

ELIMINATING FOOD DESERTS: NO SIMPLE RECIPE FOR SUCCESS

ASHLEY OLDFIELD†

I. INTRODUCTION

For many, providing a healthy dinner for their families is a simple matter, starting with a short drive to the nearest supermarket. However, for those living in a food desert¹—an area with limited access to fresh food due to the lack of a grocery store—providing a nutritious meal is more difficult.² Residents of such areas often live more than a mile from the nearest large grocery store, lack adequate transportation, and face a host of unhealthy food options, such as gas station fare and fast food.³ The recent COVID-19 pandemic exacerbated these difficulties and highlighted the need for change.⁴

Historically, land planners were slow to address food access in urban design.⁵ However, as awareness of the issue increased at the federal level and in the media, land planners began utilizing the

† Ashley Oldfield is an attorney at Rayburn Cooper & Durham, P.A. in North Carolina. She obtained her J.D. from Wake Forest University School of Law. Views expressed herein are her own, and not necessarily those of her firm or colleagues.

1. The term “food desert” itself is not without critics. Some note that it implies food inaccessibility is a natural occurrence rather than the result of social and economic inequities, while others point out its negative connotation that falsely portrays what might be a vibrant community. CAITLIN MISIASZEK ET AL., JOHNS HOPKINS CTR. FOR A LIVABLE FUTURE, BALTIMORE CITY’S FOOD ENV’T: 2018 REPORT 11 (2018).

2. *Id.*

3. *Id.*

4. See Scott Haskell, *How the Covid-19 Pandemic Affects Food Deserts*, MICH. ST. UNIV. INST. FOR FOOD L. AND REGULS. (Feb. 2, 2021), <https://www.canr.msu.edu/news/how-the-covid-19-pandemic-affects-food-deserts>; Nathaniel Meyersohn, *Groceries Were Hard to Find for Millions. Now It’s Getting Even Worse*, CNN BUS. (June 9, 2020), <https://www.cnn.com/2020/06/09/business/food-deserts-coronavirus-grocery-stores/index.html>.

5. BARBARA MCCANN, ROBERT WOOD JOHNSON FOUND., CMTY. DESIGN FOR HEALTHY EATING: HOW LAND USE AND TRANSP. SOLUTIONS CAN HELP 21 (2006) (noting that in a survey of twenty-two planning agencies in the United States in 1998, only six addressed food access in their comprehensive plans, and of those six, only three gave it significant attention).

tools at their disposal to improve access to healthy food.⁶ This Paper suggests that land planning tools can be used to alleviate food inaccessibility by increasing the number of healthy food vendors, improving transportation systems, and encouraging healthy food consumption. Nevertheless, land planning alone is unlikely to redress the problem of food inaccessibility. Therefore, land planning should be considered as just one piece of a larger system addressing the underlying causes of food inaccessibility.⁷

II. WHAT IS A FOOD DESERT?

The phrase “food desert” first gained traction in the United Kingdom during the 1990s as the government sought to address health inequalities in urban neighborhoods.⁸ Since then, a food desert has become loosely known as an area with limited access to fresh foods, usually because of the lack of a supermarket.⁹ The U.S. Department of Agriculture (“USDA”) provides a tool—the Food Access Research Atlas—to measure food access based on several different indicators, including distance to a supermarket, vehicle availability, and income level.¹⁰

Although there are various ways to define food deserts using the Food Access Research Atlas,¹¹ the commonly stated definition is a census tract where at least either five hundred people or 33 percent of the population lives more than one mile from the nearest large grocery store for an urban area or more than ten miles

6. See generally Nathan A. Rosenberg & Nevin Cohen, *Let Them Eat Kale: The Misplaced Narrative of Food Access*, 45 *FORDHAM URB. L.J.* 1091 (2018) (examining the emergence of food access as a policy issue, current approaches to increasing food access, and possible alternatives to those approaches).

7. While this Paper will note some of the other tools that may be used, a fuller discussion is beyond the scope of this Paper.

8. Rosenberg & Cohen, *supra* note 6, at 1094–97.

9. See, e.g., Marian Wright Edelman, *Urban Food Deserts Threaten Children’s Health*, *HUFFINGTON POST* (Jan. 4, 2010), https://www.huffpost.com/entry/urban-food-deserts-threat_b_410339 (describing food deserts as “areas with no or distant grocery stores”); Melissa Farley, *Winston-Salem’s Food Insecurity Dilemma*, *MEDIUM* (Apr. 26, 2017), <https://medium.com/@farlmr13/winston-salems-food-insecurity-dilemma-ee6a418021bc> (describing food deserts as “parts of the country absent of fresh produce and other healthful whole foods [that] suffers from a lack of grocery stores, healthy food providers (such as farmers markets), and a lack of transportation among citizens”).

10. U.S. DEPT. OF AGRIC., *FOOD ACCESS RSCH. ATLAS*, <https://www.ers.usda.gov/data-products/food-access-research-atlas/documentation>.

11. *Id.*

for a rural area.¹² Under this definition, over 6 percent of the U.S. population lives in such areas.¹³ When the distance to the nearest grocery store drops to a half-mile or more, the portion of the U.S. population living in a food desert rises to over 17 percent.¹⁴ The people living in these areas tend to be low-income and to be people of color.¹⁵

Many critics argue that the USDA's definition of food desert belies the problem.¹⁶ First, the USDA definition ignores the economic and social disparities impacting food accessibility and instead focuses exclusively on proximity to food retailers.¹⁷ Second, the definition focuses on large grocery stores, disregarding the many small businesses that may offer a wide variety of fresh, healthy foods.¹⁸ Third, the USDA definition does not measure the ease with which residents in a particular neighborhood can access stores.¹⁹ As a result of some of these concerns, several localities have created their own food desert measures that allow them to account for the unique circumstances of their localities.²⁰

12. *Id.*; CONG. RSCH. SERV.: DEFINING LOW-INCOME, LOW-ACCESS FOOD AREAS (FOOD DESERTS) (2021) (the USDA's definition notably measures the straight-line distance, not the actual distance someone would have to travel to reach a store); Emily M. Broad Leib, *All (Food) Politics is Local: Increasing Food Access Through Local Government Action*, 7 HARV. L. & POL'Y REV. 321, 327 (2013).

13. U.S. DEP'T OF AGRIC., *supra* note 10.

14. *Id.*

15. JUDITH BELL ET AL., POL'Y LINK & THE FOOD TRUST, ACCESS TO HEALTHY FOOD AND WHY IT MATTERS: A REVIEW OF THE RSCH. 9 (2013).

16. *See, e.g.*, Broad Leib, *supra* note 12, at 326–27; Rosenberg & Cohen, *supra* note 6, at 1113–16.

17. Rosenberg & Cohen, *supra* note 6, at 1113–16.

18. For example, the many small stores in San Francisco's Chinatown offer hundreds of healthy food options. MCCANN, *supra* note 5, at 6.

19. Broad Leib, *supra* note 12, at 326–27 (noting the many factors that go into an individual's ability to access foods, including social distance and transportation availability).

20. N.Y.C. DEP'T OF CITY PLAN. ET AL., GOING TO MARKET: NEW YORK CITY'S NEIGHBORHOOD GROCERY STORE AND SUPERMARKET SHORTAGE 5, 14, http://www.nyc.gov/html/misc/pdf/going_to_market.pdf (explaining that the New York City Department of City Planning developed the Supermarket Need Index to identify areas that have “the highest levels of diet-related diseases and largest populations with limited opportunities to purchase fresh foods.” This index takes into account factors such as population density, vehicle availability, household income, rates of diabetes and obesity, and capacity for new stores.); *see also* AMANDA BUCZYNSKI ET AL., JOHNS HOPKINS CTR. FOR A LIVABLE FUTURE, MAPPING BALTIMORE CITY'S FOOD ENVIRONMENT: 2015 REPORT 12 (2015) (noting how Baltimore developed its own Food Environment Map based on four factors: “distance to supermarket, household income, vehicle availability, and supply of healthy food in retail food stores.”).

III. HOW DID FOOD DESERTS DEVELOP?

The development of food deserts has been attributed to the flight of middle- and upper-class, largely white residents from cities to suburbs during the 1970s and 1980s.²¹ This “white flight” is blamed on “massive disinvestment in urban areas” resulting from a range of factors, including manufacturing job loss, highway construction, and federal home mortgage and housing policies.²² As these residents with higher buying power relocated, supermarkets followed, finding that larger stores targeting an automobile-oriented population could be more easily developed and maintained in the suburbs.²³ As a result, many low-income urban areas lost a significant portion of their large grocery stores.²⁴

IV. WHAT’S SO BAD ABOUT FOOD DESERTS?

While food inaccessibility has been a problem long in the making, the prevalence of food deserts has garnered increasing attention at federal, state, and local levels in recent years as policymakers argue that increased food access will result in improved health and education outcomes.²⁵ Meanwhile, food

21. See, e.g., Jarrett Thibodeaux, *A Historical Era of Food Deserts: Changes in the Correlates of Urban Supermarket Location, 1970–1990*, 3 SOC. CURRENTS 186, 187–88 (2016).

22. See *id.* at 187; MCCANN, *supra* note 5, at 15; Rosenberg & Cohen, *supra* note 6, at 1099.

23. Kameshwari Pothukuchi, *Attracting Supermarkets to Inner-City Neighborhoods: Economic Development Outside the Box*, 19 ECON. DEV. Q. 231, 232–33 (2005) (discussing the difficulties of urban locations: land assembly, site preparation, financing, crime (real or imagined), and operations costs, such as rent, labor, and insurance).

24. Rosenberg & Cohen, *supra* note 6, at 1099 (noting that Chicago, Los Angeles, Manhattan, and Brooklyn lost half of their large grocery stores between 1970 and 1988).

25. See generally Broad Leib, *supra* note 12, at 324–25 (explaining the entrenched economic and social barriers that are responsible for creating food deserts and weaknesses in the federal response to food deserts); FACT SHEET: THE BIDEN-HARRIS ADMIN. ANNOUNCES MORE THAN \$8 BILLION IN NEW COMMITMENTS AS PART OF CALL TO ACTION FOR WHITE HOUSE CONF. ON HUNGER, NUTRITION, AND HEALTH (2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/28/fact-sheet-the-biden-harris-administration-announces-more-than-8-billion-in-new-commitments-as-part-of-call-to-action-for-white-house-conference-on-hunger-nutrition-and-health> (noting that on September 28, 2022, President Biden hosted the White House Conference on Hunger, Nutrition, and Health and announced over eight billion dollars in new private- and public-sector commitments to meet the administration’s goals, which include improving food access and integrating nutrition and health); Peter Grier, *Michelle Obama Says “Let’s Move” On Obesity in American Kids*, THE CHRISTIAN SCI. MONITOR (Feb. 9, 2010), <https://www.csmonitor.com/USA/2010/0209/Michelle-Obama-says-Let-s-Move-on-obesity-in-American-kids> (noting in 2010, then-First Lady Michelle Obama launched the Let’s Move! initiative to address childhood obesity. One of the five pillars of the initiative was to improve access

justice advocates consider food accessibility a social justice issue, asserting that everyone should have fair access to food regardless of their social or economic status.²⁶ Thus, the call for more supermarkets, urban agriculture, farmers' markets, and the like has a broad base of support.²⁷ These supporters identify a host of studies bolstering their contention that increased proximity to healthy foods is the panacea for a variety of health, education, and social problems.²⁸ Some commentators, however, point to other studies that show increasing the number of healthy food retailers in an area does little to make healthy food more accessible and does not change people's eating habits.²⁹ These commentators view the push for more supermarkets and farmers' markets with a critical eye, seeing it as a flashy and superficial fix that fails to address the real obstacles to food access: poverty and racism.³⁰ Given the conflicting evidence regarding the efficacy of increasing the prevalence of healthy food retailers, these concerns warrant further research. However, such concerns are beyond the scope of this Paper.

Many studies are touted as linking food deserts to poor eating habits, obesity, and other diet-related diseases.³¹ One study assessed the association between food accessibility and obesity in New Orleans, Louisiana.³² The researchers calculated the BMIs of approximately four thousand randomly selected adults based on

to healthy, affordable foods); P'SHIP FOR A HEALTHIER AM., LET'S MOVE, <https://www.ahealthieramerica.org/articles/let-s-move-84> (last visited Nov. 20, 2022) (noting that Let's Move sought to increase access through the Healthy Food Financing Initiative that provided "financing for developing and equipping grocery stores, small retailers, corner stores, and farmers markets selling healthy food in underserved areas"); LET'S MOVE, HEALTHY COMMUNITIES., <https://letsmove.obamawhitehouse.archives.gov/healthy-communities> (last visited Nov. 20, 2022).

26. Avi Brisman, *Food Justice as Crime Prevention*, 5 J. FOOD L. & POL'Y 1, 7 (2009) (describing how food justice advocates argue that "no individual, group of people, or community should live without an adequate supply of nutritious, affordable food because of economic constraints or social inequalities").

27. See, e.g., Rosenberg & Cohen, *supra* note 6, at 1102–06.

28. See, e.g., BELL ET AL., *supra* note 15, at 12–13; Broad Leib, *supra* note 12, at 321–22.

29. See, e.g., Rosenberg & Cohen, *supra* note 6, at 1106–08 (citing numerous studies finding "little to no relationship between proximity to retailers of healthy food and increased purchasing or consumption of healthy food").

30. See, e.g., *id.* at 1115–16; Heather Tirado Gilligan, *Food Deserts Aren't the Problem*, SLATE (Feb. 10, 2014), <https://slate.com/human-interest/2014/02/food-deserts-and-fresh-food-access-arent-the-problem-poverty-not-obesity-makes-people-sick.html>.

31. BELL ET AL., *supra* note 15, at 7; Rosenberg & Cohen, *supra* note 6, at 1106–08.

32. See generally J. Nicholas Bodor et al., *The Association between Obesity and Urban Food Environment*, 87 J. URB. HEALTH 771 (2010) (assessing associations between access to food retail outlets and obesity in New Orleans).

the participants' self-reported height and weight.³³ The researchers then determined the number of each food retailer type within 1.2 miles of the center of the census tract in which the participant resided.³⁴ An analysis of this data revealed that "respondents with greater supermarket access were less likely to be obese, while greater fast food and convenience store access was predictive of higher obesity odds."³⁵ Another study of senior citizens in rural communities found an association between an increased distance to the nearest grocery store and a decreased consumption of fruits and vegetables.³⁶ Researchers have also noted an association between living in a food desert and adverse coronavirus outcomes.³⁷

On the other hand, evidence that proximity to healthy food may not be a cure-all for the nation's health problems has started to grow. For example, a 2012 study of young people in California between the ages of five and seventeen found no relationship between the food environment and the quality of the participants' diets.³⁸ This study examined the consumption of fruits, vegetables, and other food and drink items in comparison to the prevalence of particular types of food outlets, such as fast food restaurants, convenience stores, and supermarkets in the home and school neighborhoods of the studied youth.³⁹ The study "found no evidence to support the hypotheses that improved access to supermarkets . . . improves diet quality or reduces BMI among Californian youth."⁴⁰ Perhaps even more telling is the USDA's own

33. *Id.* at 772, 774.

34. *Id.* at 773–74.

35. *Id.* at 779.

36. *See generally* Joseph R. Sharkey et al., *Food Access and Perceptions of the Community and Household Food Environment as Correlates of Fruit and Vegetable Intake among Rural Seniors*, 10 BMC GERIATRICS 1 (2010) (examining the spatial challenges to good nutrition faced by seniors who reside in rural areas and how spatial access influences fruit and vegetable intake).

37. *E.g.*, Juliana Sung et al., *Associations of Food Deserts and Coronavirus Severity in Pregnancy*, 24 AM. J. OBSTETRICS & GYNECOLOGY 788, 788–89 (2021) (finding, in a study of pregnant women with coronavirus, that symptomatic patients requiring hospitalization "were significantly more likely to reside in a food desert" than asymptomatic patients); Matthew J. Belanger et al., *Covid-19 and Disparities in Nutrition and Obesity*, NEW ENG. J. MED. 1 (2020) (noting how "[u]pstream forces, including a lack of access to healthy foods, a preponderance of low-quality nutrition, and higher rates of food insecurity, result in a higher prevalence of obesity and chronic diseases and so are ultimately responsible for the increased morbidity and mortality from Covid-19 in disadvantaged populations").

38. Ruopeng An & Roland Sturm, *School and Residential Neighborhood Food Environment and Diet among California Youth*, 42 AM. J. PREVENTIVE MED. 129, 129–30 (2012).

39. *Id.* at 130.

40. *Id.* at 131.

2016 report on food deserts.⁴¹ Drawing from several national food studies, the USDA concluded that proximity to supermarkets had a “limited impact on food choices,” while factors such as product price, income, education, and personal preference were likely more determinative.⁴² These mixed results demonstrate that the prevalence of healthy food retailers is just one factor in the health of residents in a particular community.

Some commentators have also suggested that residing in a food desert may have an impact on children’s learning and social development.⁴³ These commentators tie food accessibility to food insecurity,⁴⁴ defined as “limited or uncertain availability of or inability to acquire nutritionally adequate, safe, and acceptable foods due to financial resource constraint”⁴⁵ and food insufficiency,⁴⁶ which refers to “an inadequate amount of food intake due to resource constraint.”⁴⁷ A 2005 study found associations between food insecurity and insufficiency among six- to twelve-year-old children that included poorer mathematics scores, increased grade repetition and absenteeism, and higher rates of anxiety, aggression, and depression.⁴⁸ The study did not, however, directly link the prevalence or proximity of supermarkets to its findings.⁴⁹ In 2020, the COVID-19 pandemic “doubled the percent of households with children who are food insecure from 14% to 28%.”⁵⁰

41. See Michele Ver Ploeg & Ilya Rahkovsky, *Recent Evidence on the Effect of Food Store Access on Food Choice and Diet Quality*, U.S. DEP’T OF AGRIC. (May 2, 2016), <https://www.ers.usda.gov/amber-waves/2016/may/recent-evidence-on-the-effects-of-food-store-access-on-food-choice-and-diet-quality>.

42. *Id.*

43. See, e.g., Broad Leib, *supra* note 12, at 322 (“Increased food access has been linked to results as diverse as improved educational outcomes and crime reduction”); Rylle Seymour, *Food Deserts Are Ripe for Business*, 44 B.C. ENV’T. AFF. L. REV. 421, 422 (2017) (“Lack of access to healthy food is not only linked to higher rates of diet-related disease and death, but also impacts educational outcomes, as well as crime”).

44. See, e.g., Broad Leib, *supra* note 12, at 321–22; Seymour, *supra* note 43, at 452.

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

46. See, e.g., Broad Leib, *supra* note 12, at 321–22; Seymour, *supra* note 43, at 423.

47. Jyoti et al., *supra* note 45, at 2831.

48. *Id.*

49. See generally *id.* (linking food insecurity generally to developmental consequences for girls and boys).

50. Sarah Bleich et al., *Why Partisan Politics Keeps 14 Million Hungry Children from Getting the Food They Need*, USA TODAY (Oct. 28, 2020), <https://www.usatoday.com/story/opinion/2020/10/28/how-politics-keeps-14-million-american-kids-getting-enough-food-column/6051427002>.

In sum, the evidence is unclear on exactly what role proximity to healthy food retailers plays in the well-being of individuals. Nonetheless, communities seeking to provide improved access to healthy food have several land planning tools at their disposal.

V. HOW CAN LAND PLANNING INCREASE FOOD ACCESS?

Land planners have several tools at their disposal to increase food access, such as various forms of zoning, tax, and financing incentives.⁵¹ Local efforts to increase food access through land planning techniques should focus on three areas: (1) increasing the number of healthy food vendors, (2) improving transportation systems, and (3) increasing healthy food consumption. As previously noted, land planning should be just one part of a larger system working to correct the root causes of food inaccessibility.

A. *Increasing the Number of Healthy Food Vendors*

Since food deserts have been framed as having a lack of healthy food options, land planning efforts to increase food accessibility have largely been directed at increasing the number of healthy food vendors. In many cases, this has involved attempts to attract a large grocery store to an area. Increasing the number of farmers' markets, mobile food vendors, and improving offerings at small convenience stores have also played a role.⁵² Local governments can use both zoning and financial incentives to

51. See Broad Leib, *supra* note 12, at 322 (“Many recent local actions focus explicitly on increasing healthy-food access, including amending zoning codes . . .”); Joel Gittelsohn et al., *Increasing Healthy Food Access for Low-Income Communities: Protocol of the Healthy Community Stores Case Study Project*, 19 INT’L J. ENV’T RSCH. & PUB. HEALTH, no. 2, 2022, at 1, 1–2 (describing how, to “[i]mprov[e] healthy food access to low-income communities[,]” localities have developed “policies such as sugar-sweetened beverage (SSB) and junk food taxes, super-market financing initiatives, and staple foods ordinances . . .”).

52. See Broad Leib, *supra* note 12, at 335 (stating that “[l]ocal governments can also increase healthy-food access by permitting food trucks and mobile food vendors. Food trucks can increase access to healthy ready-to-eat foods, helping to alleviate concerns about minimal cooking skills or equipment”); Gittelsohn, *supra* note 51, at 2 (stating that “there has been a push both nationally and locally to entice new supermarkets to open in low food access areas . . .”); Heather D’Angelo et al., *Small Food Store Retailers’ Willingness to Implement Healthy Store Strategies in Rural North Carolina*, 42 J. CMTY. HEALTH 109, 113 (2017) (“show[ing] promise for working with retailers in rural settings to increase healthy food availability in small food stores”).

achieve their goal of increasing the prevalence of healthy food vendors in their communities.

Perhaps the most popular and publicized method of increasing the prevalence of healthy food vendors is to encourage the development of full-service grocery stores through financial and zoning incentives.⁵³ In New York City, the FRESH Program (“Food Retail Expansion to Support Health”) “promotes the establishment and expansion of grocery stores in underserved communities by lowering the costs of owning, developing, and renovating retail space.”⁵⁴ To qualify for the FRESH Program, a store must: (1) be located in an eligible area, (2) be a minimum of five thousand square feet, (3) devote at least 50 percent of its retail space to food products for home preparation and consumption, (4) devote at least 30 percent of its retail space for perishable goods, and (5) devote at least five hundred square feet for fresh produce.⁵⁵ Financial incentives for qualified stores include real estate tax reductions, sales tax exemptions for building materials, and reduced mortgage recording taxes.⁵⁶ The FRESH Program also offers zoning incentives, such as additional floor area in mixed-use buildings, reductions in the required number of parking spaces, and larger as-of-right stores in light manufacturing districts.⁵⁷ Since the FRESH Program’s inception, nearly thirty stores have been designated as FRESH stores and benefited from the program’s financing or zoning incentives.⁵⁸ The majority of these stores are located in Harlem, the Bronx, and Brooklyn.⁵⁹

Los Angeles offers another example of local efforts to eliminate food deserts by incentivizing the development of grocery stores. In 2006, the city partnered with the Community Redevelopment Agency of Los Angeles to create the Grocery Store

53. See Broad Leib, *supra* note 12, at 334–36 (describing how local governments in cities like Philadelphia, New York City, and Baltimore have used “a range of financial and zoning incentives to encourage redevelopment of supermarkets and other healthy retailers”).

54. THE CITY OF NEW YORK, ONENYC 250: HEALTHY LIVES 22 (2019) <https://onenyc.cityofnewyork.us/wp-content/uploads/2019/05/OneNYC-2050-Healthy-Lives.pdf>.

55. *Rules for Special Areas: FRESH Food Stores*, N.Y.C. DEP’T OF CITY PLAN., <https://www1.nyc.gov/site/planning/zoning/districts-tools/fresh-food-stores.page>.

56. *Food Retail Expansion to Support Health (FRESH) Program: About*, N.Y.C. BUS., <https://www1.nyc.gov/nycbusiness/description/food-retail-expansion-to-support-health-fresh-program>.

57. *FRESH Food Stores*, *supra* note 55.

58. *Food Retail Expansion to Support Health (FRESH)*, N.Y.C. ECON. DEV. CORP., <https://edc.nyc.gov/program/food-retail-expansion-support-health-fresh>.

59. *Id.*

and Sit-Down Restaurant Incentive Package to attract grocery stores to southern Los Angeles.⁶⁰ Along with loans, grants, tax credits, and reduced utility costs, the program offers “assistance in identifying and assembling potential sites [and] expedited review by the City Planning Department and Building and Safety Department.”⁶¹ In addition, the Healthy Grocery Stores Project in Los Angeles has advanced the establishment of a conditional use permitting process for new grocery stores and renovations of existing grocery stores.⁶² This initiative suggests that stores being developed or renovated in non-food desert areas be required to pay a fee into a fund allocated for grocers opening or renovating stores in food deserts.⁶³

Greater access to healthy foods can also be achieved through farmers’ markets and mobile food vendors.⁶⁴ Although the establishment of a farmers’ market or mobile food vendor would not technically change an area’s food desert status under the USDA definition, these types of retailers are desirable because they are “far less complicated, time-consuming, and expensive” to develop than a traditional grocery store.⁶⁵ Although the process of establishing a farmers’ market may be much simpler than developing a grocery store,⁶⁶ it is not without costs and difficulties. Many cities require farmers’ markets to obtain a conditional use permit or variance to operate.⁶⁷ To encourage the establishment of farmers’ markets, cities can amend their zoning ordinances to include farmers’ markets as permitted or allowed use, thereby eliminating the need for this type of permit.⁶⁸ Mobile food vendors selling fresh fruits and vegetables have also grown in popularity,⁶⁹ although they sometimes face additional zoning challenges. For example, in 2012, a chef in

60. Nicky Bassford et al., *Food Desert to Food Oasis, Promoting Grocery Store Development in South Los Angeles*, CMTY. HEALTH COUNCILS, INC., 1, 11 (2010), <https://suprmarkt.la/wp-content/uploads/2017/09/Food-Desert-to-Food-Oasis.-Promoting-Grocery-Store-Development-in-South-Los-Angeles.pdf>.

61. *Id.*

62. Seymour, *supra* note 43, at 434.

63. *Id.*

64. Broad Leib, *supra* note 12, at 335.

65. *Id.* at 335.

66. *Id.* at 336.

67. *Establishing Land Use Protections for Farmers’ Markets*, NAT’L POL’Y & LEGAL ANALYSIS NETWORK TO PREVENT CHILDHOOD OBESITY & PUB. HEALTH L. & POL’Y, 1, 3 (Dec. 2009), https://www.ca-ilg.org/sites/main/files/file-attachments/resources__establishing20land20use20protections20for20farmers2720markets_final_091203.pdf?1441322984.

68. *Id.* at 8–9.

69. Broad Leib, *supra* note 12, at 335–36 (describing mobile food vendors operating in New York City, Chicago, and rural areas of New Mexico).

Charlotte, North Carolina sought to create a mobile farmers' market offering fresh fruits and vegetables in neighborhoods without grocery stores.⁷⁰ However, the city's zoning ordinances limited where and when mobile vendors could operate.⁷¹ The city eventually modified its ordinance to extend to mobile farmers' markets the same use as other produce stands, including in residential neighborhoods.⁷²

Another option to increase healthy food accessibility is to improve the quality of the food sold at existing small food retailers in a community, such as convenience stores.⁷³ These stores usually stock highly processed, pre-packaged foods and limited fresh produce.⁷⁴ However, cities can require, encourage, and incentivize these small stores to stock healthy food items. This may take the form of an ordinance requiring licensed grocery stores (including corner stores and gas stations) to sell a certain amount of basic food items.⁷⁵ Other ordinances could also be amended to remove some of the hurdles to selling fresh produce.⁷⁶ Cities can also encourage small stores to stock healthy foods voluntarily through programs that provide education on how to store and prepare fresh produce as well as free marketing materials and shelving.⁷⁷

If land planning is successful in increasing the prevalence of healthy food retailers in a community through a large-scale grocery store, farmers' markets, or improved small retailers, additional steps

70. Chuck McShane, *Mobile Market Plan Meets Zoning Obstacle*, UNIV. OF N.C. CHARLOTTE URBAN INST. (Apr. 16, 2014), <https://ui.uncc.edu/story/mobile-farmers-markets>.

71. *Id.*

72. CHARLOTTE, N.C. MUN. CODE § 12.539 (2019), https://charlottenc.gov/planning/Rezoning/Documents/Revised%20Zoning%20Ordinance/ZoningOrd_Chapter12.pdf.

73. CTRS. FOR DISEASE CONTROL & PREVENTION, HEALTHIER FOOD RETAIL: AN ACTION GUIDE FOR PUB. HEALTH PRACTITIONERS 48 (2014), <https://www.cdc.gov/nccdphp/dnpao/state-local-programs/pdf/healthier-food-retail-guide-full.pdf>.

74. *Id.*

75. *See, e.g.*, MINNEAPOLIS, MINN., CODE OF ORDINANCES ch. 203 (2018), https://library.municode.com/mn/minneapolis/codes/code_of_ordinances?nodeId=CO_OR_TIT10FOCO_CH203GRST (requiring grocery stores to offer for sale a certain amount of staple food items, including dairy, animal or vegetable proteins, fruits and vegetables, juice, whole grains, and legumes).

76. *See* MCCANN, *supra* note 5, at 6.

77. *See, e.g.*, Fran Daniel, *Forsyth County Stores Provide Access to Food in Areas Considered Food Deserts*, WINSTON-SALEM J. (July 16, 2016), https://www.journalnow.com/news/local/forsyth-county-stores-provide-access-to-food-in-areas-considered/article_91e0b044-f3c5-510b-92f7-e436abf8c8bd.html (describing the Healthy Corner Store Network in Forsyth County, N.C.).

may also need to be taken to enable and encourage residents to take advantage of their neighborhood's new offerings.⁷⁸

B. Improving Transportation Systems

For several reasons, efforts to increase the prevalence of healthy food vendors are not always enough to ensure access to food. Due to a lack of suitable land and other factors, it is simply infeasible for a grocery store to be developed in certain neighborhoods.⁷⁹ Large parcels of land may not be available, while “assembling a multitude of smaller parcels . . . many with unclear titles [and] cleaning up brownfields” present additional challenges.⁸⁰ Meanwhile, farmers’ markets often focus on fresh produce and other perishable items without offering other staples like cereals, crackers, and canned goods. Thus, residents may still need to travel some distance to purchase all their needed items. In these situations, cities must work “to better connect inner city residents to more distant supermarkets.”⁸¹

Transportation-related issues can be a significant barrier to accessing healthy foods.⁸² Over two million households in the U.S. do not own a vehicle and live more than a mile from the nearest

78. For example, local governments may need to work with farmers’ markets to ensure they have electronic benefit transfer (EBT) machines to accept Supplemental Nutrition Assistance Program (SNAP) benefits. Broad Leib, *supra* note 12, at 336. In addition, the purchase of healthy foods can be incentivized. The 2014 Farm Bill created the Food Insecurity Nutrition Incentive (FINI) grant program that provides funding to local organizations to support programs that encourage SNAP participants to purchase more fruits and vegetables. U.S. DEP’T OF AGRIC., FOOD INSECURITY NUTRITION INCENTIVE GRANT PROGRAM, [https://www.nifa.usda.gov/sites/default/files/grant/FY%202018%20Food%20Insecurity%20Nutrition%20Incentive%20\(FINI\)%20Final.pdf](https://www.nifa.usda.gov/sites/default/files/grant/FY%202018%20Food%20Insecurity%20Nutrition%20Incentive%20(FINI)%20Final.pdf). The format of the incentive programs varies from offering tokens and loyalty cards to coupons, vouchers, and automatic discounts, but many provide a dollar-for-dollar match for the purchase of fresh produce. GRETCHEN SWANSON CTR. FOR NUTRITION, FOOD INSECURITY NUTRITION INCENTIVE GRANT PROGRAM FINDINGS, <https://www.centerfornutrition.org/her-fini>.

79. Broad Leib, *supra* note 12, at 336–37; HANNAH BURTON, THE FOOD TR., STIMULATING SUPERMARKET DEV.: A NEW DAY FOR PHILA. (2004), https://nextcity.org/pdf/Stimulating_Supermarket_Development_A_New_Day_for_Philadelphia.pdf. (developing a supermarket in an urban area can cost 30 percent more than developing one in a suburban area).

80. Kami Pothukuchi, *Inner City Grocery Retail: What Planners Can Do*, PROGRESSIVE PLAN. 1, 12 (2004), http://www.plannersnetwork.org/wp-content/uploads/2012/07/PlannersNetwork_No158_062607.pdf.

81. *Id.*

82. For example, in Detroit, almost a quarter of the residents surveyed considered lack of transportation as their primary obstacle to accessing healthy food. See FAIR FOOD NETWORK, STRENGTHENING DETROIT VOICES (2013), https://fairfoodnetwork.org/wp-content/uploads/2017/01/FFN_SDV-TTH-Infographic_Print.pdf.

supermarket.⁸³ Thus, many of these people likely rely on public transit or non-motorized forms of transportation, such as walking or biking.⁸⁴ The onset of the COVID-19 pandemic highlighted the transportation-related difficulties of obtaining food as transit systems in many major cities implemented temporary limits on the number of passengers⁸⁵ and reduced services.⁸⁶ These issues regarding transportation cannot be resolved by a single entity but must be addressed collaboratively by government transportation and planning authorities, food retailers, and non-governmental organizations.

Public transportation can be prohibitive to food access if bus fares are high or if the rider must take multiple lines to reach a store.⁸⁷ Thus, city planners and transportation authorities should work together to provide convenient and low-cost public transportation that connects residents of food deserts with healthy food retailers. Cities can design or modify their bus routes with food accessibility in mind⁸⁸ or create special grocery bus lines.⁸⁹ One early example of this is seen in Knoxville, Tennessee. In the early 1980s, Knoxville created the Food Policy Council which worked with the Knoxville Transportation Authority Board to extend bus lines from impoverished areas to grocery stores.⁹⁰ The council also joined with the Knoxville Transit Authority to establish a special “grocery bus” that provided round-trip transportation to grocery stores for only one dollar.⁹¹

83. BELL ET AL., *supra* note 15, at 11.

84. CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 73, at 100.

85. See, e.g., Nathan Layne, *Overnight Closure of New York Subways May Presage Bigger Changes*, REUTERS (May 1, 2020), <https://www.reuters.com/article/us-health-coronavirus-newyork-subway/overnight-closure-of-new-york-subways-may-presage-bigger-changes-idUSKBN22D55D>; Katie Canales, *Almost All of San Francisco's Public Transit Will Be Shut Down as the City Continues to Fight the Coronavirus Disease*, BUS. INSIDER (Apr. 7, 2020), <https://www.businessinsider.com/san-franciscos-public-transit-coronavirus-shutting-down-2020-4>.

86. See Matt Haines, *Pandemic Worsens “Food Deserts” for 23.5 Million Americans*, VOA NEWS (May 19, 2020), https://www.voanews.com/a/usa_pandemic-worsens-food-deserts-235-million-americans/6189526.html.

87. See CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 73, at 107.

88. See, e.g., *id.* at 106 (Los Angeles); WINSTON-SALEM & FORSYTH CNTY. PLAN. & DEV. SERVS. DEP'T, FOOD ACCESS REP. 6 (2016), <https://www.cityofws.org/DocumentCenter/View/6829/06-23-2016-Forsyth-County-Food-Access-Report.pdf> (Winston-Salem).

89. CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 73, at 107 (discussing the grocery bus line created in Austin, Texas, which takes food desert residents to supermarkets in other neighborhoods).

90. KNOXVILLE-KNOX CNTY. FOOD POL'Y COUNCIL 6 (2012), <http://www.knoxfood.org/wp-content/uploads/2018/04/2012-Food-Policy-Council-Case-Study-12.10.12.pdf>.

91. *Id.*

Cities can also increase food accessibility by improving conditions for pedestrians and cyclists.⁹² Many people do not have access to public transportation and may have to walk or bike to food retailers.⁹³ Even where public transportation to healthy food retailers is available, neighborhood residents will likely still need to walk or bike to bus stops. Cities need to provide and maintain sidewalks, bike lanes, street lighting, and safe street crossings.⁹⁴ These measures can help reduce the risk of traffic injuries and crime that residents may be wary of when walking to nearby stores.⁹⁵ An effort to improve the streets in urban neighborhoods can be seen in Winston-Salem, North Carolina. The city's comprehensive plan has identified twelve major roadways as "growth corridors" in need of improvement.⁹⁶ The first roadway encompasses several areas considered food deserts.⁹⁷ Improvements will focus on providing landscaping, improved pedestrian facilities, and accommodation for bicycles to support the urban, neighborhood business district.⁹⁸

Ideally, local governments should consider all modes of transportation together when addressing food accessibility in a neighborhood. Smart Growth America, a nonprofit organization involved in urban planning and development, created the Complete Streets approach as a guide for communities in designing their streets to provide safe access for those driving, walking, biking, and using public transportation.⁹⁹ Even with improved public transit and pedestrian accessibility, some groups of people may still

92. SMART GROWTH AM. & NAT'L COMPLETE STS. COAL., COMPLETE STREETS MEAN EQUITABLE STREETS, <http://old.smartgrowthamerica.org/documents/cs/factsheets/cs-equity.pdf> (last visited Nov. 1, 2022).

93. *Id.*

94. CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 73, at 104.

95. *Id.*

96. *See* CITY-CNTY. PLAN. BD., THE LEGACY 2030 UPDATE 40 (2013), <https://www.cityofws.org/DocumentCenter/View/479/Chapter-3—Growth-Management.pdf>.

97. WINSTON-SALEM & FORSYTH CNTY. PLAN. & DEV. SERVS. DEP'T, PETERS CREEK GROWTH CORRIDOR PLAN 1 (2019) <https://www.cityofws.org/DocumentCenter/View/2617/Peters-Creek-Corridor-Plan-PDF?bidId=>.

98. *Id.*

99. CTRS. FOR DISEASE CONTROL & PREVENTION, *supra* note 73, at 104.

be unable to reach food retailers.¹⁰⁰ Efforts to fill these transportation gaps must look beyond land planning techniques.¹⁰¹

C. Improving Healthy Food Consumption

Increasing access to healthy food vendors and improving public transportation does not guarantee that residents will make better food choices.¹⁰² Several studies measuring the effect of a new supermarket on an underserved community have shown no significant change in the residents' food buying or eating habits.¹⁰³ As a result, some local governments have sought to increase healthy food consumption by requiring vendors to offer healthy foods or by restricting residents' access to unhealthy foods.¹⁰⁴ Proponents of these methods reason that residents will be more likely to choose healthy foods if there are more healthy options and fewer unhealthy options available.¹⁰⁵ This Section will discuss the potential zoning mechanisms for increasing healthy food consumption and their effectiveness. The Section will also address charges of paternalism and discrimination arising from attempts to use zoning to improve people's eating habits.¹⁰⁶

100. For example, senior citizens, people with disabilities, and those with young children may have difficulty accessing traditional public transportation or be unable to walk extended distances. *Id.* at 109.

101. One way to bridge these transportation gaps could be through shuttle services operated independently by local governments, food retailers, and non-governmental organizations or by partnerships between these groups. *Id.* at 109–10. For example, several supermarket chains in Los Angeles offer free shuttle services to customers who spend a minimum amount at their stores. *Id.* at 109. In southeast Michigan, the Chelsea Area Transportation System collaborated with a local farmers' market to provide senior citizens transportation between several senior citizen centers and the market. *Id.* at 110.

102. Rosenberg & Cohen, *supra* note 6, at 1106.

103. *Id.* at 1106–07.

104. See, e.g., Andrea Freeman, *Fast Food: Oppression Through Poor Nutrition*, 95 CAL. L. REV. 2221, 2251 (2007) (discussing trans-fat bans in New York City and Philadelphia); Susan M. Kansagra et al., *Reducing Sugary Drink Consumption: N.Y.C.'s Approach*, AM. J. PUB. HEALTH 61, 63 (2015) (discussing USDA's denial of New York City's request "to remove sugary drinks from the list of allowable purchases through the Supplemental Nutrition Assistance Program"); Jennifer Medina, *In South L.A., New Fast-Food Spots Get a "No, Thanks,"* N.Y. TIMES (Jan. 15, 2011), <https://www.nytimes.com/2011/01/16/us/16fastfood.html> (discussing moratorium on new fast food restaurants in South Los Angeles).

105. JULIE SAMIA MAIR ET AL., THE USE OF ZONING TO RESTRICT FAST FOOD OUTLETS: A POTENTIAL STRATEGY TO COMBAT OBESITY 9–20 (2005), https://www.jhsph.edu/research/centers-and-institutes/center-for-law-and-the-publicshealth/research/_pdf/ZoningFastFoodOutlets.pdf.

106. Rebecca L. Goldberg, *No Such Thing as a Free Lunch: Paternalism, Poverty, and Food Justice*, 24 STAN. L. & POL'Y REV. 35, 55 (2013).

Performance zoning that focuses on the effects of land use could be used to promote healthy food choices by requiring food vendors, such as food trucks, fast food establishments, and other restaurants, to offer a certain number of healthy alternatives.¹⁰⁷ One example of a city requiring vendors to offer healthy foods is Boston, Massachusetts. Food trucks operating on public land in the city must offer at least one healthy food option.¹⁰⁸ Additionally, as noted above, New York City's FRESH Program requires stores to dedicate at least five hundred square feet to fresh produce to qualify for its incentives.¹⁰⁹

Another method to encourage healthy food consumption is using zoning to restrict access to unhealthy foods, primarily by regulating fast food restaurants.¹¹⁰ There are several approaches to regulating fast food restaurants. First, a locality could entirely ban fast food restaurants either directly through a specific provision in the zoning code or indirectly through an exclusive list of permitted uses that does not include fast food outlets.¹¹¹ Los Angeles pursued the former option in 2010 by banning new free-standing fast food restaurants in South Los Angeles as part of a public health effort.¹¹² Second, a locality could restrict fast food restaurants by regulating

107. MAIR ET AL., *supra* note 105, at 25.

108. Press Release, City of Bos. Mayor's Office, Mayor Menino Announces New Food Truck Set to Serve up Tasty Treats on Boston's Streets (July 12, 2011), <http://www.bostonplans.org/news-calendar/news-updates/2011/07/12/new-food-trucks-set-to-serve-up-tasty-treats-on-bo> (noting how [t]he healthy food option cannot "include fried foods, trans-fats, or high fructose corn syrup" and must include "at least three of the following: fruits, vegetables, whole grains, low-fat dairy, reduced fat or lean meats that are grilled, broiled or baked").

109. THE CITY OF NEW YORK, *supra* note 54.

110. There is no consensus on what constitutes a "fast food restaurant," causing to some manipulation of the phrase to fit the desired outcome. For example, the justification for the fast food ban in South Los Angeles discussed below cited statistics stating that 45 percent of restaurants in South Los Angeles were fast food restaurants while only 16 percent of restaurants in other parts of the city were fast food restaurants. Roland Sturm & Aiko Hattori, *Diet and Obesity in L.A. County 2007–2012: Is There a Measurable Effect of the 2008 "Fast-Food Ban"?*, 133 SOC. SCI. & MED. 205, 211 (2015). This count, however, considered any restaurant with seating for less than ten as a fast food restaurant, no matter the type of food served. *Id.* In contrast, the actual ordinance defined a 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 or heated quickly, no table orders, and food served in disposable wrapping or containers." *Id.* at 206.

111. MAIR ET AL., *supra* note 105, at 40.

112. Medina, *supra* note 104. The ordinance "dovetailed with an initiative to encourage supermarkets and stores with presumably healthier fare to move in." Adam Chandler, *Why the Fast-Food Ban Failed in South L.A.*, THE ATL. (Mar. 24, 2015), <https://www.theatlantic.com/health/archive/2015/03/why-the-fast-food-ban-failed-in-south-la/388475>.

their distance from places like schools, churches, and hospitals.¹¹³ One example where this is done is in Detroit, Michigan. Detroit's zoning ordinance requires a minimum of five hundred feet between a fast food restaurant and an elementary, middle, or high school.¹¹⁴ A third option is regulating the density of fast food restaurants.¹¹⁵ This entails limiting the number of such establishments by spacing requirements or per unit space.¹¹⁶ This form of zoning is often used to preserve the unique character of a locality, but it could also be used for public health purposes.¹¹⁷

Although zoning to restrict fast food accessibility has been frequently suggested,¹¹⁸ the effectiveness of such zoning on improving eating habits is questionable.¹¹⁹ South Los Angeles's ban on new fast food restaurants is a telling example. Proponents of the ban credited the initial one-year moratorium enacted in 2008 as contributing to the opening of the area's first new supermarket in a decade.¹²⁰ However, a 2015 study found no evidence that the ban had improved residents' diets or reduced obesity.¹²¹ In fact, obesity rates in the areas under the ordinance actually "increased faster than in other parts of the city."¹²² Nonetheless, the researchers did suggest that perhaps the ordinance failed because it only targeted

113. MAIR ET AL., *supra* note 105, at 51–52.

114. Broad Leib, *supra* note 12, at 340. This ordinance has been in effect since 1978 without any legal challenges. MARYAM ABDUL-KAREEM ET AL., HARRISON INST. FOR PUB. L., USING ZONING TO CREATE HEALTHY FOOD ENV'TS IN BALTIMORE CITY 16 (2009), https://urbanhealth.jhu.edu/_pdfs/hbr_index_food/baltimorecity_2010_zoningcreatinghealthyfoodenvironments.pdf.

115. MAIR ET AL., *supra* note 105, at 50.

116. *Id.*

117. *See id.* at 48–51 (explaining the use of zoning "to preserve the unique character of the area and to ensure that the area continues primarily to serve the retail needs of the surrounding community").

118. *See, e.g.,* Marice Ashe et al., *Land Use Planning and the Control of Alcohol, Tobacco, Firearms, and Fast Food Restaurants*, 92 AM. J. PUB. HEALTH 1404, 1407 (2003) (discussing nutrition and land use); *see* Freeman, *supra* note 105, at 2257 (discussing the option of imposing land use requirements on fast food restaurants to reduce appeal and availability); *see generally* MAIR ET AL., *supra* note 105 (discussing the restriction of fast-food accessibility and its impact on consumer health).

119. *See* Freeman, *supra* note 104, at 2250 (explaining that other unhealthy eating habits impact the effectiveness of zoning on improving healthy eating habits).

120. *See* Medina, *supra* note 104 (explaining no new stand-alone fast food establishments have opened in the South Los Angeles area since the City Council's 2008 one-year moratorium).

121. *See* Press Release, Rand Corp., No Evidence that Los Angeles Fast-Food Curbs Have Improved Diets of Cut Obesity (Mar. 19, 2015), <https://www.rand.org/news/press/2015/03/19.html>.

122. *Id.*

new stand-alone fast food restaurants thereby allowing other small food retailers to proliferate.¹²³

Even if such efforts are determined to be effective, critics still contend that the use of zoning to change people's dietary habits is inappropriate because it is paternalistic and perhaps even discriminatory.¹²⁴ Strong paternalism involves "one party taking action to benefit a second party without the second party's consent, and in a way that is either coercive or involves a restriction of liberty."¹²⁵ Thus, government restrictions on fast food that affect a discrete group are seen as a paternalistic effort to limit the group's ability to make food choices for themselves.¹²⁶

Critics of paternalistic laws argue that: (1) policymakers socially separated from their target populations may create "ineffective, unnecessary, or harmful laws" because they lack the necessary understanding of those populations, (2) this separation can lead to a distrust of the policymakers, (3) such laws may deprive the disadvantaged of their rights and perpetuate discrimination, and (4) such laws prevent communities from solving their problems in the way they see fit.¹²⁷ On the other hand, proponents of paternalistic laws argue that: (1) the benefits of paternalistic laws outweigh any reductions in autonomy, (2) the preferences of the disadvantaged have been substantially influenced by external forces such that government paternalism is justified, (3) such laws are also used to benefit the general population, and (4) such laws may advance substantive equality by "leveling the playing field."¹²⁸ Given these various factors, it is unsurprising that there appears to be no clear consensus among those most concerned with food justice and the wellbeing of low-income or minority neighborhoods as to

123. See Sturm & Hattori, *supra* note 98, at 205–11 (discussing how regulations only impacted stand-alone fast food establishments).

124. See Goldberg, *supra* note 106, at 65–66 (discussing paternalism toward the poor reflected in two policy initiatives).

125. *Id.* at 65.

126. See, e.g., Karl Vick, *L.A. Official Wants a Change of Menu*, WASH. POST (July 13, 2008), http://www.washingtonpost.com/wpdyn/content/article/2008/07/12/AR2008071201557_2.html (describing how critics of Los Angeles' proposed ban on new fast food restaurants called the councilwoman behind the proposal a "fascist" and a "nanny-stater").

127. See Goldberg, *supra* note 106, at 75–76 (explaining the critics of paternalistic laws arguments).

128. *Id.* at 70–75.

whether paternalistic laws are ever justifiable, and if so, under what circumstances.¹²⁹

One way to alleviate concerns regarding government paternalism is to involve the affected groups in the decision-making process.¹³⁰ This applies not only to efforts to restrict access to unhealthy foods but to all the land planning techniques addressed in this Paper. When local governments “work closely with their constituents [and] learn how the community purchases and prepares food,” they can “respond to the community’s unique needs[] and implement targeted and effective policy interventions.”¹³¹ Land planning decisions are simply more effective and successful when the people impacted by them have a say in their development.¹³² Nonetheless, community involvement is no guarantee of success¹³³ perhaps because of the myriad of factors that go into people’s food choices.¹³⁴

VI. CONCLUSION

In conclusion, food inaccessibility is a complicated issue with no simple solution. Although this Paper recognizes the weaknesses of using land planning techniques to address food inaccessibility, that does not mean that such efforts should be abandoned. Particularly in light of the COVID-19 pandemic, local governments should continue to use whatever tools are at their disposal to ensure everyone has fair and equal access to food. Increasing the number

129. *See generally id.* (discussing the lack of consensus concerning paternalism; “scholarship suggests several reasons why such paternalism might make sense, but it also touches on many reasons to be wary of it”).

130. *See id.* at 67 (“[W]hat we need when we make decisions affecting the well-being of other people is correct intuition about their needs and an attitude of respect for their autonomy.”); *see also* Margaret Sova McCabe, *Reconsidering Federalism and the Farm: Toward Including Local, State and Regional Voices in America’s Food System*, 6 J. FOOD L. & POL’Y 151, 161 (2010) (“[A]n essential element of a more effective food system is individual empowerment to shape it.”).

131. Broad Leib, *supra* note 12, at 329.

132. *See id.* at 329–33 (contrasting New York City’s decision made without community input to bulldoze six hundred community gardens with Chicago’s food system plan created after twenty-six public meetings).

133. *See* Goldberg, *supra* note 106, at 88–89 (demonstrating how, for example, the decision to ban fast food in South Los Angeles did at least appear to have fairly significant community involvement and support); *see also id.* (explaining how the ordinance was spearheaded by a city councilwoman representing a district within South Los Angeles and had the support of two community groups); *see also id.* at 89 (emphasizing that two-thirds of South Los Angeles residents aware of the initial moratorium supported it).

134. *See* Ver Ploeg & Rahkovsky, *supra* note 41.

of healthy food vendors, improving transportation systems, and encouraging healthy food consumption could very well be effective if used in conjunction with interventions that also address the underlying poverty found in many of the areas considered food deserts.¹³⁵

135. See generally Rosenberg & Cohen, *supra* note 6 (“The goal should be to create policies that build capital within communities and distribute our country’s substantial wealth more equitably, while providing living wages and labor standards so that people can have time and money to provide for their needs.”).