaurant.⁴² Adding a health rationale based on an increasingly recognized public health issue may strengthen the ordinance if met with opposition in court.

Challenges

- **Defining a “Fast Food” Restaurant.** One challenge to designing a zoning ordinance with a goal of restricting access to unhealthy foods is in defining the type of establishment that is to be restricted. The Los Angeles Ordinance defines “fast food restaurant” as “any establishment which dispenses food for consumption on or off the premises, and which has the following characteristics: a limited menu, items prepared in advance or prepared and heated quickly, no table orders, and food served in disposable wrapping or containers.”⁴³ The City of St. Paul defines a fast food restaurant in the following way:

Any restaurant whose design or principal method of operation includes four (4) or more of the following characteristics shall be deemed to be a fast-food restaurant for zoning purposes:

- (1) Forty-five (45) percent or more of the floor area is devoted to food preparation, employee work space and customer service area;
- (2) A permanent menu board is provided from which to select and order food;
- (3) If a chain or franchised restaurant, standardized floor plans are used over several locations;
- (4) Customers pay for food before consuming it;
- (5) A self-service condiment bar is provided;
- (6) Trash receptacles are provided for self-service bussing;
- (7) Furnishing plan indicates hard-finished, stationary seating arrangements; and
- (8) Most main course food items are prepackaged rather than made to order.⁴⁴

In applying this zoning definition, the City of St. Paul encountered some controversy when considering a Noodles & Company restaurant for Grand Avenue.⁴⁵ In St. Paul’s case, the Noodles & Company restaurant was initially determined to be an ordinary restaurant and a permit was granted. However, the decision was revisited and, on reconsideration, the franchise was considered to be a fast food restaurant and therefore prohibited from the Grand Avenue location.⁴⁶

If a restaurant is defined by the manner in which food is served or handled, the method for displaying menu items or how customers consume the food, then restaurants offering reasonably priced, quickly available, and yet healthy food may be restricted from a targeted area along with the providers of burgers, fries and soft drinks. If the goal of a zoning ordinance is primarily to restrict access to unhealthy

food and not to limit aesthetically displeasing businesses, then a new method of defining a fast food restaurant may need to be developed.⁴⁷

- **Community Opposition.** Banning all fast food restaurants could potentially face some of the same resistance as other governmental mandates or prohibitions that are imposed on a community—charges of governmental paternalism.⁴⁸ One arguable inference from such a ban is that members of the target community lack the personal responsibility or capability of making healthy life decisions on their own and need to be assisted by government.⁴⁹ Also, some features of fast food restaurants have made them appealing to minority populations for egalitarian reasons,⁵⁰ so restricting them without community input could raise opposition.

Recommendations

The approach used by Los Angeles in restricting fast food restaurants may have a positive effect on food insecurity in this community by eliminating some sources of unhealthy foods. Land use regulation has been shown to be effective in reducing the negative effects of multiple alcohol retail outlets.⁵¹ Success with an approach in one public health area does not necessarily translate into similar success in another, however. For example, some economic analyses “do not show a drop in the consumption levels of non-nutritious foods after taxes are imposed” as compared with drops in smoking rates after taxes on tobacco products are raised.⁵² Additionally, some authors have expressed concern that banning fast food restaurants “may have unintended, detrimental consequences for low-income neighborhoods by further restricting food access or replacing the fast-food restaurant with a more unhealthy business, such as a liquor store.”⁵³

As discussed in the section on the Minneapolis ordinance, however, success in modifying neighborhood groceries seems to be due to adopting a coordinated and collaborative approach to change — assessments are made of the neighborhood to determine support for the changes, technical assistance and financial resources are provided by non-profits or governmental programs, and the community is consulted and involved.⁵⁴ In the case of Los Angeles, the city appears to recognize this and is taking a similar approach by coordinating implementation of the fast food restaurant ban with other programs designed to attract developers to the neighborhood and to create incentives for grocery stores and sit-down restaurants to locate in the underserved area.⁵⁵ Assistance in the form of incentives is available to grocery stores of at least 12,000 square feet; restaurants with a minimum seating capacity of 30; and produce markets that set aside 80% or more of their floor space to fresh fruits and vegetables.⁵⁶ The assistance can take the form of predevelopment and development loans, tax credits, energy discounts, and assistance identifying qualifying employees.⁵⁷

Another Alternative

Another option for governments that would invite collaboration with the local community is to consider the regional food system and local pockets of food insecurity in the comprehensive land planning process. According to a recent study from the American Planning Association, land planning has not traditionally incorporated consideration of the food system because of the prevailing view that the food system interacts only indirectly with the built environment; because of a perception that the food system was functioning well; and because the food system does not deal with public resources, such as air and water, or public investment such as highways or parks.⁵⁸

This perception appears to be changing, with food system issues receiving more attention in planning publications and at planning conferences.⁵⁹ Several factors have contributed to the increased sensitivity to the food system:

- Recognition that food system activities take up a significant amount of urban and regional land
- Awareness that planners can play a role to help reduce the rising incidence of hunger on the one hand, and obesity on the other
- Understanding that the food system represents an important part of community and regional economies
- Awareness that the food Americans eat takes a considerable amount of fossil fuel energy to produce, process, transport, and dispose of
- Understanding that farmland in metropolitan areas, and therefore the capacity to produce food for local and regional markets, is being lost at a rapid pace
- Understanding that pollution of ground and surface water, caused by the overuse of chemical fertilizers and pesticides in agriculture, adversely affects drinking water supplies
- Awareness that access to healthy foods in low-income areas is an increasing problem for which urban agriculture can offer an important solution
- Recognition that many benefits emerge from stronger community and regional food systems.⁶⁰

Madison, Wisconsin has been cited as an example of how to incorporate food systems and food security considerations into a region's comprehensive plan.⁶¹ Within its comprehensive plan, the city includes policies to encourage Community Supported Agriculture (CSA) farming, promotion of locally grown foods, and protection of existing community gardens, coupled with incentives for new community gardens.⁶² Marin County, California has also included numerous strategies in its proposed comprehensive plan under the heading of Food Systems and Security, including:

- Promotion of local food processing
- Support for locally grown organic food

- Encouragement of community gardens
- Diversification of locally grown food products
- Promotion of a countywide nutritional survey⁶³

Both cities envisioned the inclusion of food systems planning into their comprehensive plans as an opportunity to alleviate local community food insecurity while simultaneously supporting local agriculture and reducing the loss of farmland.

Scott County, Minnesota, is currently developing its 2030 Comprehensive Plan (“the Plan”) and has included local food planning and agricultural sustainability as an emerging strategic challenge for the County.⁶⁴ At this stage of its development, the Plan contains some specific strategies to address this challenge. Under the general goal to “protect and preserve agricultural uses and the economic viability of farming operations,” the Plan has several sub-goals, such as:

Promote a locally-based food production system by preserving small lot farms used for fruit and vegetable production; supporting public institutions in purchasing food grown within the County; assisting in improving connections between local food producers and consumers; and assisting local governments in developing strategies that will promote a locally-based food production system.⁶⁵

Other strategies include limiting residential development in areas planned for long-term agricultural use, establishing a farmer advisory group to engage the farming community in maintaining the viability of farming and preserving farmland, and encouraging cities and townships to protect farmers from nuisance violations.⁶⁶

The County’s plan, however, also anticipates a significant reduction in agricultural land to accommodate future urban growth and allow for residential development.⁶⁷ This change in classification of the land has raised concerns among some local food producers and consumer advocates that the Plan has not adequately considered how the loss of local agricultural land in Scott County may affect the economy and food security within the County and the surrounding metropolitan area.⁶⁸ One issue raised by local food producers and advocates is that as consumers become more aware of the benefits of locally produced food, Scott County will not be able to meet the demand due to loss of local agricultural land to other purposes.⁶⁹

Scott County approved the updated Plan on November 18, 2008, and the Plan has been submitted to the Metropolitan Council for its review and approval. The Metropolitan Council will review the Plan based on three factors: “conformance with the 2030 Regional Development Framework and system regional policy plans; consistency with requirements of the Metropolitan Land Planning Act; and compatibility with plans of other local jurisdictions.”⁷⁰ Depending on action

taken by the Metropolitan Council, the Plan is scheduled for final adoption by Scott County early in 2009.⁷¹

Conclusion

Community food insecurity is driven by several causes including movement of grocery supermarkets from lower income neighborhoods to more affluent suburbs, lack of affordable and accessible transportation options to access affordable and healthy food, overabundance of fast food restaurants in low income neighborhoods, and limited food options in food stores that continue to remain in the community. Government can be involved in efforts to reverse some of these trends and to promote other options through regulations and prohibitions, tax incentives, removal of barriers to community-based initiatives, and incorporation of food systems into comprehensive land use planning.

In reviewing the successes in alleviating community food insecurity achieved in some cities, two factors appear to contribute to success. First, the approach involves and has the support of the community; and second, the approach considers the multi-faceted reasons for food insecurity and attempts to take a broad approach to resolving the issue by incorporating multiple strategies. In the success stories of neighborhood grocery stores, sustained improvements were achieved when the store owners supported the change, the local community became involved and supportive, and both were supported by local non-profits or governmental organizations. The City of Los Angeles appears to recognize this by acknowledging that the temporary ban on fast food restaurants is only one step and must be supplemented by including positive development options that encourage healthy food alternatives. Various cities and counties are incorporating the interrelated and multi-faceted factors contributing to community food insecurity as they include regional food systems and the areas of food insecurity in the development of their comprehensive land planning goals and strategies.

Endnotes

¹ BARBARA COHEN, IQ SOLUTIONS, INC. ECONOMIC RESEARCH SERVICE, U.S. DEPARTMENT OF AGRICULTURE, COMMUNITY FOOD SECURITY ASSESSMENT TOOLKIT 3 (2002), <http://www.ers.usda.gov/publications/efan02013/efan02013a.pdf>.

² *Id.*

³ MARK NORD, ET AL. UNITED STATES DEPARTMENT OF AGRICULTURE, HOUSEHOLD FOOD SECURITY IN THE UNITED STATES, 2007 10 (2008), <http://www.ers.usda.gov/Publications/ERR66/ERR66.pdf>.

⁴ LESLIE MIKKELSEN & SANA CHEHIMI, PREVENTION INSTITUTE, THE LINKS BETWEEN THE NEIGHBORHOOD FOOD ENVIRONMENT AND CHILDHOOD NUTRITION 5-10 (2007).

⁵ ED BOLEN & KENNETH HECHT, CALIFORNIA FOOD POLICY ADVOCATES, NEIGHBORHOOD GROCERIES: NEW ACCESS TO HEALTHY FOOD IN LOW-INCOME COMMUNITIES 3 (2003).

⁶ MIKKELSEN, *supra* note 4, at 11-20.

⁷ REBECCA FLOURNOY & SARAH TREUHAFT, POLICY LINK, HEALTHY FOODS, HEALTHY COMMUNITIES: IMPROVING ACCESS AND OPPORTUNITIES THROUGH FOOD RETAILING 28 (2005).

⁸ “[P]erishable foods” are “those items that are fresh, un-refrigerated or refrigerated staple food items that will spoil or suffer significant deterioration in quality within two (2) to three (3) weeks” MINNEAPOLIS, MINN., ORDINANCES ch. 203 (2008).

⁹ *Id.*

¹⁰ Jeff Strnad, *Conceptualizing the “Fat Tax”: The Role of Food Taxes in Developed Economies*, 78 S. CAL. L. REV. 1221, 1224 (July 2005).

¹¹ “The important discovery detailed in the case history is that virtually all of the costs associated with operating a corner store that offers fresh fruit and vegetables and other healthy foods already are present in the currently typical corner store that operates without those healthy foods. Rent, utilities, insurance, labor and other expenses already are built into any corner store. Conversion to selling healthy food involves relatively little added cost – refrigerated fixtures, inventory of new items and the time required to purchase, handle and display the new, perishable items are the main items – and takes advantage of management that has some operating skills and experience and knows, and is well known by, the neighborhood from which its customers come.” BOLEN, *supra* note 5, at 21.

¹² “This amount included staff technical assistance and support (\$16,000), the refrigerated display rack (\$4,000), façade improvements and signage (\$1,075), start-up inventory (\$845), and marketing (\$600).” *Id.* at 31.

¹³ “Research also shows that low-income individuals want to buy healthy foods such as fresh produce. Surveys at “whole health” food stores – where 30 percent of the shoppers had incomes of less than \$35,000 – found no distinction between income levels among health-conscious shoppers seeking highly nutritious food. Similarly, a focus group of low-income women conducted for the Berkeley Youth Alternatives Garden Patch project found a strong preference for high quality, fresh produce.” *Id.* at 7.

¹⁴ In order to determine the response to the ordinance during its limited implementation period, I contacted the City of Minneapolis and received a call back from Grant Wilson. The comments in this section are based on our conversation. Interview with Grant Wilson, Licensing Inspector with the City of Minneapolis Business Licensing and Consumer Services Division in Minneapolis, Minn. (Oct. 20, 2008).

¹⁵ See AMERICAN PLANNING ASSOCIATION, POLICY GUIDE ON COMMUNITY AND REGIONAL FOOD PLANNING 2007, <http://www.planning.org/policy/guides/adopted/food.htm>; ; JUDITH LEVY, INSTITUTE FOR AGRICULTURE AND TRADE POLICY, 10 WAYS TO GET HEALTHY, LOCAL FOODS INTO LOW-INCOME NEIGHBORHOODS 3 (2007); and MIKKELSEN, *supra* note 4, at 11, 18, & 26.

¹⁶ BOLEN, *supra* note 5, at 29-31.

¹⁷ FLOURNOY, *supra* note 7, at 19.

¹⁸ Chris L. Winstanley, *A Healthy Food Tax Credit: Moving Away from the Fat Tax and its Fault-Based Paradigm*, 86 OR. L. REV. 1151, 1165-66.

¹⁹ “Studies consistently show that prices offered by smaller neighborhood stores can exceed prices at chain supermarkets by as much as 48 percent.” See MIKKELSEN, *supra* note 4, at 7.

²⁰ “California Food Policy Advocates is a statewide public policy and advocacy organization dedicated to improving the health and well being of low-income Californians by increasing their access to nutritious and affordable food.” California Food Policy Advocates Home Page, <http://www.cfpa.net/> (last visited Jan. 22, 2009).

²¹ BOLEN, *supra* note 5, at 28.

²² *Id.* at 29.

²³ *Id.* at 31.

²⁴ *Id.* at 31-32.

²⁵ MIKKELSEN, *supra* note 4, at 31.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Jackson S. Davis, *Fast Food, Zoning, and the Dormant Commerce Clause: Was it Something I Ate?*, 35 B.C. ENVTL. AFF. L. REV. 259, 262 (2008).

²⁹ Press Release, Office of Councilwoman Jan C. Perry, South Los Angeles Fast Food Interim Control Ordinance Unanimously Approved by Los Angeles City Council (July 29, 2008) (on file with author).

³⁰ L.A., Cal., Ordinance 180103 (Sept. 14, 2008).

³¹ Press Release, Office of Councilwoman Jan C. Perry, *supra* note 29.

³² CONCORD, MASS., Town of Concord Zoning Bylaw, Section 4.7.1.

³³ JULIE SAMIA MAIR, JD, ET AL., CENTER FOR LAW AND THE PUBLIC'S HEALTH, THE USE OF ZONING TO RESTRICT FAST FOOD OUTLETS: A POTENTIAL STRATEGY TO COMBAT OBESITY 50 (2005), <http://www.publichealthlaw.net/Zoning%20Fast%20Food%20Outlets.pdf>.

³⁴ ARDEN HILLS, MINN., CODE § 1325.04 (“No drive-in business or fast food restaurant shall be located on a site that is within four hundred (400) feet of a public, private or parochial school, a church, a public recreation area, or any residentially zoned property.”)

³⁵ MAIR, *supra* note 33, at 27.

³⁶ *Id.* at 29.

³⁷ Taco Bell v. City of Mission, 678 P.2d 133 (Kansas 1984).

³⁸ *Id.* at 145.

³⁹ MAIR, *supra* note 33, at 38-39. See also Manny Fernandez, *Pros and Cons of a Zoning Diet: Fighting Obesity by Limiting Fast-Food Restaurants*, N.Y. TIMES, Sept. 24, 2006, available at 2006 WLNR 16579312.

⁴⁰ Motion accompanying L.A., Cal., Ordinance 180103 (May 25, 2007) (on file with author).

⁴¹ L.A., Cal., Ordinance 180103 (Sept. 14, 2008).

⁴² Taco Bell, 678 P.2d at 141-42. The court opinion overturning the zoning restriction references “what appeared to be an anti-restaurant animus among the city planning commission.” The court also countered the rationale supporting the ban based on “traffic, noise, light and odor problems” with “the benefit to the public in . . . the way of jobs, taxes, and use of previously unproductive property.” *Id.* at 144-45.

⁴³ L.A., Cal., Ordinance 180103.

⁴⁴ ST. PAUL, MINN., CODE § 65.615 (2008).

⁴⁵ Heron Marquez Estrada, *Noodles & Co. is Causing Indigestion on Grand Avenue*, STAR TRIBUNE, May 5, 2007, available at 2007 WLNR 8640189.

⁴⁶ Rick Nelson, *Punch Lands Coveted Grand Avenue Spot*, STAR TRIBUNE, Aug. 2, 2007, available at 2007 WLNR 15710903.

⁴⁷ See LISA FELDSTEIN, SMART GROWTH NETWORK, LINKING LAND USE PLANNING AND THE FOOD ENVIRONMENT, <http://icma.org/sgn/newsdetail.cfm?nfid=2666&id> (last visited Nov. 24, 2008); see also Fernandez, *supra* note 39.

⁴⁸ Brian Krier, *L.A. City Council Turns Fast Food Into a Zoning Issue*, NEXT AMERICAN CITY, Aug. 15, 2008, <http://americacity.org/daily/entry/984>.

⁴⁹ *Id.*

⁵⁰ “Many of the defining elements of fast food restaurants help to reduce or eliminate potentially discriminatory behavior. Employees wait on customers according to their place in line, which avoids demonstrations of preference for more desirable clientele. Posted signs clearly announce food prices, ensuring that employees will not charge some customers more than others. Food quality and appearance are also consistent across fast food chains and within individual restaurants, providing no opportunity to discriminate by adjusting portion size or taste. . . . [M]any fast food restaurants in low-income urban communities are franchises whose owners reflect the racial or ethnic make-up of the neighborhood, reducing the likelihood of racial discrimination against local customers.” Andrea Freeman, *Fast Food: Oppression Through Poor Nutrition*, 95 CAL. L. REV. 2221, 2230-33 (2007).

⁵¹ Marice Ash, et al., *Land Use Planning and the Control of Alcohol, Tobacco, Firearms, and Fast Food Restaurants*, 93 AM. J. PUB. HEALTH 1404 (2003).

⁵² Marice Ashe, et al., *Local Venues for Change: Legal Strategies for Healthy Environments*, 35 J.L. MED. & ETHICS 138, 144 (2007).

⁵³ Graham M. Catlin, *A More Palatable Solution? Comparing the Viability of Smart Growth Statutes to Other Legislative Methods of Controlling the Obesity Epidemic*, 2007 WIS. L. REV. 1091, 1108 (2007).

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- ⁵⁴ See generally Healthy Corner Store Initiative, Supermarket Campaign – Programs & Initiatives – The Food Trust <http://www.thefoodtrust.org/php/programs/super.market.campaign.php#4> (last visited Dec. 10, 2008).
- ⁵⁵ See Press Release, Office of Councilwoman Jan C. Perry, *supra* note 29.
- ⁵⁶ CITY OF LOS ANGELES, MARKET OPPORTUNITIES: INCENTIVES FOR FOOD RETAILERS (on file with author).
- ⁵⁷ *Id.*
- ⁵⁸ AMERICAN PLANNING ASSOCIATION, *supra* note 15. .
- ⁵⁹ *Id.*
- ⁶⁰ *Id.*
- ⁶¹ WORLD HUNGER YEAR, FOOD SECURITY LEARNING CENTER, BRINGING IT ALL TOGETHER IN AMERICA’S DAIRYLAND, CASE STUDIES, , http://www.worldhungeryear.org/fslc/faqs2/ria_809.asp?section=18&click=3 (last visited Nov. 24, 2008).
- ⁶² CITY OF MADISON COMPREHENSIVE PLAN, CITY OF MADISON, WI, Chapter 6 at 16-21(2006).
- ⁶³ WORLD HUNGER YEAR, FOOD SECURITY LEARNING CENTER, SUPPORTING COMMUNITY FOOD SECURITY IN MARIN COUNTY, CASE STUDIES, , http://www.worldhungeryear.org/fslc/faqs2/ria_809.asp?section=18&click=3 (last visited Nov. 24, 2008); see also MARIN COUNTY, FOOD AND AGRICULTURE STRATEGIES, http://www.co.marin.ca.us/depts/CD/main/future-marin-website/cwpdocs/CWP_%20Food_and_Agriculture_Strategies.pdf (last visited Jan. 22, 2009).
- ⁶⁴ SCOTT COUNTY, SCOTT COUNTY 2030 COMPREHENSIVE PLAN UPDATE, EXECUTIVE SUMMARY ES-4 (Nov. 18, 2008), available at <http://www.co.scott.mn.us/wps/portal/ShowPage?CSF=977> (then follow “Executive Summary” hyperlink).
- ⁶⁵ SCOTT COUNTY, SCOTT COUNTY 2030 COMPREHENSIVE PLAN UPDATE, CHAPTER V – LAND USE AND GROWTH MANAGEMENT V-33 (Nov. 18, 2008), available at <http://www.co.scott.mn.us/wps/portal/ShowPage?CSF=977> (then follow “Chapter 5: Land Use & Growth Management” hyperlink).
- ⁶⁶ *Id.* at V-33-34.
- ⁶⁷ *Id.* at V-43.
- ⁶⁸ Letter from Local Harvest Alliance to Brad Davis, Manager, Scott County Land Use Planning Department (Mar. 26, 2008), <http://www.flaginc.org/topics/news/ScottCounty2030CommentsLHA.pdf>.
- ⁶⁹ *Id.*
- ⁷⁰ SCOTT COUNTY, SCOTT COUNTY 2030 COMPREHENSIVE PLAN UPDATE ANNOUNCEMENTS, <http://www.co.scott.mn.us/wps/portal/ShowPage?CSF=968> (last visited Dec. 11, 2008).
- ⁷¹ SCOTT COUNTY, SCOTT COUNTY 2030 COMPREHENSIVE PLAN UPDATE, PLANNING FRAMEWORK TASKS & TIMELINES (Mar. 6, 2008), <http://www.co.scott.mn.us/wps/portal/ShowPage?CSF=968&CSI=011576> (then follow “Updated Timeline for the 2030 Planning Process” hyperlink).

Appendix A. Resources

Publications

Julie Samia Mair, JD, et al, *The Use of Zoning to Restrict Fast Food Outlets: A Potential Strategy to Combat Obesity*, October 2005. This paper is an excellent resource for background information on the use of zoning to attempt to reduce the health impact of fast food restaurants. An abbreviated version of the paper is also available; it is entitled *The City Planner's Guide to the Obesity Epidemic: Zoning and Fast Food*.

(<http://www.publichealthlaw.net/Zoning%20Fast%20Food%20Outlets.pdf>)

Ed Bolen & Kenneth Hecht, California Food Policy Advocates, *Neighborhood Groceries: New Access to Healthy Food in Low-Income Communities*, January 2003. This paper provides useful case studies of community and non-profit collaboration with neighborhood stores to improve food offerings in lower income neighborhoods. (<http://www.cfpa.net/Grocery.PDF>)

Leslie Mikkelsen and Sana Chehimi, Prevention Institute, *The Links Between the Neighborhood Food Environment and Childhood Nutrition*, Robert Wood Johnson Foundation, 2007. In this publication, the authors have an informative discussion of the factors contributing to neighborhood food insecurity and some options that may alleviate the problem. The paper concludes with some suggestions for additional research. (<http://www.rwjf.org/childhoodobesity/product.jsp?id=23551>)

Rebecca Flournoy & Sarah Treuhaft, Policy Link, *Healthy Food, Healthy Communities: Improving Access and Opportunities Through Food Retailing* (2005). This paper provides a high-level overview of community food issues and some additional success stories from around the country.

(http://www.issuelab.org/research/healthy_food_healthy_communities).

Judie Levy, Institute for Agriculture and Trade Policy, *10 Ways to Get Healthy, Local Foods into Low-Income Neighborhoods, A Minneapolis Resource Guide*. (February 2007). This resource provides suggestions and tips on strategies to alleviate community food insecurity and looks at local applications of those strategies. (<http://iatp.org/iatp/publications.cfm?accountID=258&refID=97319>)

Heather Stouder, Office of the Mayor, Madison, WI, *Grocery Stores in City Neighborhoods: Supporting Access to Food Choices, Livable Neighborhoods, and Entrepreneurial Opportunities in Madison, Wisconsin*. (May 2004). This report provides examples of success in revitalizing neighborhood stores in Wisconsin's capital city.

(<http://www.ci.madison.wi.us/planning/Grocery%20Store.pdf>)

Other Links

Provided below are links to some useful websites, along with brief descriptions.

Community Food Security Coalition - <http://www.foodsecurity.org/>

“The Community Food Security Coalition (CFSC) is a non-profit...organization dedicated to building strong, sustainable, local and regional food systems that ensure access to affordable, nutritious, and culturally appropriate food for all people at all times.”

World Hunger Year / Food Security Learning Center -

<http://www.worldhungeryear.org/fslc/default.asp>

“WHY is a leading advocate for innovative, community-based solutions to hunger and poverty. WHY challenges society to confront these problems by advancing models that create self-reliance, economic justice, and equal access to nutritious and affordable food.”

American Planning Association Policy Guide on Community and Regional Food Planning -

<http://www.planning.org/policy/guides/adopted/food.htm>

“The American Planning Association provides leadership in the development of vital communities by advocating excellence in community planning, promoting education and citizen empowerment, and providing the tools and support necessary to meet the challenges of growth and change.”

Healthy Corner Store Initiative, The Food Trust -

<http://www.thefoodtrust.org/php/programs/corner.store.campaign.php>

“The Healthy Corner Store Initiative seeks to be an active partner in changing the food landscape in low-income Philadelphia communities. This innovative approach encompasses environmental change, social marketing, nutrition education in local schools, technical training and assistance with corner stores, and research in order to reduce the incidence of diet-related disease and obesity in our communities.”

Healthy Corner Stores Network - <http://www.healthycornerstores.org/index.php>

“The Healthy Corner Stores Network promotes efforts to bring healthier foods into corner stores in low-income and underserved communities. Led by the Community Food Security Coalition, The Food Trust, and Public Health Law & Policy, the Healthy Corner Store Network (HCSN) brings together community members, local government staff, nonprofits, funders, and others across the country to share best practices, lessons learned, and new approaches to common challenges.”

Steps to a Healthier Minnesota - <http://www.stepstohealthiermn.org/index.cfm>

“The Steps to a Healthier US Initiative is an overall effort of the U.S. Department of Health and Human Services (HHS), designed to identify and promote programs that encourage small behavior changes to reduce the burden of chronic disease.”

United States Department of Agriculture, Food and Nutrition Service, Food Security Resources - <http://www.fns.usda.gov/fsec/>

“The primary focus of the U.S. Department of Agriculture’s nutrition assistance programs is providing food security—access by all people at all times to enough nutritious food for an active, healthy life.”

Appendix B. Continuum of Options to Address Community Food Insecurity

*Direct governmental
involvement*

*Government
Assisted*

*Grassroots/Community
Driven*

<p>Fast food restaurant bans or restrictions</p> <p>This option would include city or county zoning regulations that prohibit fast food restaurants or restrict the number or location of fast foods restaurants. Cities such as Los Angeles, CA; Arden Hills, MN; and Concord, MA have implemented forms of zoning restrictions on fast food restaurants.¹</p>	<p>Healthy food tax credit</p> <p>This potential option would be an offset of tax liability; a refundable amount for money spent on healthy foods. This credit would assist residents of lower income neighborhoods to offset the higher costs of fresher, healthier foods.²</p>	<p>Farmers' markets / mini markets</p> <p>Farmers' markets offer opportunities to growers to sell directly to consumers. The direct connection provides the community with fresher food and can also help sustain smaller family-oriented farms.³</p> <p>A mini market, or local produce market, is a small farmers' market with five or fewer vendors.⁴</p>
<p>Government mandated food requirements</p> <p>In this category are laws, ordinances, codes or regulations that prohibit certain foods or that require stores or restaurants to stock or offer for purchase a minimum number or amount of healthy food items. The only example of the later option appears to be the Minneapolis ordinance requiring certain varieties of perishable food items.⁵</p>	<p>New Market Tax Credits</p> <p>“The New Markets Tax Credit (NMTC) Program permits taxpayers to receive a credit against Federal income taxes for making qualified equity investments in designated Community Development Entities (CDEs). Substantially all of the qualified equity investment must in turn be used by the CDE to provide investments in low-income communities.”⁶</p>	<p>Community Supported Agriculture</p> <p>Community supported agriculture (CSA) consists of a community of individuals who pledge to support a farm operation. The growers and consumers provide mutual support and share the risks and benefits associated with food production.⁷</p>

Appendix B. Continuum of Options to Address Community Food Insecurity

Direct governmental involvement

Government Assisted

Grassroots/ Community Driven

<p>Food taxes / junk food taxes</p> <p>Amounts added to certain food products to educate on the potential health effects of the product and dissuade consumers from purchasing harmful products. The tax also serves to reimburse the government for health care costs resulting from consumption of the unhealthy food.⁸</p>	<p>Tax Increment Financing</p> <p>Tax increment financing (TIF) or neighborhood block grant programs could be used to assist grocery store owners to improve their stores or to attract stores to lower income neighborhoods.⁹</p>	<p>Mobile markets</p> <p>Mobile markets are food vendors that offer produce and other food items from portable vehicles, such as trucks, cars, kiosks, trailers, or mobile carts.¹⁰</p>
<p>Comprehensive land use planning</p> <p>Use of the police powers of the government to control a variety of aspects of a community's development. The tool could be used to "achieve the public health goal of limiting the availability of consumer products proven to be harmful to health,"¹¹ or to incorporate food systems into city or county planning.¹²</p>	<p>Removal of burdensome governmental regulation</p> <p>Governments could remove restrictions that prohibit or burden community gardens or farmers' markets, such as a Sacramento ordinance that prohibits gardens on front yards.¹³</p>	<p>Cooperative grocery stores</p> <p>A cooperative grocery store is owned and managed by its members. Members support the store with purchases, are involved in decision making and share in the store's profits.¹⁴</p>
	<p>Modification of existing government programs to incent healthier eating</p> <p>An example of this option would be the change to the Women, Infants and Children (WIC) program to allow participants in the program to purchase a wider variety of foods.¹⁵</p>	<p>Community gardens</p> <p>Spaces within a neighborhood where two or more residents garden. The land can be owned by the municipality, a community group or institution, a land trust or some other entity. Food grown in the community garden is for personal consumption, for supplemental income, or for donation.¹⁶</p>

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- ¹ L.A., Cal., Ordinance 180103 (Sept. 14, 2008); ARDEN HILLS, MINN., CODE § 1325.04 (2008); and CONCORD, MASS., Town of Concord Zoning Bylaw, Section 4.7.1 (2008).
- ² Chris L. Winstanley, *A Healthy Food Tax Credit: Moving Away from the Fat Tax and Its Fault-Based Paradigm*, 86 OR. L. REV. 1151 (2007).
- ³ JUDIE LEVY, INSTITUTE FOR AGRICULTURE AND TRADE POLICY, 10 WAYS TO GET HEALTHY, LOCAL FOODS INTO LOW-INCOME NEIGHBORHOODS 2 (2007).
- ⁴ INSTITUTE FOR AGRICULTURE AND TRADE POLICY, A “HOW-TO” GUIDE FOR HOSTING MINI FARMERS’ MARKETS IN MINNEAPOLIS 7, http://www.stepstohealthiermn.com/dynamic_documents/02493.pdf (last visited Jan. 29, 2009)..
- ⁵ MINNEAPOLIS, MINN., ORDINANCE ch. 203 (2008).
- ⁶ Community Development Financial Institutions Fund Home Page, http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5 (last visited December 16, 2008).
- ⁷ SUZANNE DEMUTH, DEFINING COMMUNITY SUPPORTED AGRICULTURE (September 1993), <http://www.nal.usda.gov/afsic/pubs/csa/csadef.shtml>.
- ⁸ Jeff Strnad, *Conceptualizing the “Fat Tax”: The Role of Food Taxes in Developed Economies*, 78 S. CAL. L. REV. 1221 (2005).
- ⁹ See FRESH FOOD FINANCING INITIATIVE, http://www.thefoodtrust.org/catalog/download.php?product_id=104 (last visited Jan. 29, 2009); and NATIONAL ASSOCIATION OF REALTORS, TAX INCREMENT FINANCING (2002), [http://www.realtor.org/smart_growth.nsf/docfiles/TIFreport.pdf/\\$FILE/TIFreport.pdf](http://www.realtor.org/smart_growth.nsf/docfiles/TIFreport.pdf/$FILE/TIFreport.pdf).
- ¹⁰ See generally LEVY, *supra* note 3, at 7; and OpenAir Market Network, <http://www.openair.org/> (last visited December 16, 2008).
- ¹¹ Marice Ash, et al., *Land Use Planning and the Control of Alcohol, Tobacco, Firearms, and Fast Food Restaurants*, 93 AM. J. PUB. HEALTH 1404 (2003).
- ¹² AMERICAN PLANNING ASSOCIATION, POLICY GUIDE ON COMMUNITY AND REGIONAL FOOD PLANNING (2007) <http://www.planning.org/policy/guides/adopted/food.htm>.
- ¹³ LISA FELDSTEIN, LINKING LAND USE PLANNING AND THE FOOD ENVIRONMENT, SMART GROWTH NETWORK, <http://icma.org/sgn/newsdetail.cfm?nfid=2666&cid> (last visited Jan. 29, 2009).
- ¹⁴ LEVY, *supra* note 3, at 4.
- ¹⁵ See Issue Brief on Women, Infants and Children (WIC) Program by Maggie Mahoney.
- ¹⁶ LESLIE MIKKELSEN & SANA CHEHIMI, PREVENTION INSTITUTE, THE LINK BETWEEN THE NEIGHBORHOOD FOOD ENVIRONMENT AND CHILDHOOD NUTRITION 17 (2007).

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