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Mia Shirley

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# FOOD ORDINANCES: ENCOURAGING EATING LOCAL

MIA SHIRLEY\*

## INTRODUCTION

“*What you eat and buy has almost as big an effect on your footprint as mobility and shelter.*”<sup>1</sup> The notion that buying local food can help the environment as well as the local economy may help explain the growth and increasing number of farmers’ markets in the United States over the past fifteen years.<sup>2</sup> A consumer-driven movement for more local products has encouraged farmers to dedicate more time to farmers’ markets, promoted community supported agriculture (“CSA”) projects, and incentivized restaurants and grocery stores to provide local products.<sup>3</sup> The movement is not unique to the United States, as its popularity is increasing in many developed countries.<sup>4</sup>

Consumers are turning away from commodity-driven industrial options and demanding more local products.<sup>5</sup> “We are experiencing the rise of an ‘alternative’ food system that attempts to exist outside of the mainstream commodity-driven network.”<sup>6</sup> There are many different organizations working to transform the American food system and move from

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\* J.D. Candidate, William & Mary Law School, 2013. B.A., 2009, Major in Mathematics/Economics and Minor in Law & Society, University of California–San Diego. The author would like to thank Budd and Jackie Shirley and Heather and Marius Grigonis for their support. The author would also like to thank the editorial staff of the *Environmental Law and Policy Review* for their hard work and Laura Doore for alerting the author to the local food ordinances passed in Maine.

<sup>1</sup> Katherine Salant, *Want to Shrink Your Carbon Footprint? Think Food*, WASH. POST, Nov. 29, 2008, <http://www.washingtonpost.com/wp-dyn/content/article/2008/11/28/AR2008112801611.html>.

<sup>2</sup> See Farmers Market Growth: 1994–2011, USDA, Aug. 3, 2011, <http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateS&navID=WholesaleandFarmersMarkets&leftNav=WholesaleandFarmersMarkets&page=WFMFarmersMarketGrowth&description=Farmers%20Market%20Growth&acct=rnrdirnkt> (noting the growth in total number of farmers’ markets between 1994 and 2011); Know Your Farmer, Know Your Food, *Our Mission*, USDA, available at [http://www.usda.gov/wps/portal/usda/usda/home?navid=KYF\\_MISSION](http://www.usda.gov/wps/portal/usda/usda/home?navid=KYF_MISSION) [hereinafter Know Your Farmer, Know Your Food]. “The number of farmers markets has more than tripled in the past 15 years and there are now more than 7,175 around the country.” *Id.*

<sup>3</sup> Sarah DeWeerd, *Is Local Food Better?*, 22.3 WORLD WATCH INSTITUTE (2011), available at <http://www.worldwatch.org/node/6064>.

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

<sup>5</sup> THE FIGHT OVER FOOD: PRODUCERS, CONSUMERS, AND ACTIVISTS CHALLENGE THE GLOBAL FOOD SYSTEM (Wynne Wright & Gerad Middendorf eds., 2009).

<sup>6</sup> *Id.* at 2.

an industrialized model to a regional, environmentally friendly one.<sup>7</sup> First Lady Michelle Obama's "Let's Move" initiative encourages Americans to live a healthier, more environmentally friendly life, and supports "farmers' markets, public markets, cooperatives, farm stands, community-supported agriculture, and mobile vendors."<sup>8</sup> This growing consciousness could have an important effect on the environment and may help mitigate some of the negative environmental impacts of the modern United States food industry.

There are many ways the American food industry affects the environment—through the production, processing, transportation, and packaging of food.<sup>9</sup> Local food systems, if executed properly, can help mitigate many of these negative environmental effects.<sup>10</sup> There are many ways in which increasing reliance on local food systems may help the environment.<sup>11</sup> Small farms that sell food directly to their consumers and distribute food locally limit waste and leave a lower carbon footprint.<sup>12</sup>

Proponents of the movement claim that buying local has health, economic, and environmental benefits.<sup>13</sup> This Note will focus on the environmental benefits and the ways to maximize environmental impact. Implementation of local food programs has spread mainly through market-driven demand. While local food sales vary by region, the northeast and west coast are the geographic areas with the highest level of sales.<sup>14</sup> Further, regions that produce high amounts of fruits and vegetables are more likely to have a high rate of direct-to-consumer sales.<sup>15</sup> To date, the higher level of local food sales can be attributed to the availability of the products

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

<sup>8</sup> *Solving the Problem of Childhood Obesity Within a Generation: White House Task Force on Childhood Obesity Report to the President*, 52 (2010), available at [http://www.letsmove.gov/sites/letsmove.gov/files/TaskForce\\_on\\_Childhood\\_Obesity\\_May2010\\_FullReport.pdf](http://www.letsmove.gov/sites/letsmove.gov/files/TaskForce_on_Childhood_Obesity_May2010_FullReport.pdf) [hereinafter *Let's Move*].

<sup>9</sup> *Food Consumption & Its Environmental Impact*, SIERRA CLUB, [http://www.sierraclub.org/sustainable\\_consumption/food\\_factsheet.asp](http://www.sierraclub.org/sustainable_consumption/food_factsheet.asp) ("Even production of grains, fruits, and vegetables can have negative ecological consequences. Heavy use of chemical fertilizers and pesticides in industrial agriculture results in air and water pollution and damage to many native plant and animal species. Food grown outside the U.S. . . . often comes from countries with weak regulations regarding pesticides and pollution.")

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

<sup>11</sup> See *infra* Part I.C.

<sup>12</sup> *Ten Reasons to Buy Local Food*, ENVTL. NEWS NETWORK (Oct. 17, 2008), <http://www.enn.com/agriculture/article/38431>.

<sup>13</sup> STEPHEN MARTINEZ ET AL., USDA, LOCAL FOOD SYSTEMS CONCEPTS, IMPACTS, AND ISSUES 23, available at <http://www.ers.usda.gov/Publications/ERR97/ERR97.pdf>.

<sup>14</sup> Sarah Low and Stephen Vogel, *Direct and Intermediated Marketing of Local Foods in the United States*, USDA, Economic Research Report Number 128, November 2011.

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

and consumer demand for the products. This Note focuses on the ability of local level initiatives to build the local food movement from the ground up.

Government support for local food should be initiated at the local level.<sup>16</sup> While local governments derive their power from the state, they often handle issues such as land use, obtaining permits, and public works.<sup>17</sup> Therefore, local officials are in a prime position to facilitate the growth and viability of a local food market. In recent years, many local governments have taken formative steps to test their authority in shaping their community to be local food-friendly.<sup>18</sup> Some states and the federal government have followed suit.<sup>19</sup> While the local food movement is gaining national recognition, the federal government must also consider food safety and consumer needs. Therefore, federal government initiatives directed at promoting local food may be in opposition to federal regulations aimed at food safety that impose cost prohibitive restrictions on small farmers.

In 2011, the local food movement took a formative step when four towns in Maine adopted versions of the Local Food and Self-Governance Ordinance (“Maine Ordinance”), the first of its kind.<sup>20</sup> The purpose of the Maine Ordinance is to enhance “the economic, environmental and social wealth of [the] community.”<sup>21</sup> The Maine Ordinance is also significant in setting a model for future local food ordinances. The widespread adoption of local food ordinances has the potential to strengthen the local food movement and contribute to improving the environment. The potential of these ordinances to do environmental good can be enhanced by tailoring ordinances to ensure environmental impact at a local level and encourage widespread use throughout the country.

The rise of the local food movement has significant potential to provide benefits to the environment through changing the predominant farming practices, reducing the number of miles food travels from farm to plate, and increasing consumer awareness of environmentally smart food

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<sup>16</sup> DeWeerd, *supra* note 3.

<sup>17</sup> State and Local Government, THE WHITE HOUSE, <http://www.whitehouse.gov/our-government/state-and-local-government> (last visited Jan. 29, 2013).

<sup>18</sup> Examples include: the Local Food and Self-Governance Ordinance passed in Sedgwick, Maine and permitting regulations in Portland, Oregon. *See infra* Part IV.

<sup>19</sup> Press Release, USDA, USDA Launches “Know Your Farmer, Know Your Food” Initiative to Connect Consumers with Local Producers to Create Economic Opportunities for Communities (Sept. 15, 2009), *available at* <http://www.usda.gov/wps/portal/usda/usdahome?contentid=2009/09/0440.xml>; *see generally* Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-234, 122 Stat. 923 (2008).

<sup>20</sup> *See* Local Food and Community Self-Governance Ordinance, *available at* <http://www.sedgwickmaine.org/images/stories/local-food-ordinance.pdf> [hereinafter Maine Ordinance].

<sup>21</sup> *Id.*

choices.<sup>22</sup> This Note argues that local food ordinances can play an important role in increasing environmental awareness through food, establishing legal precedent, and setting baseline standards from which to measure and evaluate the environmental impact of increasing reliance on local foods.

In Part I, this Note introduces and provides context for the local food movement by providing a background on the United States agricultural industry and local foods, explaining the improvements in moving from a centralized, industrial agricultural system to a regional food system.<sup>23</sup> Part II discusses some federal and state initiatives impacting local foods. Although the federal government has taken some action to promote local food, many federal government initiatives continue to support large-size industrial farmers and impose licensing or other burdens that hurt local farmers.<sup>24</sup> Part III examines the positive aspects of local level regulation, asserting that local food should be regulated at the local level and by local authorities, and explains the ways in which local food ordinances may be successful.

Finally, Part IV discusses the potential challenges associated with implementing local food regulations and expanding local food networks. Some of these include: challenges by the federal government to local ordinance measures that oppose federal regulations, significant costs of direct marketing, and lack of infrastructure to increase the net usage of local food systems.<sup>25</sup> Without a major overhaul of the agricultural system in the United States, production by small, local farms will only take up a minute percentage of the agricultural industry.<sup>26</sup>

Even though local food ordinances may be a very important step in the local food and environmental movements, the short-term environmental effect may be minimal. Nevertheless, beginning the process of moving to a system more dependent on local, seasonal, and sustainable food sources is a step in the right direction. Investing in local foods to mitigate the harmful effects of mass food production and unsustainable agricultural practices is worthwhile, particularly at the local, direct-to-consumer level.

## I. BACKGROUND

All forms of agriculture harm the environment.<sup>27</sup> The modern agricultural system is a major contributor to global warming.<sup>28</sup> The

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<sup>22</sup> See *infra* notes 71–84 and accompanying text.

<sup>23</sup> See *infra* notes 42–54 and accompanying text.

<sup>24</sup> See *infra* notes 85–96 and accompanying text.

<sup>25</sup> Martinez et al., *supra* note 13, at 23.

<sup>26</sup> See ROBERT PAARLBERG, *FOOD POLITICS: WHAT EVERYONE NEEDS TO KNOW* 150 (2010).

<sup>27</sup> See *id.* at 110–12.

<sup>28</sup> Pete Smith, et al., *Agriculture, Contribution of Working Group III to the Fourth*

Intergovernmental Panel on Climate Change (“IPCC”) estimates that farming practices generate ten to twelve percent of greenhouse gases.<sup>29</sup> The IPCC predicts that greenhouse gas emissions from agriculture will increase “due to escalating demands for food and shifts in diet.”<sup>30</sup> There are many environmental impacts of food including how it is grown; how it is transported; the type of crop; and the greenhouse gas emissions generated during production, transportation, and consumption.<sup>31</sup> The type of food produced also has a large impact on the efficiency of the production.<sup>32</sup> The IPCC suggests three main ways to mitigate the environmental impact: reduce emissions, enhance removals, and avoid or displace emissions.<sup>33</sup> The process for achieving these mitigation techniques is region-specific; thus increased understanding of and reliance on local food markets and systems is essential to helping reduce greenhouse gas emissions.<sup>34</sup> One major benefit supported by the local food movement is a reduction in the carbon footprint during growing, processing, and transportation of food.<sup>35</sup>

#### A. *Defining Local Food*

Local food systems are defined in many ways.<sup>36</sup> Definitions can include distance, production method, and type and quality of food.<sup>37</sup> The varieties of food that qualify change depending on the season, region, and

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*Assessment Report of the Intergovernmental Panel on Climate Change*, CLIMATE CHANGE 2007, 503 (Peter Smith et al. eds., 2007).

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

<sup>30</sup> *Id.* at 502.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* Several studies have found that the mass production of red meat and dairy lead to high levels of green house gas emissions. *Id.*

<sup>33</sup> Smith et al., *supra* note 28, at 505–06.

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

<sup>35</sup> See *infra* notes 68–76 and accompanying text.

<sup>36</sup> See, e.g., DeWeerd, *supra* note 3; Derrick Braaten & Marne Coit, *Legal Issues in Local Food Systems*, 15 DRAKE J. AGRIC. L. 9 (2010) (“[F]ood that has been sourced from within a 150 miles radius . . . Author and nutritionist Joan Dye Gussow’s definition of local food is food that can be procured ‘within a day’s leisurely drive . . .’”); Shermain D. Hardesty, *Do Government Policies Grow Local Food?*, CHOICES (2010), available at <http://www.choicesmagazine.org/magazine/article.php?article=113> (explaining that people understand the definition of local foods to be intertwined with improving access to healthy food and decreasing the resources used on transportation of food); *Farm Fresh Fare Guide*, GREENLIVING, available at <http://www.greenlivingonline.com/article/farm-fresh-fare-recipes> (explaining that a locavore is someone who eats local food grown within a one-hundred-mile radius of his/her home).

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

farming practices.<sup>38</sup> Notably, the Maine Ordinance defines local food in terms of its method of sale, covering only direct-to-consumer sales.<sup>39</sup> Some suggest that as the local food movement continues to develop, a standard definition of “local food” will follow.<sup>40</sup> However, one of the benefits of regulating foods locally is the ability for the law to reflect the unique needs of the community, and so the definition of “local” may best remain in the hands of individual municipalities.

*B. Industrial Agricultural Industry*

The production of food, particularly within America, uses environmental resources and energy in many ways—including through the transport of food across the country, through consumption in the manufacture of fertilizer, and through the fuel used to run farm machinery.<sup>41</sup> Local food systems are more resilient, decrease the use of fossil fuels, and reduce the energy expended during processing.<sup>42</sup>

The largest agricultural corporations control the largest percent of the market and receive the most in federal government subsidies each year.<sup>43</sup> This has harmful effects. Historically, corporate farms have not been incentivized to operate sustainably.<sup>44</sup> Corporations spend money trying to come up with genetically modified crops that are resistant to pesticides, and grow quicker and larger.<sup>45</sup> Further pressure is put on farmers to upgrade to new farm equipment that maximizes productivity.<sup>46</sup> Corporate farms focus on quantity over quality and as a result, the environment suffers.<sup>47</sup> The focus on commodity crops diminishes crop diversity and leads to overuse of the land.<sup>48</sup> For example, 400,000 United States farms plant

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<sup>38</sup> *Local & Regional Food Systems*, GRACE, <http://www.gracelinks.org/254/local-regional-food-systems> (last visited Jan. 29, 2013).

<sup>39</sup> Maine Ordinance, *supra* note 20.

<sup>40</sup> Braaten & Coit, *supra* note 36, at 10.

<sup>41</sup> Salant, *supra* note 1.

<sup>42</sup> Mary Angelo, *Small, Slow, and Local: Essays on Building a More Sustainable and Local Food System*, 2011 VT. J. ENVTL. L. 354, 369 (2011).

<sup>43</sup> Chris Edwards, *Agricultural Subsidies*, CATO INSTITUTE, June 2009, available at <http://www.downsizinggovernment.org/agriculture/subsidies>.

<sup>44</sup> See PAARLBERG, *supra* note 26, at 150.

<sup>45</sup> See generally Kanchana Kariyawasam, *Legal Liability, Intellectual Property and Genetically Modified Crops: Their Impact on World Agriculture*, 19 PAC. RIM. L. & POL'Y J. 459, 466–68 (2010).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 463.



corn.<sup>49</sup> Reliance on a limited number of crops eliminates biodiversity and can destroy natural habitats, affect animals, and promote adaptation in parasites, which can be potentially dangerous to the sustainability of the system if they evolve and wipe out crop varieties.<sup>50</sup> Within the American food system, food travels an average of 1500 miles from farm to table.<sup>51</sup> In addition to the fuel used during transportation, high amounts of fuels are also used in the production of food on the farm.<sup>52</sup>

“Approximately half of the global usable land is used by pastoral or intensive agriculture . . . there is now a steady decline in arable land worldwide.”<sup>53</sup> The vast majority of federal funding and subsidies still go to the largest, industrial agriculture businesses.<sup>54</sup> These businesses are rich and powerful and aim to produce mass quantities of food that can be re-sold at low prices.<sup>55</sup> The damage done to the environment because of these practices is passed downstream to consumers and other landowners.<sup>56</sup> Agribusiness in the United States allows wealthier and more highly subsidized farmers to push their environmental waste and damages to other land and waterways that wash the pollution downstream.<sup>57</sup> These agricultural methods pollute waterways and create soil erosion.<sup>58</sup> Under the current system, industrial farms have no incentive to stop utilizing highly destructive and wasteful farming techniques to produce a high yield and increase profits without feeling the repercussions of their actions.<sup>59</sup> Subsidies help these corporations stifle small farms. The stagnation in changing food laws and regulating market giants has allowed corporations to seek greater profits, sometimes to the detriment of the American people.

This is in sharp contrast to local food systems because small farmers shoulder much of the burden for their own environmentally harmful decisions.<sup>60</sup> While all farming practices will have an effect on the land and

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<sup>49</sup> *Crop Production*, EPA, <http://www.epa.gov/oecaagct/ag101/printcrop.html> (last visited Jan. 29, 2013).

<sup>50</sup> Gabrielle O’Kane, *What Is the Real Cost of Our Food? Implications for the Environment, Society and Public Health Nutrition*, PUB. HEALTH NUTRITION, May 12, 2011, 269–70.

<sup>51</sup> William Eubanks II, *A Rotten System: Subsidizing Environmental Degradation and Poor Public Health with Our Nation’s Tax Dollars*, 28 STAN. ENVTL. L.J. 213, 268 (2009).

<sup>52</sup> See generally *Energy Use & Climate Change*, GRACE, <http://www.gracelinks.org/982/energy-use-climate-change> (last visited Jan. 29, 2013).

<sup>53</sup> O’Kane, *supra* note 50, at 269.

<sup>54</sup> Edwards, *supra* note 43.

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

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

<sup>57</sup> See PAARLBERG, *supra* note 26, at 110–12.

<sup>58</sup> O’Kane, *supra* note 50, at 269.

<sup>59</sup> See PAARLBERG, *supra* note 26, at 110–12.

<sup>60</sup> See *id.*



the environment, small farmers cannot afford to render some of their land useless.<sup>61</sup> There are different camps in the debate over what constitutes the most environmentally sustainable farming; however, there are many options farmers can consider.<sup>62</sup> Many of the problems that develop on industrial farms and the extent of those problems are not present on farms that are smaller.<sup>63</sup>

Both small and large farms are necessary. Increased reliance on local foods will help reduce the power of globalized producers and perhaps encourage those producers to develop sustainable practices.<sup>64</sup> It is important to consider the environmental impact of farming decisions. "None of the environmental costs that come from the production and transport of food are included in the cost of food for the consumer. It will be up to future generations to pay for these hidden externalities of our current, 'efficient' agricultural production methods" that focus solely on maximizing the quantity and reducing the price to consumers.<sup>65</sup>

### C. *Environmental Benefits of Local Food*

Increased reliance on local, sustainable food sources can help reduce the environmental damage caused by the current U.S. food production system.<sup>66</sup> Preliminary studies show that local foods can play an important role in improving the sustainability of modern agricultural systems and decreasing the environmental harms caused by these systems.<sup>67</sup>

Local food can be environmentally friendly in many ways, including promoting genetic diversity, preserving open spaces and animal habitats, supporting a clean environment, limiting waste, reducing energy, and preventing overuse of natural resources.<sup>68</sup> Market-driven forces instigated by the demand for local food will encourage corporations to cater to consumer demand by purchasing locally.<sup>69</sup> The smaller scale of production and farming methods help reduce waste and increase diversity. Further, the increased stewardship of the land leads to sustainable practices, particularly in reducing the use of pesticides.<sup>70</sup>

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<sup>61</sup> *See id.*

<sup>62</sup> *Id.*

<sup>63</sup> *See* Martinez et al., *supra* note 13, at 42.

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

<sup>65</sup> O'Kane, *supra* note 50, at 271.

<sup>66</sup> Angelo, *supra* note 42, at 369.

<sup>67</sup> *See* Martinez et al., *supra* note 13, at 34.

<sup>68</sup> *See Ten Reasons to Buy Local Food*, *supra* note 12.

<sup>69</sup> *See* Martinez et al., *supra* note 13, at 43.

<sup>70</sup> *Id.* at 4.

The USDA suggests that local food may help reduce greenhouse gas emissions, energy wasted during the transportation of food, and energy used on the farm.<sup>71</sup> The United States food system accounts for one-fifth of the total petroleum usage in the country.<sup>72</sup> Much of this energy is used on the farm in the form of chemical inputs (fertilizers and pesticides) and machinery.<sup>73</sup> Further, processing food has a high-energy impact and one-quarter to one-third of the energy used by the food system occurs during processing and packaging.<sup>74</sup> Distance is also a factor in contributing to overall energy use and emissions.<sup>75</sup>

Local food has the potential to significantly mitigate some of these environmental harms, particularly during the processing and transportation phases.<sup>76</sup> Small farms will have less of an “on the farm” impact than large farms.<sup>77</sup> These farms help preserve undeveloped land which has many public environmental benefits, including maintaining open space, fostering safe water runoff, and working as a carbon offset.<sup>78</sup> As domestic food miles are reduced, energy consumption also decreases.<sup>79</sup>

#### D. *Other Benefits of Local Food*

In addition to environmental benefits, there are health and economic benefits.<sup>80</sup> Local food is more likely to be organic, growth hormone-free, raised naturally, and retain its nutrients.<sup>81</sup> Further, most local food has not been processed. Local food is defined broadly, so these benefits are not guaranteed, but because of the general characteristics of the growers/sellers of local foods, these assumptions are generally accurate.<sup>82</sup> Consumers who buy local food place significance upon its quality, freshness, growing conditions, lack of use of pesticides and fertilizers, and many

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<sup>71</sup> *Id.* at 49.

<sup>72</sup> Marne Coit, *Jumping on the Next Bandwagon: An Overview of the Policy and Legal Aspects of the Local Food Movement*, 4 J. FOOD L. & POL'Y 45, 51 (2008).

<sup>73</sup> *Id.* at 52.

<sup>74</sup> *Id.*

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

<sup>76</sup> *Id.* at 53.

<sup>77</sup> Patricia E. Salkin & Amy Lavine, *Regional Foodsheds: Are Our Local Zoning and Land Use Regulations Healthy?*, 22 FORDHAM ENVTL. L. REV. 599, 602 (2011).

<sup>78</sup> *Id.* at 602–03.

<sup>79</sup> *Id.* at 602.

<sup>80</sup> Martinez et al., *supra* note 13, at 43–46.

<sup>81</sup> *Id.* at 45.

<sup>82</sup> *See id.*

other criteria that incentivize local farmers to continue to grow and produce as natural of a product as possible.<sup>83</sup>

Further, local food helps promote healthful eating with an emphasis on fresh fruits and vegetables. Access to fresh produce and meat encourages eating healthier foods with less sugar and sodium.<sup>84</sup> Food produced locally goes through fewer steps between cultivation and sale, thus it is less likely to develop harmful bacteria,<sup>85</sup> potentially reducing the chance of carrying some types of food borne illness.<sup>86</sup>

Local and regional production of food can spur local economies by creating jobs and keeping sales revenues within the community.<sup>87</sup> Many consumers choose to buy local products in order to support local farmers and businessmen.<sup>88</sup> In addition to monetary returns, a vibrant local market structure can help local businessmen and women develop important transferrable skills.<sup>89</sup> Local food systems still make up a very small percentage of agricultural sales, so as of 2010, the actual impact on local economies is uncertain; however, as local food systems grab a greater hold of the market and national attention, greater economic benefits will be possible.<sup>90</sup> One of the major talking points for promoting local food should be the potential for economic development through creating job opportunities and training people in skills that are needed.<sup>91</sup>

Increasing reliance on local food systems is one possible way to improve local economies, prevent food borne illness, and mitigate the environmental harms caused during food production and transportation. One way to monitor success is to establish local food-friendly policies and track the empirical success. This includes testing whether local food policies actually promote sustainable farming practices, reduce greenhouse gas emissions, save energy during transportation, lower the rate of food borne illness, and bring more interest in local businesses.

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<sup>83</sup> *Id.* at iv.

<sup>84</sup> PAARLBERG, *supra* note 26, at 150.

<sup>85</sup> Martinez et al., *supra* note 13, at 26–27.

<sup>86</sup> For example: diseases contracted by animals on overcrowded farms or developed during the production process.

<sup>87</sup> Martinez et al., *supra* note 13, at 43; *see also* Union of Concerned Scientists, Market Forces: Creating Jobs through Public Investment in Local and Regional Food Systems, Executive Summary (2011), *available at* <http://sustainableagriculture.net/wp-content/uploads/2011/08/market-forces-exec-summary.pdf>.

<sup>88</sup> Coit, *supra* note 72, at 55. For example, farmers' markets generate revenue for local farmers.

<sup>89</sup> Martinez et al., *supra* note 13, at 45.

<sup>90</sup> *See id.* at 26–27.

<sup>91</sup> HARVARD FOOD LAW AND POLICY CLINIC, *Good Laws, Good Food: Local Food Policy to Work for Our Communities*, July 2012, at 28.

Overall, expanding local food programs and increasing the number of towns with strong local food policies will benefit the environment, individual health, and local economies. As more data is collected, how to best form policy to meet these target areas will become clearer.

## II. REGULATION OF LOCAL FOOD

### A. *Federal Initiatives*

While increased local government support is essential to bolstering the local food movement, federal government programs overshadow local and state agendas.<sup>92</sup> Therefore, the ultimate goal of local initiatives should be to garner increasing levels of federal government support. Although some recent federal policies purport to promote local foods, the federal government also plays a role in fostering agribusiness and the industrialized food system.<sup>93</sup> In addition to passing legislation supporting agribusiness,<sup>94</sup> many federal government policies inadvertently help bolster a centralized food system.<sup>95</sup> While the federal government has started the process of implementing more regulations in support of local food, the federal government should continue to find ways to support local government initiatives and limit policies that harm small, local farmers.<sup>96</sup>

Support for local food comes from many different federal agencies, Congress, and the White House.<sup>97</sup> In recent years, federal support for local food culminated in the passage of the Food, Conservation, and Energy Act of 2008 (“2008 Farm Bill”) and the “Know Your Farm, Know Your Food” (“KYF”) initiative by the USDA.<sup>98</sup> The acknowledgment and support for local foods shows the government recognizes an advantage in promoting local food initiatives.<sup>99</sup> The 2008 Farm Bill “includes policies and programs designed specifically to increase the supply of and demand for local food.”<sup>100</sup>

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<sup>92</sup> Margaret Sova McCabe, *Reconsidering Federalism and the Farm: Toward Including Local, State and Regional Voices in America's Food System*, 6 J. FOOD L. & POL'Y 151, 153 (2010).

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

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

<sup>95</sup> Daniel Sumner, *Farm Subsidy Tradition and Modern Agricultural Realities*, AM. ENTERPRISE INST. PROJECT ON AGRICULTURAL POLICY FOR THE 2007 FARM BILL AND BEYOND (2007). The U.S. government has sought to increase farm incomes since 1933, but these attempts have in large part been directed at large farms. *Id.*

<sup>96</sup> See *Let's Move*, *supra* note 8; H.R. Res. 6124, 110th Cong. (2008); see also *Know Your Farmer, Know Your Food*, *supra* note 2.

<sup>97</sup> *Know Your Farmer, Know Your Food*, *supra* note 2.

<sup>98</sup> See *id.*; see also H.R. Res. 6124, 110th Cong. (2008).

<sup>99</sup> H.R. Res. 6124, 110th Cong. (2008).

<sup>100</sup> Hardesty, *supra* note 36.

There are three major components to the 2008 Farm Bill: the average crop revenue election, a four million dollar base of funding for conservation plans, and increased funding directed at promoting farmers' markets.<sup>101</sup> One provision of the 2008 Farm Bill allows local farmers to take food stamps so that food stamp recipients can afford local food.<sup>102</sup> The 2008 Farm Bill expired on September 30, 2012.<sup>103</sup> While the 2012 Farm Bill did not pass in 2012,<sup>104</sup> the Senate Bill proposal includes several ideas related to the promotion of local food production and economic development.<sup>105</sup> Based on initial drafts of the bill, it seems that the 2012 Farm Bill will continue to recognize the growing need for supporting local food.

KYF supports local food systems by connecting small farmers with federal local food programs and other resources. This includes providing twenty different grant, loan, and support programs for local, small-scale farming efforts.<sup>106</sup> The Farmers Market and Food Promotion Program grant supports direct-market sales similar to the plan under the Maine Ordinance.<sup>107</sup> KYF provides exemptions from USDA grading standards and grants money to farms and communities to promote the establishment of farmers' markets, community-supported agriculture programs, and other initiatives to sell and buy local foods.<sup>108</sup> The 2011 updates to the Food Safety Modernization Act also reflected a growing interest in helping local farmers.<sup>109</sup> For example, the frequency and types of some inspections

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<sup>101</sup> H.R. Res. 6124, 110th Cong. (2008).

<sup>102</sup> *See id.*

<sup>103</sup> *Path to the 2012 Farm Bill: Farm Bill Expires on Monday—What Does It Mean and What Happens Now?*, NATIONAL SUSTAINABLE AGRICULTURE COALITION (Sept. 28, 2012), <http://sustainableagriculture.net/blog/faq-on-farm-bill-expiration/#1>.

<sup>104</sup> The 2008 Farm Bill was extended one year in order to give Congress time to pass a new Farm Bill. Christopher Doering, *Agriculture Leaders Reach Deal on Farm Bill Extension*, USA TODAY, Dec. 30, 2012, <http://www.usatoday.com/story/news/politics/2012/12/30/farm-bill-extension/1799535/>.

<sup>105</sup> Agricultural Reform, Food and Jobs Act of 2012, S. 3240, 112th Cong. (2012). Provisions directed at promoting rural and local food production include: continuing the Farmers Market and Local Food Promotion Program by giving competitive grants to improve direct-to-consumer food sales and expanding it to provide assistance in developing infrastructure and central regional food development centers; expanding data collection programs for information relevant to local and regional food production and distribution; and implementing community development programs to help farmers in rural areas. *Id.*

<sup>106</sup> Know Your Farmer, Know Your Food, *Grants, Loans & Support*, USDA, [http://www.usda.gov/wps/portal/usda/usdahome?navid=KYF\\_GRANTS](http://www.usda.gov/wps/portal/usda/usdahome?navid=KYF_GRANTS) (last visited Jan. 29, 2013).

<sup>107</sup> *See* Maine Ordinance, *supra* note 20; Know Your Farmer, Know Your Food, *supra* note 2.

<sup>108</sup> Know Your Farmer, Know Your Food, *supra* note 2.

<sup>109</sup> Margaret A. Hamburg, *Food Safety Modernization Act: Putting the Focus on Prevention*,

will be conducted based on risk.<sup>110</sup> There are also some inspection and licensing exemptions for operations grossing less than \$500,000 per year.<sup>111</sup>

While efforts by the federal government to promote the benefits of local food involvement will make a substantial difference, many federal government policies still promote agribusiness.<sup>112</sup> Between 1995 and 2011, ten percent of farms collected seventy-five percent of subsidies.<sup>113</sup> In addition to its historical support of corporate farm enterprises, the federal government passes food safety laws.<sup>114</sup> These laws negatively impact small farms that cannot afford to go through the extra steps to comply with food safety laws.<sup>115</sup> While federal food safety laws affect all processors, they disproportionately hurt the smallest producers.<sup>116</sup> The government's decisions regarding agricultural subsidies and food safety law have a great impact on local food producers and often times, these producers are burdened by federal law without feeling the benefits.<sup>117</sup> The disparate impact has been a catalyst of local movements and contributed to the push for local food ordinances.<sup>118</sup> The catalyst for the Maine Ordinance was the desire by farmers to take control of local food policy and shape rules that aptly suit the areas particular farming culture.<sup>119</sup>

The attention to this topic at the federal level will help to further educate and encourage consumers to purchase locally and empower small-scale farms to sell. However, it may take considerable time before federal policies actually support more than hurt local food production. Adopting

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THE WHITE HOUSE BLOG, Jan. 3, 2011, <http://www.whitehouse.gov/blog/2011/01/03/food-safety-modernization-act-putting-focus-prevention>.

<sup>110</sup> *Id.*

<sup>111</sup> Mary Clare Jalonick, *Senate Reaches Agreement on Food Safety Bill to Exempt Small Farms*, HUFFINGTON POST, Nov. 19, 2010, [http://www.huffingtonpost.com/2010/11/19/food-safety-bill-act-small-farms-senate-tester\\_n\\_785898.html](http://www.huffingtonpost.com/2010/11/19/food-safety-bill-act-small-farms-senate-tester_n_785898.html).

<sup>112</sup> Nina Tarr, *Food Entrepreneurs and Food Safety Regulation*, 7 J. FOOD L. POL'Y 35, 39–40 (2011).

<sup>113</sup> *The United States Summary Information*, EWG FARM SUBSIDY DATABASE, <http://farm.ewg.org/region.php> (last visited Jan. 29, 2013).

<sup>114</sup> Tarr, *supra* note 112, at 36.

<sup>115</sup> *Id.* at 36.

<sup>116</sup> Bryan Andres, *Homeland Security Planning: What Victory Gardens and Fidel Castro Can Teach Us in Preparing for Food Crises in the United States*, 64 FOOD & DRUG L.J. 405, 407 (2009).

<sup>117</sup> *See id.*

<sup>118</sup> *See* Maine Ordinance, *supra* note 20.

<sup>119</sup> Pete Kennedy & Deborah Evans, *Food Rights Hour: Maine's Local Food Ordinances*, FARM-TO-CONSUMER LEGAL DEFENSE FUND (Apr. 16, 2011), <http://www.ftclfd.org/food-rights-hour-kennedy-evans.htm>.



local ordinances that uniquely address the needs of the community can help set the standards for the federal government. Developing strong roots and institutionalizing local food policies within communities can help initiate this change. The local food movement will grow through increasing government action at the federal, state, and local levels and cooperation between the three.

*B. State Initiatives*

State laws are very important. Local governments obtain their power via the state constitution.<sup>120</sup> Further, localities are governed by statewide rules and regulations.<sup>121</sup> State governments have also participated in the local food movement by passing statewide legislation encouraging growing and selling of local food.<sup>122</sup> Several states have passed cottage food bills that allow local farmers to produce goods like jams and jellies and sell them at farmers' markets.<sup>123</sup> Moreover, several states have passed laws aimed at making it more accessible for low-income individuals and families to buy local food.<sup>124</sup> Other states have adopted laws providing tax benefits for the purchase and sale of food items grown in state.<sup>125</sup>

In 2011, the Maine legislature passed a Joint Resolution Expressing the Sentiment of the Legislature for Food Sovereignty.<sup>126</sup> The Joint Resolution establishes that because "food is human sustenance and is the fundamental prerequisite to life," the elected representatives of Maine have the right to protect that fundamental freedom and "in recognition of the state's proud agricultural heritage, take this opportunity to oppose

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<sup>120</sup> HARVARD FOOD LAW AND POLICY CLINIC, *supra* note 91, at 7.

<sup>121</sup> *Id.*

<sup>122</sup> *See, e.g.*, Florida SB 2468, An act relating to school food service programs, enacted 2008 (creating policies to help schools purchase fresh and local foods); Illinois HB1300, passed 2007 (establishes that a Task Force develop plans to increase access and availability of local food); New York A02502 and A05024, enacted 2008 (help distribute New York grown food to restaurants and schools and promote comprehensive responses for distributing local food to communities in need); Pennsylvania SB997, enacted 2008 (establishing that it is the responsibility of the Department of Agriculture to promote grants and funding for local food programs).

<sup>123</sup> *See* S.B. 137, 97th Gen. Assemb., Reg. Sess. (Ill. 2011).

<sup>124</sup> *See* Ted Gregory, *Quinn Signs Laws Promoting Local Food*, CHI. TRIB., July 17, 2010, available at [http://articles.chicagotribune.com/2010-07-17/news/ct-met-farmers-market-20100717\\_1\\_link-cards-food-stamp-recipients-john-sondgeroth](http://articles.chicagotribune.com/2010-07-17/news/ct-met-farmers-market-20100717_1_link-cards-food-stamp-recipients-john-sondgeroth).

<sup>125</sup> *See* Public Health Law & Policy, *State Laws Promoting Use of Locally Grown Food and Agricultural Products in Public Contracts* (2012).

<sup>126</sup> *See* State of Maine Legislature, Summary of HP 1176, available at <http://www.maine.gov/legislature/org/LawMakerWeb/summary.asp?ID=280042123>.



any federal statute, law or regulation that attempts to threaten our basic human right to save seed and grow, process, consume and exchange food and farm products within the State of Maine.”<sup>127</sup> The Joint Resolution was not signed by the Governor and does not have a binding effect, but it does suggest that food sovereignty and the local food ordinances passed by several towns in Maine have engendered some support from the state.

While state laws that are in direct conflict with federal law will be preempted, there is room for state governments to pass local food–friendly laws. In addition to encouraging local governments to support the local food movement, local food–friendly state laws will also encourage the federal government to continue to support local food and find ways to help local farmers.

### III. LOCAL FOOD SHOULD BE REGULATED BY LOCAL AUTHORITIES

#### A. *Benefits of Local Level Regulation*

The Maine Ordinance serves as a good example of local level regulation in the environmental context. Localism is an effective tool for organizing citizens and “is an integral part of American government.”<sup>128</sup> As such, many successful environmental movements have started at the local level or are sustained through local level regulations.<sup>129</sup> These types of environmental initiatives derive their success from connecting individuals to their communities.<sup>130</sup> Local regulations have the ability to do this by recognizing the unique needs of the community. By acting locally, a municipality may take advantage of self-determination and try to carve out regulations that are more favorable than state and federal regulations that do not serve the community.<sup>131</sup> A successful campaign can begin at the local level because it requires less money up front and less organization and “sustained attitude and behavior changes are most likely to be accomplished through the positive feedbacks between personal and community norms.”<sup>132</sup>

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<sup>127</sup> H.P. 1176, 125th Leg., 1st Reg. Sess. (Me. 2011).

<sup>128</sup> McCabe, *supra* note 92, at 571.

<sup>129</sup> *See, e.g.*, 42 U.S.C. § 7401 (1970) (State Implementation Plans under the Clean Air Act); S.F., Cal., Ordinance 81-07, Plastic Bag Reduction Ordinance (current version at S.F., CAL., ENVIRONMENT CODE ch. 17, §§ 1701–1709) [hereinafter San Francisco Ordinance]; N.C. GEN. STAT. ANN. § 143-214.5 (West 2012) (noting the Water Supply Watershed Protection Act (“WSWPA”) requires implementation of local ordinances to meet the standards set forth by the act).

<sup>130</sup> Sam Kalen, *Agriculture, Food, and Environmental Policy*, 26 NAT. RESOURCES & ENV'T 3, 3 (2011).

<sup>131</sup> *See, e.g.*, Maine Ordinance, *supra* note 20.

<sup>132</sup> Sarah Krakoff, *Planetary Identity Formation and the Relocalization of Environmental Law*, 64 FL. L. REV. 87, 89–90 (2012).

Agricultural and food policy are aptly suited for local level regulations. Regulating food policy at a local level relates closely to land use development and community planning, which are regulated by municipal governments.<sup>133</sup> “Most policy issues facing farmers’ markets develop at the local level because farmers’ markets are a local activity.”<sup>134</sup> Localities are able to deal with issues of farmers’ market operations, applications of sales tax, and consumers’ demands.<sup>135</sup>

In addition to local ordinances, local governments can facilitate the growth of local food by streamlining the permitting process for the sale of local food and establishing tax incentives.<sup>136</sup> If an idea or program catches on at the local level, then there is potential for expansion to other towns to create more of an impact.<sup>137</sup> The Maine Ordinance is part of the resurgence of interest in localization and creating sustainability in individual communities.<sup>138</sup> Its reach has extended to other communities throughout the United States.<sup>139</sup>

*B. Maine Local Food and Community Self-Governance Ordinance*

In March 2011, Sedgwick Maine became the first town to pass a local food ordinance.<sup>140</sup> The Local Food and Community Self-Governance Ordinance was passed unanimously by a town vote in response to changes to federal and Maine state laws affecting small farms.<sup>141</sup> The goal is to “promot[e] self-reliance, the preservation of family farms, and local food traditions . . . enhancing the economic, environmental and social wealth of our community.”<sup>142</sup> The Maine Ordinance excuses direct-market sales from

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<sup>133</sup> See Salkin & Lavine, *supra* note 77, at 601.

<sup>134</sup> Martinez et al., *supra* note 13, at 41.

<sup>135</sup> *Id.* at 39.

<sup>136</sup> See Corinne Calfee & Eve Weissman, *Permission to Transition: Zoning and the Transition Movement*, 64 PLAN. & ENVTL. L. 3, 5 (May 2012). Portland, Oakland, and Atlanta are among several cities that have used permitting to promote local food. In Oakland, the municipal code was updated so that “home-based business” could buy a permit for forty dollars to sell home grown products out of the back yard. *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> *See id.*

<sup>139</sup> *Maine Town Passes Landmark Local Food Ordinance*, FOOD FOR MAINE’S FUTURE (Mar. 7, 2011), available at <http://savingseeds.wordpress.com/2011/03/07/maine-town-passes-landmark-local-food-ordinance/>; see also Rebekah Wilce, *Local Food Ordinances from Maine to California*, PR WATCH, Oct. 10, 2011.

<sup>140</sup> *Maine Town Passes Landmark Local Food Ordinance*, *supra* note 139.

<sup>141</sup> *Id.*

<sup>142</sup> See Maine Ordinance, *supra* note 20.

farm to consumer from state and federal regulations.<sup>143</sup> This helps local farmers avoid additional costs that are sometimes prohibitive and puts in writing the principle that residents should buy local products whenever possible.<sup>144</sup>

The Ordinance allows local farmers who sell directly to consumers through farmers' markets, or any other direct sales, to avoid state and federal licensing requirements.<sup>145</sup> Federal food protection regulations are enforced to protect consumers from food borne illness.<sup>146</sup> Proponents of local foods dislike federal policies that disproportionately hurt small local farmers, particularly when the ills the federal policies seek to avoid are not as salient to small farms.<sup>147</sup> One common example is cottage food industry exceptions.<sup>148</sup> These laws allow farmers to avoid compliance with food safety laws for certain foods that are sold directly to consumers and/or are unprocessed.<sup>149</sup> Cottage food industry exemptions are a challenge for state legislatures.<sup>150</sup> There is much debate as to what foods qualify, the safety risks, and economic advantages of farmers and the state.<sup>151</sup> Localizing this process could help efficiency because the decision makers would be more familiar with the community and its needs. The underlying concept of the Maine Ordinance is similar to the cottage food industry exemption; moving food laws specific to a small community to the municipal level.<sup>152</sup>

There are many challenges to developing a strong national local food system.<sup>153</sup> The Maine Ordinance is a good example of a strategy for codifying and insuring the growth of local food production and consumption in a localized area. Increasing the number of food regulations passed at the local level will encourage more vibrant local food markets and help distribute the legislative process to groups more closely interested in the local environment. Less than a year since passing in four towns in Maine, the influence of the Maine Ordinance has made it to the West Coast.<sup>154</sup> In

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<sup>143</sup> *See id.*

<sup>144</sup> *See id.*

<sup>145</sup> *Id.*

<sup>146</sup> *See* FDA, <http://www.fda.gov/>.

<sup>147</sup> *See* Maine Ordinance, *supra* note 20.

<sup>148</sup> Tarr, *supra* note 112, at 56–57.

<sup>149</sup> *Id.* at 58.

<sup>150</sup> *Id.* at 58–59.

<sup>151</sup> *See id.*

<sup>152</sup> *See id.* at 57–58; *see also* Maine Ordinance, *supra* note 20.

<sup>153</sup> Martinez et al., *supra* note 13, at 23–28 (explaining the difficulties faced by farms to produce enough volume to meet demand due to small size, lack of distribution infrastructure, limited farmer training, and regulatory uncertainties).

<sup>154</sup> *See* Wilce, *supra* note 139.

California, several towns passed similar measures.<sup>155</sup> Local food ordinances are a bridge to greater reform of the American food system, which can lead to greater environmental reform in agricultural production. However, local food ordinances need to be specifically tailored to ensure that the environmental benefits of local foods are obtained.

C. *Constructing Local Food Ordinances That Encourage Environmental Preservation*

In order to achieve noticeable environmental reform, food ordinances should incorporate specific measures directed at environmental preservation. While the Maine Ordinance was supported by farmers, environmentalists, and consumers, the underlying goal was to preserve the economic interests of farmers by combating federal and state policies that were making it hard on farmers to continue selling their goods.<sup>156</sup> The economic interests of local farmers are not mutually exclusive from environmental interests. Adapting the Ordinance to include more and concrete goals aimed at environmental sustainability could help the overall environmental impact in small towns in Maine. Articulate environmental success may make it more relevant for use on a national scale.

The Maine Ordinance should be altered to include an enforcement mechanism, clearly articulated goals, and baseline standards to test the impact and improvements to the local, statewide, and national environment;<sup>157</sup> to establish a process to spread the goals of the ordinance to a national level;<sup>158</sup> and to solidify a definition of local food consistent with the environmental benefits to be gained from moving to a system highly populated by small farms.<sup>159</sup> These types of specific adaptations to a local food ordinance are important in order for the local food movement to continue to uphold its claim that local food helps the environment.

In its current state, the Maine Ordinance lacks the direction necessary to ensure a positive impact on the environment and to contribute to a greater national movement. Many successful environmental initiatives have gained support through local level legislation.<sup>160</sup> This Note compares

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<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> See Maine Ordinance, *supra* note 20.

<sup>158</sup> See *id.*

<sup>159</sup> See *id.*

<sup>160</sup> See, e.g., S.F., Cal., Plastic Bag Reduction Ordinance (Mar. 22, 2007); Santa Rosa, Cal., Mayor and City Council Water Efficient Landscape Ordinance (Nov. 10, 2009).

the San Francisco Ordinance regarding plastic bag bans with the Maine Ordinance. The Maine Ordinance lacks an enforcement mechanism, clearly articulated goals, and baseline standards to test the impact and improvements to the local, statewide, and even national environment.<sup>161</sup>

Towns operating under this type of ordinance, like Sedgwick, will see more significant results if there is a tracking mechanism in place. More importantly, tracking the success of the program and collecting empirical data about the environmental benefits will encourage other communities to adopt similar measures, engender more federal government support, and provide a better model for other communities to follow. Thus, making some changes to the ordinance could make it more effective locally and more easily adapted to a statewide or national scale.

#### 1. Definition

Because the national understanding of local food remains ambiguous, consumers of local food may be attracted to the movement for different reasons and have different desires when making selections.<sup>162</sup> For example, some consumers may only want organic products, others may be concerned with farm conditions for animals and employees, others might want seasonal and native foods, and environmentalists might judge food based on energy usage and sustainability.<sup>163</sup> Currently, the Maine Ordinance defines “local food” to mean “any food or food product that is grown, produced, or processed by individuals who sell directly to their patrons through farm-based sales or buying clubs, at farmers markets, roadside stands, fundraisers or at community social events.”<sup>164</sup> The Maine Ordinance specifically applies to direct-to-consumer farmers.<sup>165</sup>

While the Ordinance does provide a definition of “local foods,” this definition provides farmers many options by which to achieve local status as long as they sell directly to consumers. Direct-to-consumer marketing includes farmers’ markets, CSA programs, community gardening, on-farm stores, and pick-your-own farm stands.<sup>166</sup> Local food should avoid a rigid definition, like the rigid definition of “organic” prescribed in the Federal

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<sup>161</sup> See Maine Ordinance, *supra* note 20.

<sup>162</sup> Martinez et al., *supra* note 13, at 3–17.

<sup>163</sup> *Id.* at 4.

<sup>164</sup> Maine Ordinance, *supra* note 20.

<sup>165</sup> See *id.*

<sup>166</sup> Martinez et al., *supra* note 13, at 9.

Organic Foods Production Act of 1990.<sup>167</sup> Allowing each community to develop its definition of local foods allows for flexibility and fits within the goals of the local food movement to satisfy the individual needs of localities.

Though some flexibility in the term is desirable, the Maine Ordinance should provide clearer guidance in terms of the distance the food can travel and the farming practices expected of farmers conducting direct-to-consumer sales. Another parameter that should be included in the Ordinance is the acceptable amounts of pesticides, GMO, HGH, and fertilizers that the foods can contain. Food labels should include ingredients (for processed food); location, including miles traveled; farming practices, including use of solar or wind energy and conditions for farm animals and employees; use of pesticides, fertilizers, or genetically modified organisms; and any other information that might help consumers achieve a personal connection with their food.

Perhaps the environmental incentives could be matched with economic ones and funds could be distributed based on the "greenness" of individual farms. At the same time, providing concrete definitions of local foods may eventually lead to a common understanding of the environmental, social, political, and economic meaning of "local food." A standardized definition could make it easier to obtain government resources, track sales, and measure the environmental, health, and local economic advantages of these regional food systems.<sup>168</sup>

## 2. Enforcing the Ordinance in Terms of the Environmental Goals

Having a definition of "local food" directed at the environment would promote enforcement. The Ordinance lacks clearly defined goals.<sup>169</sup> Local food ordinances will have the most impact if objectives are set. The Ordinance could adopt many different barometers for measuring environmental impact. These measures include: setting a goal for the reduction in carbon, recording the amount of local produce sold, calculating and aiming to reduce the number of miles food travels, and striving for a certain increase in the percentage of direct-to-consumer sales.<sup>170</sup> Objective goals and

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<sup>167</sup> Federal Organic Foods Production Act of 1990, 7 U.S.C. 6504 (1990). While local food is often organic, there is no standard definition or FDA process for certifying something as local. Martinez et al., *supra* note 13.

<sup>168</sup> See generally Kyle Lathrop, *Pre-empting Apples with Oranges: Federal Regulation of Organic Food Labeling*, 16 J. CORP. L. 885 (1991).

<sup>169</sup> See Maine Ordinance, *supra* note 20.

<sup>170</sup> The 2007 Census on Agriculture calculated \$1.2 billion in direct-to-consumer food sales as compared with \$551 million in 1997. Martinez et al., *supra* note 13.



empirical tests will incentivize participation on a local level and inspire other communities to adopt programs of their own. One example of an effective goal is to propose a percentage reduction in use of pesticides, similar to carbon limits set by the EPA.<sup>171</sup>

Laws limiting the use of plastic bags are a good example of setting environmental goals that can be achieved by establishing clear enforcement mechanisms and attaching an economic incentive.<sup>172</sup> In 2007, large supermarkets in San Francisco were required to stop using plastic bags and switch to compostable bags.<sup>173</sup> The goal was to drastically reduce the number of single use bags in the city.<sup>174</sup> Empirical research suggested that the best way to incentivize a change would be to charge customers using plastic bags,<sup>175</sup> however, at the time, state laws prohibited cities from instituting such measures.<sup>176</sup> The City of San Francisco devised a plan that matched economic incentives with environmental goals.<sup>177</sup> By pairing the two, an effective Ordinance was established.<sup>178</sup> Future local food ordinances should use economic means to incentivize and enforce environmental objectives.<sup>179</sup>

Most importantly, the goals of the San Francisco Ordinance were clearly stated.<sup>180</sup> The city planned to reduce waste.<sup>181</sup> The Ordinance states the terms and their proper uses, lays out the method for achieving the goals, and provides enforcement through penalties.<sup>182</sup> The San Francisco Ordinance calls for a seventy-five percent landfill diversion and a reduction in waste.<sup>183</sup> Further, the terms of the San Francisco Ordinance are

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<sup>171</sup> See, e.g., Regulations & Standards, EPA, <http://www.epa.gov/otaq/climate/regulations.htm> (last visited Jan. 29, 2013).

<sup>172</sup> See, e.g., San Francisco Ordinance, *supra* note 129.

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> See *Checkout Bag Ordinance*, SAN FRANCISCO ENVIRONMENT, <http://www.sfenvironment.org/article/prevent-waste/checkout-bag-ordinance> (last visited Jan. 29, 2013).

<sup>176</sup> See *Court Upholds San Francisco's Expanded Single-Use Bag Ordinance, Rejects Plastic Industry Group's Lawsuit*, PLASTICBAGLAWS.ORG (Sept. 13, 2012), <http://plasticbaglaws.org/court-upholds-san-francisco%E2%80%99s-expanded-single-use-bag-ordinance-rejects-plastic-industry-group%E2%80%99s-lawsuit/>. In 2010, Washington, D.C. became the first city in the United States to charge for plastic bags. *San Francisco Plastic Bag Ban Would Also Charge Customers for Paper Bags*, HUFFINGTON POST (Nov. 15, 2011), [http://www.huffingtonpost.com/2011/11/11/15/san-francisco-plastic-bag-ban-and-fee\\_n\\_1096011.html](http://www.huffingtonpost.com/2011/11/11/15/san-francisco-plastic-bag-ban-and-fee_n_1096011.html).

<sup>177</sup> See San Francisco Ordinance, *supra* note 129.

<sup>178</sup> See *San Francisco Plastic Bag Ban Would Also Charge Customers for Paper Bags*, *supra* note 176.

<sup>179</sup> See, e.g., San Francisco Ordinance, *supra* note 129.

<sup>180</sup> *Id.*

<sup>181</sup> See *id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*



clearly defined.<sup>184</sup> The Ordinance supplies a clear rule to follow, stating that “stores shall provide only the following as checkout bags to customers: recyclable paper bags, and/or compostable plastic bags, and/or reusable bags.”<sup>185</sup> Finally, the enforcement section of the Ordinance incentivizes businesses to follow the rules of the Ordinance by establishing that non-compliance will be met with penalties.<sup>186</sup> Potential penalties include fines and legal action commenced by the state.<sup>187</sup>

The San Francisco Ordinance has been successful in effecting change at both the local and national level.<sup>188</sup> Avoiding legal challenges through compliance with state and federal laws has been crucial to the success.<sup>189</sup> The careful drafting of the Ordinance makes it accessible to business people looking to stay within the confines of the law and also encourages support from city residents hoping to see the positive environmental changes outlined in the Ordinance come to light.<sup>190</sup> A local food ordinance drafted in this style would have greater success than the example established in Maine because the San Francisco Ordinance is more specific in its goals, has teeth to make it enforceable, and comports with state and federal law.<sup>191</sup>

Adopting an ordinance that set effective goals and encouraged widespread participation was very effective.<sup>192</sup> In the years since San Francisco adopted the first ordinance aimed at reducing plastic bag use, many other cities and countries have adopted similar efforts to reduce the use of plastic bags including Maui, Hawaii; Brownsville, Texas; and cities in China.<sup>193</sup>

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<sup>184</sup> San Francisco Ordinance, *supra* note 129. Terms include: “ASTM Standard” which means the American Society for Testing and Materials International standard D6400 for compostable plastic; “Compostable Plastic Bag”; “Highly visible manner.” *Id.*

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> See *San Francisco Plastic Bag Ban Would Also Charge Customers for Paper Bags*, *supra* note 176.

<sup>189</sup> This does not mean that the ban has not faced challenges; in fact, many different groups have spoken out against the regulations and even filed lawsuits. Mike Verespej, *Calif. Communities Continue Plastics Bans*, PLASTIC NEWS (Feb. 27, 2012), <http://www.plasticsnews.com/article/20120227/NEWS/302279935>.

<sup>190</sup> See San Francisco Ordinance, *supra* note 129.

<sup>191</sup> The Local Food Ordinance is already facing a legal challenge because of a conflict with state laws, which take precedent over the Local Ordinance. See *Complaint for Injunctive Relief and Civil Monetary Penalties* at 2–3, *Maine v. Brown* (Sup. Ct. Hancock 2011).

<sup>192</sup> See *San Francisco Plastic Bag Ban Would Also Charge Customers for Paper Bags*, *supra* note 176.

<sup>193</sup> *Id.*

### 3. Long-Term Goals

The Maine Food Ordinance should include long-term goals. The Ordinance can potentially play an important role in increasing attention and local food legislation.<sup>194</sup> The movement can gain support and recognition as a grassroots, populist movement.<sup>195</sup> The best ways to do this are to advertise on a national scale and develop plans to make local food needs accessible to all people.

The Ordinance is an effective mechanism for advertising and has already received national attention. In California, many towns have adopted similar local food ordinances.<sup>196</sup> Further, a lawsuit filed by the State of Maine against local farmer Dan Brown for the “unlicensed distribution and sale of milk and food products”<sup>197</sup> has received national attention.<sup>198</sup> The court will determine whether federal and state food distribution laws prohibit the practices allowed by the ordinance.<sup>199</sup> While the determination is at the discretion of the court, state and federal law take precedent over local law where the laws are in direct conflict.<sup>200</sup> The publicity will benefit the movement and may incite change at a higher level or stimulate the creation of a new generation of ordinances that encourage regional foods without conflicting with federal laws.

The movement is sometimes criticized as catering to the mid-to-upper socioeconomic classes because local food tends to be more expensive.<sup>201</sup> There are many proposed remedies to equalize the opportunity for all to enjoy local food including having farmers’ markets accept food stamps and establishing partnerships between public schools and local farmers to provide local, healthy school lunch options.<sup>202</sup> At the local level, the more people who enjoy the benefits of a thriving local food system, the more opportunity to expand the program to the federal level and achieve institutional change.

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<sup>194</sup> See Wilce, *supra* note 139.

<sup>195</sup> See Alli Condra, *Maine’s Local Food Ordinances Tested*, FOOD SAFETY NEWS (Nov. 21, 2011), <http://www.foodsafetynews.com/2011/11/maines-local-food-ordinances-tested/> (describing the response to Maine’s lawsuit against Dan Brown).

<sup>196</sup> Wilce, *supra* note 139.

<sup>197</sup> Complaint for Injunctive Relief and Civil Monetary Penalties, *supra* note 191.

<sup>198</sup> See Condra, *supra* note 195.

<sup>199</sup> *Id.*

<sup>200</sup> See Faith DeAmbrose, *Department of Agriculture to Towns: State Law Preempts Local Food Rules*, PENOBSCOT BAY PRESS (May 13, 2011), <http://penobscotbaypress.com/news/2011/may/13/departement-agriculture-towns-state-law-preempts-lo/>.

<sup>201</sup> Avi Brisman, *It Takes Green to Be Green: Environmental Elitism, “Ritual Displays,” and Conspicuous Non-Consumption*, 85 N.D. L. REV. 329, 356, 359 (2009).

<sup>202</sup> Martinez et al., *supra* note 13, at 39–41.

Expanding the markets for local foods is an important change, but one that will not happen overnight. Garnering more support from the federal government could help. Although the Maine Ordinance cites the principles of home rule and self-determination as authority for not following federal regulations, the Maine Ordinance cannot operate in total exclusion from federal laws.<sup>203</sup> The Ordinance stands in opposition to both state and federal laws.<sup>204</sup> Thus it necessarily will have limited authority.<sup>205</sup> The eventual goal should be to get enough local ordinances passed and garner enough support at the grass roots level to make more fundamental changes from the top. This is particularly true because “some locally grown foods will have a much larger carbon footprint on the farm compared to foods transported from a distance.”<sup>206</sup>

#### IV. CHALLENGES TO IMPLEMENTING LOCAL FOOD REGULATIONS AND TO ACHIEVING POSITIVE ENVIRONMENTAL RESULTS

While the grass roots movement and the spread of local level legislation can help the regional food movement, there is still a long road to dramatically increasing reliance on locally produced foods.<sup>207</sup> There is a sensitive balance of power between local and state governments and the federal government.<sup>208</sup> Each needs to work together to promote local food. Further, local food systems require the proper infrastructure to work efficiently and conform to federal and state policies.<sup>209</sup> Problems of availability and cost also arise. Organic and local foods are only available in some areas, and even where there are an abundance of local farmers, these products are more expensive. A final concern relates to the standards kept by local food producers. As addressed in Part I, there is no firm definition or labeling process for local foods. Therefore, just because something is produced locally does not guarantee that the farmer adhered to sustainable growing practices.

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<sup>203</sup> See Maine Ordinance, *supra* note 20.

<sup>204</sup> See Condra, *supra* note 195.

<sup>205</sup> See DeAmbrose, *supra* note 200.

<sup>206</sup> See PAARLBERG, *supra* note 26, at 152 (“Tomatoes shipped from Mexico in the winter months have a smaller carbon footprint than tomatoes grown locally in a greenhouse. For consumers in the United Kingdom, lamb meat that travels 11,000 miles from New Zealand generates only one-quarter the carbon emissions per ton compared to British lamb because British farmers raise their animals on feed (which must be produced using fossil fuels) rather than on clover pastureland.”).

<sup>207</sup> See PAARLBERG, *supra* note 26, at 150–51.

<sup>208</sup> See HARVARD FOOD LAW AND POLICY CLINIC, *supra* note 91, at 11–12.

<sup>209</sup> *Id.* at 19, 21.

Local governments only have so much power and must conform to their role in regard to the delegated power between federal, state, and local governments.<sup>210</sup> State and federal laws can preempt local ordinances. The lawsuit against farmer Dan Brown in Maine will be an interesting test case for the viability of the Local Food Ordinances.<sup>211</sup> Even with local ordinances in place, major changes to federal and state laws will be necessary for any dramatic overhaul of the food system.

Once there is more uniform support from all levels of government, the infrastructure for local food supply may improve; however, currently that is a major impediment to a vibrant local food network. The U.S. food distribution system is not organized to support local food. Because “locally produced food is unlikely to ever supply more than a small share of the national diet in the United States, given the price-reducing advantages that come from specialization and industrial-scale production in distant locations plus the short growing season in so many regions” a transition away from the current system is unlikely.<sup>212</sup> While many consumers support local foods and local farmers’ markets, the availability of fresh and locally farmed goods is just an added benefit supplementing weekly trips to the supermarket.

An Economic Research Service Study conducted by USDA identified some of the problems with local food markets.<sup>213</sup> Some of the systemic difficulties include capacity constraints for farms, a lack of infrastructure for moving local food into mainstream markets, and regulatory uncertainties.<sup>214</sup>

Barriers to local food-market entry and expansion include: capacity constraints for small farms and lack of distribution systems for moving local food into mainstream markets; limited research, education, and training for marketing local food; and uncertainties related to regulations that may affect local food production, such as food safety requirements.<sup>215</sup>

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<sup>210</sup> *Id.* at 11–12.

<sup>211</sup> See Complaint for Injunctive Relief and Civil Monetary Penalties, *supra* note 191.

<sup>212</sup> PAARLBERG, *supra* note 26, at 150–51.

<sup>213</sup> Martinez et al., *supra* note 13, at 23–28.

<sup>214</sup> Martinez et al., *supra* note 13. There are inconsistencies in the ways different food regulations are interpreted at the federal, state, and local levels. *Id.* at 27. For example, regulations classified as “voluntary” at the national level may be mandatory under state regulations. *Id.* These uncertainties negatively affect direct-to-consumer operations by adding costs and hampering production. *Id.* at 28.

<sup>215</sup> *Id.* at iv.

Some provisions in the 2012 Farm Bill may begin to address infrastructural constraints.<sup>216</sup> One key goal of local governments is to identify gaps in infrastructure to be filled and to propose ways that local, state, and federal governments can close them.<sup>217</sup>

Some problems that arise in trying to increase consumer reliance on local food include: organic and local food are generally sold at a higher price than commercially produced foods,<sup>218</sup> most consumers cannot fulfill all of their shopping needs at a farmers' market so must go to the grocery store,<sup>219</sup> not all farms that sell locally use environmentally sustainable methods,<sup>220</sup> and some foods grown locally can generate a higher carbon footprint than if the same goods were produced at a distance and transported.<sup>221</sup> Methods of properly labeling and policing goods sold locally will help ensure that customers know what they are buying and also prevent farmers from claiming local and sustainable supplies if in fact the farming practices do not uphold the environmental standards that should be established for local food certification.

Of course, the relationship between local food marketing and sustainable agricultural practices is far from perfect. A small farmer can still spray pesticides and plow from road to road. Not all farmers market vendors are organic. Clare Hinrichs, who calls herself an "ardent" farmers market shopper, nevertheless acknowledges that "the actual consequences—both intended or unintended—[of local food systems] haven't really been all that closely or systematically studied."<sup>222</sup>

Nevertheless, the demand for local food is driven by consumers and if the demand is contingent upon the use of sustainable farming methods and healthy practices, small farmers will be forced to adhere to their consumers' demands. Each shopper exercises a vote when buying certain products and selecting not to buy others. When companies like Walmart purchase organic, local, and environmentally sustainable products, that is a consumer driven choice.<sup>223</sup> Private/economic market-driven demand

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<sup>216</sup> See Agricultural Reform, Food and Jobs Act of 2012, S. 3240, 112th Cong. (2012).

<sup>217</sup> HARVARD FOOD LAW AND POLICY CLINIC, *supra* note 91, at 19.

<sup>218</sup> See Brisman, *supra* note 201, at 356, 359.

<sup>219</sup> See PAARLBERG, *supra* note 26, at 153–54.

<sup>220</sup> See DeWeerd, *supra* note 3.

<sup>221</sup> See PAARLBERG, *supra* note 26, at 152.

<sup>222</sup> DeWeerd, *supra* note 3.

<sup>223</sup> Neil Hamilton, *Moving Toward Food Democracy: Better Food, New Farmers, and the Myth of Feeding the World*, 16 DRAKE J. AGRIC. L. 117, 122–23 (2011).

and localized collective/group movements are the two main things that will help sustain and grow the local food movement.

## CONCLUSION

Environmental movements that began as local and grassroots have achieved considerable success on the national stage.<sup>224</sup> In recent years, increased awareness about food and its environmental and health consequences has encouraged consumers to consider where and what food they purchase.<sup>225</sup> This has engendered increased scrutiny of the American industrial agriculture sector and the laws and the actions of federal, state, and local governments in fostering the growth of a food industry that aims to increase profits and cut food prices while devastating the environment and harming the health of Americans.<sup>226</sup> The local food movement is driven by consumer demand and local farmers. Community leaders and citizens play an important role in shaping their communities and emphasizing the need for a dynamic local food market.<sup>227</sup>

At the local level, citizen enthusiasm for local foods can result in changes at both the local and statewide level.<sup>228</sup> Local food ordinances are a mechanism for change and have the potential to be as successful as other local environmental ordinances. In order to achieve similar success, local ordinances should be framed to clearly articulate the environmental goals and benefits, be drafted in a way to avoid state and federal preemption, and establish economic incentives for both the producer and the consumer.

The United States is currently in a position to make major changes to food policy and the way people think about food. Federal agencies, Congress, and the Executive drive this. Attention at the federal level is encouraging and places local community organizers in the important position of laying down beneficial local policy to set the example for federal decision-makers. The environmental benefits of local food are numerous. As more people and organizations become involved, much credit should be given to the small, local groups who have taken the formative steps and helped drive the movement.

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<sup>224</sup> See *supra* notes 148–60 and accompanying text.

<sup>225</sup> Know Your Farmer, Know Your Food, *supra* note 2.

<sup>226</sup> See *supra* notes 35–54 and accompanying text.

<sup>227</sup> See Hamilton, *supra* note 223, at 123–24.

<sup>228</sup> See *supra* notes 122–28 and accompanying text.