

Note: Developed by Widener Law students as an example of what similar municipal ordinances might look like. Borough council should confirm with their solicitor first.

Farmer's Markets: A Step Towards
Sustainability

Jason Lepley and Mark Bogush

I. Introduction

A growing concern among society as a whole is the effects of policies and practices with a focus on the here and now rather than awareness of how conduct today can impact the lives of future generations. These concerns have fueled a growing movement towards a complete shift away from an industrial food system into a more localized community based approach to food production and distribution.¹ A still growing trend is towards farmers' markets as an alternative to traditional grocery supermarkets in an effort to have healthier food options rather than relying on mass produced unhealthy staples from the food factories.² An obstacle for many municipalities is a comprehensive ordinance allowing local governments to institute programs to initiate these markets. Further, if there are ordinances in place, they most often are generic and ambiguous. This narrative and the ordinance to follow provide a comprehensive plan for instituting farmers' market policy at the local level. Farmers' markets and community based agriculture not only provide healthier choices to individuals but will also have a significant impact on the environment by reducing harmful effects of mass packaging and distribution schemes which contribute to the exponential growth of greenhouse gas emissions.³ Farmers'

¹ Jason J. Czarnecki, *Stegner Center Young Scholar: Food, Law & the Environment: Informational and Structural Changes for a Sustainable Food System*, 31 Utah Env'tl. L. Rev. 263, 268 (2011).

² *Id.*

³ Mary Jane Angelo, *Article: Corn, Carbon, and Conservation: Rethinking U.S. Agricultural Policy in a Changing Global Environment*, 17 Geo. Mason. L. Rev. 593, 602 (2010).

markets and local food systems also promote economic growth for communities as well as provide access to different markets for small farms through direct marketing.⁴ In order for this trend to become a widespread shift towards a sustainable food system, societal changes throughout all sectors must be implemented ranging from accessibility of information and options at the local level to policy changes at all levels of government.⁵ This narrative aims to identify: the problems associated with our current food system; the positive impacts of farmers' markets and community-supported agriculture (CSA) programs on public health, the environment and local economies; the limitations and lack of adequate legislation in promoting local food systems; the need for policy changes at all levels of government; and the best practices of successful local food systems: a proposed ordinance is attached hereto. Promoting the health of its citizens while fostering growing economies with little to no impact on the environment with an eye on future generations should be the goal of any society and a logical place to start is access to healthy foods through local food systems.

II. The “food desert,” Societal and Environmental Problems of our Current Food System

A growing problem in the United States is access to healthy food choices for all residents whether they be from the inner cities or even in smaller communities. When the choices for food supply are limited to one or two grocery stores, access to healthier food choices are limited to what is carried in those stores. “When residents of a local area have limited incomes and mobility, stores that sell healthy food are often scarce or difficult to access. Experts in the field have coined the term ‘food deserts’ to describe areas with low access to healthy food that are

⁴ Hughes et al., Evaluating the Economic Impact of Farmers' Markets Using an Opportunity Cost Framework, *JOURNAL OF AGRICULTURAL AND APPLIED ECONOMICS*, 40(1), 254 (2008).

⁵ Czamezki, *supra* note 1, at 285.

often economically disadvantaged.”⁶ Data from 2010 shows that 9.7% of the U.S. population, or 29.7 million people, live in food deserts.⁷ This problem stems from another environmental problem, urban sprawl. “[T]he dominant American residential landscape is now suburban, sprawling further from downtown, and filled with low-density residential developments.”⁸ As neighborhoods have spread out away from downtown, supermarkets have followed and are constantly leaving the downtown areas of cities thus creating these “food deserts.” “Over the last century, the transformation of agriculture, and of streets, curbs, and other public spaces into transportation corridors, have helped produce the grocery store industry and pushed merchants and markets into odd corners of big cities.”⁹ Prior to World War II, access to food was generally more localized and getting to market was a weekly endeavor.¹⁰ Over the past six decades however, food production has become more nationalized and, in many instances, globalized: “[W]e get much of our food through a mechanized, centralized and globalized system that emphasizes quantity over quality.”¹¹ While the issue of food deserts can be seen in bigger metropolitan areas, the concern for access to healthy food is still relevant to smaller communities for the same reason, that being the limitation in choices.

An adverse effect of these food deserts is the growing obesity and food-related disease epidemic prevalent in the United States. Because healthier food choices are harder to find in

⁶ Kathryn Morris, *An Analysis of the Relationship Between Food Deserts and Obesity Rates in the United States*, 9 Geo Public Pol’y Rev. 65, 66 (2014)

⁷ Emily M. Broad Leib, *All (Food) Politics is Local: Increasing Food Access Through Local Government Action*, 7 Harv. L. & Pol’y Rev. 321, 324 (2013) citing Michele Ver Ploeg Et Al., U.S. Dep’t Of Agric., Economic Research Report No. 143, Access To Affordable And Nutritious Food: Updated Estimates Of Distance To Supermarkets Using 2010 Data, at iii (2012), available at <http://www.ers.usda.gov/media/956784/err143.pdf>.

⁸ Czarnetzki, *supra* note 1, at 272

⁹ Alfonso Morales and Gregory Kettles, *Article: Healthy Food Outside: Farmers’ Markets, Taco Trucks, And Sidewalk Fruit Vendors*, 26 J. Contemp. Health L. & Pol’y 20, 21 (2009).

¹⁰ Renee Cho, *Rethinking Our Food System to Combat Obesity*, State of the Planet Blog, available at <http://blogs.ei.columbia.edu/2011/12/01/rethinking-our-food-system-to-combat-obesity/>

¹¹ *Id.*

many areas, residents are left with the highly processed, and often cheaper, options at the grocery stores that are close by. “Our food system has . . . contributed to the obesity epidemic by making processed food ubiquitous and cheaper than healthy food. Because the processing of food is mechanized, labor costs are lower, and since processed foods don’t spoil, refrigeration and transport costs are reduced, and they can be sold almost anywhere.”¹²

Not only has the grocery store industry help create these food deserts, the current food system contributes extensively to the growing problem of greenhouse gas emissions. According to Best Climate Practices, “estimates released in 2014 by the UN Food and Agriculture Organization showed that emissions from crop and livestock production and fisheries have nearly doubled over the past fifty years, from 2.7 billion tonnes CO₂e in 1961 to more than 5.3 billion tonnes CO₂e in 2011.”¹³ As for the United States, 9% of US emissions come from agriculture which, on its face, does not seem like a significant amount.¹⁴ The impact is more significant when the 26% of emissions, which includes distribution of agricultural products from transportation, is taken into account.¹⁵ An obvious way to curb these effects is to reduce the amount of products sought from the industrial food system thereby reducing demand. This leaves the much healthier, more sustainable local food system as the most effective alternative.

III. The Positive Impacts of Farmers’ Markets and CSA Programs

The rapid growth of farmers' markets, swelling numbers of street vendors, and increasing attention to public health concerns, such as diabetes and obesity . . . has produced a

¹² *Id.*

¹³ Best Climate Practices, *How do agri-food systems contribute to climate change?* This article gives a brief overview of the different aspects of agriculture and food production on the environment breaking down emissions from each sector of the food production industry. Available at <http://www.bestclimatepractices.org/how-do-agri-food-systems-contribute-to-climate-change/>

¹⁴ US Environmental Protection Agency, Sources of Greenhouse Gas Emissions available at <http://www.bestclimatepractices.org/how-do-agri-food-systems-contribute-to-climate-change/>

¹⁵ *Id.*

growing interest in open air food marketing. Today, we should enable them again as a tool for fostering healthy citizens.¹⁶

A comprehensive farmer's market ordinance is one tool that should be utilized to allow for and promote access to healthier food choices for all residents. There is no doubt that farmers' markets have enjoyed a spike in recent years marking the trend towards a healthier lifestyle while also impacting local economies and curbing the environmental effects of our current food system. In addition to fostering the health of its residents, farmer's markets also have a direct impact on local economies by supporting local growers and vendors. At the same time, utilization of local food reduces the negative impacts an industrial food system has on the environment. Promoting these positive impacts is crucial to sustainable growth in a local food system. While the trend suggests movement in the right direction, awareness and choice among citizens is still very limited.

A. Promoting Health of Citizens

There is a growing demand for more healthy food options. This demand is highlighted by the increase in production of organic food supplies. "U.S. sales of organic products were an estimated \$28.4 billion in 2012—over 4 percent of total food sales—and will reach an estimated \$35 billion in 2014, according to the *Nutrition Business Journal*."¹⁷ This trend suggests that people are more conscious of what they put in their bodies and, in turn, are aware of the significant impact food has on their health. This consciousness is further fostered through direct contact with those people who produce the food we eat.¹⁸ "Both [farmers' markets and CSA] provide access to locally grown and locally processed foods, often offer organic products, and

¹⁶ Morales and Kettles, *supra* note 9, at 21

¹⁷ Organic Market Overview, United States Department of Agriculture: Economic Research Service, (*last update May 16, 2016*), <http://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture/organic-market-overview.aspx>

¹⁸ Czarnecki, *supra* note 1, at 267.

allow consumers to know or directly inquire from farmers how their food was grown, produced, and processed.”¹⁹ This ability to speak directly with our producers not only gives peace of mind to consumers but also promotes unity among members of the community through ongoing contact and fellowship. Because of this growing awareness communities “should . . . provide affordable, nutritious foods as a more effective long-term strategy for improving [community] health and food equity.”²⁰

There has also been a recent trend to incorporate markets on medical campuses as a way to foster complete care of patients in those medical centers.²¹ The idea behind this initiative is that medical centers directly impact many members of a community not only by serving patients in the area but also by employing community members.²² This direct impact gives medical centers quick access to all members of their community allowing more effective means to promote the health of the residents. “As venues that are visited by hundreds if not thousands of workers, patients, and community members each day, medical centers can provide a practical site for markets by ensuring a steady customer base.” This rationale addresses a significant issue regarding farmers’ markets which will be covered later in this narrative: returning customers. Promoting the health of its citizens is a major goal of all communities and establishing healthier food choices at the facilities that care for our community members is an obvious choice. While this approach is not feasible for all communities because they lack access to a medical center, the roadmap provided later in this narrative for a specific medical center outlines major issues to be addressed in a comprehensive farmer’s market ordinance.

¹⁹ *Id.*

²⁰ Morales and Kettles, *supra* note 9, at 31-2.

²¹ Daniel George et. al., *Public Health Potential of Farmers’ Markets on Medical Center Campuses: A Case Study From Penn State Milton S. Hershey Medical Center*, (December 2011), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3222449/>

²² *Id.*

Local food systems will also positively impact the environment through reduced greenhouse gas emissions associated with food production and distribution.

B. Reducing the Environmental Impact of Food

Something many people do not consider when they drive to their local supermarket is the impact such a huge store can have on the environment. But if one takes only a moment to reflect, it becomes apparent that such a wide variety of food choices has one of the greatest impacts on the environment because every item in the store was at some point transported to or from a factory where it was processed and packaged and then transported, sometimes thousands of miles, to be placed on the shelves.²³ Every step of this process has an impact on the environment mostly through greenhouse gas emissions.²⁴ An obvious way to reduce this impact is to buy local.

Buying local will reduce greenhouse gas emissions by 4 to 5 percent, but shifting one day per week of protein from meat or dairy to vegetables, or even another protein source (fish, chicken, eggs) has the same effect as buying all household food from local providers. A completely local diet saves the equivalent of 1,000 miles per year driven, but a one day per week protein shift from red meat to chicken, fish, or eggs saves 760 miles per year, and a one day per week shift to veggies saves 1,160 miles per year.²⁵

Not only will buying local improve health choices, but it will significantly impact the environment in a positive way. Local food systems will also promote local economies and provide small farmers access to markets they may not have had in the recent past.

²³ Angelo, *supra* note 3, at 602-3

²⁴ *Id.*

²⁵ Weber and Matthews, *Food-Miles and the Relative Climate Impacts of Food Choices in the United States*, 42 *Envtl. Sci. & Tech.* 3508, 3512-13, (2008).

C. Support for Local Economies and Small Farms

A significant impact of farmer's markets for municipalities is the effect on the local economy. These effects include the growth of the local economy through support for the growers in the area as well as possible revenue for local governments through fees and licenses.

Through direct marketing, small farms can increase their profits per acre because the costs to get the product directly to market are significantly reduced.²⁶ Also, members of the community have the opportunity to support their small local farms through direct access to their products through farmers' markets.²⁷ "Small farms also provide a source of off-farm workers for local economies . . . [and] can serve as a means for attracting affluent in-migrants to an area and in general making an area 'more livable.'"²⁸ One study of the Iowa economy in 2004 "estimated direct sales [from farmers' markets] of \$20 million and total economic impact of \$31.5 million, with \$12.2 million of that impact in personal income throughout the regional economy" and an estimated "471 fulltime jobs generated by the spin-offs arising from Iowa farmers' markets."²⁹ As one local farmer who provides a farmers' market in Williamsport, Pennsylvania with fresh meat stated, "we get most [of our income] from farmers' markets." This farmer stated that he and his wife participate in two farmers' markets and would be able to survive solely on what they make when they are at market.³⁰ Though the economic benefits of local food systems can be seen through testimonial evidence and some studies have shown the positive impacts on local economies, it is difficult to appropriately measure these benefits because "the existing literature

²⁶ Hughes et. al., *supra* note 4, at 254

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 254-5

³⁰ Personal Interview conducted by the author of this narrative. Summary can be found in casefile

has narrow geographic and market scope, making comparing studies complicated.”³¹ “Data necessary to conduct economic impact analyses are costly to obtain, and researchers have yet to agree on a standard way of accounting for the opportunity costs involved when local foods are produced and purchased or on a standard set of economic modeling assumptions.”³² One finding in the study was that farmers who used direct-to-consumer (DTC) marketing such as farmers’ markets were more likely to stay in business from 2007-2012 and tended to experience increases in sales as opposed to farmers who did not use DTC.³³ It is apparent that there is economic benefit to farmers utilizing DTC and participating at farmers’ markets because there is still a growing number of farmers’ markets nationwide. The number of farmer’s markets has grown from 1,755 in 1994 to 7,684 in 2012³⁴ and that number has further increased to 8,284 in 2014.³⁵ These figures would not continue to grow absent some significant benefit to farmers.

The demand for healthy food choices is apparent and farmers are willing to go to market with their products but what have governments done to promote and/or allow the growth of these markets?

IV. Limitations and/or Lack of Adequate Legislation

At the Federal level, the Obama Administration has promoted the expansion of farmers’ markets and “Michelle Obama has promoted markets as part of her ‘Let’s Move’ initiative.”³⁶

The 2011 Federal budget allocated some \$5 million dollars to invest in the Farmers’ Market

³¹ Sarah A. Low et. al., Trends in U.S. Local and Regional Food Systems: A Report to Congress, Report Summary, United States Department of Agriculture, available at http://www.ers.usda.gov/media/1763062/ap068_report-summary.pdf

³² *Id.*

³³ *Id.*

³⁴ Increasing Access to Farmers’ Markets, National Conference of State Legislatures, <http://www.ncsl.org/research/agriculture-and-rural-development/farmers-market.aspx>

³⁵ United States Department of Agriculture, Number of U.S. farmers’ markets continues to rise, <http://www.ers.usda.gov/data-products/chart-gallery/detail.aspx?chartId=48561&ref=collection&embed=True>

³⁶ George, *supra* note 21.

Promotion Program at the United States Department of Agriculture (USDA.) “The federal government [] also invest[ed] millions of dollars to increase the number of farmers’ markets that participate in supplemental nutrition programs, with the goal of reducing ‘food deserts’ in inner-city and rural communities.”³⁷ The Farmers’ Market Promotion Program is a significant federal program that provides grants to a wide range of businesses to foster local farmers’ markets in an effort to localize and regionalize food consumption.³⁸ This program allows individuals to apply for federal money in an effort to establish and continue local food markets.³⁹ One case study showed that a farmers’ market in Columbia Heights in Washington D.C. was granted \$75,970 to continue the local farmers’ market. The study further provided that the market became so popular that they added a second day of the week to allow for more sales and greater participation in the market.⁴⁰ One drawback to this program is that many cities may not be aware that federal funding may be available to them for establishing farmers’ markets, especially smaller municipalities. A review of the awarded grants shows that only four cities in Pennsylvania, namely Reading, Uniontown, Bedford, and Easton were awarded grants totaling \$263,854.00.⁴¹ Further advertising and advocating of this program could greatly benefit local governments who have an interest in sustaining their local food systems.

Many states, through their departments of agriculture, “have significant authority to encourage the development of farmers’ markets within [their] states.”⁴² It is apparent that while

³⁷ *Id.*

³⁸ Farmers’ Market Promotion Program, United States Department of Agriculture, <https://www.ams.usda.gov/services/grants/fmpp>

³⁹ *Id.*

⁴⁰ Farmers Market Promotion Program (FMPP) Final Performance Report, https://www.ams.usda.gov/sites/default/files/media/14-FMPPX-DC-0036_Final%20Report.pdf

⁴¹ USDA Agricultural Marketing Service, Transportation and Marketing, Farmers Market Promotion Program, Fiscal Year 2015, Description of Funded Projects, available at https://www.ams.usda.gov/sites/default/files/media/FMPP_2015DescriptionOfFundedProjects.pdf

⁴² Czarnecki, *supra* note 1, at 271

“[s]tates can and do provide exemptions to state labeling and packing requirements to encourage farmers’ markets[,] . . . farmers’ market vendors still need to comply with health and safety standards when selling at the market . . . which pose additional burdens.”⁴³ Another barrier to farmers’ market vendors is the required registration with state government for sale of food products.⁴⁴ Somewhat ambiguous in the application is the difference between packaged food and “food for immediate consumption.”⁴⁵ Nowhere in the registration form is fresh produce delineated so the question arises if it is necessary for farmers with fresh fruits and vegetables that are not for immediate consumption to complete the form.⁴⁶

Similar to the federal promotion program, many states offer funding for farmers’ markets on a producer and individual level. For instance, Pennsylvania offers vouchers for senior citizens and low-income families through the Farmers’ Market Nutrition Program (FMNP) “to purchase fresh, local produce at farmers markets and farm stands across the state.”⁴⁷ However, one drawback to state assistance programs is that most farmers’ markets do not accept funds from the programs because they are not outfitted with the machines necessary to accept the debit-card like funds.⁴⁸ State legislatures are taking the initiative to incorporate Electronic Benefit Transfer (EBT) machines at farmers’ markets but the effort has been slow.⁴⁹ “At one market in Pennsylvania, sales to Supplemental Nutrition Assistance Program (SNAP)⁵⁰ card holders

⁴³ *Id.*

⁴⁴ Pennsylvania Department of Agriculture Bureau of Food Safety and Laboratory Services, online application, available at <http://www.agriculture.pa.gov/Protect/FoodSafety/Retail%20Food/Documents/APPLICATION%20PACKET-%20FARMERS%20MARKETS.pdf>

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Pennsylvania Pressroom, Wolf Administration Kicks Off Farmers Market Nutrition Program; Highlights Funding in Governor's Budget, <http://www.media.pa.gov/Pages/Health-Details.aspx?newsid=222>

⁴⁸ Increasing Access to Farmers’ Markets, *supra* note 33.

⁴⁹ *Id.*

⁵⁰ United States Department of Agriculture, Supplemental Nutrition Assistance Program, available at <http://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap> “SNAP offers nutrition assistance to

increased anywhere from 74 percent to over 200 percent after providing each vendor with an EBT card terminal.”⁵¹ While this effort is commendable, most farmers’ markets still only accept cash and when individuals have limited resources or only have state or federal assistance through EBT cards, their access to the local food system is very limited.

It is apparent that there is a National and State level initiative to expand the viability of local food systems with obvious limitations; however, where most of the effort will pay off is at the local government level. “Municipal governments play an especially important role given local control over [] property rules that can be modified to give fresh food marketing more space to sprout and security to grow.”⁵² Local governments are essential in the promotion of farmers’ markets as it is there that laws regarding property rights and zoning are handled first by city governments.

V. The Need for Policy Changes at all Levels of Government

If the move from industrialized agriculture to localized and regionalized food systems is to become a reality, a complete change in policy is needed from local governments all the way to the federal level. While the most effective changes in policy will come at the local level, a brief overview of some of the federal and state level changes is explored as a foundation for instituted local policy as they may provide assistance to local governments.

There have been recent federal changes as evidenced by the aforementioned Farmers’ Market Promotion Program which allocates federal funding to establishing farmers’ markets.⁵³

millions of eligible, low-income individuals and families and provides economic benefits to communities. SNAP is the largest program in the domestic hunger safety net. The Food and Nutrition Service works with State agencies, nutrition educators, and neighborhood and faith-based organizations to ensure that those eligible for nutrition assistance can make informed decisions about applying for the program and can access benefits. FNS also works with State partners and the retail community to improve program administration and ensure program integrity.”

⁵¹ Increasing Access to Farmers’ Markets, *supra* note 33.

⁵² Czarnecki, *supra* note 1 at 272.

⁵³ FMPP, *supra* note 38

However, national policy towards subsidies for large farming corporations is still a vast majority of the policies instituted by the federal government.⁵⁴ The crops that are subsidized through the federal farm bill are the commodities sold on the global market such as corn, wheat, soybean, cotton, rice, peanut, and dairy.⁵⁵ While this type of funding may be necessary for the US economy, it leaves little room for promoting small farms and the effect of direct marketing to consumers through farmers' markets. Although the new farm bill calls for cuts in this spending by \$8 billion over the next 10 years, the possibility exist to reallocate these funds with incentives to buy locally such as the state programs for vouchers for seniors and low-income families. This change in policy could have a national effect on where people shop for their food and possibly help in shifting away from industrialized food systems to more local farmers' markets.

State agriculture policy has a more direct effect on how land is used and what may be farmed on it. This realization offers solutions to transforming from the industrialized food system to more localized food. A growing concern coupled with urban sprawl is the complete loss of farm land in rural areas.⁵⁶ More than 40 acres of farmland are lost every hour to urban sprawl and development.⁵⁷ In response to these losses, state legislatures have enacted preservation programs in an effort to save farmland through land trusts and conservation.⁵⁸ One solution for moving from industrialized food to more locally grown systems may be to encourage participation in local markets in order to receive state funding. For example, in Delaware, state funded loans are available for farms of 15 acres or more to young farmers between the ages of

⁵⁴ Amelia Urry, *Our crazy farm subsidies, explained*, Grist, available at <http://grist.org/food/our-crazy-farm-subsidies-explained/>

⁵⁵ *Id.*

⁵⁶ Farmland Preservation, National Conference of State Legislatures, available at

<http://www.ncsl.org/research/agriculture-and-rural-development/farmland-preservation-2012.aspx>

⁵⁷ American Farmland Trust, *No Farms, No Food*, available at <http://www.ncsl.org/research/agriculture-and-rural-development/farmland-preservation-2012.aspx>

⁵⁸ Farmland Preservation, *supra* note 56

18-40 years.⁵⁹ A condition to receiving the loan is “farmers must preserve parts of their land in perpetuity through Preservation Easements.”⁶⁰ The possibility exists to condition the loan on participation in local food markets with the emphasis on community as well as preservation. In Massachusetts, funding is available for landowners whose land has been used for agriculture for the previous two years with at least five acres and income of \$500 from those five acres in those years.⁶¹ Here again, the funds could be conditioned on participation in a local farmers’ market. State level policy can also have a desired effect on promoting a localized food system but the greatest effects will come from local levels of government. Another more direct effect on farmers’ markets are state laws regarding food processing and manufacturing requirements.⁶² Statewide policy regarding these concerns need to be addressed in order for local market vendors to be able to operate with full knowledge of any requirements which pertain to their specific product.⁶³ “[S]ome states, such as Washington, have laws which exempt farmers from the need to obtain licenses or pay fees, [but] these exemptions typically only apply to vegetables and fruit in the raw form and may not cover either meat products or other processed foods.”⁶⁴ One drawback to this type of legislation is that a significant proportion of foods available at markets such meat, dairy, and eggs, are not addressed.⁶⁵ If states are to assist vendors in knowing exactly what products require compliance with specific regulations, it is paramount to address these issues in the most comprehensive way in order to ensure public health and safety in establishing viable farmers’ markets.

⁵⁹ Farmland Preservation, *supra* note 56, pdf available at <http://www.ncsl.org/documents/agri/DelawareFA.pdf>

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Neil Hamilton, *Farmers Market Policy Inventory: An Inventory of Federal, State, and Local Examples*, 13 (2006), <http://www.pps.org/pdf/FarmersMarketPolicyPaperFINAL.pdf>

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

“[L]ocal communities provide the base of support and implementation for the local and slow food movements, farm-to-table, and farm-to-school” programs.⁶⁶ “If cities are committed to developing farmers markets as part of the local economic and social structure, steps need to be taken to establish the rules and procedures for market operation.”⁶⁷ Hamilton addresses the policy issues for local governments and points out that the logical first step is determining where a market can be setup.⁶⁸ These concerns include location of the market in relation to adjacent businesses, parking, and whether permanent locations in the cities is possible.⁶⁹ Another concern of local governments is what zoning issues may be encountered and how they are to be dealt with.⁷⁰ Some cities issue conditional or special use permits for zoning issues while others develop comprehensive rules for allowing markets in certain locations.⁷¹ “If cities develop ordinances or procedures to regulate farmers markets, it is important to obtain the input of market vendors, managers, and consumers to insure the regulations do not place unnecessary or unworkable burdens on the operation of markets.”⁷² Probably the most important issue surrounding local policy in developing viable markets is the need to advertise and promote the market: without customers, no market can survive. There are plenty of options in promoting local markets ranging from non-profit organizations assuming the responsibility of organizing, maintaining, and promoting the market to establishing local farmers’ market departments in municipal governments.⁷³ “The [local municipal code] chapter designates the market manager, provides for the establishment of market fees and authorizes staff support for the farmers market

⁶⁶ Czarnecki, *supra* note 1 at 281

⁶⁷ Hamilton, *supra* note 62

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Hamilton, *supra* note 62.

⁷³ *Id.*

association, essentially as a public function.”⁷⁴ A completely logical policy for cities is farmers’ markets networks which could share in the costs of operations in larger cities.⁷⁵ There are many concerns with local policy but solutions are abound if each locality is willing and able to research and institute policies that have worked in other locations.

Many of the existing ordinances are limited in specificity and mostly address minor zoning issues, parking concerns, and hours of operation. While these policies should be addressed in any farmers’ market ordinance, there are other important policies that need to be addressed in order for the ordinance to have the desired effect. One ordinance that attempts to address a more comprehensive assortment of policies is the model ordinance for Cumberland County. That ordinance not only addressed the logistics such as hours of operation and zoning issues, but also addresses more extensive market operation policies such as public address systems and the implementation of a market manager.⁷⁶ Issues still lacking from this more comprehensive ordinance are penalty provisions which will allow market managers to more appropriately address violations of the ordinance with the proper authority. The ordinance that follows eliminates any confusion in this regard with appropriate penalty provisions available to the market manager when needed. There is little to be found on the effectiveness of these ordinances; however, a concern for smaller communities may be whether any ordinance based on a larger community may have significant effect on their community structure. One way to accommodate these concerns is with mobile farmers’ markets. These types of markets will be addressed in next section but with this type of provision available in an ordinance, smaller

⁷⁴ Hamilton, *supra* note 62.

⁷⁵ *Id.*

⁷⁶ Farmers’ Market Model Ordinance, Cumberland County Planning Department, available at <https://www.ccpa.net/DocumentCenter/View/21220>

communities can better utilize the law by allowing mobile markets to participate in their communities at certain times and in certain locations.

Policy initiatives at all levels of government are essential to establishing a more localized food system and move away from the costly industrialized system currently prevalent in our nation. In order to be successful, however, it is necessary to evaluate other jurisdictions to ascertain what has worked and what has not.

VI. Case Studies of other Jurisdictions

In drafting a model ordinance, it is useful to evaluate existing farmers' markets in an effort to ascertain what is working and what may need to be included or excluded in the provisions of the law. Although no ordinance was included in these studies, they nevertheless provide valuable information used in drafting the ordinance that follows.

A. The Gettysburg and Adams County Farmers' Markets

A case study of the Gettysburg Farmers' Markets was conducted in 2012 as an effort to establish how the market could better operate and reach a larger customer base giving access to healthier food choices and foster a sense of community among residents of the area.⁷⁷ The case study examined the Gettysburg Farmers' Market as well as two other markets in the Gettysburg area.⁷⁸ The study consisted of interviews with the vendors at the markets as well 370 random customers frequenting the markets.⁷⁹ It was found that the majority of products purchased at these were value-added products such as jams, honey, and sauces followed by fresh fruits and

⁷⁷ Paul A. DiSalvo et al, Farmers Markets and the Local Food System: The Case of Gettysburg, Pennsylvania, The Cupola, Scholarship at Gettysburg College, http://cupola.gettysburg.edu/cgi/viewcontent.cgi?article=1064&context=student_scholarship

⁷⁸ *Id.* at 19

⁷⁹ *Id.*

vegetables from farms within a 50 mile radius.⁸⁰ The study also examined the age of the vendors and found that a majority of the vendors were in business between 1-5 years. The survey also examined the daily earnings of vendors through the markets showing a wide range of incomes for different vendors.⁸¹ The study also revealed that most of the products lacked any necessary certification and the most commonly needed was for organic products.⁸²

As for customers, the study focused on how often the customers visited the markets, how they learned about the market, how far they traveled, and what products were sought after in visiting the markets.⁸³ The study also examined how much customers were spending at the markets and also inquired the percent of the shoppers' budget that was expended at market.⁸⁴ Most of the shoppers stated that they spent less than 10% of their weekly food budget at the markets.⁸⁵ The study also sought to distinguish among shopper demographics including age and race.⁸⁶ One significant aspect of the study was the use of SNAP/EBT discussed previously and found that customer bases could be significantly grown if all the markets accepted this type of payment.⁸⁷

The overall conclusion of the study was that a primary concern of the markets is customer retention and access to unrepresented customer bases.⁸⁸ The report recommends expanded acceptance of SNAP/EBT cards, increased public transportation to the markets, and versatile advertising to attract new customers.⁸⁹

⁸⁰ *Id.* at 38

⁸¹ *Id.* at 44-5

⁸² *Id.* at 46

⁸³ *Id.* at 34-8

⁸⁴ *Id.* at 35

⁸⁵ *Id.*

⁸⁶ *Id.* at 21-2

⁸⁷ *Id.* at 50

⁸⁸ *Id.*

⁸⁹ *Id.*

B. Penn State Milton S. Hershey Medical Center Farmers' Market

The Penn State Hershey Medical Center (Penn State) provides a comprehensive approach to establishing a farmers' market. The case study discussed below provides a roadmap of considerations to starting a farmers' market by addressing concerns ranging from types of vendors to admit to zoning considerations. An ordinance for this market was not available or was not implemented but the information used in establishing the market provides local governments with the tools needed to address many of the issues surrounding farmers' markets and should be considered in drafting an ordinance.

The medical center established a farmers' market on its campus with five stated goals: (1) to increase community access to healthy, locally grown foods; (2) support local farmers engaged in sustainable practices by creating another venue to sell their goods; (3) establish opportunities for community wellness partnerships (e.g., free health screenings, public education about prevention and nutrition); (4) build a community space for interaction between employees of a large medical center and residents from surrounding neighborhoods; and (5) pay homage to the agricultural heritage of the land surrounding Penn State.⁹⁰ The study also delineates what vendors would be involved limiting them to producers amounting to 80% organic farmers based on their practices and not solely on whether they were certified organic.⁹¹ The reason for this distinction the author explains is that some producers did not obtain certification because the process to do so was “onerous, [and] many local farmers choose to use organic practices without

⁹⁰ George et al, *supra* note 21

⁹¹ *Id.*

seeking formal approval.”⁹² The effort also limited vendors to within a 25 mile radius in an effort to reduce the carbon footprint of the endeavor addressing the environmental aspect of a local food system.⁹³

Penn State first conducted market research by speaking with other medical centers who had already established on-campus farmers’ markets like the Cleveland Clinic.⁹⁴ This information proved vital as structure issues and leadership structures were implemented in Penn State’s plan and also yielded ideas such as the hospital cafeteria purchasing the leftover produce from the markets.⁹⁵ They next spoke to other local farmers’ market “masters” to obtain information on logistics such as operating hours, marketing strategies, materials needed, etc. and also were able to obtain vendor contacts to recruit producers and even had some of the “masters” provide their bylaws for Penn State to use themselves.⁹⁶ Another aspect of this communication offered by the author was that this communication established a working relationship with other markets in an effort not to compete but to cooperate in fostering community relationships and furthering the goal of healthy living in the communities.⁹⁷

Initial concerns from the leadership at the medical center were addressed in the subsequent bylaws and included such provisions as having the vendors responsible for removing waste from the campus in order to limit additional costs to Penn State.⁹⁸

Next the study suggests that research on zoning regulations at city hall was necessary in order to ensure compliance with any requirements and that formal appeals were filed with the zoning committee.⁹⁹

⁹² *Id.*

⁹³ George et al, *supra* note 21

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ George et al, *supra* note 21

Penn State next conducted surveys of its employees and had open discussions through email with the general public and found that 98.8% of those responding to the inquiry would participate in the market.¹⁰⁰ Not only did the survey yield a “mandate” for the market and showed what types of products customers were interested in, over half of the respondents indicated they would walk to the market which spurred a new initiative by the medical center aimed at physical activity.¹⁰¹

The next step once the market was approved both by the medical center and zoning committees was to establish a governing association consisting of member-vendors who had the ability to vote on existing bylaws and help structure the market.¹⁰²

Next, Penn State started an advertising campaign aimed at other medical professionals and their employees alike in an effort to spread the word about the market.¹⁰³ One aspect Penn State was able to accomplish other markets cannot was the availability of medical professionals and allocated three booths in the market for community wellness programs.¹⁰⁴ This effort would not be limited to a market in a medical center as other markets could set aside booths for medical professionals to have a presence but may require concessions on the part of the organizers if fees are needed to obtain permission from medical boards and/or hospitals.

Penn State then launched a three phase marketing strategy to spread the word of the market and inform potential customers of what was available at the market.¹⁰⁵ The campaign involved branding of the market, in-house publications, and email groups from the 1500 email

⁹⁹ *Id.*

¹⁰⁰ George et al, *supra* note 21

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ George et al, *supra* note 21

addresses from the previous surveys.¹⁰⁶ They also utilized “further grassroots community outreach involve[ing] contacting local media outlets (newspapers, radio, and television), neighborhood newsletters, local advocacy groups, day care centers, senior centers, local politicians, and local barbershops.”¹⁰⁷ Another outlet to be explored would be social media as a mode of advertising which has proven a very useful tool in promoting one’s business.

Penn State also sought to serve a more diverse demographic because the campus was located in a rural, more “affluent” area.¹⁰⁸ To do this, Penn State began to register the farmers’ market with federal and state assistance programs as an incentive to draw in low-income customers.¹⁰⁹ They also worked with non-profit organizations to provide surplus produce to local soup kitchens, homeless shelters, halfway houses, and community clinics.¹¹⁰

As is evident, this case study provides a comprehensive roadmap in establishing a farmers’ market by providing step-by-step considerations to address all concerns involved in maintaining a well-rounded farmers’ market. This should be the model used as a starting point with differing needs of different communities supplemented where needed.

While this case study provides relevant information in addressing concerns for local governments, an issue left unresolved is that of space. Penn State had at its disposal a vast campus on which to base its market. Many small communities will lack this the space needed to establish a large farmers’ market. This is where mobile farmers’ markets could alleviate this concern while still affording residents the benefits of locally sourced food. Issues that may arise with mobile food vendors are licensing requirements, permitted locations, restrictions on what

¹⁰⁶ *Id.*

¹⁰⁷ George et al, *supra* note 21

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

can be sold, safety issues surrounding crowds that may gather, and permitted hours of operation. The licensing requirement can be met by establishing a process by which vendors can acquire the license from the municipality similar to that of a mobile restaurant or food truck. One advantage to this process would be for local governments to communicate with each other and establish a type of reciprocity whereby a vendor with a license in a neighboring community would be permitted to sell his products in both areas. The advantage would serve both the local government and the vendor by streamlining the process while allowing for the same vendor to serve different communities on designated days.

The locations permitted in the ordinance that follows are well defined and minimize any nuisance to local businesses while also addressing safety concerns such as lines that form in waiting to purchase products. The ordinance also addressed the other concerns and establishes hours of operation as well as the products permitted for sale by mobile vendors.

Farmers' markets will play a significant role in battling the health crisis in our society as well as promoting local economies and minimizing the threats posed by an industrialized food system. The preceding narrative provides the necessary information for establishing these markets but also addresses the concerns of smaller communities with limited resources for promoting and implementing farmers' markets by allowing for mobile food vendors that can serve multiple communities in a given area.

VIII. Conclusion

Promoting the health of its citizens while fostering growing economies with little to no impact on the environment with an eye on future generations should be the goal of any society and a logical place to start is access to healthy foods through local food systems. Farmers' markets can provide nutritional food choices to members of a community and lessen the effects

of food deserts by bringing the markets to the public. Farmers' markets will also reduce the impact of the current food system on the environment by reducing the carbon footprint of the industrial food system. With food available at local markets supplied by local producers, products will no longer need to travel the average 1500 miles to get to market but may travel as little as a few miles. Farmers' markets will also provide more market choices for small and medium size producers thereby promoting the local and regional economies. While there are federal and state initiatives to foster the prevalence of farmers' markets, the bigger impact will come from local governments and they should strive to spread the word of the viability of farmers' markets while also encouraging locals to participate in markets already established and aid, in any way possible, the startup of any new markets. There are many things to consider when starting a farmers' market but there are models available which address most of the concerns with the initial startup. The following proposed ordinance attempts to address all these issues using the methods promulgated in this narrative and other successful farmers' markets.

Farmer's Markets
Ordinance No: _____

An ordinance of _____ Municipality, Pennsylvania, providing for the requirements for the operation of farmer's markets and mobile farmer's markets.

(1) Within the municipality there is an increased interest and demand for access to locally grown and raised food.

(2) The municipality has determined that it is in the best interest of the municipality to promote policies for a sustainable future, including the growing, developing and consuming with the least possible impact on nature.

(3) The municipality desires to increase access to affordable, healthy and locally sourced foods, promote and encourage community-building and support local agriculture and economic development.

(4) The authority in this ordinance stems from this Commonwealth's interest in protecting and enhancing the health, welfare and safety of the public through the promotion and implementation of farmers markets and access to locally sourced foods.

(5) Such goals can be accomplished by providing producers of locally grown and raised food with the ability to directly reach residents without requiring such products to be sold in fixed location storefronts.

(6) Extensive regulation is necessary to prevent the sale of other types of goods that could change the character of the use inappropriate for residential neighborhoods in locations zoned residential where farmer's markets are allowed to sell directly to residents.

(7) The municipality finds it to be in the public health, safety and general welfare to adopt zoning regulations governing the definition, location and operation of farmer's markets within the various zoning districts in this municipality.

(8) The municipality intends to mandate that all farmers' markets and their vendors should accept forms of payment by participants of Federal, State, or local food assistance programs to ensure that low-income residents have access to fresh produce and local farmers can benefit from increased access to the spending power of these consumers.

NOW THEREFORE, it is hereby ORDAINED and ENACTED by the Board of Commissioners of the Municipality of _____ and is hereby enacted by the Authority of same as follows:

Section 1. Short title.

This ordinance shall be known and may be cited as the Farmers Market Ordinance.

Section 2. Declaration of purpose.

The _____ Municipality, Pennsylvania, finds and declares as follows:

Section 3. Statutory authority.

The municipality of _____ is empowered to regulate land uses under the provisions of the act of July 31, 1968 C.P.L. 805, No. 2471, known as the Pennsylvania Municipalities Planning Code, 53 P.S. § 10101, which authorizes municipalities to enact, amend or repeal zoning ordinances.¹¹¹

Section 4. Definitions.

The following words and terms, when used in this chapter, shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Applicant.” Any person or business who applies for a license/license renewal under the provisions of this chapter.¹¹²

“Farmer’s market.” A retail sales use open to the public, operated by a governmental agency, a nonprofit organization, or one or more producers where:¹¹³

(1) at least (60%,75,80,XX) of the displayed inventory of the products sold in each Farmer’s Market is Farm Products or Value-Added Farm Products;

(2) at least (60%,75,80,XX) of the booths open during the market’s hours of operation are Producers, or family members or employees or agents of Producers.

“Farmer’s market structure.” Includes, but is not limited to, outdoor display stands, booths, tables, and stalls.

“Farm products.” Items sold at a farmer’s market from a producer. The term shall include, but are not limited to agricultural products, such as fruits, vegetables, mushrooms, herbs, nuts, eggs, honey or other bee products, flowers, nursery stock, livestock food products (including meat, milk, cheese and other dairy products) and seafood.¹¹⁴ The term shall not include landscaping products, including, but not limited to, stone, soil, mulch, and concrete.¹¹⁵

¹¹¹ The Pennsylvania Municipal Planning Code (MPC; Act of 1968, P.L.805, No.247) empowers counties and municipalities, individually or jointly, to plan their development and to govern the same by zoning, subdivision and land development ordinances and additional tools.

¹¹² The definition of “applicant” was taken from Harrisburg’s Food Truck Ordinance, Harrisburg, Pennsylvania, Municipal Code §6-605.4.

¹¹³ *Id.*; Atlanta Zoning Ordinance, Farmer’s Market Text Amendment, Z-10-030 (2010). The term “Farmer’s Market” is not defined by law in Pennsylvania. The varying percentages in paragraphs 1-3 of this definition can be set by the municipality.

¹¹⁴ Cumberland County Planning Department, Farmers’ Market Model Ordinance (2014).

¹¹⁵ Model Ordinance on Farm Direct Marketing, Burlington County Farmland Preservation Program.

“Market manager.” A person or organization that manages the operation of the farmer’s market, assigns space to producers and sellers, directs the maintenance of premises and records and performs related duties as required.¹¹⁶

“Mobile farmer’s market.” Any motorized or nonmotorized vehicle, including but not limited to carts, stands, kiosks, or any other device designed to be portable and not permanently attached to the ground and ancillary equipment from which farm products are sold or intended to be sold by a mobile food vendor.¹¹⁷

“Mobile food vendor.” A person who sells, intends to sell or offers to sell farm products in or about the streets of the Municipality from a mobile farmer’s market.

“Producer.” A person or entity that:

(1) raises or produces farm products on the land that the person or entity farms and owns, rents, or leases; or

(2) a person or entity that creates value-added farm products.¹¹⁸

“Value-added farm product.” Any product processed by a producer from a farm product, such as baked goods, jams and jellies, canned vegetables, dried fruits, syrups, salsas, salad dressings, fours, coffee, smoked or canned meats or fish, sausages or prepared foods.¹¹⁹

“Vendor.” A farmer or other person designated as having the right to participate in the farmer’s market.

Section 5. Permitted Uses of farmer’s markets.

Farmer’s markets shall be permitted in the following zoning districts:¹²⁰

(1) Commercial /industrial zoning districts subject to the requirements of this section.

(2) Conditional use/special exception in mixed use zoning districts subject to the requirements of this section.

(3) Conditional use/special exception in residential zoning districts as an accessory use to nonprofit organizations, churches, schools, private clubs and organizations and personal residence.¹²¹

¹¹⁶ Cumberland County Planning Department, Farmers’ Market Model Ordinance (2014). The Market Manager can act as market liaison for customers, potential vendors, and resolve disputes which may arise. The market manager may also act as the applicant for zoning and building permit applications on behalf of the market, specifically within public markets.

¹¹⁷ The content of this definition was taken from Harrisburg’s Food Truck Ordinance, Title 6 Section 6-505.

¹¹⁸ *Id.*

¹¹⁹ Atlanta Zoning Ordinance, Farmer’s Market Text Amendment, Z-10-030 (2010).

¹²⁰ Cumberland County Planning Department, Farmers’ Market Model Ordinance (2014). Permitting Farmer’s Markets by right may be more appropriate for mixed use districts. Due to the complexity of zoning issues, Farmer’s Markets may not be appropriate for all residential areas, however paragraph 3 above allows for special exceptions to permit Farmer’s Markets as accessory uses.

¹²¹ *Id.* The Municipality may classify certain uses as permitted by special exception, or as conditional uses pursuant to 53 P.S. §10603(c)(1), (2). The Township of Exeter, PA permits Farmer’s Markets as an accessory, temporary use

Section 6. Specific criteria.

(a) Setbacks -- The following shall apply:

(1) Farmer's market structures shall comply with the accessory building setbacks in the district in which it is located.¹²²

(2) Farmer's market structures shall be set back (25', 50', XX') from adjacent residential property lines and zoning districts.

(b) Coverage. --

The retail sales area shall be considered to be that of the smallest rectangle, or other regular geometric shape which encompasses the farmer's market structure, plus any adjoining aisles or walkways from which consumers can inspect items for sale. The retail sales area shall include indoor or out outdoor areas as listed above.¹²³

(c) Height. --

Farmers market structures shall be in conformance with building height regulations for accessory structures of the zoning district in which it is located.¹²⁴

(d) Parking.¹²⁵ -- The following shall apply:

(1) The applicant shall demonstrate sufficient parking spaces and loading spaces will be available or provided for all uses proposed.

(2) In zoning districts where there is no minimum parking requirement, there shall be no parking required for a farmer's market.

(3) In the event that a farmer's market is located on a property that has a principle use with days or hours of operation that do not overlap with the days or hours of operation of a farmer's market, any parking spaces serving the principle use may be counted toward the required number of parking spaces for a farmer's market. In the event that a farmer's market is located on a property that has a principle use with hours of operation that overlap with the hours of operation of a farmer's market, shared may be permitted only if the applicant can demonstrate that the parking provided will be sufficient for each use.

(e) Operation.

in *any* zoning district. Municipalities may choose to permit such use in all zoning districts, and can simplify section 3 of this ordinance accordingly.

¹²² Cumberland County Planning Department, Farmers' Market Model Ordinance (2014).

¹²³ *Id.* This model ordinance provides an option to be placed in the ordinance for no more than 10 vendors or a retail sale area no greater than 2,000 square feet for those markets in Residential zoning districts. Municipalities can choose to adopt language capping square footage or number of vendors in this section if they see fit.

¹²⁴ *Id.* This section applies restrictions for accessory structures. If the Municipality so chooses, they can opt to adopt standards for principle structures in the zoning district, rather than accessory structures. The goal of this drafting, however, was to permit farmer's markets accessory structures, rather than principle structures.

¹²⁵ Cumberland County Planning Department, Farmers' Market Model Ordinance (2014). One parking space for every 200 square feet is commonly used for retail uses, however parking should be consistent with the municipality's existing parking requirements for retail uses.

Farmer's markets may operate on Monday, Tuesday, Wednesday, Thursday, Friday, Saturday, Sunday. Hours of operation, including set up and removal of all farmer's market structures, for outdoor farmer's markets shall be limited to the hours between sunrise and sunset.¹²⁶

(f) Signage. --

Permanent, temporary and directional signs shall be permitted to promote farmer's market marketing subject to the following conditions:¹²⁷

(1) A free-standing, permanent on-site business or advertising sign on the property shall comply with the following conditions:

(i) The sign shall be setback (10, 20,XX) feet from the property line;

(ii) The total area of the sign shall not exceed (10,20,XX) square feet per side; and

(iii) The maximum height to the top of the sign shall not exceed (10,20,XX) feet from ground level.

(2) A temporary sign shall comply with the following conditions:

(i) The sign shall not exceed (6,8,10,XX) square feet;

(ii) If erected at road intersections, permission of the property owner or easement holder on whose property the sign is to be located shall be granted; and

(iii) The sign shall not obstruct visibility of vehicles at intersections.

Section 7. Market operations.¹²⁸

(a) Admission charge.-- There shall be no admission charge levied by the vendor or market manager for any person to enter the farmer's market or the area surrounding the farmer's market at any time.¹²⁹

(b) Market manager required.-- All farmer's markets shall have a market manager authorized to direct the operations of all vendors during all hours of operation.¹³⁰

¹²⁶ Municipalities may choose to limit the days in which the market will operate, common examples of existing markets include Tuesday, Thursday, Saturday. Municipality's may choose to limit day and hours of operation to protect neighbors from noise, light, disturbance, or other nuisance related factors.

¹²⁷ Model Ordinance on Farm Direct Marketing, Burlington County Farmland Preservation Program. Solicitors should be aware of implications of *Reed v. Town of Gilbert* for municipal sign ordinances. Municipalities can adopt their own language or rely on existing language in sign ordinances for Farmer's Markets.

¹²⁸ Cumberland County Planning Department, Farmers' Market Model Ordinance (2014). Farmer's Market operating rules include the following: who can be a vendor, what products can be sold, the cost to the vendor, market operation dates and times, and generic atmosphere of the market. The rules can also serve as a part of the agreement between vendors and the market. Municipalities can choose whether to add a provision requiring liability insurance; a provision can be added to this section if municipalities choose to do so. Requirements for insurance, however, would deter smaller organizations and participants from becoming vendors, or likewise, increase the cost of vendor participation for public markets.

¹²⁹ Chapter 148: Farmers Markets, City of Rehoboth Beach, Delaware (2007).

(c) Governing structure.-- All farmer's markets shall have an established set of operating rules addressing the governance structure of the farmer's market, hours of operation, maintenance and security requirements and responsibilities and appointment of a market manager.

(d) Farmer's market structure.-- The farmer's market structure shall explicitly disclose producer's name and location in writing clearly visible to the consumer if a farmer's market structure sells farm products or value-added products that are not produced by the vendor.

(e) Vendor. -- Vendors shall be chosen by the market manager, in a determination made in writing, in a method offering the widest selection of produce and food products available.¹³¹

(f) Discrimination prohibited. -- In accordance with generally accepted standards, there shall be no discriminating against a patron, vendor or customer based on one or more of that person's protected characteristics. Those protected characteristics are: race, color, religion, sex, marital status, familial status, sexual orientation, gender identity, or gender expression and national origin.¹³²

(g) Permits required. -- All farmer's markets and their vendors shall receive all required operating and health permits and licenses from the Department of Agriculture of the Commonwealth or local health department.

(h) Inspection. -- All products offered for sale at farmer's markets shall be subject to inspection by the market manager or any duly authorized government official.¹³³

(i) Staffing. -- The vendor shall, at all times the farmer's market is in operation, have sufficient staffing to ensure the event remains orderly and attendees concerns and needs are adequately addressed.

(j) Conditions. -- The vendor shall be responsible to leave their farmer's market structure is as neat and clean a condition at the end of each event as it was at the start. No equipment or other material shall be stored at the farmer's market or left in the farmer's market overnight unless previously approved by the market manager.

(k) Bicycle Storage. -- All farmers' markets provide secure bicycle storage for their patrons and provide for composting, recycling and waste removal in accordance with all applicable City codes.

¹³⁰ Noting in the provision shall be construed to require the market manager to be physically present at the farmer's market. Municipalities can choose to require physical presence at the market.

¹³¹ *Id.* Municipality's can choose to give preference to vendors closest to their locations, or those that grow their product or incorporate the least processed ingredients.

¹³² *Id.*; Charlottee HB 2, 2016. <http://charlottenc.gov/NonDiscrimination/Pages/default.aspx>

¹³³ Rochester City Council, Chapter 91: Public Market (2006). Solicitors must remember local jurisdictions are preempted from adopting food safety regulations. See, e.g. PA. CONS. STAT. ANN. § 5701 (West 2012).

Section 8. Methods of selling and acceptance of payment.

(a) Sale by vendor. -- No person may sell at a farmer's market except a vendor from a farmer's market structure which has been duly leased and approved by the market manager.¹³⁴

(b) Forms of payment. -- Notwithstanding commonly used forms of payment, permission to sell at a farmer's market shall be offered only upon a vendor's acceptance of forms of payment provided by participants of federal, state or local food assistance programs, including, but not limited to, food stamps, WIC Farmers' Market Nutrition Programs, and Senior Farmers' Market Nutrition Programs. Forms of payment shall include, but are not limited to, coupons, vouchers, Electronic Benefit Transfer (EBT) cards. The market manager shall work with representative of the Department of Agriculture of the Commonwealth to ensure vendors who are not currently certified to accept any, or all, of the forms of payment specified under this subsection to obtain such certification within six months of the effective date of this Ordinance.¹³⁵

(c) All sales on the farmer's market conducted by weight shall be conducted with the use of scales inspected and approved by the Department of Agriculture of the Commonwealth.¹³⁶

Section 9. Application for vendor permit.

Any vendor desiring to operate in the farmer's market for the ensuing season shall, by January 1 of each year, file an application with the market manager providing at a minimum the following information.¹³⁷

- (1) The name of the applicant and whether it is incorporated.
- (2) The Employer Identification Number or other identifying number assigned to the applicant by the Internal Revenue Service.
- (3) The mailing address of the applicant and any telephone number.
- (4) The names, addresses and telephone numbers of the officers or directors of the applicant who will be responsible for operation of the farmer's market structure and their relevant experience.
- (5) The intended days of the week, hours and the beginning and ending date for the operation of the vendor.

¹³⁴ *Id.* Provisions such as these help to ensure outside activity doesn't occur at the market. Preventing sales outside the vendors Market Structure ensure the goods reach consumer's hands, and further promote public health initiatives.

¹³⁵ City and County of San Francisco, Farmer's Market Ordinance No. 29-07 (2007). This provision requires vendors to accept payment methods such as WIC in order to sell at a Farmer's Market. Although municipality's can eliminate this provision, the purpose and goal of this provision is to expand access to health foods as well as potentially provide new clientele for existing Farmer's Market vendors. If municipality's choose to implement this provision, they can conduct a needs assessment, potentially conducted annually, focus on identifying areas within their geographic location which would be best served for Farmer's Markets in underserved neighborhoods.

¹³⁶ The Pennsylvania Department of Agriculture, Weights and Measure Division is responsible for regulating scales used for weight based purchases in Farmer's Markets.

<http://www.agriculture.pa.gov/Protect/RideMeasurement/Pages/Weights-and-Measures-Inspection-.aspx>

¹³⁷ Chapter 148: Farmers Markets, City of Rehoboth Beach, Delaware (2007). A municipality may choose to implement only the essential identification details involved in this section.

(6) Equipment and other resources the applicant has available for operation of the farmer's market structure.

(7) The experience, in the operation of a farmer's market or other similar enterprise, of the organization and those individuals who will be directly responsible.

Section 10. Permit fee.¹³⁸

An applicant shall pay a fee of \$100 to the municipality for the season. The market manager may, upon a showing of need or at the market manager's discretion, waive the permit fee.

Section 11. Violations and penalties.¹³⁹

The market manager may revoke the permit of any vendor to which a permit has been issued, pursuant to provisions of this ordinance, because any violation of the provisions of this chapter or of any other ordinance of the municipality or of any Federal or State law. Before any permit is revoked by the market manager, representatives of the organization shall personally meet with a representative of the permit holder to review in detail the specifics of the violation. The permit holder shall have (five, ten, xx) days to correct the violation; if at the end of this (five, ten, xx-day) period the violation remains or if the violation recurs the same season, the market manager in their sole discretion may revoke the permit.

Section 12. Mobile farmer's market.¹⁴⁰

(a) License Required.¹⁴¹ -- The following shall apply:

¹³⁸ A permit fee may be charged by the municipality for the use of the Farmer's Market Structure within the Farmer's Market. Fee's typically range between \$100-\$150 per season (annually). Section 9 would be an ideal place to implement, if the municipality so chooses, an incentive to waive the permit fee for highest grossing sales, or waive the fee for organic produce stands, etc. The higher the fee, the more incentive there is on the part of the vendor to meet the municipality's needs/wants.

¹³⁹ Chapter 148: Farmers Markets, City of Rehoboth Beach, Delaware (2007). Municipality's, if they choose to implement the permit requirement in Section 9, can include a provision for revoking the permit for ordinance violations. Discretion is placed with the Market Manager to revoke the permit of any vendor in violation of any ordinance within the Municipality, State, or Country absent vendor's cure within the time period designated by the Municipality.

¹⁴⁰ Harrisburg, Pennsylvania, Municipal Code §6-605.1. This definition was adopted from Harrisburg's "Mobile Food Unit." The Mobile Farmers Market can serve as a primary tool for bringing food into nearby communities existing in food environments otherwise lacking easy access to fresh, healthy produce. This service would primarily occur during the market season – which typically runs from April through December. This Farmer's Market style can follow traditional food truck stops, as well as access "food desert" neighborhoods and make home deliveries of fresh, local, seasonal fruits and vegetables.

¹⁴¹ Harrisburg, Pennsylvania, Municipal Code §6-605.2 Municipalities may chose to reserve this section because not all Mobile Farmer's Markets will not deal in traditional "food products," which as defined under Harrisburg's Food Truck Ordinance, is "sandwiches, ice cream, soft drinks, candy, and all other articles of food or drink intended or prepared by the vendors thereof for human consumption." Mobile Farmer's Markets will not be preparing food by vendors for human consumption, they will deal in farm products as defined by this ordinance. If vendors choose to sell dairy products, livestock products, and seafood as incorporated into the definition of "farm products," then Mobile Farmer's Markets may need to be certified by the Department of Health, and become licensed.

(1) No person shall commence operation of a mobile farmer's market until all required licenses have been issued by the health officer, the tax enforcement administrator, or other designated municipal official.¹⁴²

(2) All licenses shall be prominently displayed at all times during operation. Any mobile food vendor operating without the required license and permit shall be deemed in violation of this chapter, and the mobile food vendor shall be subject to penalties and fines as provided within this ordinance and otherwise provided by law.

(b) Mobile farmer's market license.¹⁴³ -- The following shall apply:

(1) A mobile food vendor must have a mobile food vendor license to operate a mobile food unit in the Municipality.

(2) Mobile food vendor licenses shall be subject to a license fee to be promulgated by regulation and subject to the approval of municipality, a portion of which, not to exceed \$25, shall be reserved to assist the costs of waste removal and other services, or¹⁴⁴

(3) The health officer/municipal official shall be responsible for creating application forms and an application process to regulate the issuance of the mobile food vendor license, which shall be reviewed and approved by the law bureau/municipal official prior to distribution.

(4) In order to secure a mobile food vendor license, an authorized person must submit to the municipality an application with required fees in paragraph (2) above and all accompanying materials as provided by the health officer/municipal official.

(5) Applications issued under this chapter shall be subject to review and approval by the health officer/municipal official, or any designee thereof, who shall have the authority to ensure and enforce compliance with any provision of this chapter, any amendments thereto, and applicable municipal regulations and guidelines.

(6) The health officer/municipal official shall be authorized to deny, revoke or suspend any license application for any mobile food unit found in noncompliance with the established requirements.

(7) To ensure the due process of an aggrieved applicant, the appropriate municipal authority shall adopt rules and regulations as it deems necessary, which shall be reviewed and approved by the (Law Bureau/proper authorities) prior to implementation.

(c) Mobile farmer's market locations and restrictions.¹⁴⁵ -- The following shall apply:

(1) No mobile food vendor shall sell or offer for sale any food or nonfood products and services in a manner that would substantially obstruct a public right-of-way, impair the movement of pedestrians or vehicles, or pose a hazard to public safety.

(2) All street vendors shall position themselves at least 50 feet from another street vendor and shall locate the cart at the curb in such a way as to cause any line which forms to do so along the curb.

¹⁴² Requirement of a license by a Health Officer or Tax Enforcement Administrator shall be left to the discretion of the municipality.

¹⁴³ Harrisburg, Pennsylvania, Municipal Code §6-605.3.

¹⁴⁴ Municipality's can choose where to use their fee monies. Harrisburg uses theirs to offset the cost of waste removal.

¹⁴⁵ Harrisburg, Pennsylvania, Municipal Code §6-605.4.

- (3) A mobile food vendor may not sell or offer for sale any products or services:
- (i) Within 15 feet of an entrance to any property;
 - (ii) Within 500 feet of an entrance to a public or private school;
 - (iii) Within 15 feet of a fire hydrant;
 - (iv) On any sidewalk having a width of less than 47 feet;
 - (v) From any vehicle or ancillary equipment not approved and inspected by the (Health Officer/Municipal official) or any designee thereof;
 - (vi) On private property without written approval of the property owner responsible for the maintenance of the sidewalk and/or right-of-way area to be obstructed; or

(4) No vendor shall sell or offer for sale any products or services within 500 feet of the designated boundaries of any municipal-organized, sponsored or sanctioned event or activity to which vendor access is restricted or regulated. The restriction under this paragraph shall not apply to a street vendor who receives a permit from the director of the department sponsoring the event to operate within the boundaries of any municipal-organized, sponsored or sanctioned event or activity.

(5) All sales by mobile farmer's market vendors shall cease to operate no later than sunset of each day. Mobile food vendor's shall be removed from public property no later than sunset of each day.

(d) Park permit required.¹⁴⁶

No street vendor shall sell or offer for sale any food products at Municipal parks and recreational sites or upon municipal-owned real estate without possessing a valid park permit issued by the Department of Parks, Recreation and Enrichment.

(e) Responsibility for cleanliness.

(1) Any mobile farmer's market selling or offering for sale farm products or services shall pick up and remove any and all papers, wrappers, bottles, or other refuse dropped by the customers thereof in the vicinity of the cart from which such farm products are sold. A mobile food vendor shall provide for all customers a container for the deposit of all refuse, and the container shall be removed by the mobile farmer's market vendor at the close of each vendor's business day. Under no circumstances shall a mobile food vendor use a container or receptacle provided for the use of the general public.¹⁴⁷

(2) All equipment used by a mobile food vendor shall at all times be kept and maintained in a clean and sanitary condition. Each mobile food vendor shall at all times keep his or her hands clean and otherwise be clean and neat in appearance.¹⁴⁸

(f) Threat to public health.¹⁴⁹

¹⁴⁶ Harrisburg, Pennsylvania, Municipal Code §6-605.5.

¹⁴⁷ Harrisburg, Pennsylvania, Municipal Code §6-605.6

¹⁴⁸ Harrisburg, Pennsylvania, Municipal Code §6-605.7. This section of Harrisburg's Food Truck Ordinance required the following: "All openings therein shall be completely protected by glass or screening which shall be kept closed except when a customer is being served. An adequate water tank with faucets shall be installed therein from which fresh hot and cold running water shall be provided for handwashing only." This provision was removed, but can be reinserted if Mobile Farmer's Markets will provide meat, seafood, or dairy products.

(1) When it appears to the health officer/municipal official that the operation of the mobile farmer’s market poses an immediate and imminent threat to the public health and safety that will occur if the mobile food unit is not immediately closed, the health officer/municipal official shall have the power to order the immediate closure of such establishment until such time that the violations complained of have been corrected or the Board of Health or other appropriate hearing board overrules the determination of the health officer/municipal official.

(2) Nothing set forth in this section may limit the pursuit of other appropriate actions or proceedings at law or in equity available to the municipality.

Section 13. Severability.

It is hereby declared to be the intention of the Municipality that the words, phrases, clauses, sentences, paragraphs and sections of this Ordinance are severable, and if any word, phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining words, phrases, clauses, sentences, paragraphs and sections of this Ordinance, since the same would have been enacted by the Municipality without the incorporation of any such unconstitutional word, phrase, clause, sentence, paragraph or section.

Section 14. Repeals.

Any provision of any prior ordinance of the municipality which is in conflict with any provision of this Ordinance, is hereby repealed to the extent of the conflict, but all other provisions of the ordinances of the municipality which are not in conflict with the provisions of this Ordinance shall remain in full force and effect.

Section 15. Penalty Clause.

Any person, firm, or corporation violating any of the provisions or terms of this Ordinance shall be guilty of a summary offense and upon conviction, shall be fined a sum not to exceed \$300 for each offense, and each and every violation or day such violation shall continue or exist, shall be deemed a separate offense.

Section 16. Effective Date.

This Ordinance shall take effect immediately from and after its passage and the publication of the caption.

PASSED, APPROVED AND ADOPTED by _____ Municipality, Pennsylvania, on this the ____ day of _____, 2016.

¹⁴⁹ Language adopted from Harrisburg, Pennsylvania, Municipal Code §6-605.99.

Mayor

ATTEST:

City Secretary

APPROVED AS TO FORM AND LEGALITY:

City Attorney