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NO JUSTICE, JUST PEAS: WHY WAL-MART WILL NOT END D.C.'S FOOD DESERTS

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INTRODUCTION

Imagine trying to make a healthy dinner from ingredients found in the typical D.C. corner store. After scanning through shelves of chips, soda, and cookies you might luck out and find an overpriced dusty jar of spaghetti sauce or some beans but it is unlikely you will find vegetables, fruit, whole grains, or very many of the sources of lean protein you would find at a farmer’s market, produce co-op, or traditional grocery retailer. This is the reality for many District of Columbia residents, who must either travel great distances, often incurring additional expense, to find a grocery store, or choose between fast food and the corner store. These residents live in food deserts. Many are low income, and an overwhelming number are African-American.¹

Legislative efforts to solve the problem of disparate access to healthy food often presume that the best way to increase the availability of healthy food in an underserved neighborhood is to provide tax breaks and regulatory exemptions to large grocery retailers. For example, the FEED-DC Act of 2010² provides incentives for existing local businesses to sell fresh food while also encouraging large retailers to move in to communities lacking adequate sources of healthy food. But, it is federal agriculture policy, not high taxes that cause food deserts. Retailers fear they cannot make a profit

¹ D.C. HUNGER SOLUTIONS, WHEN HEALTHY FOOD IS OUT OF REACH 3 (2010). Ward 3 has one grocery store for every 7,300 people, while Ward 8 has one store for every 23,000 people. Ward 3 has the highest average household income, $128,000.00. Ward 7 $39,000.00, Ward 8 $29,000. 00 have the lowest. Ward 3 is 6. 5% African-American, Ward 7 is 96. 9% African-American, Ward 8 is 91% African-American, the city as a whole is 60% African-American.

on fresh food in areas with high levels of poverty, and often prioritize the sale of cheaper, processed foods with long shelf lives and a dependable profit margin.

D.C., like many cities, has a long history of privileging corporate profit over community enterprise when attempting to solve a public policy issue. The FEED-DC Act attempts to support community enterprise, while also promising subsidies for large grocery retailers to move in. At the same time, city officials have demanded very little from Wal-Mart - a company known for destroying local businesses while paying low wages. Placing a Wal-Mart super center in a food desert will exacerbate the problems of poverty and capital outflow that lead to the food deserts in the first place.

Without a significant policy shift away from corporate subsidies and towards local capital development, local entrepreneurs may need to abandon traditional for-profit business models in favor of alternative non-profit models that build upon existing community assets. Legislation meant to solve the problem of food deserts should prioritize community-based enterprise because of the capacity to localize capital, create living-wage jobs, and build accountability to community.

This paper will first provide a factual background detailing the racially discriminatory character of disparate food access in D.C. It will then look at successful community based models that have helped to mitigate the disparity. It will also discuss legal obstacles and possible strategies for community-led food enterprise under an economic development policy regime that privileges corporate retailers.

I. Background
A. Defining the Problem

In 2010, the D.C. City Council passed the FEED-DC Act. The law, introduced by Ward 3 Councilwoman Mary Cheh, attempts to combat D.C.’s food deserts through a combined approach of providing incentives for existing businesses to sell healthy food while also encouraging large retailers to move in. At the same time, Wal-Mart, the largest corporation in the world\(^3\) has announced that it intends to open six stores within city limits, three in areas the city has identified as food deserts, and two just outside the designated areas\(^4\). Having saturated the exurban market, the company’s latest strategy has been to move into previously ignored urban areas, deflecting criticism of its practice of paying *always low wages* in union-dense cities by claiming its stores will eliminate food deserts. The company often takes advantage of tax abatements and other legal advantages not afforded to smaller businesses.

Yet, data clearly shows that when retailers like Wal-Mart set up shop, local businesses close, jobs are lost, poverty increases, and community health declines. Research conducted by the Institute for the Study of Labor in Bonn, Germany “strongly belie[d]” claims that a new


\(^{4}\) See, Appendix A: FOOD DESERT MAP http://www.marycheh.com/images/committee/feeddc/ From downloaded from the website of Councilwoman Mary Cheh.
Wal-Mart opening will lead to more retail jobs.\textsuperscript{5}

In this context, is it possible that the FEED-DC Act will actually support local businesses, create good jobs and strengthen communities or will the presence of a large-scale retailer, like Wal-Mart, make that impossible?

\textit{B. What Are Food Deserts?}

The term food desert was first used in 1972 to refer to the lack of healthy food availability in public housing estates in the United Kingdom.\textsuperscript{6} The United States Department of Agriculture defines a food desert as a low-income census tract area where a “substantial number” of residents must travel a mile or more to access a supermarket or large grocery store (in order to qualify as a grocery store, a food retailer’s annual sales must meet or exceed two million dollars within a year).\textsuperscript{7}

The focus on physical proximity is problematic in that it does not take into account other factors that make purchasing fresh food unaffordable for many (particularly when the ubiquity of cheap fast food and junk food makes the purchase and preparation of fresh food seem comparatively burdensome). Similarly, the focus on large grocery retailers limits the scope of possible solutions because it excludes other

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\textsuperscript{5} David Neumark, Junfu Zhang & Stephen Ciccarella, \textit{The Effects of Wal-Mart on Local Labor Markets}, INSTITUTE FOR THE STUDY OF LABOR 34 (2007) (Ger.), downloaded as .pdf from http://ftp. iza. org/dp2545. pdf (“On average, Wal-Mart store openings reduce retail employment by about 2.7 percent, implying that each Wal-Mart employee replaces about 1.4 employees in the rest of the retail sector. Driven in part by the employment declines, retail earnings at the county level also decline as a result of Wal-Mart entry, by about 1.3 percent.”).


\textsuperscript{7} US DEPARTMENT OF AGRICULTURE, ECONOMIC RESEARCH SERVICE, FOOD DESERT LOCATOR http://www. ers. usda. gov/data/fooddesert/documentation. html#DefinitionThe
healthy food sources, like gardens, food co-ops and small retailers, from the discussion. So, perhaps a better definition of the term can be found in a 1996 report issued by the United Kingdom Department of Health Nutrition Task Force’s Low Income Project Team, “… an area of relative exclusion, where people experience physical and economic barriers to accessing healthy food”. 

C. Causes of Food Deserts

Food deserts in the U.S. are a direct consequence of a federal policy prioritizing agribusiness profit over sustainability. By heavily subsidizing certain favored crops, corporate-oriented federal government agricultural policy has artificially driven down the cost of crops such as corn and soybeans, paving the way for a fast food takeover of neighborhoods. In places where the USDA defines pizza and ketchup as a vegetable in school lunches, and where retailers sell junk food and soda made with cheap corn and soy based ingredients healthy fresh food is not profitable for the simple reason that it is more expensive. These public policy decisions prioritize corporate profits while collateralizing damage among the poor, working-class, and communities of color.

In D.C., the presence of food deserts in the city’s African-American neighborhoods is also symptomatic of the structural racism within an economic system. It is the result of the way in which the legacy of de jure segregation, redlining, denial of

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10 Although this paper focuses on disparate access to healthy foods among African-Americans in D.C., food deserts exist in rural white communities, Latina/o, and Native American communities across the US.
loans and other barriers to capital intersects with the *de facto* place-based segregation and gentrification of today. Although African-Americans now make up a growing percentage of the middle and upper income brackets nationally, many black neighborhoods in D.C. have actually become less economically diverse. Gentrification has caused property taxes to skyrocket in many historically African-American neighborhoods, causing long-term homeowners (many retirees on fixed incomes) to sell to upper-income newcomers. Many first-time homebuyers priced out of the neighborhoods they grew up have left for the suburbs. At the same time, the end of racial housing covenants and other racially discriminatory laws has created wider housing choices for middle and upper income African-Americans.

The result is an economically polarized city in which upper and middle-income neighborhoods tend to be more racially diverse, while most of the low-income neighborhoods are predominantly African-American. In the past, grocery retailers may have been more willing to sell fresh food in some of D.C.’s African-American neighborhoods than they are today because segregation meant that these neighborhoods were more likely to be mixed-income. Today, many Ward 7 and 8 retailers operate on a business model that makes it difficult to sell fresh food and feel they cannot make a profit on healthy groceries in these neighborhoods.

*D. Food Deserts in D.C.*

According to the policy group D.C. Hunger Solutions, nearly nineteen percent of respondents in D.C. experienced food hardship, reporting that they did not have
enough money to buy food for themselves or their family in 2010.\textsuperscript{11} In 2009-2010, thirty-seven percent of households with children in the District of Columbia said they were unable to afford enough food.\textsuperscript{12} Furthermore, forty-seven percent of D.C.’s children live in poverty, and D.C. is ninth for childhood obesity.\textsuperscript{13} Adults in Wards 7 and 8, the Wards with the overall lowest average incomes in the city, have higher rates of chronic disease, poor health status, and premature mortality.\textsuperscript{14} By contrast, Wards 2 and 3, where the affluent cluster, have lower rates of hypertension, heart disease, cerebrovascular disease, and diabetes compared to the city as a whole.\textsuperscript{15} Ward 3, the wealthiest neighborhood, has one grocery store for every 7,300 people, while Ward 8 has one store for every 23,000 people.\textsuperscript{16}

\textit{E. Policymakers Respond}

Lawmakers have responded to the crisis at the municipal, state, and federal level. President Obama’s Healthy Food Financing Initiative (HFFI) funds food security projects with New Market Tax Credits and other funds from the American Recovery and Reinvestment Act.\textsuperscript{17} The HFFI is modeled after Pennsylvania’s 2004 Fresh Food

\begin{footnotes}
\textsuperscript{11} \textit{Facts}, D.C. HUNGER SOLUTIONS http://www. dchunger. org/about/facts. html, (Feb. 25\textsuperscript{th}, 2012).
\textsuperscript{12} \textit{Id.}
\textsuperscript{13} \textit{HEALTHY SOLUTIONS GROUP}, http://www. healthysolutionsgroup. org/about-us/washington-dc/ (Feb. 25\textsuperscript{th}, 2012).
\textsuperscript{14} \textit{Id.}
\textsuperscript{15} \textit{Id.}
\textsuperscript{16} D.C. HUNGER SOLUTION, \textit{supra} note 1 at 3.
\textsuperscript{17} The President’s \textit{Healthy Food Financing Initiative of 2010} targets food security projects with New Market Tax Credits and other funds from the American Recovery and Reinvestment Act of 2009 (Stimulus Bill) Pub. L. No.111-5, 123 Stat. 115 (2009).
\end{footnotes}
Financing Initiative (FFFI) also uses New Market Tax Credit allocations, as well as state funds, to encourage retailers to sell healthy food in underserved areas. New York passed a similar bill in 2011. First Lady Michelle Obama has promised to work to end food deserts by 2017, making it a key component of her Lets Move Campaign.

It is a good thing public officials are taking action. However, rather than addressing the underlying problems that cause food deserts, most of the proposed solutions involve luring large scale retailers into areas without a large grocery store. But, a recent University of North Carolina at Chapel Hill study showed that greater proximity to a grocery store did not increase consumption of fresh produce in low-income neighborhoods. People living in food deserts often face additional barriers such as unemployment, underemployment, age, disability or limited public transportation. They may be overburdened caregivers, or lack time for food preparation.

Instead of turning to proven solutions that increase availability of healthy food while also alleviating some of the underlying causes of food deserts, many lawmakers (struggling with budget cuts and a fear of appearing to legitimize a role for government regulation in the market) advocate seemingly easy answers involving “public-private

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19 Food retail establishment subsidization for healthy communities act’ NY A.B. 2359 (NS) (2012)
20 LET’S MOVE, www.letsmove.gov/eat-healthy

partnerships”. However, since retailers are often unwilling to risk investing in low-income neighborhoods, rather than using taxpayer dollars to lure them into these neighborhoods, it would make more sense to adopt policies that encourage local investment and local solutions that solve the problem of access to fresh food, while also creating good jobs and rebuilding capital.

If the primary cause of food deserts is economic inequity and under-capitalization of a community, effective solutions must be locally led with the intent to build community wealth. Although successful solutions must be designed to meet the specific needs of a neighborhood, there are a number of successful models to draw from.

II. COMMUNITY BASED SOLUTIONS

Instead of privileging big business, legislative efforts should focus on leveling the playing field to make it possible for local businesses and social enterprises to compete with large-scale retailers. The following examples of successful community-based food businesses are all ideas that are in place now. Some exist in D.C.; others are in place in other cities. All are ideas that could work for D.C. Not only do these enterprises increase access to healthy food, but also they offer other assets in the form of job creation, creation of local businesses, education and community building.

A. The Ward 8 Farmers Market

The Ward 8 Farmers Market founder and current President John Gloster was outraged when he learned, in 1998, that the ward’s only full-service grocery retailer would close its doors. As chair of the D.C. Statehood Party, he quickly channeled
outrage into organization by forming a Committee for a Farmers Market - recruiting most of the ward’s Advisory Neighborhood Commissioners\(^\text{22}\) and other community leaders to establish a market. The market has been in operation since 1999, closing its thirteenth season in November of 2011.\(^\text{23}\)

At first, members of the volunteer board would purchase produce outside of the ward to resell to customers at the market. Residents soon signed-up as vendors and local farmers soon followed. The Ward 8 Farmer’s Market eventually registered with the IRS as a nonprofit co-op\(^\text{24}\) and currently employs an executive director to manage the market, which runs from June through mid-November, selling meat, baked goods, preserves, and locally grown houseplants along with fruits and vegetables.

From the beginning, Gloster and other market founders envisioned the market not only as a solution to the problem of lack of fresh food, but also as a venue for community empowerment. The board focused on outreach, finding out which items residents were most likely to want to purchase.

Ward 8 Farmer’s Market was the first food justice organization in D.C. to collaborate with area corner stores, providing storeowners with produce left over from the markets so that consumers would have access to fresh food throughout the week.

\(^{22}\) D.C. Code § 1-309.01 (Advisory Neighborhood Commissioners are elected officials representing a 2,000 person residential block within an Advisory Neighborhood Commission (ANC). ANCs hold monthly public meetings and “…[M]ay advise the District government on matters of public policy including decisions regarding planning, streets, recreation, social services programs, health, safety, and sanitation in that neighborhood commission area.”).

\(^{23}\) Ward 8 Farmers Market, http://www.ward8farmersmarket.com/

\(^{24}\) General Cooperative Associations, Under D.C. Code § 29-902.
The D.C. City Council later picked-up on the concept, funding a 2008 pilot program to encourage fresh food sales in corner stores (this Healthy Corners Program would later become part of the FEED-DC Act).\textsuperscript{25} Thanks to a private grant, customers who pay with SNAP\textsuperscript{26}, WIC\textsuperscript{27}, or SFMNP\textsuperscript{28} receive double-value on their benefits. Although a large supermarket chain set-up a store in Ward 8 in 2007, the market has continued to grow – recording its largest sales in 2010.\textsuperscript{29}

Not only has the market provided Ward 8 residents access to fresh produce, it has created entrepreneurial opportunities for vendors, a market for local farmers, increased nutritional awareness, and a venue to build community.

The market has a huge advantage over [a supermarket]. Our food is much closer to the farm, allowed to ripen on vine, and produced with natural farming techniques. There is nothing else like it in Ward 8. The farmers market has evolved over time, doing more than providing produce.\textsuperscript{30}

When asked whether there are any changes to licensing or regulatory changes that could make it easier to start a farmers market, Gloster cites the non-profit organizational structure of the market as one of the reasons for its success. Aside from the fact that

\begin{footnotes}
\item[27] 42 U. S. C. A. § 1786 (2010) Special supplemental nutrition program for women, infants, and children
\item[28] This is a District program providing vouchers to seniors in order to purchase fruits and vegetables.
\item[29] Id.; and, LaToya Peterson, Better Farmers Markets: Farmers Markets Have to Do Better to Tackle the Convenience Problem, THE AMERICAN PROSPECT, http://prospect.org/article/better-farmers-markets-0, 2011 sales figures are not yet available.
\item[30] Interview with John Gloster, President, Ward 8 Farmers Market (December 2\textsuperscript{nd}, 2011).
\end{footnotes}
the traditional business model necessarily privilege profit over purpose, for-profit organizations have much greater licensing and regulatory requirements.

The greatest challenge has been building a customer base from consumers used to shopping at stores. The market has been able to overcome this problem through sustained outreach efforts. However, Gloster also sees an overall shift in public consciousness. Many are aware of the role corporate agriculture plays in making people unhealthy and many are taking steps to change their eating patterns.

People in Ward 8 are beginning to realize what they eat is a matter of life and death. Ten years ago, I was fighting with people over the fact that prices were a little higher than at the supermarket. Now they understand the value in paying a little more for a much healthier product.31

It is not surprising that this grassroots enterprise, in part, owes its existence to the D.C. Statehood Party32 and the Advisory Neighborhood Commissions (ANCs)33 both of which came out of D.C.’s struggle for self-determination and developed within the context of the anti-colonial, radical, and black-power struggles of the 1960’s and 70’s.

31 Id.


33 Advisory Neighborhood Commissions (ANCs) were established in 1976 in response to a 1974 public referendum.
B. Healthy Solutions

Healthy Solutions, a national 501c3 based in Ward 7, seeks to “increase the capacity of communities of color, particularly African Americans, to achieve self-reliance through distribution, agriculture, entrepreneurship, and cooperative healthy food enterprises”.  

Since 2006, the group has run a produce co-op in Wards 7 and 8. Consumers place an order online and pickup at one of the weekly locations east of the river. Healthy Solutions works directly with black farmers, providing farmers with marketing assistance and distribution channels, while lowering the cost for consumers. The organization conducts community outreach educational programs around issues of nutrition, cooperative enterprise and food justice. The organization works with local high school students to run a regular produce co-op at the Benning Terrace housing project.

In a recent interview, the organization’s Executive Director Tanikka Cunningham described a key role of the organization as that of “capacity training” - helping aspiring entrepreneurs to “orchestrate their ideas and create the capacity to carry them through”. Examples of this include working with local residents interested in starting a catering business to place prepared foods (salads and sandwiches) in local corner stores. The group provides entrepreneurial training and licensing assistance.

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34 Healthy Solutions Group, supra note 13.

35 Telephone Interview with Tanikka Cunningham, Executive Director, Healthy Solutions (October, 2011).
Healthy Solutions was one of two organizations responsible for providing produce to local corner stores during the pilot stage of the Healthy Corners Program.\textsuperscript{36}

The organization also lobbies for the centrality of community ownership to food system reform, insisting that public policy efforts prioritize local business ownership and job creation; and that community members best know how that can be done. During a public hearing on the FEED-DC Act, Cunningham stated:

\begin{quote}
[I]n order for anything to have an impact on the community the community has to have a stake in it… [Giving community members the] opportunity to own businesses, and become economically viable in the communities in which they live. This would not only be for brick and mortar establishments but for mobile fresh food trucks, co-ops, and farmers/co-op markets. We believe that these stores should not be just located in our communities, but should be run and operated by our community members. When jobs are created, we want our community members not just to work, but to thrive.\textsuperscript{37}
\end{quote}

\textbf{C. Food Trucks}

Mobile grocery stores are becoming an increasingly popular way to deliver fresh produce to residents in food deserts. Baltimore has recently introduced the Baltimarket program where residents living in the city’s food deserts place online grocery orders and pick them up at local libraries the next day without the additional delivery costs usually


charged by grocery retailers. The program accepts WIC and SNAP benefits. The program is organized through the Baltimore City Health Department with support from the University of Maryland and private grocery retailers.

Although Baltimarket is municipally run, nonprofit groups organize many grocery delivery programs. The People’s Grocery, an Oakland, Calif., based organization with goals and programs similar to Healthy Solutions, was one of the first to do so with their Mobile Market. The organization places food justice in the context of the struggle for racial justice. As in D.C., Oakland’s food deserts are found in communities of color. The organization’s materials openly discuss issues of race, class and privilege, emphasizing the need for leadership by the people of West Oakland, while mobilizing support from outside volunteers through an ally program and cultural competency trainings.

Similarly, the Detroit Black Community Food Security Network (which educates and mobilizes the black community around food systems, advocates public policy reforms as well as running a two-acre city farm and a co-op buying program) collaborates with other organizations to explore issues of racism within Detroit’s food system. The group uses study groups as one way to build an empowerment model, where residents determine the best way to bring food security to their community instead of what founder and Executive Director Malik Yakini terms the “missionary

38 BALTIMORE CITY HEALTH DEPARTMENT, Baltimarket: The Virtual Supermarket Project http://www.baltimorehealth.org/virtualsupermarket.html
40 DETROIT BLACK COMMUNITY FOOD SECURITY NETWORK, http://detroitblackfoodsecurity.org/
approach” - where programs are determined by outside nonprofits whose decision makers are often a privileged self-perpetuating membership.\textsuperscript{41}

\textit{D. Food Policy Councils}

The Detroit Black Food Security Network successfully pushed for the creation of a Detroit Food Policy Council, a quasi-governmental body comprised of largely of leaders from organizations working on food security issues, representatives from the Mayor’s office and the city health department.\textsuperscript{42} The council acts as a kind of advisory and watchdog organization reviewing the state of food security in Detroit, and monitoring the progress of city government efforts in furtherance thereof.

Although Food Policy Councils have existed for almost thirty years (the first in 1977 Knoxville, Tenn.) growing interest in local food and sustainable economies over the last decade has led to the creation of a number of new councils. There are now over one hundred food policy councils in the U.S.\textsuperscript{43}, some are part of municipal or state governments, some independent – most a combination of the two. Many are tasked with connecting the work of various agencies and organizations working on matters related food security (nutrition, economic development, health and regulatory agencies).

\textsuperscript{41} Malik Yakini, Executive Director of the Detroit Black Community Food Security Network, “Undoing Racism in the Food System”, at Food Justice event at Cornell University (Nov. 1, 2011) accessed at http://www. youtube.com/watch?v=0cCekNUSP3w (last accessed Feb. 24, 2012)

\textsuperscript{42} DETROIT FOOD POLICY COUNCIL, http://www. detroitfoodpolicycouncil. net/Council_Members. html

\textsuperscript{43} COMMUNITY FOOD SECURITY COALITION, North American Food Policy Council Webpage http://www.foodsecurity.org/FPC/index.Html
The Detroit Food Policy Council was highlighted in a recent report because of its work addressing racial disparity within the food system.\textsuperscript{44}

\textit{E. Urban Farming}

If community determination is a key component to creating justice within a food system, growing your own food is one of the best ways to do this. The last decade has seen the growth of a number of new farms in urban food deserts. Inspired by the innovative work of Will Allen and his Milwaukee-based farm Growing Power, a number of these farms (such as D.C.’s Common Good City Farm\textsuperscript{45}) link food security with social justice – viewing urban food production as a tool for job creation, self-determination and empowerment.

Not surprisingly, legal issues arise around land use, often involving battles over zoning, or the use of vacant property.\textsuperscript{46} Legal issues also arise around use of private land, involving agreements between neighbors for the use of yard space for gardening,

\textsuperscript{44} Alethea Harper, Annie Shattuck, Eric Holt-Giménez, Alison Alkon & Frances Lambrick, \textit{Food Policy Councils: Lessons Learned}, \textit{FOOD FIRST AND THE COMMUNITY FOOD SECURITY COALITION 6} (2009) accessed at http://foodsecurity.org/pub/Food_Policy_Councils_Report-Exec_Summ.pdf (“Food Policy Councils can amplify the voices of underserved communities that have traditionally had limited access to power. The Detroit Food Policy Council for example, made addressing the underlying racial and economic disparities in food access retail ownership, food sector jobs and control over food producing resources a cornerstone of their policy platform – explicitly attacking structural racism inherent in the food system and creating space for greater economic democracy and food justice.”).

\textsuperscript{45} COMMON GOOD CITY FARM, http://commongoodcityfarm.org/

as well as changes to zoning laws to allow for beekeeping and raising chickens in the
backyard.\textsuperscript{47}

Thanks to a 1986 law introduced by City Council Chair David A. Clarke\textsuperscript{48}, farming
vacant land is legal in D.C. Although D.C. does not have the large swaths of vacant
land found in many urban food deserts necessary to create the large scale for profit
truck farms being built in cities like Detroit and Cleveland, vacant buildings could be
used for vertical farming and the indoor aquaculture techniques introduced by the
groundbreaking urban agriculture organization Growing Power\textsuperscript{49}.

\textit{F. Other Solutions}

In Jakarta, Indonesia, most of the densely populated city’s low and moderate-
income homes do not have kitchens. Families often rely on street food vendors for
most meals, purchasing low-priced, filling foods high in sugar and processed
carbohydrates. As a result, seventeen percent of children under five are
undernourished and twelve percent are overweight.\textsuperscript{50} Mercy Corps, an international
anti-poverty NGO attempted to improve nutrition among low-income families through
nutrition education campaigns aimed at mothers. The efforts were not successful
because the women knew the foods were unhealthy but were unable to afford anything

\textsuperscript{47} SUSTAINABLE COMMUNITIES LAW CENTER, URBAN AGRICULTURE PROGRAM http://www.theselc.org/programs/urban-agriculture/
\textsuperscript{48} D.C. Code § 48-402 Food production and urban gardens program established.
\textsuperscript{49} GROWING POWER, http://www.growingpower.org/

\textsuperscript{50} Tina Rosenberg, \textit{In ‘Food Deserts,’ Oases of Nutrition}, N.Y. TIMES OPINIONATOR (May 23, 2011),
else. Mercy Corps recently changed its strategy to one that attempts to make it easier for the vendors to sell healthy food. The organization worked with local business people to set up an independent social enterprise - a central food preparation location from which street vendors could buy affordable healthy food to sell in their communities. This made more profitable for vendors to offer healthy food and for mothers to purchase it.

In Helsinki, Finland, the city allows produce vendors to sell at the train station, making it cheaper and more convenient for residents to buy fresh local food, while using a preexisting food distribution network.51 A number of municipalities are introducing healthy Corners Store initiatives.52 Because of the economic downturn, many cities are instituting programs to encourage the creation of micro-businesses - many involving food retail - by offering grants for food retail incubators and exemptions to some of the licensing requirements necessary for larger scale production.

These are just a few examples of the ways in which local communities are increasing the availability of fresh food. Although the efforts mentioned above come from the public and private sectors, from long-term grassroots activists, and from new social entrepreneurs. The commonality is that they all reject the traditional profit business model, and most include efforts to build community wealth in the form of jobs training, community building, education, and empowerment.

52 HEALTHY CORNER STORES NETWORK, http://healthycornerstores.org/
III. OBSTACLES

A. Legal Barriers

Current regulatory and licensing requirements often create unintentional barriers to home-based businesses and community food production. Many of the public policy decisions surrounding food security are outdated. Regulatory laws placing barriers on urban farming and cottage industries derive from the Progressive Era, when rapid urban industrialization necessitated sweeping reforms to ensure public health and safety. Today’s municipal administrations are in a better position to fine-tune existing regulations in order to allow for the growth of food cottage industries while ensuring public health.

The Sustainable Communities Law Center\(^{53}\) calls these “legal gray areas”. Legal questions arise when it is difficult to know whether an urban garden can use volunteer labor; or, whether someone cooking a community meal can ask for money to recoup the expenses; or, what kind of agreement is needed between a non-farming neighbor with a yard and a yardless neighbor who wants to farm it. Licensing requirements often create extra hurdles for new food entrepreneurs who lack the legal resources and the connections to power brokers that large, established businesses have.

Perhaps even more significantly, many new entrepreneurs from historically disenfranchised communities do not have access to adequate capital to start a new

\(^{53}\) SUSTAINABLE COMMUNITIES LAW CENTER, supra note 46 about page (“The Sustainable Economies Law Center (SELC) facilitates the growth of sustainable, localized, and just economies, through legal research, professional training, resource development, and education.”).
business. Entrepreneurs from some of D.C.’s African immigrant communities often solve this problem using rotating credit associations. Crowd-sourced funding, where many people contribute a small amount of money in order to support an important project operates on a similar principal. The Sustainable Communities Law Center has lobbied to change a law governing the Securities and Exchange Commission in order to create an exemption allowing social entrepreneurs to crowd-source start-up funds.

Interest in social enterprise, cottage industries, and other types of micro-business has grown since the beginning of the recession. As the price of food rises, it has become increasingly clear that current food system is unsustainable, unhealthy and unjust. If community-based solutions are the most effective way to overcome disparate access to healthy food, it makes sense to look at opportunities to change municipal and state law in ways that can support community-level work for food justice.

It is time for public policy to catch-up by enacting financial regulatory changes as well as and simplifying and updating licensing requirements for small-scale food preparation, and urban farming and community food enterprise.

B. A Further Look at the FEED-DC Act


The intent of the FEED-DC Act is to increase the availability of healthy food in low-income areas by providing incentives to lure large supermarkets while encouraging corner stores, farmers markets, and other small food retailers to sell healthy food.\(^{56}\)

The text of the bill defines a grocery store as an establishment of five thousand square feet or more.\(^{57}\) It states that it will offer grants, loans, federal tax credits, and other financial and technical assistance to grocery retailers\(^{58}\) that hire D.C. residents through a First Source Agreement, accept supplemental nutrition assistance (SNAP) benefits, WIC credits (if eligible) and sell healthy food.\(^{59}\) It encourages the Zoning Commission to exercise “flexibility” and commissions a “Grocery Ambassador” to expedite regulatory and licensing procedure and coordinate communication between District agencies and utilities.

D.C. law defines a corner stores as an establishment with less than five thousand square feet of retail space, without an off premise retailer’s license, and within a SNAP eligibility area.\(^{60}\) The Healthy Food Retail Program section charges the Department of Small and Local Business Development to work with the University of the District of Columbia, and the Deputy Mayor for Planning and Economic Development, and the Health and Environment Departments to work with corner stores to develop a produce

\(^{56}\) FEED-DC Act, supra note 2, at 1.

\(^{57}\) Id. at 2.

\(^{58}\) Id. at 4.

\(^{59}\) Id. at 5.

\(^{60}\) Id. at 1.
distribution system and help them become more energy efficient.\textsuperscript{61} The Act provides grants, loans, federal tax credits, equipment, and financial and technical assistance to retailers to expand sales of healthy food. They are encouraged to apply to accept SNAP and WIC and to employ District residents.\textsuperscript{62}

Many of D.C.’s food justice advocates believe that the Act is a step in the right direction.\textsuperscript{63} It will most likely do some good in terms of improving access to healthy food. Despite the corporate subsidies, it is unusual in that it concedes some resources to local business and community enterprise development. However, it would be better to focus all of the funds locally - supporting the local businesses under threat from Wal-Mart while creating good jobs and keeping revenue in the community.

\textbf{C. Corporate Subsidies Create Unfair Competition}

Updating D.C.’s regulatory, licensing, financing environment to make it friendlier to community enterprise and local business is important. Nonetheless, if city officials continue to subsidize large corporations with public funds, many of these community-level efforts will fail.\textsuperscript{64}

\begin{flushright}
\textsuperscript{61} Id. at 8.
\textsuperscript{62} Id. at 9—10.
\textsuperscript{63} Gloster interview, supra note 30; Cunningham interview, supra note 35; and, telephone interview with Michele A. Tingling-Clemmons, Bureau Chief, Nutrition and Physical Fitness Bureau DC Department of Health (January, 4th, 2012).
\end{flushright}
Current economic development policies are rooted in the 1950s and 1960s era policies that put a priority on building petroleum dependent highways, on use of petro-chemical fertilizers, on creating an American car-culture, on establishing a dependence on refrigerated trucking – a scenario where it is presumed that the best way to ensure access to healthy food is to make sure a consumer can drive to a large supermarket surrounded by ample parking and buy imported tomatoes - made possible because of an international free-trade agreement.

Thanks to the Supermarket Tax Incentive Act, passed in 2000, a grocery retailer interested in setting up shop in one of D.C.’s food deserts receives a ten-year exemption on property taxes, licensing fees, personal property tax, and sales tax on building materials. The FEED-DC Act strengthened the tax credit by mandating that qualifying neighborhoods be determined according to recent Census Data instead of by the previous Enterprise Zone. Nonetheless, the credit is only available to stores of 20,000 square feet or more, making it more difficult for small retailers and social enterprise to compete.

Councilman Michael Brown’s 2011 D.C. Tax Exemption and Abatement Information Act aims to achieve greater transparency, mandating that the city’s Chief Financial Officer release a unified economic budget report detailing abatements and

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66 See, Appendix A.

67 See, Greg Plotkin, Will tax incentives make food deserts bloom?, GREATER GREATER WASHINGTON, December 4th, 2009, http://greatergreaterwashington.org/post/4243/will-tax-incentives-make-food-deserts-bloom (Prior to this change, a Target store was able to take advantage of the subsidy in a rapidly gentrifying neighborhood of Ward 1)

68 Tax Exemption and Abatement Information Act, D.C. CODE § 47-4701.
exemptions. It also requires combined reporting – closing the “Geoffrey Loophole”.

However, the law also includes provisions giving up to thirty five million dollars per year in tax deductions to corporations otherwise eligible for combined reporting.

Not only do small businesses not qualify for these exemptions, they also usually do not qualify for federal work force development credits. Nor do they have the market weight and political connections to access the expedited licensing and variances enjoyed by large retailers.

D.C. is hardly unusual in this practice. In her book, Big-Box Swindle, Stacey Mitchell describes corporate subsidies as an “extreme manifestation of a much broader favoritism that pervades city governments. …[l]ocal officials often bend over backward to accommodate the project, meeting with company representatives, expediting procedures, and granting exceptions, known as variances, to local zoning laws.

Lawmakers grant subsidies to corporations with the belief that the presence of the corporation will create jobs and improve the economy. However, these subsidies,

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70 Named after the Toys-R-US character, is a practice of sheltering income from state taxes by obtaining a tax deduction on income redirected as licensing fees to a dummy organization (PIC) set up in a state not taxing income on intellectual property –MI and DE.

71 Tax and other Revenue Issues in the FY2012 Budget, DC FISCAL POLICY INSTITUTE, 4 (June 28, 2010) http://cfo. dc.gov/cfo/frames. asp?doc=/cfo/lib/cfo/fy10_unified_economic_development_reportp.pdf (“[R]evenue collections from combined reporting will be weakened in future years as a result of a tax deduction passed by the DC Council during the final vote on the FY 2012 budget. The Council passed a provision that would give businesses subject to combined reporting a tax deduction worth approximately $35 million a year for seven years. The provision was designed to look like it would not have an official “fiscal impact” on DC’s mandatory four year financial plan by starting the deduction just outside the four year financial plan window.”).

often, fail to achieve the intended purpose. Although one can argue that these subsidies should not exist in the first place, at the very least, lawmakers should negotiate a set of demands in exchange for the public expenditure - sometimes referred to as “claw backs”, or community benefits agreements.\footnote{Kwame Boadi, Making Sense of the District’s Tax Abatement Dollars: Nine Questions to Consider, DC FISCAL POLICY INSTITUTE 9 (2009) (According to the policy group, Good Jobs First, Twenty states have Claw back provisions. Virginia and Maryland each have provisions forcing the recipient to pay back or decrease the amount of the subsidy if the number of jobs created falls below what was promised.).}

Although the FEED-DC Act mandates that grocery retailers comply with First Source\footnote{DC first source law requiring employees hire DC residents, although it does not specify that the employees must be residents of neighborhood in which the business is established.} hiring regulations, and accept SNAP and WIC credits (when qualified to do so)\footnote{FEED DC ACT, supra note 2, at 5.} in order to receive the grocery tax credit, there are no wage and benefit mandates. Other than vague language saying it will bring “quality jobs to D.C.” the Act does not require retailers to provide health benefits.\footnote{Id. at 1.} When it comes to wage levels, it is silent, presumably relying on the often-unenforced living wage ordinance that mandates any entity receiving District funds pay its workers a living wage.\footnote{See, Michael Neibauer, D.C.’s 'first source,' living wage programs not working, audit says, WASHINGTON BUSINESS JOURNAL, June 9, 2010, http://www.bizjournals.com/washington/stories/2010/06/07/daily29.html (“District laws requiring that developers of taxpayer-funded projects hire D.C. residents and pay their employees a living wage are poorly monitored and rarely enforced, a new audit finds.”).}

\textit{D. Wal-Mart Does Not Play Fair}
Although Wal-Mart has stated it will not apply for the grocery tax credit when it opens the six planned stores in D.C., by its own account Wal-Mart seeks subsidies for one third of its stores - although the number is probably higher. Many employees of Wal-Mart, and other large retailers, do not get benefits, relying on state-funded health insurance, SNAP, and other forms of public assistance. The political failure to enforce wage and benefit standards results in an indirect public subsidy to the corporation.

Subsidizing large retailers to move-in while allowing them to pay poverty wages is not only bad for employees of the store but also for the economic health of the community as a whole. Overall wage and benefit laws decline when a Wal-Mart moves in. A 2004 national study showed that Wal-Mart workers were paid twenty-five percent less than retail workers overall. A 2003 study conducted in Chicago’s Andersonville neighborhood showed that $68 of every $100 spent at a local retailer stays in the community, while $43 of the same amount spent at a large retail chain remains in the community.

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79 Mitchell, supra note 72 at 170, (Discussing reporting by the group Good Jobs First: 1 billion since 1990s, number probably higher given lack of reporting requirements and the difficulty in finding an independent source.).

80 Id., (According to Good Jobs First “Many Wal-Mart workers are ineligible for health coverage from their employer or choose not to purchase what is available, because it is too expensive or too limited in scope. These workers often turn to taxpayer-funded health programs such as Medicaid.”).

81 Arindrajit Dube, T. William Lester & Barry Eidlin, A Downward Push: The Impact of Wal-Mart Stores on Retail Wages and Benefits, UC Berkley Institute for Research for Labor and Employment Research Brief, 2, (2007). (With an average of 50 Wal-Mart stores per state, the average wages for retail workers were 10 percent lower, and their job-based health coverage rate was 5 percentage points less than they would have been without Wal-Mart’s presence. Nationally, the retail wage bill in 2000 was estimated to be $4.5 billion less in nominal terms due to Wal-Mart’s presence.”).

82 Id. at 2, Citing a study by Annette Bernhardt, Anmol Chaddha & Siobhan McGrath, What Do We Know About Wal-Mart? NEW YORK UNIVERSITY BRENNAN CENTER FOR JUSTICE (2005).
community.\textsuperscript{83} Furthermore, Wal-Mart destroys forty percent more jobs than it creates.\textsuperscript{84} It should come as no surprise that fifty-seven percent of business owners surveyed near a proposed Georgia Avenue Wal-Mart location believe that the planned store will have a negative impact on the community.\textsuperscript{85}

Wal-Mart’s business model depends on destroying competing businesses within the communities into which it moves. It does this through predatory pricing; setting its prices for items much lower than can be found at nearby competitors. It can do this for reasons of economy of scale and access to multinational distribution chains that allow it to purchase and move items much lower prices than those of their local competitors. However more egregiously, Wal-Mart will also take a deliberate loss on frequently purchased staple items making up a large part of a competitor’s business in order to deprive the competitor of business. It is likely that most municipal and state officials do not hand out retailer subsidies with the intention of destroying local businesses, but the same cannot be said for many federal-level policy makers. As corporations have gained greater political power, federal antitrust regulation has diminished.\textsuperscript{86}

\textsuperscript{83} The Andersonville Study of Retail Economics, Civic Economics. (2004).
\textsuperscript{84} Neumark, et. al., \textit{supra} note 5.
\textsuperscript{86} Mitchell, \textit{supra} note 72, at 184. Arguing that the Department of Justice no longer enforces the Robinson-Patman Act \cite[§ 13]{15 USC A} which says that a company need only show they were injured by discriminatory trade practices.
IV. IF THE RULES AREN’T FAIR, CHANGE THE GAME

If federal, state and local policies continue to make it impossible for most local businesses to compete against the likes of Wal-Mart and other multi-national retailers, the best way to create food justice is through non-profit business organizations. Non-profit enterprises are exempt from property taxes, income taxes, and often eligible for a number of municipal grants and educational support. This does not mean a non-profit food enterprise has it easy. It will still have to compete for a steady customer base without all of the advantages of corporate subsidies, economy of scale, brand recognition and optimized retail environment customers have become conditioned to expect.

Building-up a new community enterprise is a difficult and time-consuming process. This leads some to conclude that substandard wages, job losses and loss of local businesses are worth it if it means that everyone lives close to a store selling fresh produce. But, if federal policymakers continue to subsidize corn and soy, making fast food artificially cheap and fresh produce prohibitively expensive, many low income people (the numbers of which increase when Wal-Mart comes to town) will not be able to afford the fresh fruits and vegetables sold in these stores.

V. CONCLUSION

Community based enterprise is best way to achieve food justice. Yet, local governments look for outdated, centralized, corporate-driven solutions to address the problem of food deserts. Although the problem of food deserts is widespread, solutions
for ending them depend on factors unique to each community. Rather than a one-size-fits-all solution, municipalities should prioritize localized development in the form of micro-grants, community lending and diverse food policy councils.

Any municipal legislation that attempts to end food deserts should enlist representatives from stakeholder groups from within the community to devise solutions that approach food security from an economic and social justice perspective. These solutions must recognize the need to address discriminatory systems of wage disparity, unemployment, and the access to loans and grants that have in-part, caused food deserts in the first place. Ultimately, lawmakers must focus on advancing policies and laws that promote community-led solutions and lead to greater opportunity, ownership and community wealth.
Food Deserts and Intersection with Poverty in the District of Columbia

Appendix: FOOD DESERT MAP http://www.marycheh.com/images/committee/feeddc/DCFoodDeserts.jp