



## **Healthy Retailing:** Improving Access to Healthy Foods at the Corner Store

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## Public Health and Tobacco Policy Center

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The Public Health and Tobacco Policy Center is a resource for the New York Department of Health. It is funded by the New York State Department of Health and works with the New York State Tobacco Control Program, the New York Cancer Prevention Program, as well as the programs' contractors and partners to develop and support policy initiatives that will reduce the incidence of cancer and tobacco-related morbidity and mortality.

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## Introduction

Individuals who suffer from obesity and overweight are at significant risk for serious chronic diseases such as cancer, coronary artery disease, stroke and diabetes. In New York, nearly two thirds of the population is considered obese or overweight, leading to a significant burden on public health and imposing substantial healthcare and other economic costs to the state.

The causes of obesity and overweight are complex and include genetic makeup, the environment, poor nutrition, and lack of physical activity. Some studies have found an association between access to healthy food and the prevalence of overweight and obesity. Specifically, studies have found an association between a community's poor access to nutritious foods, called "food deserts," and its increased incidence of obesity and overweight. Food deserts are often found in low-socioeconomic communities; residents of food deserts typically have limited access to larger chain grocery stores and easy access to small food retailers (e.g., convenience stores, corner stores or bodegas) and fast food restaurants. Policies that spur the retail environment to improve the accessibility of nutritious food may help lower obesity and overweight levels, thereby reducing the incidence of chronic disease.

This report focuses on the small food retailer environment. It includes three model policies that aim to change this environment by increasing the amount of nutritious foods carried by these retailers in food deserts. One model is a voluntary certification program, incentivizing small food retailers to increase their stock of

healthy food and promote its availability to the community. The second model is a licensing ordinance that requires small food retailers to carry staple food items (whole grains, low fat dairy, protein, fruits and vegetables). The third model is a zoning amendment that incentivizes the development of small retailers that carry staple food items. All three require the commitment and support of the community to make the "best changes" (those that a community will appreciate and utilize) and to ensure those changes are sustainable.

## Part I: Chronic Disease and Overweight/Obesity

Obesity and overweight are public health epidemics that are harmful to health and economic interests. In 2012, 35.8percent of adults were overweight, and 28.1 percent of those adults were obese.<sup>1</sup> Being overweight or obese increases the risk of serious health complications including:

- Coronary heart disease
- Type 2 diabetes
- Cancers (endometrial, breast, colon)
- Hypertension (high blood pressure)
- Dyslipidemia (high cholesterol or high levels of triglycerides)
- Stroke
- Liver and Gallbladder disease
- Sleep apnea and respiratory problems
- Osteoarthritis (degeneration of cartilage under a bone in a joint)
- Gynecological problems (abnormal menses, infertility)<sup>2</sup>

### What do the terms Obesity and Overweight Mean?

Obesity and overweight are terms that describe individuals whose percentage of body fat is higher than is healthy. The Body Mass Index (BMI), a number calculated based on a person's weight and height, offers a strong correlation to the amount of body fat an individual has. An adult with a BMI between 25 and 29.9 is considered overweight; an adult with a BMI of 30 and higher is classified as obese.<sup>1</sup> For children, overweight and obesity is measured using a BMI correlated to age and sex percentile since "children's body composition varies as they age between boys and girls."<sup>1</sup> Children with a BMI above the 85<sup>th</sup> percentile and lower than the 95<sup>th</sup> percentile are considered overweight for children of the same age and sex. Children with a BMI in the 95<sup>th</sup> percentile or above are considered obese.

Important to note is that the BMI measurement, while it correlates with body fat, is not a direct measurement of an individual's body fat. It instead classifies an individual as overweight or obese if their weight is above a range considered healthy for their height. Other methods to more directly determine an individual's body fat measure include skinfold measurements and waist circumference, ultrasounds, and magnetic resonance imaging (MRI).

*Source:* CTR. FOR DISEASE CONTROL AND PREV., OVERWEIGHT AND OBESITY: DEFINING OVERWEIGHT AND OBESITY  
<http://www.cdc.gov/obesity/adult/defining.html>, (last visited June 10, 2013).

In addition to the serious health consequences of being overweight and obese, having a majority of U.S. adults at increased risk for these serious illnesses translates to an economic and health care burden for the entire population. The costs of overweight and obesity include direct medical expenses (for diagnosis and treatment) as well as indirect costs, such as the value of income from decreased productivity, absenteeism, and future income lost through premature death.<sup>3</sup> In 2008 dollars, the direct medical care cost alone of obesity in the U.S. was estimated to be \$147 billion.<sup>4</sup>

Children living with obesity face similar health risks and are more likely to be obese as adults.<sup>5</sup> In 2009-2010, 18.4 percent of children ages 12-19 years and 18 percent of children ages 6-11 years were obese.<sup>6</sup> While childhood obesity has increased overall, it has disproportionately increased in "lower income, multi-ethnic communities."<sup>7</sup> In households with incomes below 130 percent of the poverty level, 21.1 percent of boys and 19.3 percent of girls are obese.<sup>8</sup> This compared to households with incomes at or above 350 percent of the poverty level, where only 11.9 percent of boys and 12.0 percent of girls are obese.<sup>9</sup> Between 2007 and 2008, Hispanic boys ages 2-19 years were found to be "significantly more likely" to be obese than non-Hispanic white boys in the same age group.<sup>10</sup> During the same time period, non-Hispanic black girls were "significantly more likely" to be obese than non-Hispanic white girls.<sup>11</sup>

## Obesity and Overweight in New York

In New York State, obesity and overweight rates are high in both adult and adolescent populations; obesity rates among adults are highest in minority and lower socioeconomic communities.<sup>12</sup> The prevalence of adults that are obese and overweight in the state increased from 42 percent in 1997 to nearly 61 percent in 2012.<sup>13</sup> In 2011 it was estimated that 25.7 percent of New York high school students (excluding New York City) were either obese or overweight.<sup>14</sup>

In 2003 the cost of treating obesity related health problems in New York State was an estimated \$6.1 billion.<sup>15</sup> In 2011, obesity related health care costs in New York were estimated at \$11.8 billion.<sup>16</sup> Roughly \$4.3 billion of this was paid by Medicaid<sup>17</sup> and another \$7.5 billion was paid by Medicare, employers' and workers' health insurance premiums, and uninsured individuals.<sup>18</sup> Three hundred twenty-seven (\$327) million of that was attributed to medical care for obese children.<sup>19</sup>

## Part II: Poor Nutrition and Health

The causes of obesity and overweight are varied and complex. Important factors include genetic makeup, food marketing strategies, and changes in agricultural practices.<sup>20</sup> Environments that promote physical inactivity and increased consumption of less healthy food (poor nutrition) also impact the incidence of obesity and its related diseases.<sup>21</sup> This report focuses on poor nutrition (as a

result of poor access to healthier food) as one cause of obesity and overweight. Factors related to nutrition that result in overweight and obesity include less access to stores that sell healthy affordable food, while closely situated near an abundance of vendors selling high calorie and fatty foods.<sup>22</sup>

The United States Centers for Disease Control and Prevention (CDC) recommends policy and environmental approaches to make it easier for people to make healthier choices.<sup>23</sup> Such policies complement strategies that educate the public and provide support for those who want to lead a healthier lifestyle.<sup>24</sup> CDC's target areas for policy development include increasing the consumption of fruits and vegetables and decreasing the consumption of sugary drinks and high-energy-dense foods; in other words, policies that promote better nutrition.<sup>25</sup>

## Environmental Factors Affecting Nutrition: Food Deserts

Many circumstances lead to poor nutrition, including poor knowledge about a healthy diet, marketing strategies promoting high-energy-dense foods, scarcity of healthy food choices, and the relative affordability of a healthy diet. Low-income communities often have a shortage of large grocery stores or supermarkets. Residents living in food deserts may be limited to purchasing food at convenience and corner stores where healthier items are in short supply and relatively more expensive than high-energy-dense foods.<sup>26</sup>



Food deserts are characterized as areas with little access to affordable fruits, vegetables, whole grains, low-fat dairy products, and other foods “that make up the full range of a healthy diet.”<sup>27</sup> They are found in both urban and rural areas.<sup>28</sup> In low-income, urban food deserts the challenge of healthy eating is compounded by both the high price of nutritious food and the high prevalence of convenience stores and restaurants offering inexpensive food options high in calories and fat but low in healthy nutrients.<sup>29</sup> In addition, convenience stores and small grocers located in low-income urban areas typically charge higher prices for nutritious options than larger supermarkets.<sup>30</sup> As a result, high-energy-dense foods are more readily available and affordable than healthier foods and contribute to poor nutrition.

A 2011 study of food deserts in New York found that

- Food deserts exist in 32 of 62 New York counties;
- 656,000+ New Yorkers live in a food desert; and
- 86 percent of people living in a food desert live in urban areas and 14 percent reside in rural areas.<sup>31</sup>

Studies suggest an association between the types of stores located in food deserts and the BMI of their residents (although the results have been mixed and there exists a complex relationship among access to nutritious foods, socioeconomic status, and health status).<sup>32</sup> For example, one study found that access to chain supermarkets had a negative relationship with youth BMI and overweight status, while increased density of convenience stores was associated with higher BMI and overweight status.<sup>33</sup> (However, there

### A note on the federal definition of a “food desert”

The definition commonly used by many federal government agencies is criticized by some organizations as failing to accurately categorize food deserts. Many federal agencies use the North American Industry Classification System’s (NAICS) categorization of food retail outlets, which combines small corner grocers with supermarkets (supermarkets being your large stores such as Safeway, Whole Foods, or Stop n Shop). Thus, a community that does not contain a supermarket but contains, for example, two small grocers that sell only liquor and junk food would be categorized as having two food retail outlets and as a result would not be considered a food desert. In reality under this hypothetical, food availability might be quite limited compared to a community with a supermarket.

Source: THE FOOD EMPOWERMENT PROJECT, FOOD DESERTS, [http://www.foodispower.org/food\\_deserts.php](http://www.foodispower.org/food_deserts.php), (last visited June 10, 2013)

was no “statistically significant” association between availability of non-chain supermarkets and other grocery stores and adolescent weight outcomes.)<sup>34</sup>

Another study assessed the “relationship between neighborhood access to foods and weight status” through a comprehensive review of research conducted between 1985 and 2008.<sup>35</sup> It found that a majority of studies during this time period suggested that those with access to supermarkets and retailers with



healthier foods tended to have a healthier food intake.<sup>36</sup> Further, the review noted that several studies indicated that better access to supermarkets related to reduced obesity levels and that, conversely, limited access to supermarkets and greater access to convenience stores is related to higher levels of obesity.<sup>37</sup> It found that those living in rural areas, minority communities, or low-income areas were likely to have poor access to supermarkets, large chain grocery stores (as opposed to smaller, independently owned grocers), and healthy food products.<sup>38</sup> The review concluded that “[i]n general, research suggests that neighborhood residents who have better access to supermarkets and limited access to convenience stores tend to have healthier diets and lower levels of obesity.”<sup>39</sup>

Consistent with these and other studies, results of a 2006 study support an association between local food environment and obesity, finding convenience to a food source in a community is “an important predictor of food habits,” concluding that the local food environment “may play an important role in the prevention of overweight and obesity.”<sup>40</sup> This study found that access to supermarkets (defined by the study as large corporate chain food stores) is associated with lower rates of overweight, obesity, and hypertension.<sup>41</sup> The availability of convenience stores (defined as a store carrying a limited selection of food) was associated with increased overweight rates.<sup>42</sup> Interestingly, the study found that the negative impact of convenience stores on health may exist even if the community also includes a supermarket. The study found that those who live in areas with supermarkets *and*

convenience stores have a 35 percent higher rate of obesity than those who live in communities with only a supermarket available for food purchases.<sup>43</sup>

The need for accessible healthy food is of heightened importance in communities where residents may be unable to easily get to larger supermarkets. For example, low-income neighborhoods and communities of color typically have fewer grocery stores but more fast food restaurants and convenience stores than more affluent and largely Caucasian neighborhoods.<sup>44</sup> If a grocery store is not accessible to these communities, and residents lack a private vehicle or reliable public transportation, then residents turn to high-calorie, low-nutrient food available in convenience stores and fast food restaurants.<sup>45</sup> One study noted that low-income individuals report only one trip per month to supermarkets for large food purchases and, as a result, there might be heavier reliance on convenience stores to fill in the gap.<sup>46</sup>

Another study examined the relationship between access and in-store availability of fruit and vegetables to consumption and did not limit its analysis to access to grocery stores and supermarkets, in light of the fact that in urban neighborhoods there might be a greater concentration of smaller food stores.<sup>47</sup> The researchers assessed household distances to food stores as well as availability of fruits and vegetables in these stores based on shelf space.<sup>48</sup> The study found that individuals who lived within 100 meters of a store carrying fruits and vegetables had a higher intake of vegetables and fruit than those that did not.<sup>49</sup> Additionally, individuals with no store providing vegetables within a block of their home

had a lower intake of vegetables than those living within one block of retail offering up to 3 meters of linear shelf space for fresh vegetables (those with more than 3 linear meters of fresh vegetable shelf space had the highest intake of vegetables).<sup>50</sup>

The price of certain products also impacts community access to staple foods. Small grocers and corner stores are unlikely to have the same relationship with suppliers of foods, like produce, that large supermarkets do since they are unable to purchase the large volume of food products some wholesalers and distributors require.<sup>51</sup> As a result, it costs the corner store more to acquire those food products than it will the supermarket, and the higher price will be passed on to the consumers who rely on these smaller stores for their food purchases.<sup>52</sup> Further compounding the problem, the more affordable items are often the processed products with high fat and sugar content.<sup>53</sup> The result is that the food that is cheaper and easily accessible in food deserts is also detrimental to residents' health.



## Part III: Improving Access to Healthy Food

Policies that increase neighborhood access to and availability of healthier food may lead to improved health of its residents. Based on recommendations from the CDC and other health organizations, communities across the country have developed programs to improve access to healthy food in underserved areas. These programs aim to attract new food stores to underserved areas, improve or develop reliable transportation to and from full-service food stores, and provide stores with assistance to upgrade shelving and equipment that will enable them to advantageously stock and display fruits, vegetables and other staple foods.<sup>54</sup>

### Attracting New Stores to Underserved Areas

The Healthy Food Financing Initiative (“HFFI”) is a federal program that aims to improve access to nutritious food by bringing grocery stores and healthy food retailers to “underserved urban and rural communities.”<sup>55</sup> HFFI provides financing to develop and equip grocery stores, small retailers, corner stores, and farmers' markets to sell healthy food through programs of the United States Department of Agriculture, the United States Treasury, and the U.S. Department of Health and Human Services.<sup>56</sup> Many organizations are eligible for these funding opportunities including businesses, local governments, universities, non –profit organizations, state agriculture departments, community development corporations, and Treasury-certified community development financial

institutions.<sup>57</sup> One example of a program funded through the HFFI is the New Markets Tax Credit Program allowing “allocates” to invest in programs in all 50 states.<sup>58</sup> An example of this program in action in New York State is the Low Income Investment Fund, which used its allocation to invest in development projects that included financing the development of grocery stores in underserved communities.<sup>59</sup>

## Incentivizing Change in Existing Retail Environments

### Philadelphia, Pennsylvania

The Philadelphia Department of Public Health’s (PDPH) “Get Healthy Philly Initiative” aims to make healthy food easily accessible and more affordable for city residents.<sup>60</sup> As part of the Initiative, 630 stores have voluntarily enrolled in a “Healthy Corner Store Network” (Network).<sup>61</sup> The Network was developed by the Food Trust, a nonprofit that works to ensure equitable access to affordable and nutritious food,<sup>62</sup> in partnership with PDPH.<sup>63</sup>

The Network focuses on recruiting corner stores located in low-income neighborhoods as identified through U.S. census data.<sup>64</sup> Corner stores comprising less than 2,000 square feet, no more than four aisles, and a single cash register are eligible to join the Network.<sup>65</sup> Stores that participate in the Network progress through four phases of the program. At the basic level, a retailer is required to introduce a minimal variety of new foods and, after doing so, receives a \$100 cash incentive. Additional phases include

substantial changes to store inventory, the provision of free marketing materials, professional development for the owner, and assistance with store conversion (e.g., new shelving, refrigeration units or redesign).<sup>66</sup>

Stores participating at the basic level add four new products from healthy food categories identified by the Initiative, which include fruits and vegetables (fresh, frozen and canned), dairy, whole grains and proteins.<sup>67</sup> Stores have the option of advanced participation (in exchange for additional incentives) by adding more products.<sup>68</sup> The Network provided eligible participating stores with marketing materials for the new products; training in the proper storage, display, and procurement of new products; and equipment, such as refrigerators or shelving.<sup>69</sup> Participating stores were enthusiastic about the new inventory, introducing an average of 36 new healthy products, which exceeded the four required at the basic level of participation.<sup>70</sup>

After two years, the Network found that many corner stores throughout the city are willing to carry the new inventory, with many participating stores stocking well above the minimum number of new healthy products.<sup>71</sup> It also found that additional financial support, training in the storage and display of the new products, and procurement assistance during the program was necessary to ensure the profitability and sustainability of the changes to their inventory.<sup>72</sup> With these investments from the community, retailers were far more likely to be successful in selling healthier food options to the community.<sup>73</sup>

## Minneapolis, Minnesota

The Healthy Corner Store Initiative in Minneapolis (“Minneapolis Initiative”) supports retailers in making healthy foods more visible, affordable, and attractive to consumers.<sup>74</sup> The Minneapolis Initiative was born out of prior efforts to improve access to healthy food in the city, including a 2008 ordinance that required grocers to carry five varieties of perishable items (“ordinance”) and a 2009 federal requirement that WIC-certified stores carry a minimum of seven varieties of fresh produce.<sup>75</sup> After enacting the ordinance, the city found that while stores strove to comply, the stocking of quality healthy products was not always the end result.<sup>76</sup> The Minneapolis Department of Health found the ordinance to be an important tool, but that store owners also needed additional support to realize the goals of the law. The city implemented the Minneapolis Initiative to provide that additional support.<sup>77</sup>

The Minneapolis Initiative recruits stores in low-income neighborhoods. The program began with 8 stores and has since added 29 stores.<sup>78</sup> Participating stores are required to comply with certain conditions, such as increasing the prominent displays of healthy foods, displaying marketing materials highlighting the new inventory, participating in training, documenting sales of the new products, and implementing physical changes to the store.<sup>79</sup> To assist stores with these changes, the program hired a consultant to provide grocery and marketing expertise. The consultant provides guidance to store owners in the proper display and storage of produce, assists stores with the procurement of affordable produce, and identifies “assets and enhancement strategies” in each store to

help stores succeed with the new inventory.<sup>80</sup>

Initial review of the program found that most participating store owners successfully sold their inventory of produce. Stores accepting Women, Infants, & Children (WIC) benefits and Supplemental Nutritional Assistance Program (SNAP) benefits were more successful in selling produce than Electronic Benefits Transfer (EBT) only stores. Overall, owners reported more sales of, and more demand for, fresh produce than existed prior to participating in the Minneapolis Initiative.<sup>81</sup>

## Incentivizing Healthier Retailing through Zoning

### Rochester Zoning Amendment

In 2012, the City of Rochester amended its zoning code to incentivize the land use for “healthier” retail stores and limit land use for stores offering less healthy products. Prior to the amendment, the zoning code defined a catch-all “retail sales and services” use category, and identified the zones in which such uses were permissible. The amendment broke down this use category into four separate retail categories: low-impact, high-impact, specialty, and full-line food stores.<sup>82</sup> These new categories are largely defined by the types of products retailers sell. For example, full-line food stores are those offering a “full selection of food products including at least a variety of fresh produce” and which sell no more than one of the following “unhealthy” products: tobacco, beer/wine coolers or lottery.<sup>83</sup>



A “high-impact” business is defined as one that sells firearms, tobacco, lottery and/or beer or wine coolers.<sup>84</sup> The use of land for such a retail business is considered to negatively impact the surrounding community, so the new zoning law places the most restrictions on this type of use (limited to primarily areas located farther from residential and central neighborhood business districts).<sup>85</sup> The new law also limits the density of high-impact businesses—these retailers must be located at least 500 feet from other high-impact businesses and from other “protected” areas, such as schools.<sup>86</sup> Thus, the city discourages development of these less healthy businesses.

“Low impact” retailers are those that do not fall into the other retail categories and thus, by definition, do not sell less healthy products such as tobacco or beer and wine coolers.<sup>87</sup> Full-line food and low-impact retailers are permitted to locate in most areas of the city—notably, in certain residential areas and central neighborhood business districts near residential districts.<sup>88</sup> By permitting these types of retail uses in more areas of the city (and limiting the high-impact uses), Rochester has provided an incentive for stores that limit the sale of certain items that may negatively affect the community.

## Incentivizing Development of New Grocery Stores

### New York City FRESH Program

After finding a widespread shortage of supermarkets and grocery stores, particularly in low-income neighborhoods, New York City implemented the FRESH

Food Store Area Program.<sup>89</sup> The program provides zoning and financial incentives to attract new grocery stores to underserved communities.<sup>90</sup> The goal is to improve access to full-service food stores, as well as increase competition to make food more affordable in underserved neighborhoods.<sup>91</sup>



Grocery stores that renovate existing retail space or developers constructing or renovating retail space to be leased to a grocer are eligible for financing through the program when located in designated areas.<sup>92</sup> Participating stores are required to stock a minimum amount of perishable foods and fresh produce.<sup>93</sup> The program provides eligible grocers and developers with zoning incentives including additional development rights and a reduction in the number of parking spaces required.<sup>94</sup> Stores may also be eligible for financial incentives, including real estate tax reductions, sales tax exemptions for construction materials and store equipment, or a mortgage recording tax deferral.<sup>95</sup>

An example of a FRESH program supermarket development can be found in the Bronx where a Fine Fare supermarket was to be developed in a vacant 19,000 square foot building.<sup>96</sup> As of 2013, Under the FRESH program 16 projects have been approved.<sup>97</sup> Out of the 16 approved three were approved for zoning benefits, and four have completed construction.<sup>98</sup>

### New York State Healthy Food & Healthy Communities Fund

New York State established the Healthy Food & Healthy Communities (HFHC) fund in 2009.<sup>99</sup> The HFHC is a \$30 million program that provides grants and loans to food retailers located in underserved areas.<sup>100</sup> Financing through the program can be used for land acquisition, predevelopment, construction or rehabilitation costs, equipment, and infrastructure (either for new markets or the expansion of existing facilities).<sup>101</sup> Participating stores must dedicate 66 percent of retail space to the sale of food products, and most of the products must be perishable or “non-prepared” foods.<sup>102</sup> Stores must also accept SNAP and WIC benefits.<sup>103</sup> An example of a supermarket receiving financing from HFHC is Foodtown in Mount Vernon, New York.<sup>104</sup> Financing from HFHC will allow this store to complete a full renovation in this downtown store located in a densely populated, low-income community.<sup>105</sup> Funding will expand Foodtown’s square footage in order to carry more produce, fish, and meat and better serve residents of the community.<sup>106</sup>

## Improving Access to Farmers’ Markets and Locally-Sourced Food

### GrowNYC

GrowNYC is a non-profit organization based in New York City that supports initiatives that improve residents’ quality of life through environmental programs including recycling, farmers’ markets, open space development, and educational programs.<sup>107</sup> One goal of GrowNYC is to bring healthy local food to underserved areas of the City.<sup>108</sup> GrowNYC’s farmers’ market program includes the organization’s Greenmarket Co., which serves as a wholesale distribution service delivering regionally-grown food to City grocery stores, bodegas and restaurants.<sup>109</sup>

In furtherance of this goal, GrowNYC works with the Brownsville Partnership in Brooklyn to expand access to fresh produce in underserved Kings County, which has a higher incidence of obesity and type 2 diabetes than most New York counties.<sup>110</sup> Through this program, GrowNYC distributes produce from local farmers to local retailers to increase access to fresh, local produce.<sup>111</sup> It also assists retailers in selecting specific produce and products to carry, creating displays to encourage purchasing, providing advertising materials and in-store display equipment, and assisting with proper food storage.<sup>112</sup>



## Part IV: The Model Policies

There are a number of strategies available to communities to improve access to and availability of healthy food. The option that will be the most effective will depend on a number of factors including community goals, demographics and political environment.

This report includes three model policies for consideration by New York communities: (1) a voluntary retailer certification program (2) a retailer licensing ordinance and (3) a retailer zoning ordinance. The policies focus on improving the food retail environment in smaller food retailers (e.g., convenience stores, corner stores, small food marts, and bodegas). As discussed above, these smaller food retailers typically carry energy dense foods and very little produce.<sup>113</sup> The strategies employed in the models are relatively new and communities with similar programs have not yet determined their long-term effectiveness. The rationale behind them is changes to the retail environment may allow the healthier choice to become the default choice in communities.<sup>114</sup>

These models were designed for use by local governments in New York. They were developed by incorporating elements of existing models, proposals, and programs. The models are written flexibly so that they can be implemented by a county or municipality (city, town, or village). As models, they are intended to be modified or tailored to fit the particular needs of a community.

### Model Voluntary Retailer Certification Program

The model voluntary retailer certification program is intended to provide a structured and progressive program to incentivize small food retailers to incorporate healthier food, such as fresh produce, into their inventories.<sup>115</sup> The program begins with the recruitment of a store owner to the program. When the store commits to the program requirements it becomes eligible for benefits and incentives designed to help it succeed with the program. The community organization or local government agency administering the program then monitors the store's compliance with program requirements and provides technical assistance necessary to aid the stores success with the new inventory.

The model certification program does not require community-wide application. A community considering a voluntary retailer program may choose to implement a pilot program on a small scale, or dive right in and apply it community-wide. The community should assess its food retail environment and available resources to determine what type of program will make the most positive impact.

The model certification program describes four phases (or levels) of certification, each requiring increased commitment from the retailer. It includes suggestions for store requirements in each phase, as well as incentives to encourage stores to increase their commitment. For example, a program may first recruit a retailer to add a small minimum of staple foods to the store's inventory. In exchange, that retailer might be eligible for a payment of \$100 or training on the proper handling

and storage of those items. The requirements in each phase build upon the requirements in previous phases and allow stores to become comfortable with the changes in a gradual (and perhaps more sustainable) way.

The benefits of the program are twofold: Retailers volunteer to participate at a level of commitment they are comfortable with and the program may inform the community whether a broader (or mandatory) program will likely improve the health of its residents (or is desirable). A pilot program consisting of a small number of stores may educate the community about its retail environment and permit development of a broader program tailored to that community. Moreover, an initial pilot program allows a community to focus on specific underserved neighborhoods and allocate resources where needed most.

A voluntary program with phased-in requirements provides flexibility to food retailers by allowing them to gradually introduce new staple food items, reduce unhealthy items, and make store upgrades to highlight the healthier food products.<sup>116</sup> By making the changes gradually, both the program and the store owner can assess community interest, determine the most popular products for a particular area, and adjust individual store modifications to maximize sustainability.

## Model Retailer Licensing Ordinance

The model retailer licensing ordinance requires small food retailers to obtain a license before engaging in the sale of food products. A license grants legal permission to do something that would

otherwise be unlawful. It may require the license holder to comply with certain conditions and can therefore be an important tool for realizing public health goals, such as improving access to healthy food. Not only does the license impose responsibilities on all retailers in the community (thereby creating a level playing field), but it also serves as an enforcement tool to ensure compliance with applicable laws and license conditions (e.g., can be revoked as punishment for noncompliance, thereby ending permission to engage in food sales). Further, the license pays for itself since the fee paid by retailers may be used to fund both the administration of the licensing system, as well as education and enforcement efforts.

The model food retailer license requires that a certain percentage of retail space (shelf and floor space) be dedicated to “staple food items,” which include low fat dairy products, lean proteins, vegetables, fruits, and whole grains. It also includes suggestions for “additional performance standards” that are not required, but encourage retailer adoption through additional incentives.<sup>117</sup> The model grants the licensing or enforcement agency authority to conduct education and training programs and to impose penalties on retailers who fail to comply with the licensing conditions.

## Model Retailer Zoning Amendment

The model zoning amendment identifies options for incentivizing the development of corner stores that carry staple foods through a community's zoning code.

Land use regulations can be a powerful tool through which local governments may regulate the use of land for certain businesses. The purpose of zoning laws is to regulate the use of land within a particular jurisdiction. Local governments use zoning laws to divide a jurisdiction into certain districts (or zones), and identify the uses permitted (or prohibited) within each district. For example, many local governments use zoning to separate uses of land that are incompatible—such as separating manufacturing plants from residential neighborhoods.<sup>118</sup>

New York communities currently use zoning laws to regulate a number of businesses. For example, zoning is often used to regulate the location and operation of adult businesses and liquor stores because of the impact these businesses have on the health or well-being of residents. Similarly, in other states, zoning has been used to regulate the distance a tobacco retailer may locate from a school and prohibit the sale of tobacco products through self-service displays or to certain customers.<sup>119</sup> The model zoning amendment suggests ways in which New York communities might use the same strategy to ensure the adequate distribution of healthy foods.

It is important to remember that zoning is largely a prospective policy solution; it largely affects *future* land use, rather than current land use. Notwithstanding this general rule and as discussed in more

detail in the next section, a particular community may permit a structured phase-out of existing land uses that do not conform to an amended zoning plan. Regardless, the public health impact of a new zoning law will be realized gradually over time, rather than immediately.

## Part V: Legal Considerations and Potential Challenges

As with any new policy, potential legal issues must be taken into consideration. Since retailers participating in a voluntary certification policy are “volunteering” for the program, the legal considerations discussed below apply only to the model retailer licensing ordinance and the model zoning amendment.

### Authority to Regulate Business through Licensing

The State of New York possesses broad “police powers” to promote the public health and welfare of its residents. Through the New York State Constitution and state statute, New York has conveyed its police powers to local governments, giving them the authority to enact laws and adopt regulations to protect and promote the health, safety, morals and general welfare of their residents.<sup>120</sup> This includes the authority to regulate commercial activities.<sup>121</sup>

There is a limit to this broad power, and local governments cannot enact laws that are inconsistent or conflict with the New York Constitution or State law.<sup>122</sup> Opponents to this policy might argue that

regulating food retailers is outside of local government's power. They might argue that it either directly conflicts with a State law (conflict preemption), or the State has decided to fully regulate food retailers to the exclusion of all local regulation (field preemption).<sup>123</sup>

A challenge based on preemption is unlikely to succeed. The state currently regulates "food processing," which includes baking, cooking, bottling, curing, corning, blending, cutting, and slicing of food products.<sup>124</sup> The state also imposes certain sanitation requirements on food retailers.<sup>125</sup> The Department of Agriculture and Markets regulates the labeling of certain meats, the sale of frozen meat (seafood, meat, poultry), the availability of products as advertised, and sale of fruit in smaller quantities.<sup>126</sup> None of these laws specifically preempt or conflict with a local license requirement for small food retailers. Moreover, even considered together, these laws do not indicate a legislative intent to fully regulate retailers and preempt local regulation.

## License Fee

When state governments collect taxes, they raise general revenue for the state that can be used to finance various state-run operations. When a government sets a license fee, the fee may have to be used specifically to fund the regulation of the industry being licensed. In New York, taxes can be used to raise revenue for the government to fund general operations, but licensing fees cannot. A local government should be cautious and may want to determine whether it has authority to administer certain types of local taxes. Care should be taken about how license-

related fees are treated so that the fees are not challenged as illegal "taxes" for general revenue-generating purposes.

Licensing fees have been challenged in the courts as illegal taxes. The resulting New York case law indicates that license fees should be set at a level that will fund the cost of administering and enforcing the licensing system.<sup>127</sup> For example, when building permit fees set by the Commissioner of Health Services were challenged in court, New York's highest court found that the fee was valid because the commissioner set the fees based on a study that established the department's costs in issuing the permits.<sup>128</sup> The study presented information regarding the number of inspections conducted, related enforcement services, and the department's expenses.<sup>129</sup> The court held that the fee was legal as there was a "reasonable correspondence" between the cost of enforcement and the amount of the permit fee.<sup>130</sup>

A lower New York court held that an ordinance that required the payment of a license fee by peddlers and transient merchants was valid because "[a] license fee may be imposed under such an ordinance which is sufficient to compensate the municipality for the expense of issuing and recording the license, for securing police control over the matter licensed, and for the cost of inspecting and regulating such business. To that extent any fee imposed is not a tax on the business."<sup>131</sup> Because the fee specifically funded the municipality's costs in implementing and enforcing the licensing program, the court found that the fees were not a tax.

In another New York case regarding the legality of licensing fees, medical doctors

challenged registration fees required by the Department of Health for X-ray equipment and radioactive materials installations.<sup>132</sup> In that instance, the court found that licensing fees must be narrowly tailored to fund the cost of enforcement, reasoning:

In dealing with a licensing or registration fee imposed by an administrative agency, as in the case at bar, such a fee may not exceed the sum which will compensate the licensing or registration authority, for issuing and recording the license or registration and pay for the inspection to see the enforcing of the licensing or registration provisions.<sup>133</sup>

These cases highlight the importance of researching licensing and enforcement costs in order to reasonably determine the license fee. When it cannot be established that a fee is used to satisfy the cost of the licensing program, the court may find it to be an illegal tax. For instance, when a village in New York increased residential permit fees and the fees were challenged, an appeals court found that because the village did not provide sufficient supporting documentation to justifying the new fee, the fee was not valid.<sup>134</sup>

Despite this restriction, license fees can be used to fund a wide range of activities that are necessary to successfully maintain a food retailer licensing program. For example, fees may be used, among many other things, to fund the cost of issuing licenses, educate the regulated businesses and the public, hire additional staff to administer the license program, train inspectors, conduct enforcement inspections, and produce related signage and other materials.

## Authority to Regulate Business through Zoning Codes

Through its enabling acts, New York State has granted cities, towns and villages the authority to regulate the use of land within their borders through the adoption of zoning laws.<sup>135</sup> Zoning laws may be used to promote “health and general welfare” for a community’s residents, and this may include the regulation of business for such purposes.<sup>136</sup>

As previously discussed, municipalities have broad police powers to regulate businesses (e.g., through licensing requirements). However, while a municipality’s zoning authority stems from this police power,<sup>137</sup> the scope of zoning law is limited to the regulation of land use, rather than general regulation of the details of a particular business’s operation.<sup>138</sup> While a municipality providing strong evidence of the adverse health impacts of local food deserts and the ready availability of cheap, energy dense food in residential areas may be able to impose conditions on certain businesses through its zoning code, there exists some unfortunate, though not insurmountable, legal precedent that requires careful consideration.

It is well settled that municipalities in New York may regulate the location of businesses that negatively impact the surrounding community.<sup>139</sup> Municipalities may also regulate certain aspects of a business enterprise occupying particular land, so long as there is clear evidence that such regulations are intended to ameliorate the impacts those particular types of businesses have on the surrounding properties (e.g., limits on the



hours of operation).<sup>140</sup> However, courts have overturned zoning regulations that apply to a particular type of business based on general policy considerations as exceeding the zoning authority (even if the police power would permit similar regulation outside of zoning laws).<sup>141</sup>

Specifically, the courts have found these and similar zoning regulations concern the *person* occupying the land, rather than the use of the land.<sup>142</sup> Thus, while a zoning amendment like the model, which regulates the location of certain businesses, falls within municipal zoning authority, a zoning law that conditioned approval of a new corner store on the owner's agreement to stock certain staple food items (e.g., similar to those conditions included in the model licensing ordinance) may be found to exceed the scope of that authority.<sup>143</sup> Thus, communities attempting to regulate business through zoning law must make sure the law addresses the use of land.

As a general rule, the government can regulate the use of private property.<sup>144</sup> In fact, property may be regulated to the point of prohibiting an existing business activity, so as it is for the public good.<sup>145</sup> However, under both the United States and New York State Constitutions, the government may not take possession of private property for public use without fairly compensating the property owner.<sup>146</sup> A regulation could conceivably result in a physical property intrusion (e.g., a loss of lawn due to widening road or intrusion on a building's roof due to government required placement of public utility, such as an antennae/cable box). Alternately, in certain circumstances a property owner may retain complete possession of the property, yet a regulation may be deemed to so interfere with an owner's use of it

that the government, through its regulation, may be deemed to have "taken" the property from the owner. These are both referred to as a "regulatory taking" and may entitle the owner to government compensation for the loss.<sup>147</sup>

A party challenging a law as a regulatory taking must meet a high threshold to overcome the "presumption of constitutionality" of government regulation.<sup>148</sup> A property owner may allege a regulation resulted in a "*per se* taking," that is, imposes either a physical invasion of the property or eliminates *all* value to the property.<sup>149</sup> In lieu of a physical intrusion or a complete deprivation of property value, an owner may instead claim the regulation has diminished the property value, therefore "taking" some of the property to which the owner is entitled to compensation. In the latter case, a court may balance the government interest that is furthered by the law in relation to the interference with the private property owner's harm to determine whether a regulatory taking exists (and thus compensation is required).

### Per se analysis

A small food retailer may argue that the model licensing ordinance or zoning amendment results in a *per se* taking based on a physical invasion of his property (by requiring a certain space be set aside to stock staple food products) or a reduction in the value of his property. Such a challenge is unlikely to succeed.

Neither model requires a physical intrusion into the retailer's property. To determine whether a regulation constitutes a physical invasion a court will



evaluate the nature of the intrusion. For example, if a regulation forces an owner to submit to third party intrusion (the intrusion of someone other than the government or the owner himself) or use his property in a way that he did not intend, it may constitute a physical invasion.<sup>150</sup> Under the model licensing ordinance, the government would regulate the manner in which an existing business operates. Under the model zoning amendment, the government may regulate the use of land by an existing business. While there is a “space” requirement for the stocking of staple foods, there is no physical invasion by the government into the store; nor is the retailer being forced to enter a business she did not intend. It is no different from other regulations of business or land, such as building codes, sanitation rules, parking requirements or storage restrictions.<sup>151</sup> Thus, the model licensing ordinance is unlikely to constitute a taking based on physical invasion.

A small food retailer may alternately argue that the model licensing ordinance or zoning amendment constitutes a taking based on a reduction in the value of his property. To succeed, a retailer must demonstrate that the licensing ordinance or zoning amendment results in the elimination of *all* property value;—in other words, she must show the regulation deprives her of the use of her property for *any* purpose.<sup>152</sup> The licensing ordinance causes no such deprivation as it merely requires a small change in business activity.

In the case of the model zoning amendment, the determination would largely rest on the treatment of existing businesses at the time the amendment is

adopted. A zoning change that prohibits existing businesses from altogether continuing its operation may require compensation to the business owner or else constitute an unlawful taking. However, a municipality can ensure that continuing use is appropriately limited (to realize the public health benefits intended by the zoning change) and avoid a successful taking challenge by recognizing the existing use as a legal nonconforming use.

A legal nonconforming use is one which legally existed prior to a change in the zoning law that now prohibits the use. Municipalities may allow existing businesses to continue operating in violation of a new ordinance, and place conditions on that continued use.<sup>153</sup> For example, nonconforming use is generally not allowed to continue if there is an expansion or significant alteration of the building (other than regular maintenance). Additionally, if the nonconforming use is abandoned for a period of time, the business may not be allowed to resume without obtaining a permit from the municipality.

### Balancing test

Even where a regulation or law does not result in a physical invasion or deprivation of all economically beneficial use an owner may still bring a regulatory takings claim.<sup>154</sup> Specifically, the owner of a small grocer may challenge a law based on the model licensing ordinance as “going too far” in forcing her to bear a burden that should actually be borne by the public.<sup>155</sup> To evaluate this argument, a court would use a balancing test and weigh the extent of the “intrusion” on the private property interests against the government interest

served by the regulation.<sup>156</sup> A municipality should be able to demonstrate that the government interest served by the policy food stocking requirements outweighs the limited intrusion the policy imposes on an individual store owner. Specifically, there is limited intrusion as the owner is still able to use the property as intended (retail food outlet). The government interest is improving public health by increasing access to a range of healthful and nutritious foods in areas most burdened by obesity and its associated chronic diseases. When balanced against the intrusion on the small retailer to devote a small portion of her inventory to healthy food, the government interest should prevail.

Under the model zoning amendment, a municipality may choose to impose new requirements on land used by existing retailers within a reasonable period of time. The law may specify a timeline for the termination of nonconforming uses—a process referred to as amortization. Since the general policy of zoning is to establish a plan for the overall development within a community, existing uses that do not conform to the zoning code are intended to be temporary.<sup>157</sup> Under amortization, a municipality would allow a nonconforming use to continue for a “reasonable period” of time in order to allow the property owner to recoup any investment he or she has made in the property, but such use would be prohibited at the end of that time period. The “reasonable period” of time must be determined on a case-by-case basis and could be challenged by the property owner if she believes it is too short a time as applied to her property.<sup>158</sup> Therefore, municipalities wishing to establish a timeline for the phase-out of nonconforming uses should do so only

after examining the affected properties and identifying a period of time that will be reasonable for the owners to recoup their investment or make necessary changes to conform to the new requirements.

## Equal Protection

The Fourteenth Amendment of the U.S. Constitution guarantees “that persons similarly situated with respect to the legitimate purpose of the law receive like treatment.”<sup>159</sup> Opponents of a retailer licensing system might argue that the ordinance arbitrarily (and unfairly) treats small food retailers differently from similarly situated larger food retailers by exempting the latter from license requirements.

Similar challenges have been unsuccessful. In the case of *Tops Market v. County of Erie*, supermarkets and wholesalers challenged an Erie County, New York law that required individual food items to be marked with a price.<sup>160</sup> The law contained an exemption for smaller “mom & pop” stores and non-chain convenience stores, and the plaintiffs charged that such an exemption violated the equal protection rights of the larger stores.<sup>161</sup> The court disagreed and found that the County had a rational reason for distinguishing among the different stores; specifically, that there was a greater need for individual price tags in the larger stores, which used laser scanning equipment for products at checkout.<sup>162</sup> Additionally, the court found that the costs of complying with the law would be burdensome to smaller retailers in a way it was not for larger retailers.<sup>163</sup> Thus the classification of stores was reasonable and rational and therefore complied with

the requirements of the equal protection clause.<sup>164</sup>

Similarly, applying the model licensing system to smaller retailers (to the exclusion of larger ones) is rationally related to a community's desire to improve health in areas where it is needed most. A community can demonstrate that larger food retailers in the community already carry the healthier staple food items in large quantities, and greater access to these foods is beneficial to residents in areas primarily served by smaller retailers that typically do not stock these items. Thus, a challenge based on equal protection grounds has little merit.

## Part VI: Implementation and Enforcement

It is important for communities to carefully plan each aspect of the implementation and enforcement of a food retailer certification program or licensing system. (Zoning requires some separate considerations discussed in Appendix C.) While each policy presents its own set of considerations, they have shared features for a community to address. For example, the community must determine the (1) agency or program that will be in charge of implementing the program or licensing system; (2) source of financial resources to support the program; and (3) enforcement scheme of the certification or license requirements. This section illustrates the considerations common to both policies, and then addresses those unique to each model policy.

## Implementation Considerations

There are several common implementation considerations for a community seeking to change the retail environment. The model policies can be adopted or implemented by a county, city, town or village.<sup>165</sup> (In the case of the voluntary retail certification program, it may simply be that a community organization decides to develop and implement it, without the need for government action.) If a governmental entity is adopting the program, the proper legislative or administrative procedure must be followed (these procedures will depend on the specific rules of the entity). The governmental entity generally must hold a public hearing before the law is adopted. This provides the public with an opportunity to comment on the proposed law. This is also an opportunity for advocates to provide research and data—including local data—demonstrating the importance of implementing the new program to improve access to staple foods and, in turn, improve public health. While the concerns of retailers should not be dismissed, advocates should try to keep the focus on the law's objective of improving health and reducing the incidence of chronic disease. Once the public hearings have taken place and the measure has been approved, there should be a period of time, as specified in the law, between enactment and enforcement of the law.

The entity adopting a certification or licensing policy must designate an agency, department or organization to implement and/or enforce the program. If a locality already has an agency that administers commonly held licenses—like business licenses or police or fire

permits—that agency may already be equipped to administer the new retailer certifications or licenses. If not, the locality or organization must ensure that the body administering the program has funding and adequate and knowledgeable staff. The staff should include those with experience in the retail environment and the ability to build relationships with retailers and make connections between retailers and suppliers. This expertise may come from a grocery consultant, like that employed through the Minneapolis Initiative discussed above,<sup>166</sup> or through a partnership with other interested organizations and stakeholders.

Experienced staff is vital to a successful program since the administering agency or organization will be responsible for laying the groundwork before retailers are required to comply with the conditions of the certification or license. Additionally, once the program has been implemented, retailers will need ongoing technical assistance to develop procurement opportunities (e.g., the right products at the right price),<sup>167</sup> obtain training in food handling and storage,<sup>168</sup> and learn how best to market the new products. The administering agency will also be responsible for public outreach and community education about the program, availability of staple food items in new stores and the health benefits of choosing the more nutritious options.

The administering agency or organization should begin by assessing community needs to adjust the requirements of the model to achieve the best results. This will include the identification of underserved areas and the best way to improve access to healthy foods in those areas. Useful resources for this assessment are: (1)

CDC's Healthier Food Retail assessment guide;<sup>169</sup> (2) U.S. Census data; (3) The U.S. Department of Agriculture's (USDA) Food Environment Atlas;<sup>170</sup> and (4) the USDA's Food Access Research Atlas.<sup>171</sup>

It is imperative that the administering agency assist retailers to identify and establish relationships with affordable suppliers so products remain affordable for the community at retail. Small food retailers might not have existing relationships with wholesalers and distribution networks. Even if they do, they are unlikely to wield the purchasing power of larger supermarkets or grocery stores that purchase supplies in large volumes and obtain bulk discounts.<sup>172</sup> If a retailer purchases the new inventory at retail, the retail markup may make the staples foods too expensive for community members.<sup>173</sup> The administering agency should identify appropriate suppliers of affordable products or assist retailers to form purchasing clubs to increase buying power and gain access to existing wholesaler networks.<sup>174</sup> The administering agency may also coordinate “distribution hubs” where produce is dropped off for pickup or distribution to reduce transportation costs.<sup>175</sup>

The administering agency will be responsible for community outreach and education. For either model policy to be successful, residents must be aware of, and actually purchase, the new products from their corner stores. Residents may be surveyed prior to implementation of the program to determine the foods they would be most likely to purchase.<sup>176</sup> After implementation, the new products should be publicized and highlighted, through marketing materials,<sup>177</sup> cooking classes, recipes or other activities. Additionally, if



the retailers are required to accept food benefits like SNAP and WIC, agencies working with beneficiaries should be alerted to the new stores carrying products eligible for purchase.<sup>178</sup>

## Funding

While licensing fees should cover the costs of administering a licensing program, funding may be necessary for startup costs. Funding will certainly be necessary for a voluntary certification program to pay for staff, marketing and education materials and incentives, among other things. Communities may apply for funding from a variety of sources—state and federal government, non-profit organizations that support healthy food retailer initiatives. Appendix H contains a partial list of potential resources and organizations that provide funding or help communities identify funding opportunities for their program.



## Enforcement

### Voluntary Certification Program

Enforcement considerations unique to the voluntary certification program that a community will need to address include obtaining adequate financial resources (e.g. for staffing, outreach, and incentives) and developing the parameters of the program specific to the community needs, including a written agreement between participating retailers and the program.

A certification program should include a standard written agreement that clearly identifies the goals of the program and the responsibilities of both program staff and the retailer (such as required changes to the store environment, incentives and availability of technical assistance). This agreement can take the form of a simple memorandum of understanding (examples of which are provided in Appendix A2), or a more detailed and legally enforceable agreement (e.g., if significant financial incentives or equipment are provided). Further, the agreement should outline the consequences for each party for early termination of the agreement or for failure to comply with the agreement (e.g., change in store ownership). This can include providing for reimbursement of funds and the return of equipment or program materials.<sup>179</sup>

### Small Retailer License Ordinance

A licensing system by its nature includes strong mechanisms for enforcement of its restrictions and other ancillary laws. Licensing fees should be set at a level adequate to pay for the administration and enforcement of the licensing requirements, including periodic

inspections to ensure compliance and education of enforcing agency staff. (Appendix G contains an example of a compliance check sheet used in monitoring compliance with a retail program.) To conserve resources and reduce additional costs, consider whether the enforcement agency can collaborate with other agencies or combine the food retail license inspections with other mandatory inspections.

## Part VII: Conclusion

The high rates of New Yorkers living with overweight and obesity are a serious public health issue. Communities in New York may reduce these rates by implementing policy changes that encourage a healthy diet and physical activity. Research suggests that access to healthy food may play a role in a community's obesity and overweight rates. Additionally, communities across the country have begun working with local retailers and have seen improvements in their local food environment, including increases in nutritious options that community members take advantage of.

In sum, communities in New York have compelling reasons to work with local retailers to increase the availability of healthy foods. The three model policies in this report may provide a framework for a community's policy change efforts to combat obesity and overweight.



## Citations

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> ATL. CTR. FOR HEALTH STATISTICS, CTR. FOR DISEASE CONTROL AND PREV., FASTSTATS:OBESITY ANDOVERWEIGHT, [HTTP://WWW.CDC.GOV/NCHS/FASTATS/OVERWT.HTM](http://www.cdc.gov/nchs/fastats/overwt.htm), (LAST VISITED JUNE 7, 2013). [hereinafter FASTSTATS:OBESITY AND OVERWEIGHT] (citing F.M. Biro & M. Wien, *Childhood obesity and adult morbidities*. 91 (5) *AM. J. CLIN. NUTR.*1499S—1505S (May 2010)).

<sup>6</sup> *Id.*

<sup>7</sup> THE FOOD TRUST & THE ROBERT WOOD JOHNSON FOUNDATION, HARNESSING THE POWER OF SUPERMARKETS TO HELP REVERSE CHILDHOOD OBESITY, 2 (2011) (citing Christina Bethell et al, *National, State and Local Disparities in Childhood Obesity*, 29(3) *HEALTH AFFAIRS* 354 (2010)), available at <http://content.healthaffairs.org/content/29/3/347.full.pdf+html> (“As in 2003, rates of overweight and obesity were greatest among poor, Black, Hispanic, and publicly insured children.”).

<sup>8</sup> CYNTHIA L. OGDEN, ET AL., NCHS DATA BRIEF NO. 51, OBESITY AND SOCIOECONOMIC STATUS IN CHILDREN AND ADOLESCENTS: UNITED STATES, 2005-2008, NATL. CTR. FOR HEALTH STATISTICS, CTR. FOR DISEASE CONTROL AND PREV. 2 (2010), available at <http://www.cdc.gov/nchs/data/databriefs/db51.pdf>.

<sup>9</sup> *Id.*

<sup>10</sup> CTR. FOR DISEASE CONTROL AND PREV., OVERWEIGHT AND OBESITY: DATA and STATISTICS, <http://www.cdc.gov/obesity/data/childhood.html> (last visited June 7, 2013) (summarizing a study of compiled data from the National Health and Nutrition Examination Survey (NHANES) by CYNTHIA OGDEN ET AL., *PREVALENCE OF OBESITY AMONG CHILDREN AND ADOLESCENTS: UNITED STATES, TRENDS 1963-65 THROUGH 2007-2008*, CTRS. FOR DISEASE CONTROL AND PREV. (2010), available at [http://www.cdc.gov/nchs/data/hestat/obesity\\_child\\_07\\_08/obesity\\_child\\_07\\_08.pdf](http://www.cdc.gov/nchs/data/hestat/obesity_child_07_08/obesity_child_07_08.pdf))).

<sup>11</sup> *Id.*

<sup>12</sup> This is based on educational and economic disparities. For example, obesity is more prevalent among non-Hispanic black adults, adults with less than a college education, and adults who live in a household where the annual income is less than \$15,000. See KATHLEEN WALES & IAN BRISSETTE, BUREAU OF CHRONIC DISEASE EVALUATION AND RESEARCH, ADULT OVERWEIGHT AND OBESITY IN NEW YORK STATE, 2000-2010, at 2 (2011), available at [http://www.health.ny.gov/prevention/obesity/statistics\\_and\\_impact/docs/2000-2010\\_adult\\_obesity.pdf](http://www.health.ny.gov/prevention/obesity/statistics_and_impact/docs/2000-2010_adult_obesity.pdf).

<sup>13</sup> BEHAVIORAL RISK FACTOR SURVEILLANCE SYSTEM NEW YORK-2-12. CENTER FOR DISEASE CONTROL AND PREVENTION, [HTTP://APPS.NCCD.CDC.GOV/BRFSS/DISPLAY.ASP?CAT=OB&YR=2012&QKEY=8261&STATE=NY](http://apps.nccd.cdc.gov/brfss/display.asp?cat=OB&yr=2012&qkey=8261&state=NY) (last visited June 3, 2014).

<sup>14</sup> MORBIDITY AND MORTALITY WEEKLY REPORT, YOUTH RISK BEHAVIOR SURVEILLANCE- UNITED STATES, 2011, CENTER FOR DISEASE CONTROL AND PREVENTION 150 (2012) available at <http://www.cdc.gov/mmwr/pdf/ss/ss6104.pdf>. In New York City, 11.6 percent of high school students were considered obese, and another 15.5 percent were considered overweight. *Id.* at 151.

<sup>15</sup> KATHLEEN WALES & IAN BRISSETTE, BUREAU OF CHRONIC DISEASE EVALUATION AND RESEARCH, ADULT OVERWEIGHT AND OBESITY IN NEW YORK STATE, 2000-2010, at 6 (2011), available at [http://www.health.ny.gov/prevention/obesity/statistics\\_and\\_impact/docs/2000-2010\\_adult\\_obesity.pdf](http://www.health.ny.gov/prevention/obesity/statistics_and_impact/docs/2000-2010_adult_obesity.pdf).

<sup>16</sup> OFFICE OF THE STATE COMPTROLLER, SOARING HEALTH CARE COSTS HIGHLIGHT NEED TO ADDRESS CHILDHOOD OBESITY, 1 (2012), available at [http://www.osc.state.ny.us/reports/obesity\\_and\\_child\\_obesity\\_10\\_23\\_12.pdf](http://www.osc.state.ny.us/reports/obesity_and_child_obesity_10_23_12.pdf) (adjusting the price from 2009 dollars to 2011 dollars based on the Consumer Price Index for medical care costs).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 6.

<sup>20</sup> Kimberly Morland, et al., *Supermarkets, Other Food Stores, and Obesity The Atherosclerosis Risk in Communities Study*, 30(4) AM. J. OF PREV. MED. 333, 333 (2006).

<sup>21</sup> NATIONAL CTR. FOR CHRONIC DISEASE PREV. AND HEALTH PROMOTION, CTR. FOR DISEASE CONTROL AND PREV., *OBESITY: HALTING THE EPIDEMIC BY MAKING HEALTH EASIER, AT A GLANCE 2011*, <http://www.cdc.gov/chronicdisease/resources/publications/AAG/obesity.htm> (last visited June 7, 2013) [hereinafter *HALTING THE EPIDEMIC*].

<sup>22</sup> CTR. FOR DISEASE CONTROL AND PREV., *CDC VITAL SIGNS: ADULT OBESITY* (August 2010), <http://www.cdc.gov/VitalSigns/AdultObesity/index.html> (last visited June 7, 2013).

<sup>23</sup> *HALTING THE EPIDEMIC*, supra note 21.

<sup>24</sup> *HALTING THE EPIDEMIC*, supra note 21.

<sup>25</sup> *HALTING THE EPIDEMIC*, supra note 21.

<sup>26</sup> FOOD RESEARCH AND ACTION CENTER, *FOOD INSECURITY AND OBESITY: UNDERSTANDING THE CONNECTIONS*, 2 (2011), available at [http://frac.org/pdf/frac\\_brief\\_understanding\\_the\\_connections.pdf](http://frac.org/pdf/frac_brief_understanding_the_connections.pdf).

<sup>27</sup> CTR. FOR DISEASE CONTROL AND PREV., *A LOOK INSIDE FOOD DESERTS*, <http://www.cdc.gov/Features/FoodDeserts/> (last visited June 10, 2013).

<sup>28</sup> Elizabeth Whalen & Michael Seserman, *Looking for an Oasis in a Food Desert: Low Income New Yorkers Lack Access to Healthy Food*, 4 (2011), available at <http://www.cancer.org/acs/groups/content/@eastern/documents/webcontent/acspc-031472.pdf> ("It is estimated that 75% of food desert tracts in the continental U.S. are urban, while the remaining 25% are rural.").

<sup>29</sup> *Id.* at 3.

<sup>30</sup> Judith Bell & Marion Standish, *Building Healthy Communities Through Equitable Food Access*, 5(3) COMMUNITY DEVELOPMENT INVESTMENT REVIEW: FEDERAL RESERVE BANK OF SAN FRANCISCO 75, 78 (2009).

<sup>31</sup> Whalen, supra note 28, at 2.

<sup>32</sup> But see May C. Wang, et al., *Socioeconomic and food-related physical characteristics of the neighbourhood environment are associated with body mass index*, 61 J. EPIDEMIOL COMMUNITY HEALTH, 491, 496 (2007), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2465719/pdf/491.pdf> (demonstrating an association between high BMI and living close to supermarkets while not finding a relationship between higher BMI and proximity to small grocery stores and convenience stores.); Janne Boone-Heinonen et al., *Fast Food Restaurants and Food Stores, Longitudinal Associations with Diet in Young to Middle-aged Adults: The CARDIA Study*, 17(13) ARCH INTERN MED. 1162, 1165 (2011). ("In our longitudinal study neighborhood supermarket availability was generally unrelated to both adherence to fruit and vegetable recommendations and overall diet quality."); Budzynska et al, *A food desert in Detroit: associations with food shopping and eating behaviours, dietary intakes and obesity*, 16 Public Health Nutrition 2114-2123 (2013) ("However, living in Detroit, a recognized food desert, was not associated with BMI once potential covariates were considered. These findings suggest that the relationship between obesity and area of residence is not explained simply by access to supermarkets but is influenced by other aspects such as sociodemographic factors and health status, which may confound or mediate the association.").

<sup>33</sup> Lisa Powell et al., *Associations Between Access to Food Stores and Adolescent Body Mass Index*, 33 (4S) AM. J. PREV. MED. S301, S305 (2007). ("Each additional chain supermarket outlet per 10,000 capita was estimated to reduce CMI by 0.11 unites and to reduce the prevalence of overweight by 0.6 percentage points. BMI and overweight were statistically significantly higher in areas where there were more convenience stores; an additional convenience store per 10,000 capita was associated with 0.03 unit increase in BMI and a 0.15 percentage point increase in overweight." This was reached controlling for individual and family characteristics, and holding neighborhood per capital income, restaurant availability, and food prices constant.).

<sup>34</sup> *Id.* at S306.

<sup>35</sup> Nicole I. Larson et al., *Neighborhood Environments: Disparities in Access to Healthy Foods in the U.S.*, 36 AM. J. PREV. MED. 74, 74 (2009).

<sup>36</sup> *Id.* at 75.

<sup>37</sup> *Id.* at 75.

<sup>38</sup> *Id.* at 76.

<sup>39</sup> *Id.* at 77.

<sup>40</sup> Kimberly Morland, et al., *Supermarkets, Other Food Stores, and Obesity The Atherosclerosis Risk in Communities Study*, 30(4) AM. J. OF PREV. MED. 333, 334, 338(2006) (analyzing atherosclerosis risk in communities' participants overweight and obesity rates compared to the presence of supermarkets, small food stores, and conveniences stores.); *but see* Aiko Hattori, et al, *Neighborhood Food Outlets, Diet, and Obesity Among California Adults, 2007 and 2009*, 10 PREV. CHRONIC DIS. (2013) (finding that access to food within a walkable distance did not correlate with BMI of residents and found some evidence associating food environment for larger non-walkable areas with BMI.).

<sup>41</sup> Morland, *supra* note 40, at 335.

<sup>42</sup> Morland, *supra* note 40, at 336.

<sup>43</sup> Morland, *supra* note 40, at 336.

<sup>44</sup> CALIFORNIA CTR. FOR PUB.HEALTH ADVOCACY, UCLA CTR. FOR HEALTH POLICY RESEARCH & POLICYLINK, *DESIGNED FOR DISEASE: THE LINK BETWEEN LOCAL FOOD ENVIRONMENTS AND OBESITY AND DIABETES 2* (2008), *available at* [http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/DESIGNEDFORDISEASE\\_FINAL.PDF](http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/DESIGNEDFORDISEASE_FINAL.PDF).

<sup>45</sup> *Id.*

<sup>46</sup> Sanae Inagami, et al., *You Are Where You Shop: Grocery Store Locations, Weight, and Neighborhoods*, 31(1) AM. J. PREV. MED., 10, 15 (2006).

<sup>47</sup> Bodor et al, *Neighborhood fruit and vegetable availability and consumption: the role of small food stores in an urban environment*, 11 PUBLIC HEALTH NUTRITION 413-420 (2007) *available at* [http://prc.tulane.edu/uploads/Neighbourhood%20F%20and%20V%20availability%20and%20consumption\\_Role%20of%20small%20food%20stores%20in%20urban%20env.pdf](http://prc.tulane.edu/uploads/Neighbourhood%20F%20and%20V%20availability%20and%20consumption_Role%20of%20small%20food%20stores%20in%20urban%20env.pdf) (studying in-store food availability in four contiguous census tracts in New Orleans.).

<sup>48</sup> *Id.* at 414.

<sup>49</sup> *Id.* at 416-417.

<sup>50</sup> *Id.*

<sup>51</sup> THE FOOD TRUST FOR THE HEALTHY CORNER STORES NETWORK, *HEALTHY CORNER STORES ISSUE BRIEF*, Winter 2012, at 1, *available at* [http://thefoodtrust.org/uploads/media\\_items/winter2012issuebrief.original.pdf](http://thefoodtrust.org/uploads/media_items/winter2012issuebrief.original.pdf).

<sup>52</sup> POLICYLINK, *WHAT IS IT? 1*, <http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/access%20to%20healthy%20food.PDF> (last visited June 10, 2013).

<sup>53</sup> *Id.*

<sup>54</sup> DIV. OF NUTRITION, PHYSICAL ACTIVITY, AND OBESITY, NATIONAL CTR. FOR CHRONIC DISEASE PREV. AND HEALTH PROMOTION, *THE CDC GUIDE TO STRATEGIES TO INCREASE THE CONSUMPTION OF FRUITS AND VEGETABLES*, 9 (2011), *available at* [http://www.cdc.gov/obesity/downloads/FandV\\_2011\\_WEB\\_TAG508.pdf](http://www.cdc.gov/obesity/downloads/FandV_2011_WEB_TAG508.pdf).

<sup>55</sup> U.S. DEPT. OF HEALTH AND HUMAN SERVICES, *OBAMA ADMINISTRATION DETAILS HEALTHY FOOD FINANCING INITIATIVE*, (2010), <http://www.hhs.gov/news/press/2010pres/02/20100219a.html> (last visited July 15, 2013).

<sup>56</sup> OFFICE OF CMTY. SERVICES, ADMIN. FOR CHILDREN & FAMILIES, *HEALTHY FOOD FINANCING INITIATIVE*, <http://www.acf.hhs.gov/programs/ocs/resource/healthy-food-financing-initiative-0> (last visited June 10, 2013).

<sup>57</sup> *Id.*

<sup>58</sup> CMTY. DEV. FINANCIAL INSTITUTIONS FUND, UNITED STATES DEPARTMENT OF THE TREASURY, *NMTC PROGRAM ALLOCATEES STATES SERVED*, [http://www.cdfifund.gov/impact\\_we\\_make/nmtc\\_state\\_reports.asp](http://www.cdfifund.gov/impact_we_make/nmtc_state_reports.asp) (last visited June 10, 2013).

<sup>59</sup> *See* LIIF, NEW YORK HEALTHY FOOD & HEALTHY COMMUNITIES FUND, <http://www.liifund.org/products/community-capital/capital-for-healthy-food/new-york-healthy-food-healthy-communities-fund/> (last visited June 10, 2013).

<sup>60</sup> PUBLIC HEALTH, COMMISSIONER'S OFFICE, *COMMUNITY FOOD ACCESS AND AFFORDABILITY*, <http://www.phila.gov/health/Commissioner/FoodAccess.html> (last visited June 10, 2013).

<sup>61</sup> *Id.*

<sup>62</sup> THE FOOD TRUST, *WHO WE ARE*, <http://thefoodtrust.org/about> (last visited June 19<sup>th</sup> 2013).

<sup>63</sup> THE FOOD TRUST, ET AL., PHILADELPHIA'S HEALTHY CORNER STORE INITIATIVE 2010-2012 at 3 (2012), available at [http://www.foodfitphilly.org/FOODFITPHILLY/assets/File/HCSI\\_Y2report\\_FINAL%202012.pdf](http://www.foodfitphilly.org/FOODFITPHILLY/assets/File/HCSI_Y2report_FINAL%202012.pdf) [hereinafter PHILADELPHIA'S HEALTHY CORNER STORE].

<sup>64</sup> *Id.* at 5.

<sup>65</sup> *Id.* at 4.

<sup>66</sup> *Id.* at 6.

<sup>67</sup> *Id.* at app. B.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 3.

<sup>70</sup> *Id.* at 10.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 3.

<sup>73</sup> *Id.*

<sup>74</sup> MINNEAPOLIS DEPT. OF HEALTH AND FAMILY SUPPORT, MINNEAPOLIS HEALTHY CORNER STORE PROGRAM: MAKING PRODUCE MORE VISIBLE, AFFORDABLE AND ATTRACTIVE, 4 (2012), available at [http://www.health.state.mn.us/divs/oshii/docs/Mpls\\_Healthy\\_Corner\\_Store.pdf](http://www.health.state.mn.us/divs/oshii/docs/Mpls_Healthy_Corner_Store.pdf) [hereinafter MINNEAPOLIS HEALTHY CORNER STORE PROGRAM].

<sup>75</sup> *Id.* at 5; Tatiana Andreyeva et al., *Food retailer practices, attitudes and beliefs about the supply of health foods*, 14(6) PUB. HEALTH NUTR. 1024, 1025 (2011). ("Since October 2009, WIC participants began to receive vouchers for new food packages including fruit and vegetables, whole grains, and other nutritious products.").

<sup>76</sup> Aliyah Ali, *The Minneapolis Healthy Corner Store Program*, 23 (October 20, 2010) (unpublished presentation at the 14<sup>th</sup> Annual CFSC: Food Justice Culture) (on file with Minnesota Vision), available at <http://www.slideshare.net/cfsc/nolapresentation>.

<sup>77</sup> MINNEAPOLIS HEALTHY CORNER STORE PROGRAM, *supra* note 70, at 3.

<sup>78</sup> MINNEAPOLIS HEALTH DEP'T, HEALTHY CORNER STORES, <http://www.minneapolismn.gov/health/living/cornerstores> (last visited June 10, 2013).

<sup>79</sup> MINNEAPOLIS HEALTHY CORNER STORE PROGRAM, *supra* note 70, at 5.

<sup>80</sup> MINNEAPOLIS HEALTHY CORNER STORE PROGRAM, *supra* note 70, at 5.

<sup>81</sup> MINNEAPOLIS HEALTHY CORNER STORE PROGRAM, *supra* note 70, at 12.

<sup>82</sup> CITY OF ROCHESTER, N.Y. LOCAL LAW §120-208.

<sup>83</sup> CITY OF ROCHESTER, N.Y. LOCAL LAW §120-208.

<sup>84</sup> CITY OF ROCHESTER, N.Y. LOCAL LAW §120-208.

<sup>85</sup> See Memorandum from Mayor Thomas S. Richards to Rochester City Council, Amending the City Code-Chapter 120 Zoning Code and Chapter 90 Property Code (August 24, 2012).

<sup>86</sup> CITY OF ROCHESTER, N.Y. LOCAL LAW §120-146.

<sup>87</sup> CITY OF ROCHESTER, N.Y. LOCAL LAW §120-208.

<sup>88</sup> CITY OF ROCHESTER, N.Y. LOCAL LAW §120.

<sup>89</sup> FRESH: FOOD RETAIL EXPANSION TO SUPPORT HEALTH, the program's website is available at <http://www.nyc.gov/html/misc/html/2009/fresh.shtml>.

<sup>90</sup> *Food Retail Expansion to Support Health*, NYC.GOV, <http://www.nyc.gov/html/misc/html/2009/fresh.shtml> (last visited June 7, 2013).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> NYCEDC, NYCIDA APPROVES ASSISTANCE FOR NEW FINE FARE SUPERMARKET IN THE BRONX, <http://www.nycedc.com/press-release/nycida-approves-assistance-new-fine-fare-supermarket-bronx> (last visited June 7, 2013).

<sup>97</sup> THE CITY OF NEW YORK, NEW YORK CITY FOOD POLICY: 2013 FOOD METRICS REPORT, 15 (2013) <http://www.nyc.gov/html/nycfood/downloads/pdf/1152-food-metrics-report-2013.pdf>

<sup>98</sup> *Id.*

<sup>99</sup> *New York Healthy Food & Healthy Communities Fund*, NEW YORK STATE'S EMPIRE STATE DEVELOPMENT, <http://esd.ny.gov/BusinessPrograms/HealthyFoodHealthyCommunities.html> (last visited June 7, 2013).

- <sup>100</sup> *New York Healthy Food and Healthy Communities Fund*, LIIF: LOW INCOME INVESTMENT FUND, <http://www.liifund.org/products/community-capital/capital-for-healthy-food/new-york-healthy-food-healthy-communities-fund/> (last visited June 10, 2013) (defining underserved areas as those satisfying both criteria: “low or moderate income census tract (or a food market site with a customer base of 50 percent or more living in a low-income census tract)” or a “census tract with below average food market density.”).
- <sup>101</sup> NEW YORK HEALTHY FOOD AND HEALTHY COMMUNITIES FUND, FUND OVERVIEW 1 (2012) *available at* [http://www.liifund.org/wp-content/uploads/2012/01/NY-HFHC-Overview-Terms\\_2012-01-17.pdf](http://www.liifund.org/wp-content/uploads/2012/01/NY-HFHC-Overview-Terms_2012-01-17.pdf).
- <sup>102</sup> NEW YORK HEALTHY FOOD AND HEALTHY COMMUNITIES FUND, PROGRAM GUIDELINES 1 (2012) *available at* [http://www.liifund.org/wp-content/uploads/2012/01/NY-HFHC-Program-Guidelines\\_2012-01-17.pdf](http://www.liifund.org/wp-content/uploads/2012/01/NY-HFHC-Program-Guidelines_2012-01-17.pdf).
- <sup>103</sup> *Id.* at 2 (A market that takes financing does not have to accept WIC benefits if it is a “farmers’ market, produce market, mobile market, or other food market that utilizes no less than 70 percent of its retail floor area (or retail goods, for mobile markets) for the sale of agricultural food products.”).
- <sup>104</sup> *Foodtown*, LIIF: LOW INCOME INVESTMENT FUND, <http://www.liifund.org/projects/healthy-food-markets/foodtown/> (last visited June 7, 2013).
- <sup>105</sup> *Id.*
- <sup>106</sup> *Id.*
- <sup>107</sup> *About GrowNYC*, GROWNYC, <http://www.grownyc.org/about> (last visited June 7, 2013).
- <sup>108</sup> *Greenmarket Co.*, GROWNYC, <http://www.grownyc.org/greenmarketco> (last visited June 7, 2013).
- <sup>109</sup> *Id.*
- <sup>110</sup> *Healthy Retail*, GROWNYC, <http://www.grownyc.org/greenmarketco/healthyretail> (last visited June 7, 2013).
- <sup>111</sup> *Id.*
- <sup>112</sup> *Id.*
- <sup>113</sup> Larson, *supra* note 35, at 75.
- <sup>114</sup> EVA RINGSTROM & BRANDON BORN, UW NORTHWEST CENTER FOR LIVABLE COMMUNITIES, FOOD ACCESS POLICY AND PLANNING GUIDE 5 (2011) *available at* <http://www.nyc.gov/html/ddc/downloads/pdf/ActiveDesignWebinar/King%20County%20Food%20Access%20Guide.pdf>.
- <sup>115</sup> See, e.g., CHRISTINE FRY ET AL., CHANGELAB SOLUTIONS, HEALTH ON THE SHELF: A GUIDE TO HEALTHY SMALL FOOD RETAILER CERTIFICATION PROGRAMS 5 (2013) *available at* [http://changelabsolutions.org/sites/default/files/Health\\_on\\_the\\_Shelf\\_FINAL\\_20130322-web\\_0.pdf](http://changelabsolutions.org/sites/default/files/Health_on_the_Shelf_FINAL_20130322-web_0.pdf).
- <sup>116</sup> PHILADELPHIA’S HEALTHY CORNER STORE, *supra* note 59, at 13.
- <sup>117</sup> CHANGELAB SOLUTIONS, LICENSING FOR LETTUCE: A GUIDE TO THE MODEL LICENSING ORDINANCE FOR HEALTHY FOOD RETAILERS 8 (2013) *available at* [http://changelabsolutions.org/sites/default/files/Licensing\\_for\\_Lettuce\\_FINAL\\_20130212\\_0.pdf](http://changelabsolutions.org/sites/default/files/Licensing_for_Lettuce_FINAL_20130212_0.pdf) [hereinafter LICENSING FOR LETTUCE].
- <sup>118</sup> See *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S.365, 387 (1926) (finding that due to increased development of urban land, restrictions on land use are necessary; the validity of such restrictions depends on local conditions; and separating industrial uses from residential uses is clearly in the public interest).
- <sup>119</sup> Palmdale Zoning Ordinance, Ch. 9, Art. 92, § 92.15.
- <sup>120</sup> See N.Y. Const., art. IX, § 2(c) (granting local governments in New York State the authority to regulate with respect to the “safety, health and well-being” of their residents, so long as local laws do not conflict with state laws).
- <sup>121</sup> *Nebbia v. New York*, 291 U.S. 502, 524 (1934).
- <sup>122</sup> N.Y. CONST. art. 9 §2(c).
- <sup>123</sup> *Woodbury Heights Estates Water Co., Inc. v. Village of Woodbury*, 943 N.Y.S.2d 385, 389 (N.Y. Sup. 2012).
- <sup>124</sup> See N.Y. AGRIC. & MKTS. § 251-z *et. seq.* (McKinney 2009); *Description of Food Processing*, NEW YORK STATE: DEP’T OF AGRIC. & MARKETS, <http://www.agriculture.ny.gov/FS/general/foodprep.html> (last visited June 7, 2013).
- <sup>125</sup> N.Y. AGRIC & MARKETS §500 (McKinney 2009).
- <sup>126</sup> See N.Y. COMP. CODES R. & REGS. tit. 1, §272 (2013).



<sup>127</sup> See *Suffolk County Builders Ass'n v. County of Suffolk*, 389 N.E.2d 133 (N.Y. 1979); *ATM One, L.L.C. v. Incorporated Village of Freeport*, 714 N.Y.S.2d 721 (N.Y. App. Div. 2000); *N.Y. Telephone Co. v. City of Amsterdam*, 613 N.Y.S.2d 993 (N.Y. App. Div. 1994); *Torsoe Bros. Construction Corp. v. Bd. of Trustees of Monroe*, 375 N.Y.S.2d 612 (N.Y. App. Div. 1975); *Town of N. Hempstead v. Colonial Sand & Gravel Co.*, 178 N.Y.S.2d 579 (N.Y. Sup. Ct. 1958); *Sperling v. Valentine*, 28 N.Y.S.2d 788 (N.Y. Sup. Ct. 1941); *Dugan Bros. of N. J. v. Dunnery*, 269 N.Y.S. 844 (N.Y. Sup. Ct. 1933).

<sup>128</sup> *Suffolk County Builders Ass'n v. County of Suffolk*, 389 N.E.2d 133, 134-137 (1979).

<sup>129</sup> *Id.* at 134-137.

<sup>130</sup> *Id.*

<sup>131</sup> *Dugan Bros. of N.J. v. Dunnery*, 269 N.Y.S. 844, 845 (N.Y. Sup. Ct. 1933).

<sup>132</sup> *Nitkin v. Adm'r of Health Servs. Admin. of City of N.Y.*, 91 Misc. 2d 478, 479 (N.Y. Sup. Ct. 1975).

<sup>133</sup> *Id.*

<sup>134</sup> *ATM One, L.L.C. v. Incorporated Village of Freeport*, 714 N.Y.S.2d 721, 722 (N.Y. App. Div. 2000).

<sup>135</sup> N.Y. GEN. CITY LAW §§ 20(24), 20(25); N.Y. TOWN LAW §§ 261-285; N.Y. VILLAGE LAW, §§ 7-700 to 7-742. Counties have not been granted the power to adopt zoning regulations. While this zoning power is limited by the enabling statutes adopted by the New York State Legislature, those statutes include the local adoption of regulations “designed to promote the public health, safety and general welfare” and thus are sufficiently broad to include the regulation of businesses. N.Y. GEN. CITY LAW § 20(25). See also N.Y. TOWN LAW §261; N.Y. VILLAGE LAW § 7-700.

<sup>136</sup> See, e.g., New York Town Law §263.

<sup>137</sup> *Connell v. Town of Granby*, 12 A.D.2d 177, 178 (1961) (citing *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365).

<sup>138</sup> *Sunrise Check Cashing v. Town of Hempstead*, 20 N.Y.3d 481, 483 (2013) (“zoning is concerned with the use of land, not with the identity of the user); see also *St. Onge v. Donovan*, 71 N.Y.2d 507, 516 (1988) (holding that zoning boards may not impose conditions seeking to regulate the details of the operation of a business, rather than the use of the land on which the business is located); see also *Kamhi v. Town of Yorktown*, 74 N.Y.2d 423, 427 (1989) (confirming that local governments cannot exceed the lawmaking authority granted by the state legislature).

<sup>139</sup> *Stringfellow's of New York, Ltd. V. City of New York*, 91 N.Y.2d 382, 397 (1998); see also, e.g., NYC Amended Zoning Resolution §32-01 (restricting adult commercial businesses to light industrial areas in order to control “secondary effects” of such businesses); Lafayette (California) Mun. Code §6-533 (restricting firearm dealers to commercial zones and requiring special permit after consideration of proximity to schools, other firearms dealers, liquor stores, etc.); *Van Sicklen v. Browne*, 15 Cal. App. 3d 122 (1971) (permissible for city to deny CUP for automobile service station in area in which several already existed).

<sup>140</sup> *Milt-Nik Land Corp. v. City of Yonkers*, 24 A.D.3d 446, 449 (2005) (upholding zoning special permit requirement limiting restaurant hours of operation in consideration of adverse effects on neighboring residential properties, such as noise, traffic and parking problems).

<sup>141</sup> *Sunshine Check Cashing v. Town of Hempstead*, 20 N.Y.3d 481, 485 (2013); *Properties, Inc. v. Strada*, 191 Misc.2d 746, 751-753 (2002) (upheld on appeal); *People v. Courtesy Mobil*, 3 Misc.3d 11, 13 (2003).

<sup>142</sup> *Sunshine Check Cashing v. Town of Hempstead*, 20 N.Y.3d 481, 485 (2013);

<sup>143</sup> The courts striking zoning laws imposing restrictions on the operation of certain businesses appear to leave open the possibility of such zoning regulation if the municipality provides substantial empirical evidence that a business operating outside of the regulation would negatively impact the surrounding neighborhood. See *Sunshine Check Cashing v. Town of Hempstead*, 20 N.Y.3d 481, 485-486 (2013) (finding insufficient evidence that zoning restriction on particular type of business would negatively impact surrounding community); *Louhal Properties, Inc. v. Strada*, 191 Misc.2d 746, 751-753 (2002) (upheld on appeal)(finding that zoning restrictions on the operation of business might be upheld if restrictions substantially relate to the prevention of a significant impact on nearby properties or the community); *Westbury Trombo, Inc. v. Board of Trustees of Village of Westbury*, 307 A.D.2d 1043, 1044 (2003) (finding insufficient evidence that 24-hour business would have detrimental impact on health, safety, welfare or morals of the community); *Texaco Refining & Marketing, Inc., v. Valente*, 174 A.D.2d 674, 675 (1991) (finding zoning restriction on hours of operation were not supported by evidence that 24-hour operation would disturb local residents, but rather were based on generalized objections of community).



<sup>144</sup> Penn. Coal Co. v. Mahon, 260 U.S. 393, 415(1922).

<sup>145</sup> Penn. Central. Transp. Co. v. City of New York, 438 U.S. 104, 126-127 (1978).

<sup>146</sup> U.S. CONST. amend. X; N.Y. Const. art. I § 7.

<sup>147</sup> Penn. Coal Co. v. Mahon, 260 U.S. 393, 415(1922); Walton v. New York State Dept. Of Correctional Services, 13 N.Y. 3d 475, 489 (2009).

<sup>148</sup> Dawson v. Higgins, 197 A.D.2d 127, 135-136 (1994).

<sup>149</sup> Lucas v. South Carolina Coastal Council, 505 U.S. 1003, 1015 (1992); See also *Friedenburg v. New York State Dept. of Environmental Conservation*, 3 A.D. 3d 86 , 92 (2003)

<sup>150</sup> *Seawall Associates v. City of New York*, 74 N.Y.2d 92 (1989) (law required owners of commercial property to rehab and rent them as single room occupancy units); See also *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982) (law requiring property owners to submit to the installation of cable television facilities in apartment buildings comprised a taking of property).

<sup>151</sup> As opposed to being analyzed as a permanent, physical occupation by the government. See *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 440 (1982) (“[s]o long as these regulations do not require the landlord to suffer the physical occupation of a portion of his building by a third party, they (landlord regulations) will be analyzed under the multifactor inquiry generally applicable to non-possessory governmental activity.”).

<sup>152</sup> See *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015-6 (1992); see also *Smith v. Town of Mendon*, 822 N.E.2d 1214 (N.Y. 2004) (required conservation easement over property did not deprive landowner of *all* economic use of his property).

<sup>153</sup> See *generally* 12 N.Y. JUR. 2D BUILDINGS § 333 (2011).

<sup>154</sup> *Gangemi v. City of New York*, 827 N.Y.S.2d 498, 507 (2006)

<sup>155</sup> See *Penn. Coal Co. v. Mahon*, 260 U.S. 393, 416 (1922) (explaining that while property may be regulated, the regulation goes “too far” when it shifts a burden from one to another without compensation.).

<sup>156</sup> See *Friedenburg v. New York State Dept. of Environmental Conservation*, 3 A.D. 3d 86 , 96 (2003) (stating that where a per se taking has not been found –meaning either a physical invasion or complete deprivation of economic use- then a court will look to the factors provided in *Penn Central* to determine whether a taking has occurred: (1) the economic impact of the regulation, (2) the extent to which the regulation has interfered with reasonable investment-backed expectations, and (3) the character of the governmental action.).

<sup>157</sup> *P.M.S. Assets, Ltd. V. Zoning Bd. Of Appeals of Village of Pleasantville*, 774 N.E.2d 204, 205 (2002); *Toys R Us v. Silva*, 89 N.Y.2d 411, 417 (1996).

<sup>158</sup> “Reasonableness is determined by examining all the facts, including the length of the amortization period in relation to the investment and the nature of the use. The period of amortization will normally increase as the amount invested increases or if the amortization applies to a structure rather than a use.” *Town of Islip v. Caviglia*, 73 N.Y.2d 544, 561 (1989). In a challenge, landowner bears the burden of establishing that the loss suffered by amortization period is “so substantial that it outweighs the public benefit to be gained” by the zoning amendment. *Village of Valatie v. Smith*, 83 N.Y.2d 396, 400-401 (1994).

<sup>159</sup> *Walgreen Co. v. City & County of S. F.*, 110 Cal. Rptr. 3d 498, 504, 506 (Cal. Ct. App. 2010) (internal citations and quotation marks omitted).

<sup>160</sup> *Tops Mkts. v. County of Erie*, 156 Misc.2d 49, 52 (N.Y. Sup Ct. 1992).

<sup>161</sup> *Id.* at 55.

<sup>162</sup> *Id.* at 56.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*; see also *Wegman’s Food Markets, Inc. v. State of New York*, 76 A.D.2d 95 (A.D.4d 1980).

<sup>165</sup> N.Y. MUN. HOME RULE LAW § 10(1)(ii)(a)(12) (McKinney 2013) (“Every local government ... shall have power to adopt and amend local laws ... relating to ... [t]he government, protection, order conduct, safety, health and well-being of persons therein. This provision shall include but not be limited to the power to adopt local laws providing for the regulation or licensing of occupations or business ...”).

<sup>166</sup> MINNEAPOLIS HEALTHY CORNER STORE PROGRAM, *supra* note 70, at 4-5 (“MDHFS recognized that to effectively implement the program, it needed grocery and marketing expertise not typically found in public health professionals. MDHFS sought a grocery store consultant with energy, creativity, business-savvy and passion for creating a more equitable food system. After searching grocery trade organizations and local colleges and universities, MDHFS ultimately hired an operations manager from a local healthy foods co-op to consult on the project. The consultant’s role was to identify assets and enhancement strategies in each store and develop procurement opportunities for corner stores. She also provided direct guidance and support for store owners in storing and displaying produce.”).

<sup>167</sup> Sarah Kliff, *Will Philadelphia’s experiment in eradicating ‘food deserts’ work?*, THE WASHINGTON POST (June 8, 2012), [http://www.washingtonpost.com/blogs/wonkblog/post/will-philadelphias-experiment-in-eradicating-food-deserts-work/2012/06/08/gJQAU9snNV\\_blog.html](http://www.washingtonpost.com/blogs/wonkblog/post/will-philadelphias-experiment-in-eradicating-food-deserts-work/2012/06/08/gJQAU9snNV_blog.html) (last visited June 7, 2013)

(“Philadelphia is trying to turn corner stores into greengrocers. For a small shop, it’s a risky business proposition. Vegetables have a limited shelf life, so a store owner must know how much will sell quickly — or watch profits rot away. He also lacks the buying power of large supermarkets and is often unable to meet the minimum orders required by the cheaper wholesalers that grocery stores use.”); *See also* WARREN ORTLAND, TOBACCO LAW CENTER, REDUCING COMMUNITY FOOD INSECURITY: A REVIEW OF OPTIONS, 4 (2008), (“Food prices in inner city neighborhood stores tend to be higher because a lack of economies of scale available to larger grocery stores. If the foods are made available, but priced too high when compared to cheaper, less healthy options the local consumer still may not purchase them.”).

<sup>168</sup> WARREN ORTLAND, *supra* note 140, at 4 (noting that a stocking requirement is similar to an “unfunded mandate” where stores are placed with the financial burden of transitioning to be able to stock produce requirements and further need support for store modification, which has been estimated anywhere from 22,520 to 100,000 per store in assistance, equipment, and initial inventory. These costs are excessive for smaller stores to handle.).

<sup>169</sup> CTR. FOR DISEASE CONTROL AND PREV, DIVISION OF NUTRITION, PHYSICAL ACTIVITY, AND OBESITY, HEALTHIER FOOD RETAIL: BEGINNING THE ASSESSMENT PROCESS IN YOUR STATE OR COMMUNITY, *available at* <http://www.cdc.gov/obesity/downloads/hfrassessment.pdf>.

<sup>170</sup> *Food Environment Atlas*, U.S. DEP’T OF AGRIC., <http://www.ers.usda.gov/data-products/food-environment-atlas/about-the-atlas.aspx#Ua5KkdjLWuI> (last visited June 10, 2013).

<sup>171</sup> *Food Access Research Atlas*, U.S. DEP’T OF AGRIC., <http://www.ers.usda.gov/data-products/food-access-research-atlas.aspx#UaYi09jLWuI> (last visited June 10, 2013).

<sup>172</sup> DESIGNING A STRONG AND HEALTHY NEW YORK: NEW YORK STATE’S OBESITY PREVENTION COALITION AND POLICY CENTER, POLICY BRIEF: REGIONAL FOOD DISTRIBUTION CENTERS: LINKING COMMUNITIES TO HEALTHY FOODS AND ECONOMIC DEVELOPMENT, 3 (2012) [hereinafter DESIGNING A STRONG AND HEALTHY NEW YORK] (“These small independent businesses (corner stores), which are often the main sources of food for low-income communities in rural and urban areas, have difficulty accessing current distribution networks. The networks are scaled for higher volumes of purchasing than smaller retailers can sustain.”).

<sup>173</sup> Tatiana Andreyeva et al., *Food retailer practices, attitudes and beliefs about the supply of healthy foods*, 14(6) PUBLIC HEALTH NUTR. 1024, 1029 (2011) (“Suppliers have pervasive influence in the market, particularly through price setting, which was mentioned by many retailers. Supplier networks differ by product, and healthy products such as fruits and vegetables typically have fewer suppliers. Produce is usually procured by small retailers through self-supply from supermarkets and warehouse clubs, potentially leading to double retailer markup, poor food safety and increased spoilage due to multiple handling.”).

<sup>174</sup> THE FOOD TRUST FOR THE HEALTHY CORNER STORES NETWORK, HEALTHY CORNER ISSUE BRIEF: WINTER 2012, 1 (2012) (“Additionally, . . . a group of owners can purchase larger quantities of produce to then divide among other store owners, thus allowing them to purchase in larger volumes at a lower cost.”).

<sup>175</sup> *Id.*; *see* DESIGNING A STRONG AND HEALTHY NEW YORK, *supra* note 135.

<sup>176</sup> Example of a customer survey on food items and general store impressions is in Appendix D.

<sup>177</sup> *See* CHRISTINE FRY ET AL., CHANGELAB SOLUTIONS, HEALTH ON THE SHELF: A GUIDE TO HEALTHY SMALL FOOD RETAILER CERTIFICATION PROGRAMS 58 (2013) *available at* [http://changelabsolutions.org/sites/default/files/Health\\_on\\_the\\_Shelf\\_FINAL\\_20130322-web\\_0.pdf](http://changelabsolutions.org/sites/default/files/Health_on_the_Shelf_FINAL_20130322-web_0.pdf).

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<sup>178</sup> Products eligible through WIC include breakfast cereal, fruit and vegetable juice (100%) unsweetened pasteurized fruit and/or vegetable juice), milk and dairy products, legumes, eggs, fruits and vegetables, canned fish, and infant formula. See U.S. DEP'T OF AGRIC., FOOD & NUTRITION SERVICES, BENEFITS AND SERVICES WIC FOOD PACKAGES-REGULATORY REQUIREMENTS FOR WIC-ELIGIBLE FOODS, <http://www.fns.usda.gov/wic/benefitsandservices/foodpkgregs.HTM> (last visited on May 7<sup>th</sup> 2013); SNAP benefits can purchase breads and cereal, fruits, vegetables, meats, fish, poultry, and dairy products. See U.S. DEP'T. OF AGRIC. FOOD & NUTRITION SERVICES, SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM: ELIGIBLE FOOD ITEMS, <http://www.fns.usda.gov/snap/retailers/eligible.htm> (last visited on May 7<sup>th</sup> 2013).

<sup>179</sup>For a model enforceable agreement see CHRISTINE FRY ET AL., *supra* note 4, at app. A.



## APPENDIX A

### Model Voluntary Retailer Certification Program



## New York Model Voluntary Retailer Certification Program

The Model Voluntary Certification Program is intended to provide a framework for communities seeking to encourage small food retailers to offer more nutritious products. It describes incentives that may be provided in exchange for these modifications at each level of certification, with the more valuable incentives offered at higher levels of certification wherein broader store changes are adopted. The model illustrates the steps a community may take to develop and implement a voluntary certification program.

### Step 1: Identify Funding

Any program will require a funding source to cover the costs of administering the program. These costs might include staffing, incentives, monitoring compliance and evaluating the program.<sup>1</sup> Identifying available funding first will inform the community of the scope of the final program. Appendix G lists some resources that may be useful to this effort.

### Step 2: Staff & Community Partners

The program should include experienced staff to administer the program and provide ongoing support to the participating retailers. Staff responsibilities will include: initial community evaluation; identification of underserved areas, key retailers, and appropriate suppliers (of affordable staple food products for purchase by retailers); education, recruitment and training of retailers; community outreach; provision of technical assistance to participating stores; compliance monitoring; and evaluation of the program's effectiveness.

Communities should review existing retailer incentive programs for ideas about key staff and responsibilities that have impacted their success. For example, the Minneapolis Healthy Corner Store program sent staff to stores biweekly to encourage accountability, build trust, and provide technical assistance.<sup>2</sup> Additionally, the program hired a grocery consultant that was an operation manager of local healthy food co-ops. The consultant looked at individual stores to assess their assets, identify enhancement strategies, assist with food procurement, and provided guidance and support in storing and display of healthy food retail.<sup>3</sup>

It cannot be overstated that developing partnerships with local wholesalers, distributors, and food markets, or coordinating purchasing clubs, is vital to a successful program. This effort will ensure a supply of affordable produce and other staple foods for retailers. As discussed in the report, smaller retailers may not be eligible to purchase from certain suppliers, or simply lack the

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<sup>1</sup> MINNEAPOLIS DEP'T. OF HEALTH AND FAMILY SUPPORT, MINNEAPOLIS HEALTHY CORNER STORE PROGRAM: MAKING PRODUCE MORE VISIBLE, AFFORDABLE AND ATTRACTIVE, 3 (2012), *available at* [http://www.health.state.mn.us/divs/oshii/docs/Mpls\\_Healthy\\_Corner\\_Store.pdf](http://www.health.state.mn.us/divs/oshii/docs/Mpls_Healthy_Corner_Store.pdf) [hereinafter MINNEAPOLIS HEALTHY CORNER STORE PROGRAM].

<sup>2</sup> MINNEAPOLIS HEALTHY CORNER STORE PROGRAM, *supra* note 1, at 13.

<sup>3</sup> MINNEAPOLIS HEALTHY CORNER STORE PROGRAM, *supra* note 1, at 4-5.

purchasing power to obtain bulk discounts on products. If these products are not affordable to the retailer they will not be accessible to the community.

Cross-sector partnerships among local nonprofits, community development groups, local schools and universities, local health organizations, private sector businesses, and other community organizations may help defray costs and serve as a source of experienced and committed staff.<sup>4</sup> Below is a breakdown of partnerships of the two healthy retail programs discussed in the report:

- **Minneapolis Healthy Corner Store Program:**<sup>5</sup> The lead organization was the Minneapolis Healthy Department (MHD), which hired a grocery store expert. Partners were Appetite for Change, a food-based social change organization,<sup>6</sup> and CAPI, a social justice organization.<sup>7</sup> The program also worked with city licensing, environmental health and public works departments to ensure stores were in compliance with existing health, zoning, and other regulations.<sup>8</sup> Community partners included high school youth, youth from a local YMCA, and staff from the University of Minnesota's Simply Good Eating Program.<sup>9</sup>
- **Philadelphia Healthy Corner Store Network:** The Healthy Corner Store Network is a program developed by The Food Trust in partnership with the Philadelphia Department of Public Health's Get Healthy Philly Initiative.<sup>10</sup> The Network collaborated with 30 neighborhood and citywide organizations.<sup>11</sup> The community organizations provided resources, assisted in recruitment, raised awareness, assisted in food procurement, and provided training and education.<sup>12</sup>

### Step 3: Identify underserved areas and key retailers

Identifying priority neighborhoods in which to increase access to staple foods is important. A community should examine income, access to food retailers that provide staple foods, and obesity/overweight rates in neighborhoods to determine where the program will have the greatest impact. Resources available to communities to examine these factors are:

- U.S. Census data (to identify low-income communities by zip code);<sup>13</sup>

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<sup>4</sup> CHRISTINE FRY ET AL., CHANGELAB SOLUTIONS, HEALTH ON THE SHELF: A GUIDE TO HEALTHY SMALL FOOD RETAILER CERTIFICATION PROGRAMS, 14-18 (2013) *available at* [http://changelabsolutions.org/sites/default/files/Health\\_on\\_the\\_Shelf\\_FINAL\\_20130322-web\\_0.pdf](http://changelabsolutions.org/sites/default/files/Health_on_the_Shelf_FINAL_20130322-web_0.pdf).

<sup>5</sup> *Healthy Corner Stores*, MINNEAPOLISMN.GOV, <http://www.minneapolismn.gov/health/living/cornerstores> (last visited July 8, 2013).

<sup>6</sup> To learn more about Appetite for Change visit <http://www.appetiteforchangemn.org/mission-vision/>.

<sup>7</sup> To learn more about CAPI visit <http://www.capiusa.org/OurApproaches.aspx>.

<sup>8</sup> MINNEAPOLIS HEALTHY CORNER STORE PROGRAM, *supra* note 1, at 12-13.

<sup>9</sup> MINNEAPOLIS HEALTHY CORNER STORE PROGRAM, *supra* note 1, at 9.

<sup>10</sup> THE FOOD TRUST, ET AL., PHILADELPHIA'S HEALTHY CORNER STORE INITIATIVE 2010-2012, 3 (2012), *available at* [http://www.foodfitphilly.org/FOODFITPHILLY/assets/File/HCSI\\_Y2report\\_FINAL%202012.pdf](http://www.foodfitphilly.org/FOODFITPHILLY/assets/File/HCSI_Y2report_FINAL%202012.pdf) [hereinafter PHILADELPHIA'S HEALTHY CORNER STORE].

<sup>11</sup> PHILADELPHIA'S HEALTHY CORNER STORE, *supra* note 10, at 9.

<sup>12</sup> PHILADELPHIA'S HEALTHY CORNER STORE, *supra* note 10, at app. F at 22.

<sup>13</sup> PHILADELPHIA'S HEALTHY CORNER STORE, *supra* note 10, at 5.

- U.S. Department of Agriculture's (USDA) Food Access Research Atlas (to assess food accessibility by census tract);<sup>14</sup>
- USDA Food Environment Atlas (for county-level information on food environment factors including food choices, health and well-being and community characteristics).<sup>15</sup>

Once selected, a program will want to work with local departments to ensure that the stores are compliant with existing laws and regulations.<sup>16</sup> For example, the program will want to ensure that stores are compliant with existing building codes, sanitation regulations, and local fees and permits.

A program may then identify retailers to recruit. Factors to consider when identifying target stores include (but are not limited to):

- Size of food retailer. For example, the Healthy Corner Store Initiative in Philadelphia works with corner stores that are less than 2,000 square feet, have four aisles or less and a single cash register.<sup>17</sup>
- Community popularity of store for food purchases.
- Public benefit acceptance, such as WIC certified stores and stores that accept SNAP benefits.

## Step 4: Develop Standards and Incentives

After surveying community members and potential participants to identify priority foods and understand local store owners' concerns (and identify attractive incentives), the program should develop the standards for inventory changes and incentives.<sup>18</sup> Program staff should identify the minimum changes stores must make to initiate participation. Higher levels of participation can include more substantial changes and incentives to encourage voluntary advancement through the program.

The program should evaluate its financial resources to ensure it can provide valuable incentives to encourage retailers to participate at the highest level possible. The program should get creative and think not only about financial incentives, but promotional activities that can increase sales and awareness of the program. For example, a program may provide grocery baskets or marketing materials, host cooking demonstrations or display healthy recipes at the store, or provide advanced training for owners and staff.

The Appendices in this report include examples of incentives gleaned from existing programs. Appendix D contains some conversion costs (costs to make physical changes to the store) that might be covered as incentives. Appendix E contains examples of marketing and promotional

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<sup>14</sup> See *Food Access Research Atlas*, ERS.USDA.GOV, <http://www.ers.usda.gov/data-products/food-access-research-atlas.aspx#.UaYi09jLWuI> (last visited July 8, 2013).

<sup>15</sup> See *Food Environment Atlas*, ERS.USDA.GOV, <http://www.ers.usda.gov/data-products/food-environment-atlas/about-the-atlas.aspx#.Ua5KkdjLWuI> (last visited July 8, 2013).

<sup>16</sup> MINNEAPOLIS HEALTHY CORNER STORE PROGRAM, *supra* note 1, at 5.

<sup>17</sup> PHILADELPHIA'S HEALTHY CORNER STORE, *supra* note 10, at 4.

<sup>18</sup> See CHRISTINE FRY, *supra* note 4, at 24; see also *Id.* at 25 (providing suggested survey questions).

materials used by other programs. (In-store marketing materials highlighting the healthy foods may include decals, stickers on labels, magnets, or other promotional materials.)

## Step 5: Recruit Retailers to Participate

Once key stores have been identified, they should be contacted with information about the program. A sample recruitment letter may be found in Appendix A1. If a retailer agrees to participate, she should sign a written agreement with the program. This agreement may be a loose agreement (which can be terminated without penalty by either party at any time) or a more formal contract, requiring some effort to terminate. The more valuable the incentives, the more formal the agreement should be to ensure the return of valuable equipment or other incentives upon termination by the retailer.

- Initial outreach steps of the program include the following,<sup>19</sup>
- Select stores to participate (store owner enthusiasm and interest is key to selection).<sup>20</sup>
- Provide recruitment letter either in person or via mail.
- Visit selected stores to introduce program through face-to-face meetings and written materials.
- Provide application to the store.
- Notify stores of selection and present with written agreement.

## Step 6: Monitoring, Enforcement, and Evaluation

Once stores have begun participating in the initial phase of the program, staff should monitor compliance with the retailer responsibilities and provide any technical assistance necessary to improve successful sales. Staff should also evaluate the impact of the program on the community. As stated above, an adequate staff for monitoring allows a program to provide consistent and frequent contact with participating stores that encourages compliance and increases commitment. (An example of a compliance checklist may be found in Appendix F.)

In other programs, careful evaluation helped identify successes, head off problems, and develop innovative ideas to improve the food retail environment. For example, Minneapolis's program assessed stores both before and after implementation of the program.<sup>21</sup> It also provided an opportunity for participating stores to provide feedback on the effectiveness of the program.<sup>22</sup> By way of further example, Philadelphia's program partnered with Temple University and the University of Pennsylvania to conduct the pre- and post-implementation evaluation.<sup>23</sup> The primary goal of the evaluation was to assess consumer buying behaviors outside of participating corner

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<sup>19</sup> KARA MARTIN & BRANDEN BORN, DELRIDGE HEALTHY CORNER STORE PROJECT: A TOOLKIT FOR COMMUNITY ORGANIZERS AND STORE OWNERS, A-6, (2009) *available at* [http://www.healthycornerstores.org/wp-content/uploads/resources/Delridge\\_HCS\\_Toolkit.pdf](http://www.healthycornerstores.org/wp-content/uploads/resources/Delridge_HCS_Toolkit.pdf)

<sup>20</sup> *Id.*

<sup>21</sup> MINNEAPOLIS HEALTHY CORNER STORE PROGRAM, *supra* note 1, at 10.

<sup>22</sup> MINNEAPOLIS HEALTHY CORNER STORE PROGRAM, *supra* note 1, at 10.

<sup>23</sup> PHILADELPHIA'S HEALTHY CORNER STORE, *supra* note 10, at 9.

stores and “evaluate the availability, quality, and price of healthy and less healthy foods” in participating corner stores.<sup>24</sup>

## Model Certification Phases

Below are examples of requirements and incentives a community may consider when developing its certification program. Starting “small” permits store owners to make small changes for initial participation. A gradual approach not only permits retailers to become more familiar with the new inventory, but also allows the program to develop a relationship with stores and may improve the sustainability of the changes.<sup>25</sup> This model has been developed by incorporating elements of other models and existing programs. The requirements and incentives included in the model should be adjusted to suit the needs of the community.

### Phase 1: Committing to the Program

Phase 1 represents the first step in the certification program. A retailer wishing to participate in the program may be certified at Phase 1 by adding a minimum number of staple food products. The model suggests the introduction of 3 new products, but a community should make this determination based on community needs and the existing retail environment. At this stage the program will want to enter into a written agreement with the participating retailer (e.g. a memorandum of understanding (MOU) or other agreement to commit) so the responsibilities of both the retailer and the program are clearly identified.

### Phase 2: Improve Retail Environment

Phase 2 builds upon the introduction of new food products by improving the retail environment for customers (and to the benefit of the store owner). It focuses on marketing and education within the store to improve the products attractiveness and increase consumer awareness about their availability. It also simplifies purchasing by requiring individual price labels, scales to weigh produce purchases, and laser scanners to permit tracking of staple food purchases.

In return for making these in-store improvements retailers receive training on the handling, storage, and display of new food products and engaging customers around healthy purchases. It is also an opportunity for community involvement with the provision of in store marketing materials. For example, the suggested recipe board (providing a “recipe of the month” featuring staple foods) may present an opportunity for collaboration with local restaurants, culinary schools, or other organizations.

### Phase 3: Improve the food retail environment for customers

Phase 3 focuses on increasing healthy options while reducing unhealthy products. Requirements to consider at this phase include introduction of additional staple food items, introduction of low

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<sup>24</sup> PHILADELPHIA’S HEALTHY CORNER STORE, *supra* note 10, at 9.

<sup>25</sup> PHILADELPHIA’S HEALTHY CORNER STORE, *supra* note 10, at 9.



sodium options, participation in WIC and SNAP, coupon promotions of staple food items and reduction of sugary beverages. If a store is unable to obtain state certification for WIC,<sup>26</sup> it may meet this requirement by stocking foods that meet WIC minimum requirements.<sup>27</sup>

The model suggests the introduction of low sodium products as another way to improve the health of the community. Many people in the United States consume sodium well above dietary guideline of 2,300 mg per day (<1,500 mg for at-risk populations, such as those over 50 years, African Americans, or those with high blood pressure, diabetes, or chronic kidney disease).<sup>28</sup> The top 10 food sources of sodium according to the CDC are: breads and rolls, cold cuts and cured meats, pizza, poultry, soups, sandwiches, cheese, pasta dishes, meat dishes and snacks.<sup>29</sup>

The program should increase the value of the incentives to correspond with more substantial changes required of the retailer. One of the suggestions at this point is to connect retailers with local wholesalers and other suppliers or coordinate retailers into purchasing clubs, so that they are able to obtain staple food items at competitive prices. Additionally, the program may conduct one-on-one training with store owners concerning professional development and business management to improve the overall success of the particular store.

#### Phase 4: Improve small food retailer inside and out.

Phase 4 represents the highest level of commitment to changing the retail environment. At this phase, the program selects participating stores for mini-conversions; in other words, making physical improvements to improve the store's ability to highlight staple food items, including additional refrigeration units, freezers, and shopping baskets. A community may consider the following questions when selecting a store for retail conversion:

- Is the store busy? Is it near businesses and public buildings, accessible by public transportation, and has a lot of foot traffic?
- Is the store safe and well maintained with well stocked inventory, does it have employees engaged in the store, is it clean, and does it give a positive impression?

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<sup>26</sup> The State only has to authorize enough stores to ensure that WIC participants have access to WIC food and that the state can “effectively manage.” Thus, not all stores that apply will be certified. For more information, visit <http://www.fns.usda.gov/wic/wicretailstoresfactsheet.pdf>.

<sup>27</sup> Food vendor WIC applicant criteria can be found in 10 NY ADC 60-1.13. For stocking food the regulation states that the “applicant vendor shall stock WIC acceptable foods, as determined by the New York State Department of Health, in the minimum quantities prescribed in the vendor application document at the time of enrollment.” In order to determine stocking requirements a participating retailer must meet the program should reach out the New York State WIC program. For more information on New York's WIC Program: toll-free number in state- 1-800-522-5006, voice- 518-402-7093, and email is [nyswic@health.state.ny.us](mailto:nyswic@health.state.ny.us). The New York state website for WIC is <http://www.health.ny.gov/prevention/nutrition/wic/index.htm>.

<sup>28</sup> CTR. FOR DISEASE CONTROL AND PREV., *Vital Signs: Food Categories Contributing the Most to Sodium Consumption- United States, 2007-2008*, MORBIDITY AND MORTALITY WEEKLY REPORT VOL. 61, 1 (2012) available at <http://www.cdc.gov/mmwr/pdf/wk/mm61e0207.pdf>; CTR. FOR DISEASE CONTROL AND PREV., SALT, <http://www.cdc.gov/salt/> (last visited July 8, 2013).

<sup>29</sup> CTR. FOR DISEASE CONTROL AND PREVENTION, *Vital Signs: Food Categories Contributing the Most to Sodium Consumption- United States, 2007-2008*, MORBIDITY AND MORTALITY WEEKLY REPORT VOL. 61, 1 (2012) available at <http://www.cdc.gov/mmwr/pdf/wk/mm61e0207.pdf>.

- Does it have the capacity to increase inventory and a capacity for more demanding inventory such as a deli?
- Is the owner engaged and interested in selling healthier options, excited to receive equipment and training, and have an understanding of its business and customers? <sup>30</sup>

If a store is chosen for a mini-conversion, a separate agreement should be signed. In that agreement, participating stores should commit to using new units for the stocking and display of staple food items only.<sup>31</sup>

In the alternative, stores that are not selected for mini-conversion can still improve the food retail environment by making it appealing to, and safe for, the community. This may include improving physical aspects of the store, such as installing exterior lighting and bicycle racks, removing graffiti, preventing loitering, maintaining cleanliness of business premise inside and out, and routinely removing spoiled and expired products.<sup>32</sup> A store may also choose to reduce offerings of unhealthy items, such as tobacco and/or alcoholic beverages and promote local products through participation in Pride of New York.<sup>33</sup>

Under the model, stores eligible for conversion receive equipment at no cost. Those stores certified at Phase 4 through alternative changes may have access to in-kind donations of lighting, bicycle racks, trash receptacles, or the labor required to install these items. A program may also consider a community event (e.g., ribbon cutting ceremonies or even a “grand re-opening”) to introduce the store as a Phase 4 participant and recognize its commitment to the program to.<sup>34</sup>

The model also provides for an annual incentive for stores that remain certified at Phase 4. These incentives are focused on general maintenance of the improvements through trainings, events, and updated marketing materials to highlight the healthy changes made by the retailer.

### EXAMPLES OF REQUIREMENTS AND INCENTIVES FOR VOLUNTARY CERTIFICATION PROGRAM

Phases	Incentives
<b>Phase 1:</b> Sign a memorandum of understanding or contract committing to the program.	<ul style="list-style-type: none"> <li>• \$100 cash incentive.</li> <li>• Provide and conduct customer survey (e.g., identify desirable staple foods, frequency of purchases at store, and sense of security at location.) Model customer</li> </ul>

<sup>30</sup> Modeled after Philadelphia’s Healthy Corner Store Initiative. See PHILADELPHIA’S HEALTHY CORNER STORE, *supra* note 10, at app. D at 20.

<sup>31</sup> PHILADELPHIA’S HEALTHY CORNER STORE, *supra* note 10, at 7.

<sup>32</sup> CHANGELAB SOLUTIONS, MODEL LICENSING ORDINANCE FOR HEALTHY FOOD RETAILERS, 24 (2012) *available at* <http://changelabsolutions.org/publications/HFR-licensing-ord> [hereinafter CHANGELAB MODEL LICENSING ORDINANCE].

<sup>33</sup> Pride of New York is a program supported by New York State to market locally-sourced food products. A \$25 fee allows a retailer to use Pride of New York logos and promotional materials on products grown or processed/produced in New York. For more details, see APPLICATION FOR PARTICIPATION IN THE PRIDE PROGRAM, AGRICULTURE.NY.GOV, <http://www.agriculture.ny.gov/AP/PrideOfNY/application.html> (last visited July 8, 2013).

<sup>34</sup> See CHRISTINE FRY, *supra* note 4, at 58 (discussing the Louisville program which hosts a ribbon cutting ceremony for newly certified stores under their Healthy in a Hurry program.).

<p>Introduce <b>[3]</b> new products from each staple food category.<sup>35</sup> Staple food categories are:</p> <ul style="list-style-type: none"> <li>• Fresh Fruits and Vegetables</li> <li>• Fruits and Vegetables</li> <li>• Dairy Products</li> <li>• Whole Grains</li> <li>• Lean Proteins</li> </ul> <p><i>Fresh Fruits and Vegetables:</i> Fruits and vegetables that have not been canned, processed, and are unspoiled.<sup>36</sup></p> <p><i>Fruits and Vegetables:</i> Fruits and vegetables that are canned, frozen, or dried. Canned fruit should be packed in natural juice or light syrup; canned vegetables should contain 290 milligrams or less of sodium per serving.<sup>37</sup></p> <p><i>Dairy Products:</i> Animal and plant derived milks without added caloric sweeteners (i.e., no flavored milk), animal and plant derived low fat and nonfat yogurts and cheeses. Includes lactose-free, lactose reduced products.<sup>38</sup></p> <p><i>Whole Grains:</i> Any food made from whole grain, wheat, rice, oats, cornmeal, barley, or other cereal grain and does not include more than 10 grams of sugar per serving.<sup>39</sup></p> <p><i>Lean Proteins:</i> Lean or low-fat meat and poultry, seafood, eggs, nuts, seeds, beans, peas, and processed soy products.<sup>40</sup> Nuts and seeds must be unsalted or lightly salted products.</p>	<p>survey available at Appendix C.</p> <ul style="list-style-type: none"> <li>• Training on the handling, storage and display of staple food items.</li> <li>• Provide decal or other marketing materials highlighting participation in the program</li> </ul>
<p><b>Phase 2:</b> Choose and complete <b>[3]</b> of the following:</p> <ul style="list-style-type: none"> <li>• Place and maintain in-store marketing materials that highlight staple foods.</li> <li>• Place and maintain recipe board using staple food items. Recipes should be simple and affordable.</li> <li>• Place and maintain clear pricing labels for individual staple food products.</li> <li>• Purchase scale to weigh healthy produce.</li> </ul>	<ul style="list-style-type: none"> <li>• Full or partial financing for the purchase of scale, electronic scanners.</li> <li>• Supply recipes for the board on a regular basis (monthly, seasonally, etc.)</li> <li>• Conduct in-store training of employees on handling, storage and display of staple food items, upkeep of marketing materials, goals of certification, and engaging customers around healthy food purchases.</li> </ul>

<sup>35</sup> PHILADELPHIA'S HEALTHY CORNER STORE, *supra* note 10, at app. B at 15.

<sup>36</sup> PHILADELPHIA'S HEALTHY CORNER STORE, *supra* note 10, at app. B at 15.

<sup>37</sup> PHILADELPHIA'S HEALTHY CORNER STORE, *supra* note 10, at app. B at 15.

<sup>38</sup> CHANGELAB MODEL LICENSING ORDINANCE, *supra* note 32, at 13.

<sup>39</sup> CHANGELAB MODEL LICENSING ORDINANCE, *supra* note 32, at 18.

<sup>40</sup> CHANGELAB MODEL LICENSING ORDINANCE, *supra* note 32, at 16.

<ul style="list-style-type: none"> <li>• Purchase electronic scanners to improve tracking of staple food purchases.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide marketing materials to stores (multilingual, based on community).</li> </ul>
<p><b>Phase 3:</b> <i>Continue to provide healthier options</i></p> <ul style="list-style-type: none"> <li>• Add <b>[4]</b> new products from each of the Staple Food Group categories</li> <li>• Carry <b>[2]</b> low or reduced sodium (salt) products from the following categories. <ul style="list-style-type: none"> <li>• Soups, broth, and stock.</li> <li>• Dips, gravies, and condiments</li> <li>• Snacks- Chips, crackers, pretzels, mixed nuts, popcorn.</li> <li>• Cold Cuts</li> <li>• Cereal, bread, and pasta.</li> <li>• Prepared Meals (including frozen entrees)<sup>41</sup></li> </ul> </li> <li>• Choose <b>[2]</b> of the following: <ul style="list-style-type: none"> <li>○ Complete WIC Certification and accept WIC benefits or meet minimum stocking requirements of WIC vendors.</li> <li>○ Participate in Federal Supplemental Nutrition Assistance Program (SNAP) program, accept EBT cards.</li> </ul> </li> <li>• Offer one sale, coupon, or discount each month on any staple food item.<sup>42</sup></li> <li>• Remove <b>[4]</b> sugar sweetened beverages products from your stock.</li> <li>• Discontinue sales of single serving Fountain Drinks over 16 ounces<sup>43</sup></li> <li>• Discontinue free refills of Fountain Drinks<sup>44</sup></li> </ul> <p><i>Beverage Dispensing Machine:</i> Device, including fountain machines, which mixes concentrate or syrup with any one or more ingredients to create a sugar sweetened beverage and dispenses it into an open container that is ready to drink.<sup>45</sup></p> <p><i>Fountain Drinks:</i> Sugar-sweetened beverage dispensed by a beverage dispensing machine.<sup>46</sup></p> <p><i>Sugar-Sweetened Beverages:</i> Nonalcoholic beverage, carbonated or noncarbonated, which is</p>	<ul style="list-style-type: none"> <li>• Connect with and improve relationships with wholesale distributors, local markets, distribution hubs, and/or purchasing clubs.</li> <li>• Provide stock keeping unit (SKU) numbers of products that are staple foods to ease purchasing.</li> <li>• Advanced one on one training with owners and management to meet business goals.</li> <li>• Assist with participation in WIC and SNAP</li> <li>• Send store location information to local WIC offices and to local Eat Smart NY SNAP programs and counselors to direct those receiving benefits to the store.</li> </ul>

<sup>41</sup>CTR. FOR DISEASE CONTROL AND PREVENTION, HIGH SODIUM INTAKE IN CHILDREN AND ADOLESCENTS: CAUSE FOR CONCERN, CDC.GOV, 2 (2013) *available at* [http://www.cdc.gov/salt/pdfs/children\\_sodium.pdf](http://www.cdc.gov/salt/pdfs/children_sodium.pdf).

<sup>42</sup> See CHRISTINE FRY, *supra* note 4, at 31.

<sup>43</sup> CHANGELAB MODEL LICENSING ORDINANCE, *supra* note 32, at 26.

<sup>44</sup> CHANGELAB MODEL LICENSING ORDINANCE, *supra* note 32, at 26.

<sup>45</sup> CHANGELAB MODEL LICENSING ORDINANCE, *supra* note 32, at app. B at 2.

<sup>46</sup> CHANGELAB MODEL LICENSING ORDINANCE, *supra* note 32, at app. B at 2.

intended for human consumption and contains caloric sweetener (sugars, fructose, glucose, sucrose, fruit juice concentrate, other sugars) <sup>47</sup>	
<p><b>Phase 4:</b> <i>Committed inside and out</i></p> <p>If selected :</p> <ul style="list-style-type: none"> <li>• Participate in retailer conversion.<sup>48</sup></li> </ul> <p>If not selected for conversions choose one of the following:</p> <ul style="list-style-type: none"> <li>• Improve business property (e.g., lighting, security)</li> <li>• Reduce number of tobacco or liquor products by 20%.<sup>49</sup></li> <li>• Participate in Pride of NY program</li> </ul>	<ul style="list-style-type: none"> <li>• Free equipment for stores chosen for conversions (e.g., shelving and refrigerators).<sup>50</sup></li> <li>• Formal media recognition of Phase 4 certification.</li> <li>• Communities provide connections with local products or produce that qualify under Pride of New York.</li> <li>• Connection to in-kind donations for improvement of business property.</li> </ul>
<p><b><u>For each year of compliance with all four certification levels:</u></b></p>	<ul style="list-style-type: none"> <li>• One annual training for employees and store owners</li> <li>• Updated marketing materials as issued.</li> <li>• Annual community event (e.g., cooking demonstration, tastings).</li> <li>• Updated purchasing/wholesaler information as issued.</li> </ul>

<sup>47</sup> CHANGELAB MODEL LICENSING ORDINANCE, *supra* note 32, at app. B, 2-3.

<sup>48</sup> Modeled after Philadelphia's Healthy Corner Store Initiative, see PHILADELPHIA'S HEALTHY CORNER STORE, *supra* note 10, at app. D at 20.

<sup>49</sup> See CHRISTINE FRY, *supra* note 4, at 32; ED BOLEN & KENNETH HECHT, NEIGHBORHOOD GROCERIES: NEW ACCESS TO HEALTHY FOOD IN LOW-INCOME COMMUNITIES, CALIFORNIA FOOD POLICY ADVOCATES, 18 (2003) available at <http://www.healthycornerstores.org/wp-content/uploads/resources/CFPAreport-NeighborhoodGroceries.pdf> ("In some cities, corner stores are increasingly opposed by residents and local officials because they have become de facto liquor stores and because liquor stores have been shown in epidemiological studies to be magnets for violence and crime.").

<sup>50</sup> PHILADELPHIA'S HEALTHY CORNER STORE, *supra* note 10, at 6.



# APPENDIX A1

## Model Recruitment Letter

### Voluntary Retailer Certification Program

Modeled After: Kara Martin & Branden Born, Delridge Healthy Corner Store Project: A Toolkit for Community Organizers and Store Owners (2009) *available at* [http://www.healthycornerstores.org/wp-content/uploads/resources/Delridge\\_HCS\\_Toolkit.pdf](http://www.healthycornerstores.org/wp-content/uploads/resources/Delridge_HCS_Toolkit.pdf).

## New York Model Retailer Recruitment Letter

### COMMUNITY X's HEALTHY RETAILER CERTIFICATION PROGRAM

Store  
Address

Date

Dear Storeowner,

We are excited to invite you to participate in the Healthy Retailer Certification Program led by **[X local agency or community organization]**. The goal of this program is to increase access to healthy and affordable food in **[COMMUNITY]** through its small food retailers. **[COMMUNITY's]** residents depend on stores like yours.

Your store is **[Reasons particular store has been identified as important to the Program]**.

The program asks that participating stores join the program at Phase 1. Phases 2-4 are optional and require additional commitment to changing the store environment. By joining the program and making these changes, not only will your store become eligible for the incentives associated with each phase, but we believe you will be making a positive impact on the community. We will provide training, financial assistance, marketing materials, and community education and outreach to help participating stores increase sales of staple food items in the community for. Our ongoing technical assistance is designed to help you be successful with your new inventory. Some of this assistance will include:

- Training in the proper storage and display of new produce and other products
- Providing in store-marketing materials to highlight the new inventory and educate consumers
- Hosting community events to highlight the store's participation in the program

Programs like this have been successful in Minneapolis, Philadelphia and other communities across the country. We have attached a description of the program and the requirements and incentives associated with each phase, as well as an application to the program. Please take the time to consider what changes you would be willing to make to positively impact your community. We will select participating stores on **[DATE]**. If interested please contact us at **[phone]/ [e-mail]**. We look forward to hearing from you.

Sincerely,

## APPENDIX A2

### Memorandum of Understanding

EXAMPLES FROM: KARA MARTIN & BRANDEN BORN, DELRIDGE HEALTHY CORNER STORE PROJECT: A TOOLKIT FOR COMMUNITY ORGANIZERS AND STORE OWNERS (2009) *available at* [http://www.healthycornerstores.org/wp-content/uploads/resources/Delridge\\_HCS\\_Toolkit.pdf](http://www.healthycornerstores.org/wp-content/uploads/resources/Delridge_HCS_Toolkit.pdf).

and

MINNEAPOLIS DEPARTMENT OF HEALTH AND FAMILY SUPPORT, MINNEAPOLIS HEALTHY CORNER STORE PROGRAM: MAKING PRODUCE MORE VISIBLE, AFFORDABLE AND ATTRACTIVE, Appendix 3 (February 2012), *available at* [http://www.health.state.mn.us/divs/oshii/docs/Mpls\\_Healthy\\_Corner\\_Store.pdf](http://www.health.state.mn.us/divs/oshii/docs/Mpls_Healthy_Corner_Store.pdf)).



## Delridge Healthy Corner Store Project Memorandum of Understanding

**A Delridge Healthy Corner Store is a local food store that collaborates with the Delridge Neighborhoods Development Association (DNDA) and the community to promote healthy food access and to discourage activities that are detrimental to the well-being of the community. It does so by stocking and advertising healthful products, discouraging unhealthy practices in the vicinity of the store, abiding by existing laws, and participating in activities that meet the nutritional needs of local community residents.**

This Memorandum of Understanding outlines the activities that will be provided by the Delridge Neighborhoods Development Association (DNDA) in a supporting role to implement the *Delridge Healthy Corner Store Project* at STORE NAME, STORE ADDRESS. These services will be provided to STORE NAME for compliance with specified criteria. The agreement will be effective for the period of one year ending \_\_\_\_\_.

STORE NAME is committed to the well-being of the neighborhood in which my store is located and pledges to do the following as further developed in my store project plan:

### Stock Healthy Foods

- Sell a variety of the high quality fresh fruits and vegetables.
- Stock whole grain products.
- Stock low-fat and skim dairy products.
- Listen to and try to accommodate customers' requests for healthy foods.

### Market Healthy Foods

- Display healthy foods prominently in the store.
- Label and promote healthy items.
- Limit the advertising of unhealthy foods, drinks and substances.

### Adhere to High Business Standards

- Keep prices of healthy foods affordable by participating in Federal Nutrition programs such as Food Stamps and WIC.
- Remove items past the sell-by date from shelves.
- Maintain high standards of cleanliness and safety inside and outside the store.
- Adhere to all laws regarding sales of tobacco and alcohol to minors.

Delridge Neighborhoods Development Association (DNDA) will implement the *Delridge Healthy Corner Store Project* by:

- Providing free marketing and advertising through a local media campaign including leafleting, press opportunities, and in-store promotional materials (posters, window decals, shelf labels, etc.).
- Assisting the store in meeting the goals agreed upon in the store project plan.
- Monitoring the store's progress, including bi-annual formal evaluations and monthly informal check-ins with the storeowner.

The following parties pledge to uphold the standards listed above and will continue to collaborate with community members to make the neighborhood a healthier place to live.

---

MERCHANT NAME  
Owner, STORE NAME

---

Derek Birnie,  
Executive Director, DNDA

---

Phillippia Goldsmith,  
Delridge Healthy Corner Store Project Coordinator, DNDA

Date: \_\_\_\_\_



## MEMORANDUM OF UNDERSTANDING

The purpose of THIS MEMORANDUM OF UNDERSTANDING by and between the City of Minneapolis through the Minneapolis Department of Health (the “Department”) and **insert owner name** (“the Store Owner or Designee”) is to establish the expectations related to the implementation of the Minneapolis Healthy Corner Store Program as it relates to **insert store name and address** (“the Store”).

**Whereas,**

The Department has undertaken a project known as the Minneapolis Healthy Corner Store Program;

The goal of the Minneapolis Healthy Corner Store Program is to support store owners in making fresh produce and healthy foods more visible, affordable and attractive to neighborhood residents.

As part of the support provided to the Store Owner or Designee related to the Minneapolis Healthy Corner Program, the Department will be assessing the Store through a Healthy Corner Store Assessment Process (the Assessment);

The results of the Assessment will be used to develop strategies and a project plan to be implemented in the store that will address the goals of the Minneapolis Healthy Corner Store Program project; and

Once the strategies and project plan are agreed upon by the Store Owner or Designee and the Department, the Store Owner or Designee and the Department will collaboratively participate in the implementation.

**Now, Therefore,** the Parties hereby understand the following:

1. The Department will provide the Store Owner or Designee with the following assistance for the Store:
  - Assistance from a grocery store expert to develop a project plan to:
    - Identify goals, opportunities, and strategies for increasing sales of healthy foods
    - Strategically display fresh produce and healthy foods
    - Display in-store promotional materials highlighting healthy foods (shelf signs, posters, flyers, etc.)
    - Purchase, price and stock healthy foods affordably
    - Develop a financial system to help track and monitor sales of healthy foods
  - Assistance in promoting healthy offerings to neighborhood residents
  - Small business development resources from the City of Minneapolis such as loan opportunities

2. To receive the assistance offered by the Department, the Store Owner or Designee must:
  - Participate in assessment activities
  - Increase and prominently display healthy foods, including:
    - At least 3 new items of fruits and vegetables
    - At least 2 new items of whole grain products
    - At least 2 new items of low-fat and/or skim dairy products
  - Display Healthy Corner Store marketing materials within the store
  - Participate in training for produce purchasing, stocking, handling and marketing
3. The Department & the Store Owner or Designee will develop an action plan to implement within the Store. The project selection will be determined collaboratively based on Assessment findings. The Department will continue to monitor store progress and offer technical assistance through the life of the project.
4. The Store will be recognized by the City for their participation in the Minneapolis Healthy Corner Store Program. This may include designation as a Healthy Corner Store and public recognition before the City leadership, including the City Council and Mayor, at the completion of the project.
5. Participation in the Minneapolis Healthy Corner Store Program will make the Store Owner or Designee eligible to receive stipends, product displays and/or technical assistance to implement projects at the Store based on the action plans developed.
6. By signing this Agreement, the Store is agreeing to collaborate with the Department on the Minneapolis Healthy Corner Store Program.
7. The term of this Memorandum of Understanding is from the date this document is signed by all parties until completion of the Minneapolis Healthy Corner Store Project, including assessment and implementation.
8. Each of the parties to this Memorandum of Understanding may terminate this Memorandum of Understanding upon thirty (30) days written notice to the other parties.
9. This Memorandum of Understanding is a non-funded obligation document. It is neither a fiscal nor a funds obligation document.

Signatures

\_\_\_\_\_  
Name  
Minneapolis Commissioner of Health

\_\_\_\_\_  
Date

\_\_\_\_\_  
Store owner, Title  
Address

\_\_\_\_\_  
Date

## APPENDIX B

### MODEL RETAILER LICENSING ORDINANCE

*This model ordinance has been adapted for use with the permission of ChangeLab Solutions.*

*The original model,*

***Model Licensing Ordinance for Healthy Food Retailers,***

*is available at <http://changelabsolutions.org/publications/HFR-licensing-ord>.*

The “**Findings**” section of the model ordinance expresses the government rationale to enact the law. These findings are important because courts reviewing the law may look to the findings to see if the government had sufficient reasons and justifications for adopting the measure. The findings should focus on explaining why a lack of access to nutritious food is a problem, documenting the community’s lack of access, and demonstrating how the proposed law will alleviate the problem. Some courts have expressed a preference for localized findings of fact documenting the problem at the local level. To illustrate how local findings can be integrated, the model provides three findings with blank figures. It is advisable to add additional compelling localized findings, such as a map illustrating food deserts. Additional supporting information and exhibits can also be introduced at government hearings where the ordinance is considered. This supporting information may then be referenced in the findings.

## New York Model Ordinance for Small Food Retailer License

### Section 1: Findings

The [Common Council] of [City] hereby finds and declares that:

Obesity and overweight are grave public health issues that increase the risk of serious chronic disease including diabetes, heart disease, stroke, and cancer.

During years 2009-2010, 35.9 percent of adults in the U.S. age 20 years and older were obese and 33.3 percent were overweight.<sup>1</sup>

In 2008 this public health epidemic cost the U.S. about \$147 billion in direct medical care costs.<sup>2</sup>

In New York, adult obesity and overweight prevalence rose from 42 percent in 1997 to 60 percent in 2008.<sup>3</sup> In 2010 over 5 million New York adults were overweight and over 3.5 million were obese.<sup>4</sup>

In 2011 obesity related health problems cost New York State \$11.8 billion.<sup>5</sup>

Poor nutrition and diet places individuals at a greater risk for obesity and overweight.<sup>6</sup> One factor that results in poor nutrition is infrequent access to stores selling food that is both healthy and affordable.<sup>7</sup>

“Food deserts” are “areas that lack access to affordable fruits, vegetables, whole grains, low-fat milk, and other foods that make up the full range of a healthy diet.”<sup>8</sup>

New York State Law defines a “food desert” as an area with limited access to affordable and nutritious food, particularly an area predominantly comprised of lower-income neighborhoods and communities. (New York State Agriculture and Markets Law §260.)

<sup>1</sup> NATL. CTR. FOR HEALTH STATISTICS, CTR. FOR DISEASE CONTROL AND PREV., FASTSTATS: OBESITY AND OVERWEIGHT, <http://www.cdc.gov/nchs/fastats/overwt.htm> (last visited June 7, 2013).

<sup>2</sup> CTR. FOR DISEASE CONTROL AND PREV., OVERWEIGHT AND OBESITY: CAUSES AND CONSEQUENCES, <http://www.cdc.gov/obesity/adult/causes/index.html> (last visited June 7, 2013).

<sup>3</sup> N.Y. DEP'T. OF HEALTH, OBESITY PREV., THE OBESITY PROBLEM, HEALTH.NY.GOV, <http://www.health.ny.gov/prevention/obesity/> (last visited July 10, 2013).

<sup>4</sup> KATHLEEN WALES & IAN BRISSETTE, BUREAU OF CHRONIC DISEASE EVALUATION AND RESEARCH, ADULT OVERWEIGHT AND OBESITY IN NEW YORK STATE, 2000-2010, at 2 (2011), available at [http://www.health.ny.gov/prevention/obesity/statistics\\_and\\_impact/docs/2000-2010\\_adult\\_obesity.pdf](http://www.health.ny.gov/prevention/obesity/statistics_and_impact/docs/2000-2010_adult_obesity.pdf).

<sup>5</sup> OFFICE OF THE STATE COMPTROLLER, SOARING HEALTH CARE COSTS HIGHLIGHT NEED TO ADDRESS CHILDHOOD OBESITY, 1 (2012), available at [http://www.osc.state.ny.us/reports/obesity\\_and\\_child\\_obesity\\_10\\_23\\_12.pdf](http://www.osc.state.ny.us/reports/obesity_and_child_obesity_10_23_12.pdf).

<sup>6</sup> CTR. FOR DISEASE CONTROL AND PREV., CDC VITAL SIGNS: ADULT OBESITY (August 2010), <http://www.cdc.gov/VitalSigns/AdultObesity/index.html> (last visited June 7, 2013).

<sup>7</sup> *Id.*

<sup>8</sup> CTR. FOR DISEASE CONTROL AND PREV., A LOOK INSIDE FOOD DESERTS, <http://www.cdc.gov/Features/FoodDeserts/> (last visited June 10, 2013).



Food deserts are found in both urban and rural areas, as well as in low income communities.<sup>9</sup>

Research has demonstrated a correlation between living in a food desert, poor nutrition, and higher BMI.<sup>10</sup>

Poor nutrition in communities with limited access to healthy foods may be exacerbated by an increased number of convenience stores selling food products that are low in nutrition and high in calories.<sup>11</sup>

Convenience stores and small grocers located in low-income urban areas typically charge higher prices for nutritious products.<sup>12</sup> As a result, highly processed and high calorie convenience foods are more affordable than healthy foods.<sup>13</sup>

Low-income neighborhoods and communities of color typically contain fewer grocery stores and more fast food restaurants and convenience stores than more affluent and largely Caucasian neighborhoods.<sup>14</sup> As a result, highly processed and high calorie food is more readily available.<sup>15</sup>

Residents with limited access to full-service food stores often rely on convenience stores to supplement infrequent trips to full-service stores.<sup>16</sup>

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<sup>9</sup> Elizabeth Whalen & Michael Seserman, *Looking for an Oasis in a Food Desert: Low Income New Yorkers Lack Access to Healthy Food*, 4 (2011), available at <http://www.cancer.org/acs/groups/content/@eastern/documents/webcontent/acspc-031472.pdf>.

<sup>10</sup> See Lisa Powell et al., *Associations Between Access to Food Stores and Adolescent Body Mass Index*, 33 (4S) AM. J. PREV. MED. S301 (2007); Nicole I. Larson et al., *Neighborhood Environments: Disparities in Access to Healthy Foods in the U.S.*, 36 AM. J. PREV. MED. 74 (2009); Kimberly Morland, et al., *Supermarkets, Other Food Stores, and Obesity The Atherosclerosis Risk in Communities Study*, 30(4) AM. J. OF PREV. MED. 333 (2006).

<sup>11</sup> CALIFORNIA CTR. FOR PUB. HEALTH ADVOCACY, UCLA CTR. FOR HEALTH. & ENV'T. RESEARCH & POLICY, *DESIGNED FOR DISEASE: THE LINK BETWEEN LOCAL FOOD ENVIRONMENTS AND OBESITY AND DIABETES 2* (2008), available at [http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/DESIGNEDFOR\\_DISEASE\\_FINAL.PDF](http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/DESIGNEDFOR_DISEASE_FINAL.PDF) [hereinafter *DESIGNED FOR DISEASE*].

<sup>12</sup> Judith Bell & Marion Standish, *Building Healthy Communities Through Equitable Food Access*, 5(3) COMMUNITY DEVELOPMENT INVESTMENT REVIEW: FEDERAL RESERVE BANK OF SAN FRANCISCO 75, 78 (2009).

<sup>13</sup> *Id.*

<sup>14</sup> *DESIGNED FOR DISEASE*, *supra* note 61, at 2.

<sup>15</sup> *DESIGNED FOR DISEASE*, *supra* note 61, at 2.

<sup>16</sup> Sanae Inagami, et al., *You Are Where You Shop: Grocery Store Locations, Weight, and Neighborhoods*, 31(1) AM. J. PREV. MED., 10, 15 (2006).

Statistics provided in this report should be updated to reflect the most recent data. The following resources may provide community specific statistics:

Center for Disease Control and Prevention, Division of Nutrition, Physical Activity, and Obesity's Overweight and Obesity.  
<http://www.cdc.gov/obesity/>

New York State Department of Health, Obesity Prevention webpage.  
<http://www.health.ny.gov/prevention/obesity/>

Trust for America's Health, Key Health Data about New York.  
<http://healthyamericans.org/states/?stateid=NY>

United States Department of Agriculture (USDA) resources:

- a. The Food Environment Atlas presents county level statistics on food environment factors influencing food choices and diet quality, including store and restaurant proximity, food prices, and other community characteristics.  
<http://www.ers.usda.gov/data-products/food-environment-atlas/go-to-the-atlas.aspx#.Ua9h-djLWul>
- b. The Food Access Research Atlas provides data on food deserts by census tract.  
<http://www.ers.usda.gov/data-products/food-access-research-atlas/go-to-the-atlas.aspx#.Ua9iSdjLWul>

In New York State, more than 656,000 New Yorkers live in a food desert.<sup>17</sup>

**[Percent]** of **[City]** residents are overweight or obese.

**[Percent]** of **[City]** residents live **[X miles]** from a food retailer that routinely provides nutritious food, including a variety of products from all staple food categories: fruits, vegetables, whole grain products, lean protein and low fat dairy.

**[Percent]** of **[City]** residents are low-income.

The Center for Disease Control and Prevention (CDC) recommends increasing the supply of shelf space dedicated to healthier food products at existing stores.<sup>18</sup>

**[City]** has a substantial interest in improving the health and welfare of its residents, including reducing the incidence of chronic disease.

Improving access to and availability of nutritious foods is an important step in improving health of **[City]**'s residents.

It is the intent of the **[City]** to implement measures through this Chapter effective in reducing the risk of chronic disease in **[City]** by improving residents' access to nutritious foods.

## Section 2: Definitions

As used in this Chapter, the following terms shall have the meanings indicated:

BEVERAGE DISPENSING MACHINE means a device, including fountain machines, which mixes concentrate or syrup with one or more ingredients to create a Sugar Sweetened Beverage and dispenses it ready to drink into an open container.

DAIRY PRODUCT means animal and plant-derived milk without added caloric sweeteners, animal and plant derived low and nonfat yogurts and cheeses, including lactose free products and dairy products defined pursuant to Agriculture and Markets Law §46-A.

DEPARTMENT means the [Department of XXX]

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<sup>17</sup> Whalen, *supra* note 59, at 2.

<sup>18</sup> DIV. OF NUTRITION, PHYSICAL ACTIVITY, AND OBESITY, NAT'L CTR. FOR CHRONIC DISEASE PREV. AND HEALTH PROMOTION, THE CDC GUIDE TO STRATEGIES TO INCREASE THE CONSUMPTION OF FRUITS AND VEGETABLES, 9 (2011), *available at* [http://www.cdc.gov/obesity/downloads/FandV\\_2011\\_WEB\\_TAG508.pdf](http://www.cdc.gov/obesity/downloads/FandV_2011_WEB_TAG508.pdf).

**FOOD PRODUCT** means all articles of food, drink, confectionary or condiment, whether simple, mixed or compound, used or intended for human consumption, and shall also include all substances or ingredients intended to be added to food for any purpose.

**FOOD RETAIL LICENSE** means a license issued by the Department to a Food Retailer to engage in the retail sale of Food Products in **[City]** primarily for off-site consumption.

**FOOD RETAILER** means any retailer operating in **[City]** with more than **[200]** and less than **[5,000]** square feet of Retail Space primarily selling Food Products and non-Food consumer products intended for preparation, use or consumption off-site. Food Retailer does not include:

- Mobile Food Vending Units,
- Stores and vendors selling primarily fruits and vegetables,
- Specialty Food Stores,
- Grocery Stores,
- Restaurants primarily in the business of selling food for consumption on site.

**FOUNTAIN DRINK** means Sugar Sweetened Beverages dispensed by a beverage dispensing machine.

**GROCERY STORE** means a food retail establishment that has at least **[5,000]** square feet of Retail Space.

**MOBILE FOOD VENDING UNIT** means a food service establishment located in a pushcart or vehicle, self or otherwise propelled, used to store, prepare, display, service or sell food, or distribute food free of charge to the public for consumption in a place other than in or on the unit. Any such pushcart or vehicle shall be deemed a mobile food vending unit whether operated indoors or outdoors, on public, private or restricted space.

**PERISHABLE FOODS** means any food that may spoil or otherwise become unfit for human consumption because of its nature, type, or physical condition. Perishable food includes, but is not limited to, fresh or processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits or vegetables and foods that have been packaged, refrigerated or frozen, or otherwise require refrigeration to remain nonperishable. This definition shall not include game or wild game.

**PERSON** means any natural person, company, corporation, firm, partnership, business, organization, or other legal entity.

**PRODUCE** means fruits or vegetables in their raw or natural state, whether offered whole or pre-sliced.

Section 2 defines the terms used in the model ordinance. A community may decide to use existing definitions, particularly if the licensing system is incorporated into a larger body of law (where, for example, “person” is already defined).

This model is intended to apply to small food retailers, such as convenience stores, corner stores and bodegas. The rationale is that large grocery stores typically provide an ample supply and variety of staple foods. Should this not be the case in a particular community, the ordinance could be modified to apply to stores that serve as the primary food sources of the community, including larger grocery stores. The minimum requirements for stocking staple foods may be changed, and different store categories may have different requirements, based on their size.

The definition of “food product” used in this model derives from New York Agriculture and Markets Law §2.

The definition of “mobile food vending unit” used in this model derives from NYC Health Code Article 89, §89.03.

The definition of “perishable foods” used in this model derives from New York Agriculture and Markets Law §71-y.

PROTEIN means lean or low-fat meat and poultry, eggs, seafood, nuts, seeds, beans, peas, and processed soy products.

RETAIL SPACE means the **[floor area/ combined floor area and shelf space]** of a store where products, including non-food products, are displayed and offered for sale.

SPECIALITY FOOD STORE means a retail operation that sells or offers for sale specific or limited types or groups of food products and does not carry a general variety of food as does a Food Retailer, as defined under this section, as determined by the Department.

STAPLE FOODS means dairy products, produce, protein, and whole grains, whether frozen or unfrozen.

SUGARY SNACKS means processed snacks where over 50% of total weight is comprised of sugar, or other sweetener, artificial or otherwise.

SUGAR SWEETENED BEVERAGES means nonalcoholic beverage, carbonated or noncarbonated, which is intended for human consumption and contains caloric sweetener (sugars, fructose, glucose, sucrose, fruit juice concentrate, or other sugars).

WHOLE GRAINS means food in which whole grain is the primary ingredient by weight, and which meets labeling requirements established by federal Food and Drug Administration for making a health claim as a “whole grain food with moderate fat content.”

### Section 3: Food Retail License

(A) Starting [Enforcement Date], no Food Retailer shall sell, offer for sale or permit the sale of Food Products to consumers in [City], without a valid Food Retail License issued by the Department.

(B) All Food Retail Licenses issued pursuant to this section are nontransferable and non-assignable and are valid only for the Food Retailer and the specific address indicated on the Food Retail License. A separate Food Retail License is required for each address at which Food Products are sold or offered for sale. Any change in business ownership or business address requires a new Food Retail License.

Section 3 requires small food retailers to obtain a license from the Department by the specified “Enforcement Date.” The licenses will expire one year from that date. The Enforcement Date should be set so that it provides the Department with enough time to implement the law and review applications.

(C) All Food Retail Licenses issued pursuant to this section are valid for no more than one year and expire on the [Day of Month (of Enforcement Date)] following the effective date of the Food Retail License. As set forth in Section 9, a Food Retail License may be revoked by the Department prior to its expiration date for cause.

(D) Applications for a Food Retail License shall be submitted to the Department in writing upon a form provided by the Department. The Department may require such forms to be signed and

verified by the applicant or an authorized agent thereof.

(E) Applications for a Food Retail License shall be accompanied by the fee set forth in Section 7.

(F) The issuance of any Food Retail License pursuant to this Chapter is done in **[City's]** discretion and shall not confer upon licensee any property rights in the continued possession of such a license.

#### Section 4: Conditions for Maintenance of Licenses

(A) A Food Retailer shall, at all times, stock Staple Foods as follows:

- (1) A Food Retailer shall utilize **[\_ %]** of its Retail Space for Staple Foods. **[\_ %]** of this Retail Space for Staple Foods will be utilized for Perishable Foods.
- (2) A Food Retailer shall, at all times, stock the following minimum variety of Staple Foods:
  - a) **[\_]** varieties of Dairy Milk Product
  - b) **[\_]** varieties of Produce
  - c) **[\_]** varieties of Whole Grain Products
  - d) **[\_]** varieties of Protein

(B) No more than **[\_ %]** of bottled beverages offered for sale by Food Retailer may be Sugar Sweetened Beverages.

(C) No more than **[\_ %]** of non-perishable foods offered for sale by Food Retailer may be Sugary Snacks.

(D) A Food Retailer shall accept Supplemental Nutrition Assistant Program (SNAP) benefits

(E) A Food Retailer shall maintain the interior and exterior of the business premises in a manner that does not constitute a nuisance. At a minimum a Food Retailer shall:

- (1) Provide adequate lighting within the business premise, including parking lots and all entrances and exits;
- (2) Provide adequate trash and recycling receptacles;
- (3) Remove any graffiti on the business premises within **[time period]** of receiving notice;
- (4) Prevent loitering on the business premises;
- (5) Maintain the cleanliness of all interior and exterior areas of the business premises, including shelf spaces; and
- (6) Comply with all state laws prohibiting littering.

Section 4 describes the conditions required of a Food Retailer to maintain its license. Subsections (B) through (F) are optional requirements that realize changes to the retail environment beyond the addition of staple food items. The community must decide what changes will be most feasible and effective and should adapt the model accordingly.

A community can decide to use a square footage requirement, a simple requirement for a minimum variety of staple foods, or both. The model contains both in order to ensure the requirement will not be fulfilled simply by stocking one product within each category. The number of different products will depend on community needs.



## Section 5: Additional Performance Standards and Incentives

(A) In addition to the requirements of Section 4, a Food Retailer that complies with any of the following performance standards may be eligible to receive an incentive as provided in this section. To qualify for an incentive, a Food Retailer shall voluntarily:

- (1) Exceed the applicable square footage stocking requirements for Staple Foods by  %;
- (2) Exceed the applicable variety requirements for Staple Foods to meet the following variety standards
  - a.  varieties of Dairy Milk Product
  - b.  varieties of Produce
  - c.  varieties of Whole Grain Products
  - d.  varieties of Protein;
- (3) Carry  low or reduce sodium (salt) products from each of the following categories
  - a. Soups, broth, and stock
  - b. Snacks including chips, crackers, pretzels, mixed nuts, and popcorn
  - c. Dips, gravies, and condiments
  - d. Cold Cuts
  - e. Cereal, bread, and pasta
  - f. Prepared Meals including frozen entrees
- (4) Not sell or offer for sale alcoholic beverages OR No more than  % of beverages offered for sale by food retailer may be alcoholic beverages;
- (5) Not sell or offer for sale a single serving of a Fountain Drink larger than  ounces, and not offer or provide free refills for Fountain Drinks;
- (6) Not sell or offer for sale Tobacco Products OR reduce the total Retail Space for tobacco products by  %;
- (7) Participate in the Pride of New York program administered by the New York Department of Agriculture and Markets;
- (8) Use marketing materials approved by Department to promote Staple Food items;

Section 5 is an optional section. It identifies additional performance standards to accomplish more substantial changes to the retail environment. It offers incentives to retailers in exchange for making changes beyond simply providing the minimum staple foods. A community incorporating this section into a law should authorize the administering department to adopt rules and regulations that lay out the requirements and incentives in more detail.

Excess sodium consumption is a risk factor for serious illness. Many people in the U.S. consume sodium well above the dietary guidelines, which are  $\leq 2,300$  mg ( $\leq 1,500$  mg for at-risk populations, such as those aged 51 years or older, African Americans, and those who suffer from high blood pressure, diabetes, or chronic kidney disease). The top 10 food sources of sodium according to the CDC are: breads and rolls, cold cuts and cured meats, pizza, poultry, soups, sandwiches, cheese, pasta dishes, meat dishes and snacks. The license provides an opportunity to require or incentivize a store to carry low sodium options in these or other food categories.

For more information about sodium content, see “Understanding Food Labels” at <http://www.worldactiononsalt.com/resources/factsheets/56336.pdf>



- (9) A Food Retailer shall apply to be certified as a WIC vendor to accept benefits provided through the Special Supplemental Nutrition Program for Women, Infants and Children or meet minimum stocking requirements of WIC vendors to the extent those requirements are not met by this license;
- (B) Food Retailers that meet any of the performance standards set forth in subsection (a) shall be eligible to receive one of the following incentives, to be determined by the Department, for each of the performance standards met:
- (1) Expedited processing of the Food Retail License application, or expedited processing of other licenses or permits required for the business by **[City]**;
  - (2) Reduced or waived fees for the Food Retail License or reduced or waived fees for other permits or licenses required for the Food Retailer by the **[City]**;
  - (3) Increased parking or non-metered parking adjacent to store for customers;
  - (4) A tax exemption or other tax incentives as provided by **[City]**; or
  - (5) Other incentives as determined by the Department.

## Section 6: Issuance of Licenses

- (A) Upon the receipt of a completed application for a Food Retail License and the fee required by Section 7, the Department shall inspect the location at which Food Product sales are to be permitted. The Department may also ask the applicant to provide additional information that is reasonably related to the determination of whether a license may issue.
- (B) The Department may refuse to issue a Food Retail License to an applicant if it finds that one or more of the following bases for denial exists:

WIC is a federal program providing benefits to low-income women who are pregnant, postpartum and breastfeeding and infants and children up to age 5 that are at nutritional risk.<sup>1</sup> States are responsible for authorizing stores that can accept WIC checks. There is no fee to apply for authorization.<sup>1</sup> Not every store that applies has to be certified since a State only has to authorize enough stores to ensure that WIC participants have access to WIC food and that the state can “effectively manage.”<sup>1</sup> Because of this, the model license provides that a store can also stock to meet WIC minimum requirements in lieu of applying to WIC.

Food vendor WIC applicant criteria can be found in 10 NY ADC 60-1.13. For stocking food the regulation states that the “applicant vendor shall stock WIC acceptable foods, as determined by the New York State Department of Health, in the minimum quantities prescribed in the vendor application document at the time of enrollment.”<sup>1</sup> In order to determine stocking requirements a participating retailer must meet the Department should reach out the New York State WIC program.

New York’s WIC Program information is: toll-free number in state- 1-800-522-5006, voice- 518-402-93, and email is [nyswic@health.state.ny.us](mailto:nyswic@health.state.ny.us). The New York state website for WIC is <http://www.health.ny.gov/prevention/nutrition/wic/index.htm>.

Section 6 provides that during the application process the Department must inspect the location. The license fee should be set at a level to support initial application inspection and subsequent enforcement and inspection costs. This section also provides circumstances under which a license can be denied.

- (1) The information presented in the application is incomplete, inaccurate, false, or misleading;
- (2) The fee for the application has not been paid as required;
- (3) The applicant has been found by a court of law or administrative body to have violated any federal, state, or local laws pertaining to the sale, storage or handling of Food Products;
- (4) The applicant has not paid to **[City]** outstanding fees, fines, penalties, or other charges owed to the **[City]**; or
- (5) The Department determines, in accordance with written criteria established to further the purposes of this Chapter, that the applicant is otherwise not fit to hold a Food Retail License.

### Section 7: Required Fee

- (A) Each application for a Food Retail License shall be accompanied by a fee of \$[Fee Amount].
- (B) Starting two years after the effective date of this Chapter, the Department may, on an annual basis, modify the fee required pursuant to Section 7(A). The fee shall be calculated so as to recover the cost of issuing a license, administering the license program, providing retailer education, conducting retailer inspection and compliance checks, documenting violations and prosecuting violators, but shall not exceed the cost of the regulatory program authorized by this Chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

Section 7 provides the fee amount to be paid by the applicant. The fee amount has been left blank and should reflect the amount necessary to implement, run, and enforce the licensing system. This amount will vary by locality and requires localized analysis to best calculate and estimate the costs of the licensing system.

This section also allows the Department to adjust the fee on an annual basis two years after the start of the licensing system. This allows the Department to increase or decrease the license fee to reflect the fiscal needs of the licensing system.

### Section 8: Required License Display

- (A) Any Food Retail License issued pursuant to this chapter shall be displayed prominently at the location where the Tobacco Products are sold so that it is readily visible to customers.
- (B) Selling, offering for sale, or permitting the sale of any Food Product by a Food Retailer without a valid Food Retail License displayed in accordance with Section 8(A) constitutes a violation of this Chapter.

Section 8 requires the license to be displayed to permit customers and inspectors to verify that the food retailer is operating pursuant to this Chapter's requirements. Failure to display the license may incur penalties and fines.

## Section 9: Revocation of Licenses

- (A) The Department may suspend or revoke a Food Retail License issued pursuant to this Chapter for violations of the terms and conditions of this Chapter or for violation of any federal, state, or local law or regulation pertaining to the sale, storage or handling of Food Products.
- (B) The Department may revoke a Food Retail License if the Department finds that one or more of the bases for denial of a license under Section 6 existed at the time application was made or at any time before the license issued.

Section 9 addresses the revocation of licenses. Violations of the licensing system's requirements and federal, state or local laws regarding food handling, sale and storage may result in license suspension or revocation. The Department charged with enforcement can conduct inspections to ensure compliance.

## Section 10: Implementation and Education

In order to assist retailers to understand and comply with requirements of this Chapter the Department shall

- (A) Prepare fact sheets, guides, and other educational materials to explain the requirements of this chapter, how inspections occur, and penalties for non-compliance. Materials shall be in English and [designate other languages that may be necessary for your City];
- (B) Conduct at least [3] trainings annually concerning the requirements of this Chapter for all Food Retailers operating in [City];
- (C) Provide individual technical assistance to any Food Retailer requesting such assistance, to help them determine whether their business is in compliance with the requirements of this chapter, and if not, how to gain compliance; and
- (D) Educate the community about the healthy food stocking requirements for Food Retailers.

Section 10 requires the Department to provide education and training to assist retailers to comply with the license. The licensing fee should consider costs necessary to perform the requirements of this Section. This provides an opportunity for the Department to partner with other departments, agencies, and community organizations to conduct trainings, community outreach and education, and compile materials on compliance with the license.

## Section 11: Violations and Enforcement

- (A) The Department or its authorized designee(s) shall enforce the provisions of this Chapter. The Department may conduct periodic inspections in order to ensure compliance with this Chapter.

Section 11 addresses enforcement of the licensing requirements. In addition to suspension and revocation of licenses described in Section 9, the Department may issue written warnings and subsequent monetary fines for violations of this Chapter's requirements. The fines may be adjusted to match existing fines (for example other fines the Department issues) and accomplish community goals.

(B) In addition to the penalties provided for in Section 9, and any other remedy authorized by law, any Food Retailer found to be in violation of this Chapter may be subject to a written warning for the first violation, a civil penalty of not more than \$250 for a second violation within a twelve-month period, a civil penalty of not more than \$500 for the second violation within a two-year period, and a civil penalty of not more than \$1000 for the third and each subsequent violation within a two-year period. Each day on which a violation occurs shall be considered a separate and distinct violation.

### Section 12: Rules and Regulations

The Department may issue and amend rules, regulations, standards, guidelines, or conditions to implement and enforce this Chapter.

Section 12 authorizes the Department to create further guidance, requirements, and procedures not addressed in the ordinance to ensure effective implementation of the licensing system.

### Section 13: Severability

The provisions of this Chapter are declared to be severable, and if any section of this Chapter is held to be invalid, such invalidity shall not affect the other provisions of this Chapter that can be given effect without the invalidated provisions.

Section 13 and 14 are technical provisions found in many laws. Section 13 provides that if any piece of this licensing system is struck down in court, the remaining parts remain valid.

### Section 14: Effective Date

The effective date of this ordinance shall be one hundred and eighty (180) days from the date of its enactment.

Section 14 provides that the law will go into effect 180 days after it is enacted—approximately six months. After this date, the Department has the authority to act on sections of this law and begin implementation. This is different from the enforcement date, which is when the licensing system should be in place and licenses issued. These dates should permit the Department to begin community outreach and retailer education and training prior to enforcing the license requirements.

## Appendix C: Model Zoning Amendment

## New York Model Zoning Amendment to Improve Distribution of Nutritious Food

The Model Zoning Amendment to Improve Distribution of Nutritious Food is intended to provide an option for communities seeking to improve access to healthy foods by encouraging the development of healthier retailers (specifically, corner or convenience stores). The model describes the general requirements of any zoning amendment, specific suggestions for legislative language, as well as additional incentives communities may consider implementing to increase the public's access to healthy foods.

As discussed in the report, the purpose of zoning law is to regulate the use of land within a particular jurisdiction. Local governments use zoning laws to divide a jurisdiction into certain districts (or zones), and identify the uses permitted (or prohibited) within each district. Zoning laws may be used to promote “health and general welfare” for a community’s residents, and this may include certain business regulation for such purposes (such as the permissible location of certain types of businesses).<sup>1</sup> The model is intended to support land uses which will ensure residents of a community have adequate access to essential goods at locations convenient to them.

### Step 1: Consider the Comprehensive Plan

The goal of zoning is to use a community’s land in an efficient, cohesive, and balanced manner.<sup>2</sup> New York State enabling laws require that a community, when regulating via zoning, do so in support of a comprehensive or well considered plan.<sup>3</sup> The purpose of a comprehensive or well considered plan is to provide a blueprint of the long-term goals of the community.<sup>4</sup> There are two “sources” of a community’s comprehensive plan: (1) A community can formally propose and file a comprehensive plan according to state law or (2) a court, when reviewing a challenged zoning ordinance, can infer such a plan from surrounding circumstances.<sup>5</sup>

New York State law provides that a formally adopted comprehensive plan may consist of materials including (but not limited to) maps, charts, resolutions, reports, and other materials that

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<sup>1</sup> See, e.g., N.Y. TOWN LAW §263.

<sup>2</sup> Marx v. Zoning Bd. of Appeals of Village of Mill Neck, 137 A.D. 2d 333, 337 (1988).

<sup>3</sup> N.Y. GEN. CITY LAW §§ 20(24), 20(25) (“well considered plan”); N.Y. TOWN LAW §§ 261-285; N.Y. VILLAGE LAW, §§ 7-700 to 7-742. Counties have not been granted the power to adopt zoning regulations.

<sup>4</sup> See Rayle v. Town of Cato Bd., 295 A.D. 2d 978, 979 (2002); see also N.Y. STATE & N.Y. DEP’T OF STATE, *Creating the Community You want: Municipal Options for Land Control in* JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES 3 (2011).

<sup>5</sup> N.Y. STATE & N.Y. DEP’T OF STATE, *Creating the Community You want: Municipal Options for Land Control in* JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES 9 (2011); Tracy Bateman Farrell et al, *Requirement of Comprehensive Plan; Interim, Spot, and Piecemeal Zoning: In General*, 12 N.Y. JUR. 2D BUILDINGS § 166 (2014); Counties may also adopt a comprehensive plan to guide the development of county property, see NEW YORK GENERAL MUNICIPAL LAW 239-d; Municipalities may also create a comprehensive plan to be independently adopted by participating municipalities, See N.Y. GENERAL CITY LAW §20-g(4)(c), N.Y. GENERAL MUNICIPAL LAW §119-u(4)(c).



describe a community's objectives, principles and policies for the "immediate and long-range protection, enhancement, growth and development" of the community.<sup>6</sup> This plan is prepared and adopted by a community's legislative body, subject to a public hearing.<sup>7</sup> A community is required to refer a proposed comprehensive plan, or any amendment thereto, to a county board or regional planning agency for review.<sup>8</sup> Once the plan or amendment is approved, it must be filed with the local clerk's office and the county planning agency office.<sup>9</sup>

If a community has not formally adopted a comprehensive plan under state law, case law permits the inference of a comprehensive plan.<sup>10</sup> A proposed zoning measure may be well considered if it "conforms to a master plan, is broad in scope of coverage, all inclusive in control of use, height, and area, or internally consistent zoning based on a rational underlying policy."<sup>11</sup> This inference may arise through the examination of all "available and relevant" evidence of the community's land use policies.<sup>12</sup> A community that fails to document the support for such an ordinance or amendment, whether through research, existing ordinances, general land use policies, or other measures is unlikely to demonstrate that the proposed zoning measure supports an overall plan for the community.<sup>13</sup> However, a proposed zoning ordinance or amendment is not required to explicitly fit within a comprehensive plan but rather support it, with a recognition that the needs of a community do change over time.<sup>14</sup>

A community considering the adoption of zoning amendments designed to improve distribution of (and therefore access to) nutritious foods may want to first ensure that any formal comprehensive

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<sup>6</sup> See N.Y. VILLAGE LAW §7-722, N.Y. TOWN LAW, §272-a, and N.Y. GENERAL CITY LAW §28-a.; See *Hart v. Town Bd. of Town of Huntington*, 980 NYS 2d 128, 132 (2014) ("[T]he Master Plan outlined a number of concerns and goals. One of which was to retain the low-density, village-like character of the Town. However, the Master Plan also detailed additional foals in recognition of the fact that the demographics of the Town's population were changing, such as the need for a diverse housing stock, the need for senior housing, the need for affordable housing, and the need to reserve opens spaces. Al though the proposed development will likely increase the density of the neighborhood, it will also preserve a sizable portion of the property as open land, provide senior housing, and provide a number of affordable units.").

<sup>7</sup> See N.Y. GENERAL MUNICIPAL LAW 239-m (3); The legislative bodies for each type of municipality are: the "legislative body" for cities, see N.Y. GENERAL CITY LAW 28-a(5); the Town Board for towns, see N.Y. TOWN LAW §272-a(5)(b); the Village Board of Trustees or, by special resolution of the Board, a planning board or special board, for villages, see N.Y. VILLAGE LAW 7-722(4). Public hearings are required by N.Y. CITY LAW 28-a(7) , N.Y. TOWN LAW §272-a(6), and N.Y. VILLAGE LAW 7-722(6).

<sup>8</sup> N.Y. CITY LAW §28-a( 6)(b); N.Y. TOWN LAW §272-a(5)(b); N.Y. VILLAGE LAW §7-722(5)(b).

<sup>9</sup> Filing is required by N.Y. GENERAL CITY LAW §28-a(13), N.Y. TOWN LAW §272-a(12), and N.Y. VILLAGE LAW §7-722(12).

<sup>10</sup> GOVERNOR ANDREW M. CUOMO AND CESAR A PERALES, *ZONING AND THE COMPREHENSIVE PLAN*, NEW YORK STATE AND DEPARTMENT OF STATE 3(reprinted 2011).

<sup>11</sup> *Udell v. McFadyen*, 40 Misc. 2d 265, 266 (1963).

<sup>12</sup> *Asian Americans for Equality v. Koch*, 72 NY 2d 121, 131 (1988).

<sup>13</sup> See *Los-green Inc. v. Weber*, 548 NYS 2d 832, 833 (1989) (In this case the town planning board and consultant did not prepare a report, cite to a comprehensive plan, provide evidence to support the rezoning, or conduct studies to support rezoning. As a result the court found that the record contained no evidence of the town board considering a comprehensive plan in order to rezone and the decision to do so was arbitrary and capricious.).

<sup>14</sup> *Matter of Town of Bedford v. Village of Mount Kisco*, 33 NYS 2d 178, 188 (1973)("What is mandated is that there be comprehensiveness of planning, rather than special interest, irrational *ad hocery*. The obligation is support of comprehensive planning, not slavish servitude to any particular comprehensive plan. Indeed sound planning inherently calls for recognition of the dynamics of change.").

plan includes “reasonable access to nutritious food” or something similar as an important public health goal.<sup>15</sup> Thereafter, and for communities without a formal plan, a community should include evidence that the proposed zoning amendment will benefit the community by improving access to nutritious food. This can be accomplished by presenting research findings at hearings, or incorporating information and evidence within the “findings” section of the legislation, which lays out the intent of the legislature in adopting the amendment. Ultimately, the goal is to demonstrate that the legislation reflects a well-considered plan.<sup>16</sup>

## Step 2: Environmental Review

When a community decides to amend its zoning law, it must comply with the State Environmental Quality Review Act (SEQRA). The law requires local governments to consider environmental factors when taking certain actions, such as the adoption of zoning laws.<sup>17</sup> Essentially, to complete any local action, a municipality must include the issuance of a negative declaration (i.e., that the proposed zoning law has no significant adverse environmental impact)<sup>18</sup> or the preparation of an environmental impact statement (EIS) identifying any potential adverse environmental impact.<sup>19</sup>

In the case of the type of zoning change proposed here, it is unlikely that such a law will cause any significant adverse environmental impact; thus, a negative declaration may be all that is necessary. Nevertheless, the state has prepared an “Environmental Assessment Form” (designed to assist municipalities in determining whether an action is environmentally significant or non-significant) which a municipality should complete for any zoning proposal.<sup>20</sup>

## Step 3: Drafting the Zoning Amendment

Below is model language (in italics) designed to be modified by a municipality to suit its particular needs, existing zoning laws, and comprehensive plan.

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<sup>15</sup> See *Begami v. Town Bd. of Town of Rotterdam*, 949 NYS 2d 245, 248(2012) (Finding that the Town’s amendment to its comprehensive plan, adopted after “exhaustive studies,” supported the decision by the town to rezone.).

<sup>16</sup> GOVERNOR ANDREW M. CUOMO AND CESAR A PERALES, ZONING AND THE COMPREHENSIVE PLAN, NEW YORK STATE AND DEPARTMENT OF STATE 4(reprinted 2011); See *Nicholson v. Incorporated Village of Garden City*, 978 NYS 2d 288, 290(2013) (“Moreover, the local law was enacted after the issue of the subdivision of certain large corner lots in the Central Section of the Village was studied by an expert engaged by the Village, who advised it on the necessity of additional regulation, and offered alternative approaches to resolve the issue.”).

<sup>17</sup> See 6 NY ADC 617.1.

<sup>18</sup> See NY ADC 617.2(y); A lead agency can also issue a conditional negative declaration where the action as proposed could result in significant adverse environmental impacts unless mitigation measures identified and required by the lead agency are taken to that no significant adverse environmental impact results, see NY ADC 617.2(h).

<sup>19</sup> 6 NY ADC 617.3.

<sup>20</sup> 6 NY ADC 617.6; see 6 NY ADC 617.2.

## Section 1: Title

*An Ordinance to Provide for Better Distribution and Accessibility of Nutritious Foods for the Convenience of the Public*

## Section 2: Findings

The “**Findings**” section of the model ordinance expresses the government rationale to enact the law. This section is important because courts reviewing the law may look to the findings to determine whether the government had sufficient justification for adopting the measure. The findings should focus on explaining why a lack of access to nutritious food is a problem, documenting the community’s limited access, and demonstrating how the proposed law will alleviate the problem. Some courts have expressed a preference for localized findings of fact documenting the problem at the local level. To illustrate how local findings can be integrated, the model provides some findings with blank figures. It is advisable to add additional compelling localized findings, such as a map illustrating food deserts. Additional supporting information and exhibits can also be introduced at government hearings where the amendment is considered. This supporting information may then be referenced in the findings.

*The **[Common Council]** of **[City]** hereby finds and declares that:*

*Obesity and overweight are grave public health issues that increase the risk of serious chronic disease including diabetes, heart disease, stroke, and cancer.*

*During years 2009-2010, 35.9 percent of adults in the U.S. age 20 years and older were obese and 33.3 percent were overweight.<sup>21</sup>*

*In 2008 this public health epidemic cost the U.S. about \$147 billion in direct medical care costs.<sup>22</sup>*

*In New York, adult obesity and overweight prevalence rose from 42 percent in 1997 to 60 percent in 2008.<sup>23</sup> In 2010 over 5 million New York adults were overweight and over 3.5 million were obese.<sup>24</sup>*

*In 2011 obesity related health problems cost New York State \$11.8 billion.<sup>25</sup>*

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<sup>21</sup> NATL. CTR. FOR HEALTH STATISTICS, FASTSTATS: OBESITY AND OVERWEIGHT CTR. FOR DISEASE CONTROL AND PREV., <http://www.cdc.gov/nchs/fastats/overwt.htm> (last visited June 7, 2013).

<sup>22</sup> CTR. FOR DISEASE CONTROL AND PREV., OVERWEIGHT AND OBESITY: CAUSES AND CONSEQUENCES, <http://www.cdc.gov/obesity/adult/causes/index.html> (last visited June 7, 2013).

<sup>23</sup> N.Y. DEP’T. OF HEALTH, OBESITY PREV., THE OBESITY PROBLEM, HEALTH.NY.GOV, <http://www.health.ny.gov/prevention/obesity/> (last visited July 10, 2013).

<sup>24</sup> KATHLEEN WALES & IAN BRISSETTE, ADULT OVERWEIGHT AND OBESITY IN NEW YORK STATE, 2000-2010, BUREAU OF CHRONIC DISEASE EVALUATION AND RESEARCH 2 (2011), *available at* [http://www.health.ny.gov/prevention/obesity/statistics\\_and\\_impact/docs/2000-2010\\_adult\\_obesity.pdf](http://www.health.ny.gov/prevention/obesity/statistics_and_impact/docs/2000-2010_adult_obesity.pdf).

<sup>25</sup> OFFICE OF THE STATE COMPTROLLER, SOARING HEALTH CARE COSTS HIGHLIGHT NEED TO ADDRESS CHILDHOOD OBESITY 1 (2012), *available at* [http://www.osc.state.ny.us/reports/obesity\\_and\\_child\\_obesity\\_10\\_23\\_12.pdf](http://www.osc.state.ny.us/reports/obesity_and_child_obesity_10_23_12.pdf).

*Poor nutrition and diet places individuals at a greater risk for obesity and overweight.<sup>26</sup> One factor that results in poor nutrition is infrequent access to stores selling food that is both healthy and affordable.<sup>27</sup>*

*“Food deserts” are “areas that lack access to affordable fruits, vegetables, whole grains, low-fat milk, and other foods that make up the full range of a healthy diet.”<sup>28</sup>*

*Food deserts are found in both urban and rural areas, as well as in low income communities.<sup>29</sup>*

*Research has demonstrated a correlation between living in a food desert, poor nutrition, and higher BMI.<sup>30</sup>*

*Poor nutrition in communities with limited access to healthy and nutritious foods may be exacerbated by an increased number of convenience stores selling food products that are low in nutrition and high in calories.<sup>31</sup>*

*Convenience stores and small grocers located in low-income urban areas typically charge higher prices for nutritious products<sup>32</sup> (making them less accessible). As a result, highly processed and high calorie convenience foods are more affordable than healthy foods.<sup>33</sup>*

*Low-income neighborhoods and communities of color typically contain fewer grocery stores and more fast food restaurants and convenience stores than more affluent and largely Caucasian neighborhoods.<sup>34</sup> As a result, highly processed and high calorie food is more readily available.<sup>35</sup>*

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<sup>26</sup>CTR. FOR DISEASE CONTROL AND PREV., CDC VITAL SIGNS: ADULT OBESITY (August 2010), <http://www.cdc.gov/VitalSigns/AdultObesity/index.html>.

<sup>27</sup> *Id.*

<sup>28</sup> CTR. FOR DISEASE CONTROL AND PREV., A LOOK INSIDE FOOD DESERTS, <http://www.cdc.gov/Features/FoodDeserts/> (last visited June 10, 2013). New York State Law defines a “food desert” as an area with limited access to affordable and nutritious food, particularly an area predominantly comprised of lower-income neighborhoods and communities, see N.Y. AGRIC. & MKTS. LAW §260.

<sup>29</sup> Elizabeth Whalen & Michael Seserman, *Looking for an Oasis in a Food Desert: Low Income New Yorkers Lack Access to Healthy Food* 4 (2011), available at <http://www.cancer.org/acs/groups/content/@eastern/documents/webcontent/acspc-031472.pdf>.

<sup>30</sup> See Lisa Powell et al., *Associations Between Access to Food Stores and Adolescent Body Mass Index*, 33 (4S) AM. J. PREV. MED. S301 (2007); Nicole I. Larson et al., *Neighborhood Environments: Disparities in Access to Healthy Foods in the U.S.*, 36 AM. J. PREV. MED. 74 (2009); Kimberly Morland, et al., *Supermarkets, Other Food Stores, and Obesity The Atherosclerosis Risk in Communities Study*, 30(4) AM. J. OF PREV. MED. 333 (2006).

<sup>31</sup> CALIFORNIA CTR. FOR PUB. HEALTH ADVOCACY, UCLA CTR. FOR HEALTH POLICY RESEARCH & POLICYLINK, *DESIGNED FOR DISEASE: THE LINK BETWEEN LOCAL FOOD ENVIRONMENTS AND OBESITY AND DIABETES 2* (2008), available at [http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/DESIGNEDFORDISEASE\\_FINAL.PDF](http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35af0%7D/DESIGNEDFORDISEASE_FINAL.PDF) [hereinafter *DESIGNED FOR DISEASE*].

<sup>32</sup> Judith Bell & Marion Standish, *Building Healthy Communities Through Equitable Food Access*, 5(3) COMMUNITY DEVELOPMENT INVESTMENT REVIEW: FEDERAL RESERVE BANK OF SAN FRANCISCO 75, 78 (2009).

<sup>33</sup> *Id.*

<sup>34</sup> *DESIGNED FOR DISEASE*, *supra* note 31, at 2.

<sup>35</sup> *Id.*

*Residents with limited access to full-service food stores often rely on convenience stores to supplement infrequent trips to full-service stores.<sup>36</sup>*

**[Percent]** of **[City]** residents are overweight or obese.

**[Percent]** of **[City]** residents live **[X miles]** from a food retailer that routinely provides nutritious food, including a variety of products from all staple food categories: fruits, vegetables, whole grain products, lean protein and low fat dairy.

*The travel distance required of these residents to access full-service food stores contributes to traffic congestion and its associated pollution.*

**[Percent]** of **[City's]** residents are low-income.

**[City]** has a substantial interest in improving the health and welfare of its residents, including reducing the incidence of chronic disease.

*Improving access to and availability of nutritious foods is an important step in promoting the health and general welfare of **[City]**'s residents.*

*Ensuring the availability to the public of nutritious food at a convenient location is an essential land use goal that not only promotes the health and general welfare of residents, but also reduces traffic and related congestion.*

*Regulating the use of land by food retailers through the zoning code will not unduly burden legitimate business activities of retailers.*

*This Chapter complies with State Environmental Quality Review Act and the regulations of the New York Department of Environmental Conservation.*

*It is the intent of the **[City]** to implement measures through this Chapter effective in reducing the risk of chronic disease in **[City]** by improving residents' access to nutritious foods.*

Statistics provided in this model should be updated to reflect the most recent data. The following resources may provide community-specific statistics:

- Center for Disease Control and Prevention, Division of Nutrition, Physical Activity, and Obesity's Overweight and Obesity. <http://www.cdc.gov/obesity/>
- New York State Department of Health, Obesity Prevention webpage. <http://www.health.ny.gov/prevention/obesity/>
- Trust for America's Health, Key Health Data about New York. <http://healthyamericans.org/states/?stateid=NY>
- United States Department of Agriculture (USDA) resources:
  - The Food Environment Atlas presents county level statistics on food environment factors influencing food choices and diet quality, including store and restaurant proximity, food prices, and other community characteristics.

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<sup>36</sup> Sanae Inagami, et al., *You Are Where You Shop: Grocery Store Locations, Weight, and Neighborhoods*, 31(1) AM. J. PREV. MED., 10, 15 (2006).



<http://www.ers.usda.gov/data-products/food-environment-atlas/go-to-the-atlas.aspx#.Ua9h-djLWul>

- The Food Access Research Atlas provides data on food deserts by census tract.  
<http://www.ers.usda.gov/data-products/food-access-research-atlas/go-to-the-atlas.aspx#.Ua9iSdjLWul>

### Section 3: Definitions

*As used in this Chapter, the following terms shall have the meanings indicated:*

*CONVENIENCE STORE means retail use between [200] and [5,000] square feet of Retail Space primarily selling Food Products and non-Food consumer products intended for preparation, use or consumption off-site that does not fit the definition of a Grocery Store, Mobile Food Vending Unit, Restaurant, Small Food Retailer, Specialty Food Store and is not a store or vendor selling primarily fruits and vegetables.*

*DAIRY PRODUCT means animal and plant-derived milk without added caloric sweeteners, animal and plant derived low and nonfat yogurts and cheeses, including lactose free products and dairy products defined pursuant to Agriculture and Markets Law §46-A.*

*FOOD PRODUCT means all articles of food, drink, confectionary or condiment, whether simple, mixed or compound, used or intended for human consumption, and shall also include all substances or ingredients intended to be added to food for any purpose.*

*SMALL FOOD RETAILER means retail use between [200] and [5,000] square feet of Retail Space primarily selling Food Products and non-Food consumer products intended for preparation, use or consumption off-site, and dedicating at least [X]% of Retail Space to a variety of Staple Foods, including [X]% of Retail Space to Perishable Foods. Food Retailer does not include:*

- (1) Mobile Food Vending Units,*
- (2) Stores and vendors selling primarily fruits and vegetables,*
- (3) Specialty Food Stores,*
- (4) Grocery Stores,*
- (5) Restaurants primarily in the business of selling food for consumption on site.*

*GROCERY STORE means a food retail use with at least [5,000] square feet of Retail Space offering at least a variety of staple foods.*

*MOBILE FOOD VENDING UNIT means a food service establishment located in a pushcart or vehicle, self or otherwise propelled, used to store, prepare, display, service or sell food, or distribute food free of charge to the public for consumption in a place other than in or on the unit. Any such pushcart or vehicle s self or otherwise propelled, used to store, prepare,*



*display, service or sell food, or distribute food free of charge to the public for consumption in a place other than in or on the unit. Any such pushcart or vehicle shall be deemed a mobile food vending unit whether operated indoors or outdoors, on public, private or restricted space.*

*PERISHABLE FOODS means any food that may spoil or otherwise become unfit for human consumption because of its nature, type, or physical condition. Perishable food includes, but is not limited to, fresh or processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits or vegetables and foods that have been packaged, refrigerated or frozen, or otherwise require refrigeration to remain nonperishable. This definition shall not include game or wild game.*

*PERSON means any natural person, company, corporation, firm, partnership, business, organization, or other legal entity.*

*PRODUCE means fruits or vegetables in their raw or natural state, whether offered whole or pre-sliced.*

*PROTEIN means lean or low-fat meat and poultry, eggs, seafood, nuts, seeds, beans, peas, and processed soy products.*

*RETAIL SPACE means the **[floor area/ combined floor area and shelf space]** of a store where products, including non-food products, are displayed and offered for sale.*

*SPECIALITY FOOD STORE means a retail operation that sells or offers for sale specific or limited types or groups of food products and does not carry a general variety of food as does a Small Food Retailer, as defined under this section, as determined by the **[Local Zoning Board]**.*

*STAPLE FOODS means dairy products, produce, protein, and whole grains, whether frozen or unfrozen.*

*WHOLE GRAINS means food in which whole grain is the primary ingredient by weight, and which meets labeling requirements established by federal Food and Drug Administration for making a health claim as a “whole grain food with moderate fat content.”*

## Section 4. Permitted Uses

Municipalities should identify the zones or districts in which the use of land as a Small Food Retailer would benefit the community. These areas may be zoned as residential areas or may be located convenient to residential areas, ensuring that most residents have access to healthy and nutritious foods. Additionally, communities should identify those zones in which the location of Convenience Stores (i.e., retailers not offering a minimum amount of staple foods) would be a detriment to the community and prohibit the use of land for such businesses in those zones.

The zoning amendment should identify existing land uses that do not comply with the new law (such as a Convenience Store in an area where such uses are prohibited) as “nonconforming uses”, subject to the municipality’s existing rules for maintaining such status. Such designation permits continuing use of the land in a nonconforming manner on a temporary basis. If the proper circumstances arise (e.g., the use is abandoned or changed, or the owner engages in

unauthorized expansion of the building), the municipality may terminate the nonconforming use and bring that parcel of land into compliance with the zoning amendment.

For example, the amendment might include language that explicitly states:

*Existing Convenience Stores: Any Convenience Store legally in existence in zones [A, B, C] as of the effective date of this Chapter is considered a legal nonconforming use pursuant to [cross reference local conditions for legal nonconforming use].*

In the alternative a community may wish to ensure that nonconforming uses are terminated within a finite time period. As discussed in the report, a municipality may establish a reasonable period of time for a nonconforming use to terminate through amortization.<sup>37</sup> Termination may comprise the conversion of a nonconforming use to a conforming use (e.g., a Convenience Store conversion to a Small Food Retailer in a particular zone) or the relocation of a nonconforming use to a permitted district. Any municipality wishing to establish an amortization period for nonconforming use should examine the land uses that will be affected by the zoning amendment and identify a period of time that will be reasonable to conform to those uses. Keep in mind that any landowner who can demonstrate substantial financial or other hardship may successfully challenge the amendment's application to her/him and ask a court to grant additional (or indefinite) time to continue the nonconforming use.<sup>38</sup>

In light of this, a municipality wishing to establish an amortization period for the zoning amendment should specifically permit owners of existing nonconforming uses to obtain an exemption by demonstrating undue hardship and make it clear that the goal of the new law is to ensure adequate distribution of nutritious food for the health and welfare of the community and thus existing nonconforming uses may be able to make small changes to convert to a conforming use (e.g., by offering a minimum amount of staple foods). For example, a municipality might include a clause that states:

*Existing Convenience Stores: Any Convenience Store legally in existence in zones [A, B, C] as of the effective date of this Chapter is considered a nonconforming use and must terminate within [X months] of the effective date of this Chapter. The owner of any such use that is unable to terminate without undue hardship may apply to the [Zoning Board of Appeals] for permission to continue as a legal nonconforming use pursuant to [cross reference local conditions for legal nonconforming use].*

Finally, a community might wish to include restrictions on retailers selling unhealthy products, such as tobacco or alcohol. This might be achieved in this model by excluding retailers that sell such goods from the definition of Small Food Retailer, thus restricting them to locate in certain zoned districts. In the alternative, a community might simply include language restricting the density or location of Small Food Retailers that also sell tobacco or alcohol in certain zones

<sup>37</sup> Village of Valatie v. Smith, 83 N.Y.2d 396, 400-401 (1994).

<sup>38</sup> Village of Valatie v. Smith, 83 N.Y.2d 396, 400-401 (1994) (holding that amortization period is presumed valid unless owner can demonstrate that the loss suffered is so substantial that it outweighs the public benefit to be gained through the law).

(limiting the location or density restrictions to certain zones, rather than change the definition of Small Food Retailer applying throughout the zoning code). For an example, see the zoning code recently adopted by the City of Rochester, which requires stores selling certain alcoholic beverages or tobacco be located at least 500 feet from each other and from other protected areas.<sup>39</sup>

#### Step 4. Consider complementing zoning change with incentives for existing retailers

A community that does not include an amortization period in its zoning amendment might consider offering incentives to existing retailers (such as Convenience Stores, in this model) to encourage them to voluntarily offer a minimum inventory of staple foods (thereby eliminating nonconforming uses in districts zoned for Small Food Retailers rather than Convenience Stores). Moreover, a community might incentivize retailers to make other healthy changes. For example, a community might offer a benefit or reward (not necessarily through the zoning code) for convenience stores or small food retailers that reduce or eliminate certain unhealthy goods such as sugar-sweetened beverages, foods high in sodium, tobacco products or alcoholic beverages. A community might also choose to incentivize retailers to apply to accept federal benefits, such as SNAP or WIC, to ensure healthier food options are available to low-income populations.

Incentives may take many forms—there is no single benefit that will work for all communities. Communities must choose something valuable to local business owners, which is affordable for the community. Zoning benefits might include:

- A waiver from certain zoning requirements, such as minimum parking space requirements (e.g., requirements that certain retail uses provide a minimum amount of parking); or
- Density bonuses for developers that wish to include a Small Food Retailer or other healthy retailing use as part of a larger project (e.g., permit the development to exceed height or square footage limits in a zone based on the square foot of healthy inventory provided).

Non-zoning benefits or rewards might include:

- Tax credits or other incentives;
- Streamlined business permitting or reduced permit fees<sup>40</sup>;
- Other financial incentives, such as those to assist with the acquisition of refrigeration equipment or upgraded shelving and display cases; or
- Free marketing or promotion as a healthy retailer.

Incentives for new or existing businesses should include technical assistance for healthy retailing, as described in the report. Specifically, existing convenience stores and bodegas may not have ready access to staples foods at affordable prices. Community programs that coordinate the supply of staple foods, assist retailers in marketing the new inventory, or provide financial assistance for equipment upgrades (e.g., refrigerators or shelving units) will increase the chances

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<sup>39</sup> City of Rochester, N.Y. Local Law §120-146.

<sup>40</sup> See, e.g., City of Rochester, N.Y. Local law §120-208 (exempting healthier retailers from business permit requirement).

that the changes to the retail environment will be sustainable for the retailer and that the healthier food options will be accessible to the community.

## Step 5. Process

As with any local law, a zoning amendment must be adopted by the local legislature (e.g., city council). Most municipalities have an agency or department in charge of examining land use in the community, which reviews proposals and makes recommendations to the legislature prior to the adoption of zoning law. Thus, community educators will ideally educate community members, members of the zoning or planning board and legislators of the benefits of planning for the development of healthier food environments throughout the community.

The process for changing the zoning code is similar to adopting changes to other local law. As discussed in the report, a public hearing is required for any proposed change to local law. This hearing provides an opportunity for community members and advocates to present information about residents' access to healthy and nutritious foods (or lack thereof) as well as evidence that the proposed zoning change will improve access over the long term, thereby improving the health and welfare of community members. This evidence may then be referenced in the "findings" section of the proposed legislation to lay out the rationale for the new law.

Recall that the focus of any zoning change is land use, rather than regulation of business. These land use changes could be used in combination with other regulation (such as licensing or incentives designed to encourage existing retailers to carry a minimum inventory of staple foods) to further improve access to healthy food options. Once the community understands the relationship between access to nutritious foods and chronic disease, community members and decision makers can decide the best solution (or solutions) to pursue.

## Appendix D: Customer Survey Example

Source: Minneapolis Department of Health and Family Support, Minneapolis Healthy Corner Store Program: Making Produce More Visible, Affordable and Attractive, at Appendix 6 (2012), *available at* [http://www.health.state.mn.us/divs/oshii/docs/Mpls\\_Healthy\\_Corner\\_Store.pdf](http://www.health.state.mn.us/divs/oshii/docs/Mpls_Healthy_Corner_Store.pdf).



## Minneapolis Healthy Corner Store Program Customer Survey

Store Name: \_\_\_\_\_ Address: \_\_\_\_\_

Hello, the City of Minneapolis Department of Health and Family Support is working with (store name) to increase the availability of fruits and vegetables and healthy foods. As a customer of this store, we are interested in learning the types of produce items you would be likely to buy. Do you have a moment to take a 5 question survey?

Note to surveyor: Please read each question to the customer and check or write in the appropriate responses.

**1. Do you live in this neighborhood? Yes / No**

**2. How often do you shop at this store?**

- ☐ Daily
- ☐ Several times a week
- ☐ Once a week
- ☐ Every other week or several times a month
- ☐ Once a month
- ☐ Less than once a month
- ☐ Never
- ☐ Varies

**3. What types of foods or products do you buy at this store? Check all that apply.**

- ☐ Snacks (pop, chips, candy)
- ☐ Milk
- ☐ Fruits and/or vegetables
- ☐ Tobacco
- ☐ Other (please describe):



**4. Which of the following produce items would you purchase, if offered at this location?**

- ☐ Lettuce
- ☐ Cucumbers
- ☐ Apples
- ☐ Tomatoes
- ☐ Carrots
- ☐ Oranges
- ☐ Grapes
- ☐ Green Peppers
- ☐ Hot Peppers

**5. What other types of fruits and vegetables items or products would you like to see sold at this store?**

**6. Additional Comments:**

## Appendix D1: Model Retailer Survey

Source: Minneapolis Department of Health and Family Support, Minneapolis Healthy Corner Store Program: Making Produce More Visible, Affordable and Attractive, at Appendix 5(2012), *available at* [http://www.health.state.mn.us/divs/oshii/docs/Mpls\\_Healthy\\_Corner\\_Store.pdf](http://www.health.state.mn.us/divs/oshii/docs/Mpls_Healthy_Corner_Store.pdf).

## Minneapolis Healthy Corner Store Program Owner interview\*

Store Name: \_\_\_\_\_ Address: \_\_\_\_\_

### Background Questions

1a. Are you a resident of the community in which your store is located?

Yes / No

☐ 1b. How long have you lived in this neighborhood?

2. How long have you owned this store?

☐

0-2 years

☐

3-5 years

☐

6-10 years

☐

10+ years

3a. Do you own other stores in Minneapolis?

Yes / No

☐ 3b. Where?

4. How many employees do you have (not including yourself)?

5. What is your typical weekly work schedule?

6a. Does your store currently advertise?

Yes / No

☐ 6b. Where and how often?

### Product Offerings and Inventory System

7. Who orders the products for your store?

8. How do you make your product selections?

9. How do you track your inventory?

10. How do you track your product sales?

11. How many vendors do you have? Who do you work with?

12a. Do you or your staff currently order from any produce suppliers?

Yes / No

☐ 12b. Which Suppliers?

13a. If your supplier is Core-Mark, are you familiar with their “right size” program?

Yes / No

☐ 13b. What are you currently selling from this product line?

14. What, if any, challenges have you had in carrying fresh produce?

- ☐ Sourcing affordable produce
- ☐ Spoilage before it sells
- ☐ Having adequate refrigeration
- ☐ Other (please describe): \_\_\_\_\_
- ☐ None

## Customer-Base

15. Tell us a bit about your customer-base. Check all that apply.

- ☐ Limited English Proficient (LEP). Which language(s)?
- ☐ Neighborhood residents.
- ☐ Seniors
- ☐ Youth/ Students
- ☐ Families
- ☐ Commuters.
- ☐ Other (Please describe): \_\_\_\_\_

16. What percent of your customers do you estimate are “regulars?”

- ☐ less than 20%    ☐ 20 - 40%    ☐ 41 - 60%    ☐ 61 - 80%    ☐ 81 - 100%

17. Who shops at the store most frequently? (seniors, youth, workmen)?

18a. Do you have a way to track the number of customers that come in each day?

Yes / No

☐ 18b. Please describe how:

19. On average, how many customers do you have each day?

☐ under 50      ☐ 50-100      ☐ 101-150      ☐ 151-200      ☐ over 200      ☐ All ages

20. What are the busiest days of the week?

☐ Mon    ☐ Tue    ☐ Wed    ☐ Thu    ☐ Fri    ☐ Sat    ☐ Sun    ☐ All the same

21. What % of your customers do you estimate use WIC vouchers?      ☐ N/A

☐ less than 20%    ☐ 20 to 40%    ☐ 41 to 60%      ☐ 61 to 80%      ☐ 81to 100%

22. What % of your customers do you estimate use EBT?      ☐ N/A

☐ less than 20%    ☐ 20 to 40%    ☐ 41 to 60%      ☐ 61 to 80%      ☐ 81to 100%

## Customer Preferences

23. What percent of your customers do you estimate comes in primarily for snack foods (e.g. pop, chips, candy):

☐ less than 20%    ☐ 20 to 40%    ☐ 41 to 60%      ☐ 61 to 80%      ☐ 81to 100%

24. What percent of your customers do you estimate comes in primarily for staples like eggs, milk, butter, fruits and vegetables:

☐ less than 20%    ☐ 20 to 40%    ☐ 41 to 60%      ☐ 61 to 80%      ☐ 81to 100%

25. What percent of your customers do you estimate comes in primarily for all of their food needs:

☐ less than 20%    ☐ 20 to 40%    ☐ 41 to 60%      ☐ 61 to 80%      ☐ 81to 100%

26a. Do neighborhood residents ever comment about the fresh produce for sale here?

Yes / No

☐ 27b. What do they say?

27. What are your average sales of fresh produce (store over all versus fresh produce):

Sales	Daily	Weekly	Monthly	Annually
Fresh Produce				

### Potential enhancements for store

28a. Do you have any plans for any physical improvements to your store in the next year?

Yes / No

☐ 28b. Please Describe:

29a. Do you currently have any broken coolers that need to be removed?

Yes / No

☐ 29b. How many?

30. We will be developing a project plan for your store to enhance the visibility of fresh produce of healthy foods. What are your top 3-4 interests from the list below?:

Assistance opportunity	Owner's top 3-4 interests
a. Cooking demonstrations with fresh fruits and vegetables	
b. Recipe cards for healthy dishes that include the foods sold in your store	
c. Resources to purchase or update equipment or make other internal improvements (baskets, small shelving)	
d. Energy efficient lighting/refrigeration	
e. In-store signage promoting healthy food options	
f. External improvements (i.e. painting your store, selling fresh produce outside)	
g. Tracking and monitoring sales of healthy foods	
h. Alternative sourcing strategies such as purchasing produce from the farmer's market, community garden, mini farmers market	
i. Purchasing, pricing, and stocking healthy food affordably (includes training on produce handling)	
j. Strategically displaying fresh produce and healthy foods	
k. Promoting healthy food choices to neighborhood residents	



## Store Owner Input on the Minneapolis Healthy Corner Store Program

31. What about this program made you interested in wanting to become a part of it?

32. Do you have any ideas to increase the availability, visibility and affordability of fresh produce and healthy foods in your store?

33. Are you willing to work with youth, community based organizations, and/or neighborhood residents on this project?

34. As part of your assistance, you will be receiving training on produce handling. Would you be available to attend a training with other store owners?

35. What concerns you the most about being a part of this program?

36. Are there any other questions you have about the program?

Comments:

### **Creating a Healthier Minneapolis** **healthy eating + physical activity + smoke-free living**

Minneapolis Department of Health and Family Support (MDHFS)  
250 S. 4th St., Rm. 510, Minneapolis, MN 55415-1384 | [www.ci.minneapolis.mn.us/dhfs](http://www.ci.minneapolis.mn.us/dhfs)

\*Adapted from Delridge Corner Store Project

## Appendix E

### Example of Conversions Costs

The Philadelphia Healthy Corner Store Initiative provided small conversions that did not require large investments to expand a store's ability to carry healthy products.<sup>109</sup> The average cost was \$1,390 and allowed a store to introduce on average 44 new healthy products.<sup>110</sup> The following is a copy of the list of items used in mini-conversions; along with a costs break down from the Philadelphia Healthy Corner Store Initiative.

SOURCE: THE FOOD TRUST, ET AL., PHILADELPHIA'S HEALTHY CORNER STORE INITIATIVE 2010-2012, 21 (2012), *available at* [http://www.foodfitphilly.org/FOODFITPHILLY/assets/File/HCSI\\_Y2report\\_FINAL%202012.pdf](http://www.foodfitphilly.org/FOODFITPHILLY/assets/File/HCSI_Y2report_FINAL%202012.pdf)






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<sup>109</sup> PHILADELPHIA'S HEALTHY CORNER STORE, *supra* note 10, at 3.

<sup>110</sup> PHILADELPHIA'S HEALTHY CORNER STORE, *supra* note 10, at 3. The costs of conversions ranged from \$1,000 to \$5,000. *Id.* at 7.

## APPENDIX E: CUSTOMIZED MINI-CONVERSION INFRASTRUCTURAL CHANGES

The below equipment menu outlines the standard equipment that most stores receive as part of their customized mini-conversions. A customized conversion package is developed for each store based on each store's unique needs and often included one or more of the items below.

	Product	Price
	<b>Commercial Grade Wire Shelving</b> 72 H X 36 W X 16 D This shelving will be used with produce baskets to create a produce display in corner stores	\$67
	<b>Single Door Refrigerator</b> 23 cubic feet This will be used to store produce and other healthy items that need to be refrigerated	\$1,290
	<b>Produce Scale</b> Digi DS-781 Scales will be used to weigh out customers' produce at register	\$235
	<b>Produce Basket</b>	\$8–\$12
	<b>Sign Options</b>	\$5–\$12

*Additional options are available for all items. Prices may vary.*

## Appendix F

### Marketing Material Examples



Decal provided to stores participating in the Philadelphia Healthy Corner Store Network.<sup>111</sup>

Signs provided for refrigerators at stores receiving mini conversions as part of Philadelphia's Healthy Corner Store Network.<sup>112</sup>



Get Healthy Cards provided by the Philadelphia Corner Store Network, displayed at stores for customers to take.<sup>113</sup>

**Make at least half your grains whole.**

**Shopping List:**

Whole wheat bread  
Whole grain cereal  
Brown rice  
Oatmeal  
Popcorn  
Whole wheat crackers  
Whole wheat tortillas  
Whole wheat pasta  
Cornmeal  
Barley



**Let the colors be your guide:**

Whole grains are listed as the first ingredient

Whole grains are not listed as the first ingredient

Whole grains are not listed as an ingredient

<sup>111</sup> PHILADELPHIA'S HEALTHY CORNER STORE, *supra* note 10, at app. C at 16.

<sup>112</sup> PHILADELPHIA'S HEALTHY CORNER STORE, *supra* note 10, at app. C at 17.

<sup>113</sup> PHILADELPHIA'S HEALTHY CORNER STORE, *supra* note 10, at app. C at 18.

## Appendix G

### Example Monitoring Compliance Material

Source: Minneapolis Department of Health and Family Support, Minneapolis Healthy Corner Store Program: Making Produce More Visible, Affordable and Attractive, at Appendix 8(2012), *available at* [http://www.health.state.mn.us/divs/oshii/docs/Mpls\\_Healthy\\_Corner\\_Store.pdf](http://www.health.state.mn.us/divs/oshii/docs/Mpls_Healthy_Corner_Store.pdf)



## Post-Implementation Visual Assessment (Page 1)

Store Name: \_\_\_\_\_

Store Owner: \_\_\_\_\_

Date: \_\_\_\_\_

Enhancement Strategy	Status	Notes	Owner challenges, requested services
<b>Signage</b>			
Displaying "Fresh Produce" signage	yes / no		
Maintaining visible mat clings	yes / no		
Maintaining visible window clings	yes / no		
Using produce labels, neon signage	yes / some / no		
Pricing is labeled for all produce	yes / some / no		
Using "Fresh Produce" side walk sign outside	yes / no		
<b>Baskets</b>			
Impulse basket is in high traffic area	yes / no		
Using all black baskets provided for produce in and out of coolers	yes / some / no		
Baskets and other displays props available for future marketing	yes / no		
<b>Overall Store Appearance</b>			
Store is clean	yes / somewhat / no		
Produce is well-organized	yes / somewhat / no		
View of produce from front door is unobstructed	yes / no		
Use of cross-merchandizing produce displays	yes / no		
<b>Tracking Sales / Customer Response</b>			
Tracking produce sales regularly	yes / somewhat / no		
Asking customers for feedback regarding new produce items	yes / no		
Providing an opportunity for customers to request produce items	yes / no		

Additional Comments: \_\_\_\_\_

\*\*\* if responding with "some/somewhat" - indicate approximation in notes section (ex. &lt;25%, 50%, or &gt;75%)

## Creating a Healthier Minneapolis

### healthy eating + physical activity + smoke-free living

Minneapolis Department of Health and Family Support (MDHFS)  
 250 S. 4th St., Rm. 510, Minneapolis, MN 55415-1384 | [www.ci.minneapolis.mn.us/dhfs](http://www.ci.minneapolis.mn.us/dhfs)

\*Adapted from Delridge Corner Store Project

## APPENDIX H

### Funding and Other Resources for New York Communities

## FUNDING RESOURCES FOR NEW YORK COMMUNITIES

### Federal Financing Opportunities

The \$400 million Healthy Food Financing Initiative was established under the Obama administration to bring healthy food retailers to underserved communities.<sup>1</sup> Under this Initiative, financing opportunities are available through federal agencies. As of the date of this report there are 19 grant programs from the U.S. Departments of Treasury, Health and Human Services, and Agriculture that focus on expanding access to nutritious food.<sup>2</sup> Organizations that are interested in these programs are encouraged to “form partnerships and develop sustainable projects and integrated strategies” prior to applying in order to implement multiple programs that provide greater resources to combat food deserts.<sup>3</sup>

### National Organizations

**The Food Trust** is a national nonprofit working to ensure that “everyone has access to affordable, nutritious food and information to make healthy decisions.”<sup>4</sup> It partnered with Philadelphia’s Department of Health to develop the Philadelphia Healthy Corner Store Network.<sup>5</sup> The Food Trust also founded the Healthy Corner Stores Network that supports efforts to increase healthy food availability in small stores in underserved communities nationwide.<sup>6</sup>

**ChangeLab** is a Californian organization that provides model legal policies, guides, informational fact sheets, and other policy tools to assist communities in making a positive change in their environment.<sup>7</sup> Specific to financing, ChangeLab has developed a “Green for Greens” guide providing “a general overview of economic development and ideas for how to approach economic development agencies with healthy food retail proposals.”<sup>8</sup> The guide, which is available online, also provides an overview of economic development programs at the local, state, and federal level that have been or could be used for healthy food retail projects.

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<sup>1</sup>U.S. DEPT. OF HEALTH AND HUMAN SERVICES, OBAMA ADMINISTRATION DETAILS HEALTHY FOOD FINANCING INITIATIVE, (2010), <http://www.hhs.gov/news/press/2010pres/02/20100219a.html>, (last visited July 15, 2013).

<sup>2</sup>AGRIC.MKTG. SERVICES, U.S. DEP’T OF AGRIC., GRANT OPPORTUNITIES, <http://apps.ams.usda.gov/fooddeserts/grantOpportunities.aspx>, (last visited July 15, 2013).

<sup>3</sup> *Id.*

<sup>4</sup> THE FOOD TRUST, WHO WE ARE, <http://thefoodtrust.org/about> (last visited July 15, 2013).

<sup>5</sup> THE FOOD TRUST, WHAT WE DO: IN CORNER STORES, <http://thefoodtrust.org/what-we-do/corner-store> (last visited July 15, 2013).

<sup>6</sup> *Id.*; See also HEALTHY CORNER STORES NETWORK, ABOUT US, <http://www.healthycornerstores.org/about-us> (last visited July 15, 2013).

<sup>7</sup> CHANGELAB SOLUTIONS, ABOUT US, <http://changelabsolutions.org/about-us> (last visited July 15, 2013).

<sup>8</sup> CHANGELAB SOLUTIONS, GREEN FOR GREENS: FINDING PUBLIC FINANCING FOR HEALTHY FOOD RETAIL, <http://changelabsolutions.org/publications/green-for-greens> (July 15, 2013).

**Healthy Food Access Portal**, a website developed through a partnership between PolicyLink, The Food Trust, and The Reinvestment Fund provides information for communities that want to launch healthy food retail projects.<sup>9</sup> It contains a resource called “Find Money,” which provides information on current funding opportunities.<sup>10</sup>

## STATE PROGRAMS

### New York State Department of Agriculture & Markets

The New York State Department of Agriculture & Markets administers the Pride of New York program, which promotes and supports food products grown and processed in New York.<sup>11</sup> A New York community implementing either the licensing system or voluntary certification program may encourage stores to participate and utilize program benefits including marketing assistance to highlight the availability of locally sourced produce and other products at participating stores.<sup>12</sup>

### New York Healthy Food & Healthy Communities Fund (HFHC)

This program provides loans and grants to food retailers for land acquisition and predevelopment, construction or rehabilitation, equipment and infrastructure.<sup>13</sup> Stores must be located in underserved areas, defined as (1) low or moderate income census tracts (or food market sites with customer bases of 50% or greater living in low-income census tracts), and (2) having below average food market density.<sup>14</sup> Stores that apply must accept SNAP and WIC.<sup>15</sup> A certification program could consider assisting individual stores with HFHC applications to fund improvements to a store’s physical space to improve ability to carry and promote healthier food.

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<sup>9</sup> HEALTHY FOOD ACCESS PORTAL, HEALTHYFOODACCESS.ORG, <http://www.healthyfoodaccess.org/home?destination=home> (last visited July 10, 2013).

<sup>10</sup> HEALTHY FOOD ACCESS PORTAL: FIND MONEY, HEALTHYFOODACCESS.ORG, <http://www.healthyfoodaccess.org/find-money> e (last visited July 10, 2013).

<sup>11</sup> PRIDE OF NEW YORK, PRIDEOFNY.COM, <http://www.prideofny.com/> (last visited July 10, 2013).

<sup>12</sup> *Id.*

<sup>13</sup> NEW YORK HEALTHY FOOD AND HEALTHY COMMUNITIES FUND, FUND OVERVIEW, 1 (2012) *available at* [http://www.liifund.org/wp-content/uploads/2012/01/NY-HFHC-Overview-Terms\\_2012-01-17.pdf](http://www.liifund.org/wp-content/uploads/2012/01/NY-HFHC-Overview-Terms_2012-01-17.pdf).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

## Empire State Development Agency & Subsidiaries

New York State's Empire State Development (ESD) is the state's economic development agency whose mission is to "promote a vigorous and growing economy, encourage the creation of new job and economic opportunities, increase revenues to the State and its municipalities, and achieve stable and diversified local economies."<sup>16</sup> ESD has a number of programs that target economic development including corporate outreach, technical assistance to businesses, and financial assistance.<sup>17</sup> It has ten regional offices throughout the state.<sup>18</sup> ESD offers assistance through its many programs.<sup>19</sup> Working with regional councils can facilitate the application process for potential funding opportunities through ESD.<sup>20</sup> An example of working with an economic development agency can be found in Philadelphia where the Pennsylvania Department of Community and Economic development has provided funding to convert an additional 200 stores.<sup>21</sup>

## Local Political Bodies

Working with local legislative bodies on a voluntary program provides an avenue for strong local government support and potential funding from local government to assist in the program.<sup>22</sup>

## In-Kind Donations

In-kind donations from the public and private businesses can be useful for the program. Local businesses can provide items needed for mini store conversion, donate printing for marketing materials, and so forth.<sup>23</sup>

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<sup>16</sup> N.Y. EMPIRE STATE DEV., ABOUT US, ESD.NY.GOV, <http://esd.ny.gov/AboutUs.html> (last visited July 10, 2013).

<sup>17</sup> N.Y. EMPIRE STATE DEV., EMPIRE STATE DEVELOPMENT SERVICES, ESD.NY.GOV, <http://esd.ny.gov/AboutUs/Services.html> (last visited July 10, 2013).

<sup>18</sup> N.Y. EMPIRE STATE DEV., REGIONAL OVERVIEWS, ESD.NY.GOV, <http://esd.ny.gov/RegionalOverviews.html> (last visited July 10, 2013).

<sup>19</sup> N.Y. EMPIRE STATE DEV., BUSINESS PROGRAMS, ESD.NY.GOV, <http://esd.ny.gov/BusinessPrograms.html> (last visited July 10, 2013).

<sup>20</sup> REGIONAL ECONOMIC DEV., COUNCILS, REGIONALCOUNCILS.NY.GOV., <http://regionalcouncils.ny.gov/> (last visited July 10, 2013).

<sup>21</sup> PHILADELPHIA'S HEALTHY CORNER STORE, *supra* note 10, at 14.

<sup>22</sup> See CHRISTINE FRY, *supra* note 4, at 14.

<sup>23</sup> See CHRISTINE FRY, *supra* note 4, at 16.

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## *Providing legal expertise to support policies benefiting the public health.*

The **Public Health and Tobacco Policy Center** is a legal research Center within the Public Health Advocacy Institute. Our shared goal is to support and enhance a commitment to public health in individuals and institutes who shape public policy through law. We are committed to research in public health law, public health policy development; to legal technical assistance; and to collaborative work at the intersection of law and public health. Our current areas of work include tobacco control and chronic disease prevention. We are housed at the Northeastern University School of Law in Boston, Massachusetts.

### What We Do

#### Research & Information Services

- analyze and contextualize the legal landscape and scientific evidence base for emerging issues in tobacco control and other public health policy areas
- develop model policies for implementation at the organizational, municipal, or state level
- compile and analyze policy initiatives and litigation related to impactful health policy

#### Legal Technical Assistance

- assist local governments with identifying effective, feasible policy responses addressing public health concerns
- draft tailored policies to address municipalities' unique concerns
- assist local governments with policy enactment and implementation

#### Education & Outreach

- conduct in-person and online trainings that convey the legal landscape for promising policy interventions, their potential impact on a public health problem, best practices, common obstacles, and lessons learned
- facilitate strategic planning for public health agencies and other regulators
- maintain website featuring technical reports, model policies, fact sheets, toolkits, story maps, summaries of tobacco control laws
- impact development of national and federal tobacco control laws and regulations, including through collaboration with partners and *amicus curiae* briefs

### Find Us Online

#### [www.tobaccopolicycenter.org](http://www.tobaccopolicycenter.org)

The Policy Center's website provides information about local policy interventions to improve population health. We highlight factors driving tobacco use and policy solutions addressing these factors; authority and rationale for implementing local tobacco controls, and relevant federal, state, and local policies in effect in New York State. We provide contextualized summaries of recent court cases affecting tobacco product and sales regulation, newsletter summaries of relevant current issues, and more. The website provides convenient access to the Policy Center's technical reports, toolkits, model policies, fact sheets, presentations, and story maps.

#### [twitter.com/TobaccoPolicy](https://twitter.com/TobaccoPolicy)

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Follow us on Twitter and Facebook for policy updates and current events.

### Requests for Legal Technical Assistance

The Public Health and Tobacco Policy Center provides legal background and policy guidance for research, development, and implementation of tobacco control strategies and policies. We do not represent clients or provide legal advice. The Policy Center is a resource for the New York tobacco control community. Individuals from state-funded coalitions and local governments may contact us with tobacco-related legal or policy issues at [tobacco@tobaccopolicycenter.org](mailto:tobacco@tobaccopolicycenter.org).



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