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### Ten Years of Food Policy Governance in New York City: Lessons for the Next Decade

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# TEN YEARS OF FOOD POLICY GOVERNANCE IN NEW YORK CITY: LESSONS FOR THE NEXT DECADE

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& Craig Willingham<sup>\*\*\*\*</sup>*

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## INTRODUCTION

In this century, cities around the world have embarked on ambitious efforts to modify food policies to improve health, reduce hunger and food insecurity, and to create more sustainable community development and environmental protection, while decreasing economic inequality.<sup>1</sup> In the last decade, New York City has played a leading role in charting the path of new urban food governance by creating dozens of new food policies and programs to improve nutritional well-being, promote food security, create food systems that support community and economic development, and encourage more sustainable food production, distribution, and consumption practices.<sup>2</sup> These initiatives built on the City's prior efforts to create healthier food environments<sup>3</sup> and used existing and new governance mechanisms to consider, enact, and implement changes in how New York City manages its food system.

Food policy means more than laws and regulations that govern food; it includes all public decisions affecting food. Thus, this Article uses the term "food policy" to refer to legislation, executive orders, rule changes, demonstration projects, program expansion or elimination, capital investments and budget allocations, grant programs, reporting requirements, certifications and enforcement, programs, and government agency rules and regulations. Together these decisions and their implementation constitute the food policy landscape in New York. Businesses and trade associations also shape food policy, both through their influence on government and through their own organizational practices such as marketing, retail

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1. See generally Kameshwari Pothukuchi & Jerome L. Kaufman, *Placing the Food System on the Urban Agenda: The Role of Municipal Institutions in Food Systems Planning*, 16 AGRIC. HUM. VALUES 213, 213–24 (1999).

2. See generally NICHOLAS FREUDENBERG ET AL., CUNY SCH. OF PUB. HEALTH & HEALTH POLICY, URBAN FOOD POLICY INST., *FOOD POLICY IN NEW YORK CITY SINCE 2008: LESSONS FOR THE NEXT DECADE* 4–9 (2018).

3. Thomas R. Frieden et al., *Public Health in New York City, 2002–2007: Confronting Epidemics of the Modern Era*, 37 INT'L J. EPIDEMIOLOGY 966, 966 (2008).

distribution, pricing, and product design.<sup>4</sup> As this Article will demonstrate, businesses and civil society groups have played an important role in food policy governance in New York City.

As city governments around the world took on new responsibilities for food, municipalities also expanded their role in health, transportation, education, environmental protection, and housing.<sup>5</sup> Analyzing these experiences, scholars from several disciplines began exploring what distinguishes governance from the institution of government, and furthermore, what constitutes good urban governance.<sup>6</sup> In this discourse, government describes a more static structure while governance conveys the dynamic interactive processes that influence policy.<sup>7</sup> UN-HABITAT, the United Nations agency for human settlements, asserts that “good urban governance” provides residents with “the platform which will allow them to use their talents to the full to improve their social and economic conditions.”<sup>8</sup> Another United Nations agency, UNESCO, has defined governance as “the structures and processes that are designed to ensure accountability, transparency, responsiveness, rule of law, stability, equity and inclusiveness, empowerment, and broad-based participation.”<sup>9</sup> Governance allocates power, resources, and services. It safeguards justice and fairness, sets the rules for markets, enables participation and democracy, and reinforces or disrupts hierarchies. More broadly, governance describes how citizens, government, civil society groups, and businesses interact to achieve public goals and participate in public affairs. In 2015, acknowledging the growing global interest in governance, world leaders endorsed the United

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4. TIM LANG ET AL., FOOD POLICY: INTEGRATING HEALTH, ENVIRONMENT AND SOCIETY 160–65 (2009).

5. See generally Jason Corburn et al., *Health in all Urban Policy: City Services Through the Prism of Health*, 91 J. URB. HEALTH 623 (2014).

6. See generally BENJAMIN R. BARBER, IF MAYORS RULED THE WORLD: DYSFUNCTIONAL NATIONS, RISING CITIES (2013); BRUCE KATZ & JENNIFER BRADLEY, THE METROPOLITAN REVOLUTION: HOW CITIES AND METROS ARE FIXING OUR BROKEN POLITICS AND FRAGILE ECONOMY (2013); JON PIERRE, THE POLITICS OF URBAN GOVERNANCE (2011).

7. Laura S. Jensen, *Government, the State, and Governance*, 40 POLITY 379, 381 (2008).

8. U.N. HUMAN SETTLEMENTS PROGRAMME, THE GLOBAL CAMPAIGN ON URBAN GOVERNANCE 14 (2d ed. 2002).

9. *Concept of Governance*, U.N. EDUC., SCI. & CULTURAL ORG., <http://www.unesco.org/new/en/education/themes/strengthening-education-systems/quality-framework/technical-notes/concept-of-governance/> [https://perma.cc/VD5W-3WCQ].

Nations Sustainable Development Goals,<sup>10</sup> which recognized the development and strengthening of good governance at the local level as a key goal.<sup>11</sup> In the food sector, food governance describes the complex systems and processes through which global, national, and local decisions shape food environments and food choices;<sup>12</sup> urban food governance, specifically, describes how these dynamic processes operate at the municipal level to achieve—or fail to achieve—food goals.<sup>13</sup> To focus our assessment of food governance in New York City, we identified six broad goals of city food policy, as shown in Table 1. Our assessment asks: how effective was food policy governance in New York City in the last decade in making progress towards achieving these six goals?

Table 1. Municipal Food Policy Goals in New York City, 2008–2017<sup>14</sup>

Six Basic Policy Goals of Urban Food Governance
1. <u>Improve nutritional well-being</u> : policies that promote health and reduce diet-related disease.
2. <u>Promote food security</u> : policies that reduce hunger and food insecurity and provide the quality and quantity of food needed to maintain health.
3. <u>Create food systems that support economic and community development</u> : policies that promote community economic development through food and improve food production and distribution in the region.
4. <u>Ensure a sustainable food system</u> : policies that reduce food waste and food-related pollution and carbon emissions and protect the region's farmland.
5. <u>Support food workers</u> : policies that provide food workers with decent wages and benefits, safe working conditions, and the right to organize.
6. <u>Strengthen food governance and food democracy</u> : policies that encourage civic engagement in shaping food policy and reduce the influence of special interests.

10. See Press Release, U.N. Dep't of Pub. Info., Historic New Sustainable Development Agenda Unanimously Adopted by 193 UN Members (Sept. 25, 2015), [https://sustainabledevelopment.un.org/content/documents/8371Sustainable%20Development%20Summit\\_final.pdf](https://sustainabledevelopment.un.org/content/documents/8371Sustainable%20Development%20Summit_final.pdf) [<https://perma.cc/2YMS-ANLM>].

11. ORG. FOR ECON. CO-OPERATION & DEV., GETTING GOVERNMENTS ORGANISED TO DELIVER ON THE SUSTAINABLE DEVELOPMENT GOALS 8–12 (2017), <http://www.oecd.org/gov/SDGs-Summary-Report-WEB.pdf> [<https://perma.cc/A8JP-HE6Y>].

12. See Otto Hospes & Anke Brons, *Food System Governance: A Systematic Literature Review*, in *FOOD SYSTEMS GOVERNANCE: CHALLENGES FOR JUSTICE, EQUALITY, AND HUMAN RIGHTS* 13, 26 (Amanda Kennedy & Jonathan Liljeblad eds., 2016).

13. See generally Roberta Sonnino, *The Cultural Dynamics of Urban Food Governance*, CITY, CULTURE & SOC'Y (forthcoming 2018).

14. FREUDENBERG ET AL., *supra* note 2, at 15–17.

This Article examines to what extent and in what ways New York City's food policy governance since 2008 reflects these six values. The Article proposes these six values as standards by which to judge the effectiveness and fairness of urban food governance. The goal of this Article is to identify lessons for improving food governance in New York and other cities in the decade to come. Part I briefly describes the rationale for these six standards for food governance. Part II presents five short profiles of food policies enacted in New York City since 2008, and Part III assesses how current governance practices contributed to the implementation and impact of the policies. Finally, the Article concludes by suggesting lessons from this analysis that could inform modifications in food policy governance in New York and other cities in the next decade.

### I. FOOD POLICY GOVERNANCE STANDARDS

Effective urban food governance enables cities to identify and solve food problems such as food insecurity, diet-related diseases, an underpaid food workforce, or unsustainable food production and distribution practices.<sup>15</sup> As urban governance attracted scholarly attention, new bodies of literature from public health, urban planning, geography, political science, and other fields emerged that analyzed key characteristics of effective urban governance addressing food and health.<sup>16</sup> An analysis of recent literature on urban food governance<sup>17</sup>

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15. See Roberta Sonnino, *Feeding the City: Towards a New Research and Planning Agenda*, 14 INT'L PLAN. STUD. 425, 433 (2009); see also CORINNA HAWKES & JESS HALLIDAY, INTERNATIONAL PANEL OF EXPERTS ON SUSTAINABLE FOOD SYSTEMS, WHAT MAKES URBAN FOOD POLICY HAPPEN? INSIGHTS FROM FIVE CASE STUDIES 4 (2017), [http://www.ipes-food.org/images/Reports/Cities\\_full.pdf](http://www.ipes-food.org/images/Reports/Cities_full.pdf) [<https://perma.cc/TVZ2-C4A8>].

16. See generally, e.g., David Barling et al., *Joined-Up Food Policy? The Trials of Governance, Public Policy and the Food System*, 36 SOC. POL'Y & ADMIN. 556 (2002); Scott Burris et al., *Emerging Strategies for Healthy Urban Governance*, J. URB. HEALTH 54 (2007); Jane Dixon et al., *The Health Equity Dimensions of Urban Food Systems*, J. URB. HEALTH 118 (2007); Rebecca Katz et al., *Urban Governance of Disease*, 2 ADMIN. SCI. 135 (2012); A. Moragues-Faus & K. Morgan, *Reframing the Foodscape: The Emergent World of Urban Food Policy*, 47 ENV'T & PLAN. 1558 (2015).

17. See, e.g., HAWKES & HALLIDAY, *supra* note 15, at 93–94. See generally HARVARD LAW SCH. FOOD LAW & POLICY CLINIC, PUTTING LOCAL FOOD POL'Y TO WORK FOR OUR COMMUNITIES (2017); MILAN URBAN FOOD POL'Y PACT (2015), <http://www.milanurbanfoodpolicypact.org/wp-content/uploads/2016/06/Milan-Urban-Food-Policy-Pact-EN.pdf> [<https://perma.cc/7KJD-M2F3>]; THE GOVERNANCE OF CITY FOOD SYSTEMS: CASE STUDIES FROM AROUND THE WORLD (Mark Deakin et al. eds., 2016); Lauren Baker & Hank de Zeeuw, *Urban Food Policies and Programmes: An Overview*, in CITIES AND AGRICULTURE 26 (Henk de Zeeuw & Pay Drechsel eds., 2015); *Food Systems Network Overview*, C40 CITIES, <http://www.c40.org/networks/>

recognized six recurring key characteristics of food policy-making, each described briefly here, that scholars identified as contributing to improved processes and outcomes. These include food governance that promotes equity, encourages accountability, ensures sustainability, fosters inclusion and participation, uses data and evidence to inform decisions, and advances intersectoral action.

**(1) Promotes equity.** Many cities in high, middle, and low-income countries are characterized by food systems that allocate access to food inequitably.<sup>18</sup> In effective food governance, these cities use their formal and informal power to promote more equitable outcomes.<sup>19</sup> Additionally, food systems can reduce or exacerbate urban food inequities at different stages of urbanization, and accordingly, municipalities should pursue intersectoral policies that make improving equity a priority.<sup>20</sup> Therefore, effective urban food governance monitors the impact of food systems on health and economic equity and takes action to reduce identified gaps in food access allocation.

**(2) Encourages accountability.** In practice, urban governance regimes can either reinforce or undermine the accountability of public and private actors in the food system. Effective food governance encourages decision makers to make stable commitments to provide the resources and political support needed to implement food policies over time.<sup>21</sup> It provides all constituencies with the information they need to judge the effectiveness of policies, a practice sometimes termed “transparency,”<sup>22</sup> and it provides for consequences for players who fail to keep commitments.<sup>23</sup>

**(3) Ensures sustainability.** Effective food governance protects future as well as current generations. It considers the environmental

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food\_systems [https://perma.cc/H37X-55QJ]; EURO CITIES, Working Group on Urban Food Policy (Aug. 3, 2016), <http://www.eurocities.eu/eurocities/documents/Draft-work-plan-EUROCITIES-Working-Group-on-Urban-Food-Policy-WSPO-A7USMF> [https://perma.cc/7XBG-WZJA].

18. See generally Dixon et al., *supra* note 16; Andrea S. Richardson et al., *Are Neighbourhood Food Resources Distributed Inequitably by Income and Race in the USA? Epidemiological Findings Across the Urban Spectrum*, 2 *BMJ OPEN* 1 (2012).

19. Samina Raja et al., *Planning for Equitable Urban and Regional Food Systems*, 43 *BUILT ENV'T* 309, 312 (2017).

20. See Dixon et al., *supra* note 16, at 1126.

21. See generally HAWKES & HALLIDAY, *supra* note 15.

22. Doris Fuchs et al., *Actors in Private Food Governance: The Legitimacy of Retail Standards and Multistakeholder Initiatives with Civil Society Participation*, 28 *AGRIC. & HUM. VALUES* 353, 357–58 (2011).

23. *Id.* at 358.



consequences of all stages of food supply chains<sup>24</sup> and assesses the global consequences of local food practices and the local impact of regional, national, and global food practices.<sup>25</sup> Given these concerns, many cities have prioritized the development of policies that protect the long-term viability of the regional foodshed.<sup>26</sup>

**(4) Fosters inclusion and participation.** Effective food governance can also foster inclusion and participation from a diverse population, especially those communities often excluded from food policy-making. Governments should seek this inclusion for two reasons. First, those who bear the heaviest burden of inequitable food environments have unique insights into what needs to change.<sup>27</sup> Second, including all affected constituencies in making policy decisions increases the likelihood that they will have a stake in achieving desired food policy goals.<sup>28</sup> Governance systems that invite participation and promote inclusion of disadvantaged sectors of the population also contribute to more democratic decisions, a value goal in itself.

**(5) Uses data and evidence to inform decisions.** Effective food governance uses public data, research evidence, and practice-based evidence to guide and modify food policies and programs.<sup>29</sup> New technologies enable more participatory data gathering, contributing to the goal of inclusion and participation.<sup>30</sup> Governments can, in turn, use this organized data to monitor progress towards goals, promote accountability, and identify problems affecting vulnerable

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24. See generally Terry Marsden & Roberta Sonnino, *Human Health and Wellbeing and the Sustainability of Urban-Regional Food Systems*, 4 CURRENT OPINIONS ENVTL. SUSTAINABILITY 427 (2012).

25. See generally FOR HUNGER-PROOF CITIES: SUSTAINABLE URBAN FOOD SYSTEMS (Mustafa Koc et al. eds., 1999).

26. Christian J. Peters et al., *Foodshed Analysis and Its Relevance to Sustainability*, 24 RENEWABLE AGRIC. FOOD SYS. 1, 2 (2008).

27. See, e.g., YVONNE YEN LIU & DOMINIQUE APOLLON, APPLIED RESEARCH CTR., THE COLOR OF FOOD 4, 20 (2011), [https://www.raceforward.org/sites/default/files/downloads/food\\_justice\\_021611\\_F.pdf](https://www.raceforward.org/sites/default/files/downloads/food_justice_021611_F.pdf) [<https://perma.cc/322N-ABET>].

28. Michele Silver et al., *Creating Integrated Strategies for Increasing Access to Healthy Affordable Food in Urban Communities: A Case Study of Intersecting Food Initiatives*, 94 J. URB. HEALTH 482, 485 (2017).

29. See HAWKES & HALLIDAY, *supra* note 15, at 17–18; see also Lawrence W. Green, *Public Health Asks of Systems Science: To Advance Our Evidence-Based Practice, Can You Help Us Get More Practice-Based Evidence?* 96 AM. J. PUB. HEALTH 406, 406–09 (2006).

30. See Chiara Certoma et al., *Crowdsourcing Urban Sustainability. Data, People and Technologies in Participatory Governance*, 74 FUTURES 93, 99, 103 (2015).

communities before they become entrenched.<sup>31</sup> These data capabilities, therefore, can make governments more responsive and effective in resolving food policy issues.

**(6) Advances intersectoral action.** Food policy is made in several sectors including agriculture, health, zoning and land use, environmental protection, public benefits, and consumer protection. Effective approaches ensure that policies that contribute to achieving food goals are coordinated across sectors and that governance includes mechanisms that reward intersectoral collaboration, a process called “joined-up” food policy.<sup>32</sup> Cities have used mechanisms from food policy councils<sup>33</sup> to mayoral staff-level food policy coordinator positions<sup>34</sup> to achieve this aim.<sup>35</sup> Effectively deployed, intersectoral collaboration can yield benefits across sectors. For example, increasing the amount of regionally grown fresh produce in a school feeding program can improve health, reduce food insecurity, and promote regional farmers.<sup>36</sup>

These six standards for fair and effective urban food governance provide a framework for assessing governance as it plays out in a specific time and place, providing researchers and advocates with a score card for rating to what extent their urban food system meets these standards. Before applying such an assessment to several examples of food policy-making in New York City, it is worth noting that some scholars have critiqued the concepts of food governance and urban governance. In practice, private actors—agribusiness, food and beverage manufacturers, food distributors, fast food chains—play a dominant role in shaping urban food environments, yet most governance analyses devote little attention to these influences.<sup>37</sup> The

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31. See generally Hugo F. Alrøe et al., Editorial, *Opportunities and Challenges for Multicriteria Assessment of Food System Sustainability*, 21 *ECOLOGY & SOC'Y* 38 (2016). See also Jan Landert et al., *A Holistic Sustainability Assessment Method for Urban Food System Governance*, 9 *SUSTAINABILITY* 490, 12–21 (2017).

32. See Barling et al., *supra* note 16, at 558.

33. See CLARE FOX, UCLA URBAN PLANNING DEP'T, *FOOD POLICY COUNCILS: INNOVATIONS IN DEMOCRATIC GOVERNANCE FOR A SUSTAINABLE AND EQUITABLE FOOD SYSTEM* 40 (2010).

34. See, e.g., CRAIG WILLINGHAM ET AL., CUNY GRADUATE SCH. OF PUB. HEALTH, *MAKING FOOD POLICY IN NEW YORK: THE CUNY INSTITUTE OF URBAN FOOD POLICY GUIDE TO FOOD GOVERNANCE IN NEW YORK CITY* 8 (2017).

35. See generally, e.g., FREUDENBERG ET AL., *supra* note 2, at 71.

36. See Emilie Sidaner et al., *The Brazilian School Feeding Programme: An Example of an Integrated Programme in Support of Food and Nutrition Security*, 16 *PUB. HEALTH NUTRITION* 989, 989–90 (2012).

37. See Doris Fuchs & Agni Kalfagianni, *The Causes and Consequences of Private Food Governance*, 12 *BUS. & POL.* 1, 8–17 (2010).

focus on urban-level governance ignores the extent to which national and global forces shape food systems and may divert policymakers and activists from addressing these deeper determinants of urban food problems.<sup>38</sup> Finally, some analysts make the case that, to a significant extent, urban food governance schemes reinforce rather than challenge the neoliberal urban agenda of strengthening and deregulating markets, weakening democracy and public accountability, and shrinking the public sector.<sup>39</sup>

## II. FOOD POLICY IN NEW YORK CITY SINCE 2008


Table 2 lists twenty of the most important municipal food policies developed or expanded in New York City in the last decade. This Article highlights these policies to illustrate the diversity, breadth, and scope of the City's approach to urban food policy. While the City implemented other municipal policies that influenced the food environment during that time, these twenty represent significant efforts to achieve the six main policy goals shown in Table 1, which have motivated most food policy changes in New York City in this period.<sup>40</sup> While this Article focuses on municipal food policy, it also considers the role that state and federal policies play in shaping urban food environments.

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38. See Richard Nunes, *Rethinking Justice in City-Regional Food Systems Planning*, 43 BUILT ENV'T 447, 448 (2017).

39. See Agnese Cretella, *Beyond the Alternative Complex. The London Urban Food Strategy and Neoliberal Governance*, 17 MÉTROPOLIS 1, 9 (2015).

40. FREUDENBERG ET AL., *supra* note 2, at 15–16.

Table 2. Twenty New York Food Policy Initiatives Created or Expanded, 2008–2017			
Policy Goal	Policy Action	Year Enacted (Expanded or Modified)	Description
 <p><b>1. Improve nutritional well-being</b> Policies that promote health and reduce diet-related diseases</p>	1. Launched Healthy Bodegas/Shop Healthy NYC! Program <sup>41</sup>	2005 2012: expanded and renamed as Shop Healthy NYC! <sup>42</sup>	Works with food retailers (e.g., bodegas, grocery stores), suppliers and distributors, and community residents to increase stock and promotion of healthier foods in underserved neighborhoods <sup>43</sup>
	2. Limited sugary drinks in child care centers <sup>44</sup>	2007 2012: extended to summer camps <sup>45</sup>	Establishes nutrition standards for beverages, banning sugary drinks, restricting high-fat milk, requiring portion sizes for juice and that it be 100% juice, and increasing availability of drinking water <sup>46</sup>
	3. Banned artificial trans-fats in NYC restaurants <sup>47</sup>	2007 2008: fully implemented <sup>48</sup>	Requires phase out of artificial trans-fats in all NYC food service establishments permitted by NYC DOHMH, including restaurants, school caterers, senior centers, mobile food-vending units, children's institutions, soup kitchens, park concessions, street-fair food booths, and others <sup>49</sup>

41. Rachel Dannefer et al., *Healthy Bodegas: Increasing and Promoting Healthy Foods at Corner Stores in New York City*, 102 AM. J. PUB. HEALTH 27, 27–28 (2012).

42. FREUDENBERG ET AL., *supra* note 2, at 45.

43. Dannefer et al., *supra* note 41, at 27–28.

44. Laura Lessard et al., *Measurement of Compliance with New York City's Regulations on Beverages, Physical Activity, and Screen Time in Early Child Care Centers*, 11 PREVENTING CHRONIC DISEASE, no. E183, Oct. 2014, at 2–3.

45. FREUDENBERG ET AL., *supra* note 2, at 45.

46. Lessard et al., *supra* note 44, at 6.

47. Sonia Y. Angell et al., *Change in Trans Fatty Acid Content of Fast-Food Purchases Associated with New York City's Restaurant Regulation: A Pre-Post Study*, 157 ANNALS INTERNAL MED. 81, 81 (2012).

48. *Id.*; see also FREUDENBERG ET AL., *supra* note 2, at 45.

49. See N.Y.C. DEP'T OF HEALTH & MENTAL HYGIENE, THE REGULATION TO PHASE OUT ARTIFICIAL TRANS-FAT IN NEW YORK CITY FOOD SERVICE

	4. Installed water jets in many NYC public schools <sup>50</sup>	2008 <sup>51</sup>	Increases access to safe drinking water for school children <sup>52</sup>
	5. Established NYC Food Standards <sup>53</sup>	2008 <sup>54</sup>	Sets nutrition requirements for city agencies (e.g., schools, senior centers, homeless shelters, public hospitals, correctional facilities), including specific standards for meals/snacks purchased and served, beverage vending machines, food vending machines, meetings and events, and commissaries <sup>55</sup>
	6. Established 1000 permits for Green Carts <sup>56</sup>	2008 2010: began providing support to equip vendors with EBT machines <sup>57</sup>	Establishes Green Carts, which are mobile food carts that sell fresh produce in underserved neighborhoods with low rates of fruit and vegetable consumption <sup>58</sup>

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ESTABLISHMENTS: HOW TO COMPLY 3 (2007), <https://www1.nyc.gov/assets/doh/downloads/pdf/cardio/cardio-transfat-bro.pdf> [<https://perma.cc/G3M7-GHT4>].

50. Brian Elbel et al., *A Water Availability Intervention in New York City Public Schools: Influence on Youths' Water and Milk Behaviors*, 105 AM. J. PUB. HEALTH 365, 365 (2015).

51. FREUDENBERG ET AL., *supra* note 2, at 45.

52. *Id.* at 48.

53. Ashley Lederer et al., *Toward a Healthier City: Nutrition Standards for New York City Government*, 46 AM. J. PREVENTATIVE MED. 423, 424 (2014).

54. *Id.*

55. *See id.* at 426.

56. ESTER R. FUCHS ET AL., COLUMBIA SCH. OF INT'L & PUB. AFFAIRS, INNOVATIVE PARTNERSHIP FOR PUBLIC HEALTH: AN EVALUATION OF THE NEW YORK CITY GREEN CART INITIATIVE TO EXPAND ACCESS TO HEALTHY PRODUCE IN LOW-INCOME NEIGHBORHOODS 1 (2014), [https://internal.sipa.columbia.edu/system/files/GreenCarts\\_Final\\_June16.pdf](https://internal.sipa.columbia.edu/system/files/GreenCarts_Final_June16.pdf) [<https://perma.cc/6F2T-676F>].

57. FREUDENBERG ET AL., *supra* note 2, at 45.

58. *NYC Green Carts*, N.Y.C. DEP'T OF HEALTH, <http://www1.nyc.gov/site/doh/health/health-topics/green-carts.page> [<https://perma.cc/D3ZA-C9WH>].

	7. Required chain restaurants to post calorie information on menus/menu boards <sup>59</sup>	2008 2015: updated requirements with enforcement beginning in 2017 <sup>60</sup>	Requires chain food establishments and mobile food vendors to post calorie information for all sizes of foods and beverages; updated rule requires chain convenience stores and grocery stores to post calorie information about prepared foods and requires these retailers and chain restaurants to post a statement on menus about daily calorie needs <sup>61</sup>
	8. Launched the Food Retail Expansion to Support Health (“FRESH”) program <sup>62</sup>	2009 <sup>63</sup>	Provides zoning and financial incentives to eligible grocery store operators and developers in underserved areas with limited healthy food access <sup>64</sup>
	9. Launched Grow to Learn NYC initiative <sup>65</sup>	2011 <sup>66</sup>	Facilitates and promotes school gardens in every public school across the city by providing material and financial support <sup>67</sup>

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59. Brian Elbel et al., *Calorie Labeling and Food Choices: A First Look at the Effects on Low-Income People in New York City*, 28 HEALTH AFF. 1110, 1111 (2009).

60. FREUDENBERG ET AL., *supra* note 2, at 45.

61. William Neuman, *How Many Calories in That: New York City Delays Enforcing Labeling Rules*, N.Y. TIMES (Aug. 25, 2017), <https://www.nytimes.com/2017/08/25/nyregion/food-calories-labeling-restaurants-new-york.html> [<https://nyti.ms/2vxxauH>].

62. Batya Ungar-Sargon, *Have City Subsidies to Supermarkets Made NYC Healthier?*, CITY LIMITS (Apr. 5, 2016), <https://citylimits.org/2016/04/05/have-city-subsidies-to-supermarkets-made-nyc-healthier/> [<https://perma.cc/4XCB-G7VA>].


63. FREUDENBERG ET AL., *supra* note 2, at 45.

64. Ungar-Sargon, *supra* note 62.

65. *Grow to Learn NYC: The Citywide School Gardens Initiative*, GROWN NYC, <https://www.grownyc.org/grow-to-learn> [<https://perma.cc/98VN-7YGX>].

66. FREUDENBERG ET AL., *supra* note 2, at 45.

67. *Grow to Learn NYC*, *supra* note 65.

	10. Required sodium warning labels on chain restaurant menus <sup>68</sup>	2015 2016: began enforcing <sup>69</sup>	Mandates that chain food service establishments post a salt shaker icon next to any food item containing 2300 mg or more of sodium <sup>70</sup>
 <p><b>2. Promote food security</b> Policies that reduce hunger and food insecurity and provide the quality and quantity of food needed to maintain health</p>	11. Launched Health Bucks Program <sup>71</sup>	2005 2012: expanded to all NYC farmers' markets 2016: expanded to year-round with USDA funding <sup>72</sup>	Provides \$2 coupons for fresh fruits and vegetables at NYC farmers' markets; distributed to community organizations in low-income neighborhoods and as a SNAP incentive (for every \$5 spent in EBT, a shopper receives a \$2 Health Buck) <sup>73</sup>

68. Benjamin Mueller & Michael M. Grynbaum, *New York City Health Board Backs Warning on Menu Items with High Salt*, N.Y. TIMES (Sept. 9, 2015), <https://www.nytimes.com/2015/09/10/nyregion/new-york-city-health-board-approves-sodium-warnings-on-menus.html> [<https://nyti.ms/2BdRbNc>].

69. FREUDENBERG ET AL., *supra* note 2, at 45.

70. Press Release, N.Y.C. Dep't of Health & Mental Hygiene, De Blasio Administration Announces New Calorie Labeling Rules (May 18, 2017), <https://www1.nyc.gov/site/doh/about/press/pr2017/calorie-label-rules.page> [<https://perma.cc/6GHS-97RQ>].

71. Gayle Holmes Payne et al., *Implementing a Farmers' Market Incentive Program: Perspectives on the New York City Health Bucks Program*, 10 PREVENTING CHRONIC DISEASE, No. E145, Aug. 2013, at 1–2.

72. FREUDENBERG ET AL., *supra* note 2, at 46.

73. *Health Bucks*, N.Y.C. DEP'T OF HEALTH & MENTAL HYGIENE, <https://www1.nyc.gov/site/doh/health/topics/health-bucks.page> [<https://perma.cc/72QC-QTTL>].

	12. Created the New York City Food Assistance Collaborative to coordinate several new and prior initiatives to facilitate enrollment in SNAP in New York City <sup>74</sup>	2015 <sup>75</sup>	Allows residents to apply for food stamps at partner food pantries and soup kitchens. In 2015, a coalition of organizations, convened by the Mayor's Office of the Director of Food Policy, sought to alleviate hunger in New York City by increasing emergency food availability and access, as well as income assistance benefits for eligible New Yorkers. <sup>76</sup>
	13. Implemented universal free school lunch in most New York City middle schools <sup>77</sup>	2015 2017: expanded to all New York City public schools <sup>78</sup>	Launches pilot of universal free school lunch in 2014 that makes free food available to school children without stigma and extended to every student at all New York City's public schools in the 2017–2018 school year <sup>79</sup>

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74. *New York City Food Assistance Collaborative*, LEONA M. & HARRY B. HELMSLEY CHARITABLE TR., <http://helmsleytrust.org/programs/place-based-new-york-city-new-york-city-food-assistance-collaborative> [<https://perma.cc/39GL-QEQH>].

75. FREUDENBERG ET AL., *supra* note 2, at 15.


76. *Id.* at 51.

77. Sean Piccoli & Elizabeth A. Harris, *New York City Offers Free Lunch for All Public School Students*, N.Y. TIMES (Sept. 6, 2017), <https://www.nytimes.com/2017/09/06/nyregion/free-lunch-new-york-city-schools.html> [<https://nyti.ms/2xc12IH>].

78. FREUDENBERG ET AL., *supra* note 2, at 15.

79. Piccoli & Harris, *supra* note 77.



 <p><b>3. Create food systems that support economic development</b> Policies that promote community economic development through food and improved food production and distribution in the region</p>	<p>14. Promulgated Local Food Procurement Guidelines for NYC Agencies<sup>80</sup></p>	2011 <sup>81</sup>	<p>Mandates that the Mayor's Office of Contract Services establish guidelines to assist city agencies in purchasing food products grown, produced, or harvested in New York State<sup>82</sup></p>
	<p>15. Invested \$150 million to revitalize the Hunts Point Terminal Produce Market<sup>83</sup></p>	2015 <sup>84</sup>	<p>Allocates \$150 million over twelve years to renovate, modernize, and provide infrastructure upgrades to Hunts Point Terminal Produce Market, which is estimated to create 500 permanent and 900 unionized construction jobs.<sup>85</sup> In 2016, New York State invested \$15 million more in development of a Greenmarket Regional Food Hub at Hunts Point; a 120,000-square-foot facility that will expand distribution capacity, provide new markets for farmers, and create jobs.<sup>86</sup></p>

80. *Food Policy Standards*, MAYOR'S OFFICE OF CONTRACT SERVS. (MOCS), <https://www1.nyc.gov/site/mocs/resources/food-policy-standards.page> [<https://perma.cc/59F8-VTHZ>].

81. FREUDENBERG ET AL., *supra* note 2, at 46.


82. *Food Policy Standards*, *supra* note 80.

83. Jaime Williams, *\$150 Million Allocated to Fix Hunts Point Markets*, BRONX TIMES (Mar. 18, 2015), [https://www.bxtimes.com/stories/2015/11/11-funding-2015-03-13-bx\\_2015\\_11.html](https://www.bxtimes.com/stories/2015/11/11-funding-2015-03-13-bx_2015_11.html) [<https://perma.cc/5XMV-HPMQ>].

84. FREUDENBERG ET AL., *supra* note 2, at 46.

85. Williams, *supra* note 83.

86. Margaret Brown & Mark Izeman, *Cuomo Commits Critical Funds to Advance Regional Food Hub*, NAT. RESOURCES DEF. COUNCIL (Aug. 16, 2016),

 <p><b>4. Ensure sustainable food systems</b> Policies that reduce food waste and food-related pollution and carbon emissions, and that protect region's farmland</p>	<p>16. Established New York City Organics Program, a compost pilot program for curbside collection of organic waste<sup>87</sup></p>	<p>2013 2017: expanded program<sup>88</sup></p>	<p>Pilot program tested the efficacy and cost-efficiency of the curbside collection of food scraps, food-soiled paper, and yard waste; other mayoral initiatives challenged businesses to reduce waste by fifty percent<sup>89</sup> and require heating oil sold or used by the City to contain a percentage of biodiesel<sup>90</sup></p>
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<https://www.nrdc.org/experts/margaret-brown/cuomo-commits-critical-funds-advance-regional-food-hub> [<https://perma.cc/DQU3-JYMQ>].

87. *DSNY Announces Major Expansion of NYC Organics Program*, BRONX CHRON. (Mar. 27, 2017), <http://thebronxchronicle.com/2017/03/27/dsny-announces-major-expansion-of-nyc-organics-program/> [<https://perma.cc/NY5L-36PS>].

88. FREUDENBERG ET AL., *supra* note 2, at 47.

89. Press Release, Office of the N.Y.C. Mayor Bill de Blasio, ONENYC: Mayor de Blasio's Zero Waste Challenge Wraps Up with Thousands of Tons of Waste Diverted from Landfill and Incineration (July 11, 2016), <http://www1.nyc.gov/office-of-the-mayor/news/604-16/onenyc-mayor-de-blasio-s-zero-waste-challenge-wraps-up-thousands-tons-waste-diverted> [<https://perma.cc/EK8Y-7W6D>].

90. *Mayor de Blasio Signs B5 Bioheat® Fuel Bill*, N.Y. OIL HEATING ASS'N INC. (Oct. 19, 2016), <http://www.nyoha.org/blog/mayor-de-blasio-signs-b5-bioheat-fuel-bill/> [<https://perma.cc/5F5U-ADQQ>].

 <p><b>5. Support food workers</b> Policies that provide food workers with decent wages and benefits, safe working conditions, and the right to organize</p>	<p>17. Increased the minimum wage in New York State for fast food workers in 2015, for other workers in 2016, and for New York City workers in 2016<sup>91</sup></p>	<p>2015 2016: extended to other workers<sup>92</sup></p>	<p>Increased the minimum wage across New York State, first for fast food and tipped workers in April 2015, then for state workers in November 2015, and then for all workers across all industries in April 2016; the increases are incremental, and the minimum wage will reach \$15 in NYC by the end of 2018 or end of 2019, depending on type of business; the wage increase is estimated to benefit 2.3 million workers statewide<sup>93</sup></p>
	<p>18. Protected fast food workers from unpredictable scheduling and payment through Fair Work Week package of bills<sup>94</sup></p>	<p>2016–2017<sup>95</sup></p>	<p>Ensures that fast food and other retail workers will have fair notification of their work hours and predictable schedules for paychecks; estimated to benefit 65,000 workers in New York City<sup>96</sup></p>

91. Patrick McGeehan, *New York's Path to \$15 Minimum Wage: Uneven, and Bumpy*, N.Y. TIMES (Apr. 1, 2016), <https://www.nytimes.com/2016/04/02/nyregion/new-yorks-path-to-15-minimum-wage-uneven-and-bumpy.html> [<https://nyti.ms/2m1qNzi>].


92. FREUDENBERG ET AL., *supra* note 2, at 47.

93. *Id.* at 53; Press Release, Office of the N.Y. State Governor Andrew M. Cuomo, Governor Cuomo Announces 2018 Launch of Economic Justice Programs for the Middle Class: Minimum Wage Increase, Paid Family Leave Policy and Middle Class Tax Cut in New York State (Dec. 31, 2017), <https://www.governor.ny.gov/news/governor-cuomo-announces-2018-launch-economic-justice-programs-middle-class-minimum-wage-1> [<https://perma.cc/6BSZ-R5RZ>].

94. Press Release, Office of the N.Y.C. Mayor Bill de Blasio, Mayor de Blasio, Speaker Mark-Viverito Announce that New York City Is the Largest City to End Abusive Scheduling Practices in the Fast Food and Retail Industries (May 30, 2017), <http://www1.nyc.gov/office-of-the-mayor/news/372-17/mayor-de-blasio-speaker-mark-viverito-that-new-york-city-the-largest-city-end#0> [<https://perma.cc/E7S9-L6HR>].

95. FREUDENBERG ET AL., *supra* note 2, at 47.

96. *Id.* at 53.

 <p><b>6. Strengthen food governance and food democracy</b> Policies that encourage civic engagement in shaping food policy and reduce the influence of special interests</p>	19. Established first Food Policy Coordinator position in mayor's office <sup>97</sup>	2008 2014: renamed Office of the Director of Food Policy <sup>98</sup>	Works to increase food security, promote access to/awareness of healthy food, and support economic opportunity and environmental sustainability in the food system <sup>99</sup>
	20. Required annual Food Metrics Reports <sup>100</sup>	2011 <sup>101</sup>	Requires annual reporting on the production, processing, distribution, and consumption of food in and for New York City for the previous fiscal year for city agency food-related initiatives <sup>102</sup>

Each of these twenty policies went through New York City's existing government and governance channels. While Table 2 provides a summary and sampling of different food policies, this Article specifically examines five key policies to examine to what extent food governance in New York City meets the standards discussed in Part I of this Article. The five examples include: the 2008 New York City Food Standards; the 2009 Food Retail Expansion to Support Health; several changes implemented in city outreach and enrollment for the Supplemental Nutrition Assistance Program ("SNAP"), a program previously known as Food Stamps, between 2008 and 2015; the 2017 universal free school lunch expansion; and the unsuccessful 2012 proposal to limit the portion size of sugary

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97. Office of the Mayor, Exec. Order No. 122, Food Policy Coordinator for the City of New York and City Agency Food Standards (2008) [hereinafter Exec. Order No. 122], [http://www.nyc.gov/html/om/pdf/eo/eo\\_122.pdf](http://www.nyc.gov/html/om/pdf/eo/eo_122.pdf) [<https://perma.cc/X3PY-KMST>].

98. FREUDENBERG ET AL., *supra* note 2, at 47.

99. OFFICE OF THE FOOD POLICY DIR., CITY OF NEW YORK, NEW YORK CITY FOOD POLICY: 2014 FOOD METRICS REPORT 2 (2014) [hereinafter FOOD METRICS REPORT 2014], <http://www1.nyc.gov/assets/foodpolicy/downloads/pdf/2014-food-metrics-report.pdf> [<https://perma.cc/GG2P-TJ6D>].

100. *Id.*

101. FREUDENBERG ET AL., *supra* note 2, at 47.

102. *Id.* at 28.

beverages sold in food service establishments in New York City.<sup>103</sup> Each of these five policy initiatives involved two or more branches of city government, several different city agencies, and some civil society, state, or federal influence. Together they provide rich material for understanding how food policy-making in New York City succeeds and fails in realizing the characteristics of effective governance.

### A. Food Standards and Food Policy Coordinator

In 2008, Mayor Bloomberg signed Executive Order No. 122, which outlined the New York City Food Standards (“Food Standards”). The order created nutrition standards for every meal purchased, prepared, or served by a city agency or its contractors.<sup>104</sup> The Food Standards illustrate several principles of effective governance. They promote equity by ensuring that the 240 million meals or snacks the City serves every year in schools, child care programs, senior centers, jails, and hospitals provide nutritious food to vulnerable populations, improving their health, reducing food insecurity, and promoting the local economy.<sup>105</sup> The Food Standards set common standards for the eleven city agencies that serve food<sup>106</sup> and are based on the accumulated evidence that reducing sugar, salt, and fat and increasing the number of portions of fruits and vegetables can contribute to reductions in obesity, diabetes, and other diet-related diseases, a key goal of city food policy.<sup>107</sup> The Food Standards encourage

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103. Michael M. Grynbaum, *New York’s Ban on Big Sodas Is Rejected by Final Court*, N.Y. TIMES (June 26, 2014), <https://www.nytimes.com/2014/06/27/nyregion/city-loses-final-appeal-on-limiting-sales-of-large-sodas.html> [<https://nyti.ms/2kl7egt>].

104. Exec. Order No. 122, *supra* note 97.

105. OFFICE OF THE FOOD POLICY DIR., CITY OF NEW YORK, FOOD METRICS REPORT 2016, at 12 (2016) [hereinafter FOOD METRICS REPORT 2016], <http://www1.nyc.gov/assets/foodpolicy/downloads/pdf/2016-Food-Metrics-Report.pdf> [<https://perma.cc/YHM5-WKQ2>].

106. The eleven municipal agencies that play a role in serving food are: Department of Education, Administration for Children’s Services, Department of Youth and Community Development, Department of Correction, Department of Homeless Services, Department for the Aging, New York City Health & Hospitals, Department of Health and Mental Hygiene, Human Resources Administration, HIV/AIDS Services Administration, and Department of Parks and Recreation. See N.Y.C. FOOD POLICY CTR. AT HUNTER COLL., THE PUBLIC PLATE IN NEW YORK CITY: A GUIDE TO INSTITUTIONAL MEALS 6 (2014) [hereinafter PUBLIC PLATE REPORT], <http://nycfoodpolicy.org/wp-content/uploads/2013/05/PUBLICPLATE-REPORT.pdf> [<https://perma.cc/NY3N-Y57S>].

107. See generally N.Y.C. DEP’T OF HEALTH & MENTAL HYGIENE, REVISED NEW YORK CITY FOOD STANDARDS: MEALS/SNACKS PURCHASED AND SERVED (2017)

intersectoral action by creating a framework for a wide range of city agencies including the Departments of Health and Mental Hygiene, Education, Correction, Aging, and others to work together to procure, prepare, and distribute the food they serve in their institutional food programs.<sup>108</sup> The standards also strengthen the public sector in food by enabling the City to achieve economies of scale in procurement that single agencies or programs could not achieve.<sup>109</sup>

The Food Standards show how incremental changes in food governance can open the door for more transformative changes. In 2016, a coalition of civil society groups including the Food Chain Workers Alliance, an alliance of food labor organizations; City Harvest, an anti-hunger group; Community Food Advocates, an advocacy organization; United Food and Commercial Workers Union; the CUNY Institute for Urban Food Policy; and others began to work to expand the New York City Food Standards from an exclusive focus on nutrition to also include standards for labor rights, environmental protection, and animal rights.<sup>110</sup> These developments illustrate how a city policy, enacted within the formal government structure and focused on a specific issue within the population, subsequently inspired other civil society groups to take action and pursue other social policy issues. The Food Standards also demonstrate how policy achievements in one city—in this case Los Angeles, which implemented the broader Good Food Procurement Standards in 2012<sup>111</sup>—can encourage other cities to emulate these models. In 2017, for example, Chicago followed Los Angeles in adopting the Good Food Procurement Standards.<sup>112</sup>

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<https://www1.nyc.gov/assets/doh/downloads/pdf/cardio/cardio-meals-snacks-standards.pdf> [<https://perma.cc/JJ5S-Y9JY>].

108. FREUDENBERG ET AL., *supra* note 2, at 39.

109. Nicholas Freudenberg, *Healthy-Food Procurement: Using the Public Plate to Reduce Food Insecurity and Diet-Related Diseases*, 4 LANCET DIABETES & ENDOCRINOLOGY 383, 383–84 (2016).

110. *See generally* CTR. FOR GOOD FOOD PURCHASING, TRANSFORMING THE WAY PUBLIC INSTITUTIONS PURCHASE FOOD (2017), <https://gfpp.app.box.com/v/Overview> [<https://perma.cc/BV4D-R4F7>].

111. Joann Lo & Alexa Delwiche, *The Good Food Purchasing Policy: A Tool to Intertwine Worker Justice with a Sustainable Food System*, 6 J. AGRICULTURE, FOOD SYSTEMS, & COMMUNITY DEV. 185, 185–86 (2016).

112. Press Release, Chi. Food Policy Action Council, Press Advisory: Chicago Food Policy Action Council Secures Good Food Purchasing Program for City of Chicago (Oct. 11, 2017), <https://goodfoodpurchasing.org/chicago-food-policy-action-council-secures-good-food-purchasing-program-for-city-of-chicago/> [<https://perma.cc/R2CM-PSZF>].

Executive Order No. 122 also created the Food Policy Coordinator position, and for the first time, a single person in the mayor's office was assigned specific responsibility for food policy.<sup>113</sup> The person holding this position serves as a visible spokesperson to represent the mayor's interest in food to other city and state agencies, legislators, and civil society groups, thereby increasing accountability. In practice, the three individuals who have served as the Food Policy Coordinator (later renamed Director) since 2008 have actively reached out to community-based and advocacy food organizations, creating new opportunities for dialogue on municipal food policies.<sup>114</sup> While the position has increased informal opportunities for participation in food policy-making, formal mechanisms for including under-represented groups are lacking, representing a weakness of the current governance regime. In addition, the resources available to the office of the Food Policy Coordinator are modest (three staff positions), diminishing its capacity to monitor or influence many parts of the city's food system.<sup>115</sup>

The Food Policy Coordinator reports to the Deputy Mayor for Health and Human Services, and the stated rationale for the Food Standards was to reduce "the prevalence of obesity and diabetes, which are the only major health problems in New York City that continue to affect increasing numbers of New Yorkers."<sup>116</sup> This framing of food policy emphasizes its origins in health concerns, a focus that helped to win broad public and policymaker support.<sup>117</sup> However, by making health the priority, this focus may have made the task of intersectoral coordination with economic and community development groups, labor and environmental city agencies, and civil society groups more challenging, causing these constituencies to believe that their concerns were perceived as secondary.

Finally, Executive Order No. 122 illustrates the many paths to policy change within the current governance system, each with distinct advantages and disadvantages. "Executive orders have the power to create massive change at the stroke of a pen, sidestepping the need to coordinate with legislators."<sup>118</sup> Unlike laws created

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113. See Exec. Order No. 122, *supra* note 97.

114. FREUDENBERG ET AL., *supra* note 2, at 50; *Panel Discussion with Three New York City Food Policy Coordinators*, YOUTUBE (Nov. 9, 2017), <https://youtu.be/xzBWcbzPvoE?t=20> [<https://perma.cc/U6UW-MSEC>].

115. FREUDENBERG ET AL., *supra* note 2, at 38.

116. See Exec. Order No. 122, *supra* note 97.

117. See LANG ET AL., *supra* note 4, at 1–16.

118. WILLINGHAM ET AL., *supra* note 34, at 26.

through the legislative process, however, executive orders can be withdrawn by a successor.<sup>119</sup> Additionally, an overuse of executive orders can antagonize the legislature, making it harder for the executive to enact policies on issues that require broad government cooperation.<sup>120</sup> Had the Food Standards or the Food Policy Coordinator position been approved by the city council, the city's legislature, they would be less vulnerable to the changing priorities of a future mayor.<sup>121</sup> Furthermore, they would have been better positioned for mandated funding allocations. The need for a city council vote, however, would have made the legislative process vulnerable to special interest influences and delayed the policy.

### B. Food Retail Expansion to Support Health (“FRESH”)

The Food Retail Expansion to Support Health (“FRESH”) program provides incentives and subsidies to supermarkets to open or expand new stores in under-served neighborhoods.<sup>122</sup> The program was the result of a study conducted by an intersectoral task force of city agencies—including the New York City Department of City Planning (“NYC DCP”), the New York City Economic Development Corporation (“NYCEDC”), the mayor's office, and the New York City Department of Health and Mental Hygiene—that showed fewer full-scale supermarkets in low-income communities compared to wealthier neighborhoods.<sup>123</sup> The 2008 study, *Going to Market*,<sup>124</sup> found that high costs associated with acquiring, developing, and operating supermarkets blocked their development.<sup>125</sup> The FRESH program reduces these obstacles through zoning and financial

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119. FREUDENBERG ET AL., *supra* note 2, at 78.

120. WILLINGHAM ET AL., *supra* note 34, at 8. For example, as will be seen in the discussion of the sugary beverage portion cap limitation, the perception in the city council that the mayor was using the Board of Health to bypass legislative review may have contributed to lack of support for this rule among legislators.

121. *See id.* at 7.

122. *See* N.Y.C. ECON. DEV. CORP., THE FOOD RETAIL EXPANSION TO PROMOTE HEALTH (FRESH) 1–2 (2015) [hereinafter FRESH FACT SHEET], [http://www.nyc.gov/html/misc/pdf/fresh\\_fact\\_sheet\\_eng.pdf](http://www.nyc.gov/html/misc/pdf/fresh_fact_sheet_eng.pdf) [https://perma.cc/Q9SU-7ANY].

123. *Id.*

124. *See generally* N.Y.C. DEP'T OF PLANNING, GOING TO MARKET: NEW YORK CITY'S NEIGHBORHOOD GROCERY STORE AND SUPERMARKET SHORTAGE (2008) [hereinafter GOING TO MARKET 2008], [http://www.nyc.gov/html/misc/pdf/going\\_to\\_market.pdf](http://www.nyc.gov/html/misc/pdf/going_to_market.pdf) [https://perma.cc/B45N-7TF4].

125. *Id.* at 23.



incentives.<sup>126</sup> The program is run by the NYCEDC, a not-for-profit corporation created by the City to encourage economic development.<sup>127</sup> Since its launch in 2009, through 2017, the FRESH program has approved twenty-seven projects for zoning and financial incentives, fourteen of which were completed.<sup>128</sup> These stores have added 735,000 square feet of new or renovated FRESH retail space and retained or created approximately 2200 jobs.<sup>129</sup> The FRESH program also illustrates how some food policies need separate approval from two branches of government. The city council must approve any land use changes that a FRESH-funded project may require, and the mayor authorizes expenditures of city dollars.<sup>130</sup>

The City Planning Commission (“CPC”) plays an integral role in shaping the neighborhoods of New York City, including the distribution of food retail sites.<sup>131</sup> The CPC rests within the NYC DCP (a mayoral agency) and provides oversight and guidance on issues related to land use.<sup>132</sup> Land use actions, like rezoning, are conducted through a process known as the Uniform Land Use Review Procedure (“ULURP”), and the CPC plays a major part in the ULURP approval process.<sup>133</sup> In the case of the FRESH program, the CPC helps to advance the city’s food policy agenda by facilitating changes in land use that affect the ability of New Yorkers to find healthy food in city neighborhoods.<sup>134</sup> However, the multiple city agencies with overlapping mandates that must approve and provide subsidies for a single new supermarket illustrates the complexity of moving policy through urban governance systems.

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126. N.Y.C. ECON. DEV. CORP., FRESH IMPACT REPORT 2 (2015), <https://www.nycedc.com/system/files/files/program/FRESH%20Impact%20Report.pdf> [<https://perma.cc/G8KW-S5JQ>].

127. *Id.*

128. OFFICE OF THE FOOD POLICY DIR., CITY OF NEW YORK, FOOD METRICS REPORT 2017, at 28 (2017) [hereinafter FOOD METRICS REPORT 2017], <http://www1.nyc.gov/assets/foodpolicy/downloads/pdf/2017-Food-Metrics-Report-Corrected.pdf> [<https://perma.cc/4EFX-2GAQ>].

129. *Id.*

130. FRESH FACT SHEET, *supra* note 122, at 1–2.

131. Jesse S. Raphael, *City Planning Commission as an Agency for City Planning*, 12 ST. JOHN’S L. REV. 226, 230 (2014).

132. *City Planning History*, N.Y.C. DEP’T OF CITY PLANNING, <https://www1.nyc.gov/site/planning/about/city-planning-history.page> [<https://perma.cc/4JXB-AMRN>].

133. *Uniform Land Use Review Procedure (ULURP)*, N.Y.C. DEP’T OF CITY PLANNING, [www1.nyc.gov/assets/planning/download/pdf/applicants/applicant-portal/lur.pdf](http://www1.nyc.gov/assets/planning/download/pdf/applicants/applicant-portal/lur.pdf) [<https://perma.cc/5T3M-JAV2>].

134. FRESH FACT SHEET, *supra* note 122, at 1–2.

While admirable in theory, the true impact of the FRESH program is largely unknown. For the most part, evidence is lacking on whether the FRESH program has had a measurable impact on food access in low-income communities, which is its avowed goal. Many more food stores closed in these neighborhoods than the FRESH program helped open.<sup>135</sup> Furthermore, studies in New York City show that even where the number of supermarkets increases, the number of fast food establishments increases much faster, making low cost unhealthy choices still more available.<sup>136</sup> Additionally, since the FRESH program was created, evidence suggests that more supermarkets in low-income urban neighborhoods do not necessarily lead to healthier diets.<sup>137</sup> Recent evidence questions the belief that “food deserts,” places with an inadequate number of supermarkets, are the main cause of limited healthy food access in dense urban areas.<sup>138</sup> Rather, some studies suggest that the price and quality of existing supermarkets limit access for low-income residents.<sup>139</sup> To date, officials have not modified the FRESH program, which is based on the food desert hypothesis, to reflect this new evidence.

The process of approving and implementing the FRESH program shows how private and civil society groups influence urban food policy. The Food Industry Alliance (“FIA”), a group representing supermarket operators, provided important support for getting the incentives provided by the FRESH program approved by the city council.<sup>140</sup> Those incentives, such as tax breaks and zoning bonuses,

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135. See generally NEVIN COHEN & NICHOLAS FREUDENBERG, CUNY URBAN FOOD POLICY INST., *CREATING HEALTHY FOOD ACCESS IN A CHANGING FOOD RETAIL SECTOR: INVITATION TO A DIALOGUE 2* (2016).

136. NICHOLAS FREUDENBERG ET AL., CUNY SCH. OF PUB. HEALTH & N.Y.C. FOOD POLICY CTR. AT HUNTER COLL., *EATING IN EAST HARLEM: AN ASSESSMENT OF CHANGING FOODSCAPES IN COMMUNITY DISTRICT 11, 2000–2015*, at 14 (2016), [https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1079&context=sph\\_pubs](https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1079&context=sph_pubs) [<https://perma.cc/5W4Y-PX64>].

137. Tamara Dubowitz et al., *Diet and Perceptions Change with Supermarket Introduction in a Food Desert, but not Because of Supermarket Use*, 34 HEALTH AFF. 1858, 1860 (2015).

138. Betsy Donald, *Food Retail and Access After the Crash: Rethinking the Food Desert Problem*, 13 J. ECON. GEOGRAPHY 231, 231–37 (2013).

139. Lillian MacNell et al., *Black and Latino Urban Food Desert Residents’ Perceptions of Their Food Environment and Factors That Influence Food Shopping Decisions*, 12 J. HUNGER & ENVTL. NUTRITION 375, 382 (2017); see also James Mabli & Julie Worthington, *The Food Access Environment and Food Purchase Behavior of SNAP Households*, 10 J. HUNGER & ENVTL. NUTRITION 132, 133 (2015).

140. Terry Pristin, *With a Little Help, Greens Come to Low-Income Neighborhoods*, N.Y. TIMES (June 16, 2009), <https://www.nytimes.com/2009/06/17/business/17supermarkets.html> [<https://nyti.ms/2oTHRYW>].

help lower the cost of operating a supermarket in New York City, a clear benefit to the FIA's constituency. In 2017, a union representing supermarket workers, the Retail Wholesale and Department Store Union, testified in a hearing on FRESH held by the city's Industrial Development Agency.<sup>141</sup> The union unsuccessfully urged the City to amend FRESH to include labor standards for workers in the publicly supported supermarkets, in addition to adding a requirement that FRESH supermarkets devote a specified portion of shelf space to fresh produce.<sup>142</sup>

### C. Changes in SNAP Enrollment and Outreach

In 2017, the City provided food benefits to 1.6 million New York City residents through SNAP,<sup>143</sup> making SNAP the city's principal bulwark against food insecurity and one of the most important safety net programs buffering the effects of widespread poverty.<sup>144</sup> Between 2008 and 2016, the Human Resources Administration, often with the support and encouragement of the Food Policy Coordinator, modified how New York City residents learned about and enrolled in SNAP.<sup>145</sup> Redesigning these types of internal processes and practices does not require legislative approval or attract outside attention, and city agencies can play an important role in implementing policies more effectively. For example, the New York City Human Resources Administration can streamline enrollment processes and enable more transactions to be completed online, thereby reducing the time burden on clients.<sup>146</sup> These changes in enrollment practices, which were suggested and promoted by anti-hunger groups, contributed to

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141. *Public Hearing Summary*, N.Y.C. INDUSTRIAL DEV. AGENCY (June 9, 2017), [https://www.nycedc.com/sites/default/files/filemanager/NYCIDA/Board\\_Meetings\\_Hearings/NYCIDA\\_Public\\_Hearing\\_6\\_9\\_2017\\_Summary.pdf](https://www.nycedc.com/sites/default/files/filemanager/NYCIDA/Board_Meetings_Hearings/NYCIDA_Public_Hearing_6_9_2017_Summary.pdf) [<https://perma.cc/5LQA-GQKY>].

142. *Id.*

143. N.Y. STATE OFFICE OF TEMPORARY & DISABILITY ASSISTANCE, TEMPORARY AND DISABILITY ASSISTANCE STATISTICS MARCH 2017, at 6 (2017), <https://otda.ny.gov/resources/caseload/2017/2017-03-stats.pdf> [<https://perma.cc/VX86-98S3>].

144. *See Oversight: Hunger and Food Insecurity Hearing Before Comms. on General Welfare & Aging*, 2017 N.Y. City Council 2-3 (Jan. 25, 2017) (testimony of Lisa Fitzpatrick, Chief Program Officer, N.Y.C. Human Res. Admin.), [https://www1.nyc.gov/assets/hra/downloads/pdf/news/testimonies/2017/jan/2017%20Hunger%20Hearing%20Testimony\\_012517\\_final.pdf](https://www1.nyc.gov/assets/hra/downloads/pdf/news/testimonies/2017/jan/2017%20Hunger%20Hearing%20Testimony_012517_final.pdf) [<https://perma.cc/ZCH3-HUXT>].

145. FOOD METRICS REPORT 2017, *supra* note 128, at 12-14.

146. *Id.* at 8, 12-13.

the expansion of SNAP during the great recession and beyond.<sup>147</sup> Of note, increased enrollment was also facilitated by increased federal support for SNAP via the American Recovery and Reinvestment Act of 2009,<sup>148</sup> an example of federal policy facilitating municipal goals.

Despite the 2009 expansion of federal SNAP benefits, recent decisions and regulatory and budget proposals by President Trump and Congress suggest that federal support for SNAP is likely to decline in the coming years.<sup>149</sup> This decline will likely require city and state officials to develop new approaches to reducing food insecurity and hunger. While anti-poverty, civil rights, food security, and other civil society organizations have long-established coalitions to defend food assistance for the poor in New York City,<sup>150</sup> their ability to overcome the national efforts to cut such assistance remains uncertain. In the event of major federal cutbacks in SNAP, New York City's food governance system will have trouble protecting city residents against growing food insecurity.

#### D. Universal Free Lunch

In 2017, the New York City Council and several advocacy groups played a key role in pressing the mayor to approve a budgetary allocation to expand free lunches in city schools.<sup>151</sup> The Lunch for Learning campaign, organized by the nonprofit Community Food Advocates, advocated for universal school meals for *all* New York City students.<sup>152</sup> Notably, the campaign includes members of the food

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147. ROBIN HOOD FOUND., SPOTLIGHT ON SNAP: GOING HUNGRY: WHICH NEW YORKERS ARE LEAVING FOOD ON THE TABLE? 1 (2017), <https://robinhoodorg-production.s3.amazonaws.com/uploads/2017/11/robin-hood-poverty-tracker-snap-spotlight.pdf> [<https://perma.cc/SFR7-LAK4>].

148. BRYNNE KEITH-JENNINGS & DOTTIE ROSENBAUM, CTR. ON BUDGET & POLICY PRIORITIES, SNAP BENEFIT BOOST IN 2009 RECOVERY ACT PROVIDED ECONOMIC STIMULUS AND REDUCED HARDSHIP 1-3 (2015), <https://www.cbpp.org/sites/default/files/atoms/files/3-31-15fa.pdf> [<https://perma.cc/CX9K-DHJR>].

149. STACY DEAN, CTR. ON BUDGET & POLICY PRIORITIES, PRESIDENT'S BUDGET WOULD SHIFT SUBSTANTIAL COSTS TO STATES AND CUT FOOD ASSISTANCE FOR MILLIONS 1-3 (2017), <https://www.cbpp.org/sites/default/files/atoms/files/5-23-17fa.pdf> [<https://perma.cc/4NNG-XSSR>].

150. J. Larry Brown, *Sweet Justice: Domestic Hunger and the Limits of Charity*, 114 PUB. HEALTH REP. 381, 381 (1999), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1308500/pdf/pubhealthrep00026-0091.pdf> [<https://perma.cc/NMZ4-8895>]. See generally JANET POPPENDIECK, SWEET CHARITY? EMERGENCY FOOD AND THE END OF ENTITLEMENT (1999).

151. Piccoli & Harris, *supra* note 77.

152. See generally LUNCH 4 LEARNING, CMTY. FOOD ADVOCATES, UNIVERSAL FREE SCHOOL LUNCH IN NYC: AN OVERVIEW (2014) [hereinafter LUNCH 4

workers of District Council 37 (“DC37”) and the teachers’ union.<sup>153</sup> At several city hall demonstrations, city council members and union leaders spoke in favor of the program.<sup>154</sup> As a coalition partner, DC37 played an integral role in the development and adoption of universal school meals. DC37 helped to craft an advocacy strategy, provided space for meetings, turned out in large numbers to press conferences and other calls to action, and used their institutional knowledge to help inform the activities of this campaign.<sup>155</sup> During the budget negotiation for the 2018 fiscal year, the mayor’s office decided to expand universal free school lunch, thus realizing a longstanding policy goal of anti-hunger advocates.<sup>156</sup> Ultimately, the City fully funded the universal free lunch program, bringing it to all school children in New York City.<sup>157</sup>

The successful campaign to make school lunches free for all children illustrates the power of advocacy coalitions, defined by the political scientist Paul Sabatier as policy alliances that work together to achieve common goals.<sup>158</sup> It also shows the effectiveness of framing policy changes around children’s needs and the importance of building support for policy reforms in both the executive and legislative branches. The campaign demonstrates how civil society advocates can advance equity-promoting food policy initiatives and bring new constituencies into food policy-making.

### E. Portion Cap Limitation

Analyzing policy failures can also provide meaningful insights into the best way to enact effective food initiatives. In 2012, Mayor Michael Bloomberg announced the Portion Cap Rule, a proposed

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LEARNING], [https://docs.wixstatic.com/ugd/fce5d8\\_200d136d200b40cba1c348ad7deaffd2.pdf](https://docs.wixstatic.com/ugd/fce5d8_200d136d200b40cba1c348ad7deaffd2.pdf) [<https://perma.cc/ZKM2-G6C3>].

153. Alfredo Alvarado, *City Launches Free School Lunch Program with Help from the Union*, DC 37: BLOG (Sept. 8, 2017), <https://dc37blog.wordpress.com/2017/09/08/city-launches-free-school-lunch-program-with-help-from-the-union/> [<https://perma.cc/6AMK-ZDFU>].

154. Erin Durkin & Ben Chapman, *Rally Urges Mayor to Fund Free Lunch for All Public School Kids*, N.Y. DAILY NEWS (Nov. 16, 2016), <http://www.nydailynews.com/new-york/education/rally-urges-mayor-fund-free-lunch-public-school-kids-article-1.2876698> [<https://perma.cc/58FH-CS5Y>].

155. *Id.*

156. Press Release, N.Y.C. Dep’t of Educ., Chancellor Fariña Announces Free School Lunch for All (Sept. 6, 2017), <http://schools.nyc.gov/Offices/mediarelations/NewsandSpeeches/2017-2018/FreeSchoolLunch.htm> [<https://perma.cc/8B69-CUMK>].

157. Piccoli & Harris, *supra* note 77.

158. Paul A. Sabatier, *An Advocacy Coalition Framework of Policy Change and the Role of Policy-Oriented Learning Therein*, 21 POL’Y SCI. 129, 139 (1988).

amendment to the New York City Health Code that would require “food service establishments” to cap the size of cups and containers used to offer, provide, and sell sugary beverages sixteen ounces or larger.<sup>159</sup> The proposal intended to help promote the city’s public health by decreasing the default portion sizes of sugary beverages.<sup>160</sup> Thus, the Portion Cap Rule sent a message that super-sized soda containers encouraged health-damaging consumption patterns.

The proposal attracted extensive media and popular interest. In the public comments invited by the Board of Health, the Board received 32,000 written and oral comments supporting and approximately 6000 comments opposing the proposal.<sup>161</sup> Media coverage, however, was less favorable, often framing the issue as an overbearing government imposing its will on the population, rather than a public health effort to protect those at risk of diet-related disease.<sup>162</sup> The soda industry spent millions of dollars mobilizing public opinion against the proposed rule.<sup>163</sup> It painted the proposed city rule as a nanny state needlessly restricting freedom by taking away the right to choose a soda portion of any size,<sup>164</sup> echoing the mainstream media’s criticism of the proposal.

In 2014, the New York State Court of Appeals rejected the Portion Cap Rule, finding that the Board of Health had “exceeded the scope of its regulatory authority by adopting the portion cap rule.”<sup>165</sup> The court explained that “[b]y choosing among competing policy goals, without any legislative delegation or guidance, the Board engaged in law-making and thus infringed upon the legislative jurisdiction of the

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159. See N.Y. Statewide Coal. of Hispanic Chambers of Commerce v. N.Y.C. Dep’t of Health & Mental Hygiene, 16 N.E.3d 538, 541–42 (N.Y. 2014) (quoting and invalidating N.Y. CITY HEALTH CODE § 81.53).

160. Susan M. Kansagra et al., *Reducing Sugary Drink Consumption: New York City’s Approach*, 105 AM. J. PUB. HEALTH e61, e62 (2015).

161. N.Y.C. Board of Health, N.Y.C. Dep’t of Health & Mental Hygiene, Notice of Adoption of an Amendment (§81.53) to Article 81 of the New York City Health Code (Sept. 13, 2012), <https://www1.nyc.gov/assets/doh/downloads/pdf/notice/2012/notice-adoption-amend-article81.pdf> [<https://perma.cc/5DYX-Q2JZ>].

162. Elisabeth A. Donaldson et al., *News Media Framing of New York City’s Sugar-Sweetened Beverage Portion-Size Cap*, 105 AM. J. PUB. HEALTH 2202, 2204, 2207–08 (2015).

163. Grynbaum, *supra* note 103.

164. Karen Harned, Opinion, *The Michael Bloomberg Nanny State in New York: A Cautionary Tale*, FORBES (May 10, 2013), <https://www.forbes.com/sites/realspin/2013/05/10/the-michael-bloomberg-nanny-state-in-new-york-a-cautionary-tale/#73f951947109> [<https://perma.cc/74MR-JD9V>].

165. N.Y. Statewide Coal. of Hispanic Chambers of Commerce v. N.Y.C. Dep’t of Health & Mental Hygiene, 16 N.E.3d 538, 549 (N.Y. 2014).

City Council of New York.”<sup>166</sup> For the time being, New York City ended its efforts to regulate portion size.

The portion cap conflict provides several governance lessons. It shows how governance procedures such as public hearings can serve to mobilize and engage thousands of residents and food activists. It also illustrates the power of the media in framing public policy issues<sup>167</sup> and of industry interest groups in shaping public opinion.<sup>168</sup> Furthermore, it demonstrates the risks of failing to engage community residents in shaping and framing policy proposals and expecting expert opinion alone to win public health battles. Although some civil society groups did support the portion size limits, proponents were less successful in generating backing than the soda industry was in mobilizing the public against the proposal.<sup>169</sup> Finally, the court of appeals decision reduced the authority of public health officials by limiting the power of the Board of Health to set rules without legislative approval and set a dangerous precedent in the view of some observers.<sup>170</sup> Many of New York City’s most innovative food policies of the last decade (e.g., the ban on trans-fats, calorie posting in chain restaurants) were the result of Board of Health decisions.<sup>171</sup> The silver lining of the portion cap cloud is that as this case was debated, soda consumption among adults in New York City fell substantially, suggesting that even losing a public health policy debate can generate public discussion and change long-term consumer behavior.<sup>172</sup>

### III. AN ASSESSMENT OF FOOD POLICY GOVERNANCE IN NEW YORK CITY

These five policy vignettes from the last decade provide valuable insight into and evidence for New York City’s ability to achieve the

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166. *Id.* at 541.

167. Heide Weishaar et al., *Why Media Representations of Corporations Matter for Public Health Policy: A Scoping Review*, 16 BMC PUB. HEALTH 1, 7–8 (2016).

168. Donaldson et al., *supra* note 162, at 2205, 2207.

169. Michael M. Grynbaum, *Soda Makers Begin Their Push Against New York Ban*, N.Y. TIMES (July 1, 2012), <http://www.nytimes.com/2012/07/02/nyregion/in-fight-against-nyc-soda-ban-industry-focuses-on-personal-choice.html> [<https://nyti.ms/2Gk8fVF>].

170. Lawrence O. Gostin et al., *The Historic Role of Boards of Health in Local Innovation: New York City’s Soda Portion Case*, 312 JAMA 1511, 1511–12 (2014).

171. *Id.* at 1512.

172. Kansagra et al., *supra* note 160, at e63.

six standards this Article proposes for fair and effective urban food governance.<sup>173</sup>

### A. Promotes Equity

Since 2008, policymakers have assigned a higher priority to reducing inequities in food access, food insecurity, and diet-related diseases in New York.<sup>174</sup> Each of the five profiled policies has an equity dimension. The New York City Food Standards use public resources to bring healthy, mostly free food to the vulnerable populations served by the city's institutional food programs.<sup>175</sup> Universal free school lunch eliminates an important obstacle to more equitable access to nutritious food.<sup>176</sup> The FRESH program locates new supermarkets in under-served neighborhoods,<sup>177</sup> and the changes in SNAP enrollment reduce obstacles to obtaining food benefits for populations at higher risk of food insecurity.<sup>178</sup> The portion cap limitation would have most benefited the low-income, Black, and Latino populations who often consume the largest amount of sugary beverages<sup>179</sup> and have the highest rates of obesity and diabetes.<sup>180</sup> These examples demonstrate that many of the New York City food policies explicitly or implicitly sought to reduce inequities.

Both Mayor Bloomberg (2002–2013) and Mayor de Blasio (2014–present) pursued policies to achieve more equitable food environments within the city, although with different emphases. Mayor Bloomberg utilized the authority of city government to make improvements in health a municipal priority.<sup>181</sup> Furthermore, his

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173. *See supra* Part I.

174. *The New York City Food Forum & Why Equity Matters to NYC and Our Food System*, N.Y.C. FOOD POL'Y CTR. AT HUNTER COLL. (Nov. 13, 2014), <http://www.nycfoodpolicy.org/new-york-city-food-forum-equity-matters-nyc-food-system/> [<https://perma.cc/ES6C-3YKH>].

175. *See* PUBLIC PLATE REPORT, *supra* note 106, at 8–10.

176. *See* LUNCH 4 LEARNING, *supra* note 152.

177. *Financing & Incentives: Food Retail Expansion to Support Health (FRESH)*, N.Y.C. ECON. DEV. CORP., <https://www.nycedc.com/program/food-retail-expansion-support-health-fresh> [<https://perma.cc/69AN-FKXD>].

178. *A Short History of SNAP*, U.S. DEP'T OF AGRIC., <https://www.fns.usda.gov/snap/short-history-snap> [<https://perma.cc/ZR7R-UVJ5>].

179. *Facts on Health Disparities and Sugar Drinks*, CTR. FOR PUB. INT., <https://cspinet.org/sites/default/files/attachment/CSPI%202017%20Facts%20on%20Health%20Disparities%20and%20Sugar%20Drinks.pdf> [<https://perma.cc/JE6Q-QYM9>].

180. *Id.*

181. Kimberley Roussin Isett et al., *Learning from New York City: A Case Study of Public Health Policy Practice in the Bloomberg Administration*, 21 J. PUB. HEALTH MGMT. & PRAC. 313, 315 (2015).



office implemented and enforced policies that brought healthier food to previously underserved communities that lacked sufficient access to fresh foods—programs such as FRESH<sup>182</sup> and Green Carts.<sup>183</sup>

Mayor de Blasio, while less focused on health and nutrition, made equity across sectors a top priority.<sup>184</sup> His policies on universal pre-kindergarten, affordable housing, workforce development, and immigrant inclusion each contributed indirectly to better food outcomes,<sup>185</sup> illustrating how non-food policies that seek to increase equity can also improve food environments.<sup>186</sup> Under Mayor de Blasio, the New York City Health Department created a new Center for Health Equity, which focuses efforts to shrink inequalities in health, including in food-related conditions.<sup>187</sup>

Activists, community organizations, progressive elected officials, and some health professionals played a role in pressuring policymakers to take up the equity dimensions of food and supporting those who did.<sup>188</sup> As illustrated in the campaign for universal free lunch<sup>189</sup> and efforts by fast food workers to raise the minimum wage,<sup>190</sup> these coalitions used both formal (e.g., testifying at legislative hearings, submitting comments during rule making, requesting increased budgetary allocation for favored programs) and informal (e.g., mobilizing community support, organizing demonstrations) governance mechanisms to advance their equity agendas for food policy.

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182. *Financing & Incentives*, *supra* note 177.

183. FUCHS ET AL., *supra* note 56, at 16; *see also* Table 2, *supra* Part II.

184. JUAN GONZÁLEZ, RECLAIMING GOTHAM: BILL DE BLASIO AND THE MOVEMENT TO END AMERICA'S TALE OF TWO CITIES 3 (2017).

185. *See generally* OFFICE OF THE MAYOR, ONE NEW YORK CITY: THE PLAN FOR A STRONG AND JUST CITY (2015) [hereinafter ONE NEW YORK CITY], <http://www.nyc.gov/html/onenyc/downloads/pdf/publications/OneNYC.pdf> [<https://perma.cc/5TPF-P2LF>].

186. Nevin Cohen, *Food Policy Brief: Illuminating the “Hidden” Food Policies of the de Blasio Administration*, CUNY URB. FOOD POL'Y INST. (July 27, 2016), <http://www.cunyurbanfoodpolicy.org/news/2016/7/19/illuminating-the-hidden-food-policies-of-the-de-blasio-administration> [<https://perma.cc/Y3EJ-GV9N>].

187. *Center for Health Equity*, N.Y.C. DEP'T OF HEALTH & MENTAL HYGIENE, <https://www1.nyc.gov/site/doh/health/neighborhood-health/center-for-health-equity.page> [<https://perma.cc/4X83-7YE2>].

188. Nicholas Freudenberg et al., *Can a Food Justice Movement Improve Nutrition and Health? A Case Study of the Emerging Food Movement in New York City*, 88 J. URB. HEALTH 623, 633–34 (2011).

189. *See* Alvarado, *supra* note 153.

190. *See* William Finnegan, *Dignity*, NEW YORKER (Sept. 15, 2014), <https://www.newyorker.com/magazine/2014/09/15/dignity-4> [<https://perma.cc/LP63-BSXM>].

While social movements, progressive elected officials, and food activists pressured urban food governance—the totality of public processes that shape food environments—to add food equity to the municipal policy agenda, the current food governance system has been less successful in reducing inequalities. Despite the numerous food policies implemented throughout the decade, the wide gaps in food insecurity and diet-related diseases between the wealthy and the poor, as well as between different races, persisted in New York and elsewhere.<sup>191</sup> For example, gaps in fruit and vegetable consumption, sugary beverage consumption, and rates of obesity and diabetes between Black and Latinos on the one hand and whites on the other remained the same for most of the decade.<sup>192</sup> While unsurprising that inequality created over decades would not be resolved immediately, identifying innovations in governance and policy substance that can begin to close these gaps is an urgent priority for the next decade.

### B. Encourages Accountability

Many of New York City's recent food policy initiatives have created accountability mechanisms. In 2011, the city council passed Local Law 52 that established reporting requirements for many of the city's food-related initiatives, including institutional food programs, Green Carts, and FRESH.<sup>193</sup> The six annual Food Metrics Reports released between 2012 and 2017 provided the most comprehensive compendium of food data published by the City and produced important evidence that could be used to assess the progress of selected food policies approved in New York City and New York State over the last decade.<sup>194</sup> Therefore, the Food Metrics Reports

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191. Nicole I. Larson et al., *Neighborhood Environments: Disparities in Access to Healthy Foods in the U.S.*, 36 AM. J. PREVENTATIVE MED. 74, 79 (2009).

192. FREUDENBERG ET AL., *supra* note 2, at 6.

193. OFFICE OF THE FOOD POLICY DIR., CITY OF NEW YORK, LOCAL LAW 52 OF 2011: FOOD METRICS FOR NEW YORK CITY 1 (2012) [hereinafter FOOD METRICS REPORT 2012], <http://www1.nyc.gov/assets/foodpolicy/downloads/pdf/ll52-food-metrics-report-2012.pdf> [<https://perma.cc/R22X-SAMH>].

194. *See generally* FOOD METRICS REPORT 2017, *supra* note 128; FOOD METRICS REPORT 2016, *supra* note 105; OFFICE OF THE FOOD POLICY DIR., CITY OF NEW YORK, FOOD METRICS REPORT 2015 (2015), <http://www1.nyc.gov/assets/foodpolicy/downloads/pdf/2015-food-metrics-report.pdf> [<https://perma.cc/N8QK-T6T5>]; FOOD METRICS REPORT 2014, *supra* note 99; OFFICE OF THE FOOD POLICY DIR., CITY OF NEW YORK, NEW YORK CITY FOOD POLICY: 2013 FOOD METRICS REPORT (2013), <http://www1.nyc.gov/assets/foodpolicy/downloads/pdf/ll52-food-metrics-report-2013.pdf> [<https://perma.cc/U97N-BCJ8>]; FOOD METRICS REPORT 2012, *supra* note 193. *See also* Nicholas Freudenberg et al., *The Role of Metrics in Food Policy: Lessons for New York City*, 8 J. AGRIC. FOOD SYS. & COMMUNITY DEV. (forthcoming 2018).

are an important step forward in providing transparency for food policy planning. The 2017 Report showed measurable progress on about fifty percent of the thirty-seven indicators for which data are provided and offers assurance that most of the selected measures of implementation of food initiatives are moving in the right direction.<sup>195</sup>

Despite the availability and relative transparency of food policy data, the Food Metrics reporting process could better enhance accountability in several ways. First, the reports could include more data, presented in ways that more clearly show progress or setbacks for future policymakers. The reports could also disaggregate data geographically to enable communities to identify local problems and advocate for solutions. Finally, most of the metrics chosen are outputs, not outcomes, making the reports of limited value in determining whether public food policies and programs are making a difference. This heavy reliance on quantitative data limits policymakers and advocates from understanding why policy changes that are needed have or have not occurred. As a result of these shortcomings, the urban food governance system sometimes lacks the evidence needed to learn from experience, tailor programs and policies to specific communities or populations, correct mistakes, or identify emerging problems.

The City provided further accountability when it created the Food Policy Coordinator position in 2008. This position increased government accountability by designating a single official within the mayor's office to respond to concerns about food policy within and outside city government. In practice, this office, now the Office of the Food Policy Director, has provided an important new forum for discussions about food policy and food governance. For example, the Food Policy Director convened city agencies and anti-hunger groups to improve SNAP enrollment and emergency food programs and assisted city agencies to meet the New York City Food Standards.<sup>196</sup>

However, although many food policies over the past decade have increased government accountability, several limitations remain apparent. The Office of the Food Policy Director has only three staff positions, far fewer resources than are needed to achieve its mission.<sup>197</sup> Additionally, there are no formal mechanisms that ensure

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195. FREUDENBERG ET AL., *supra* note 2, at 31; *see also* Freudenberg et al., *supra* note 194.

196. *See* FREUDENBERG ET AL., *supra* note 2, at 51.

197. *Cf. id.* at 38 (noting that the Mayor's Office of Food Policy has "limited staff and resources"). *See also Meet Barbara Turk: The Mayor's Director of Food Policy at the Just Food Conference*, JUST FOOD (Mar. 3, 2015), <http://www.justfood.org/>

consultation with citizens or civil society groups, leaving these voices without a guaranteed audience and preventing government accountability to their needs.<sup>198</sup> Furthermore, the city government does not provide an integrated budget for its food expenditures, making it difficult for officials to monitor resource allocation. Governments should acknowledge and examine these limitations to ensure that future policies include and execute accountability measures.<sup>199</sup>

Civil society groups in New York City have a long history of creating informal governance processes that enable them to make public agencies more accountable, especially to traditionally underserved populations.<sup>200</sup> The successes of school food advocates in persuading a broad coalition of city officials to endorse and fund universal free school lunches and of anti-hunger activists to convince public assistance officials to ease enrollment in SNAP illustrate this pluralistic approach to making city government more accountable. These processes contribute to many of the recent food policy successes in New York City. At the same time, however, the food justice movement that has emerged in New York City over the last decade has yet to articulate a coherent food policy agenda, integrate the many strands of local food activism, or put forward leaders who can speak for the movement as a whole.<sup>201</sup> In the future, the creation of a more integrated and cohesive coalition of food justice advocates will increase the capacity of civil society groups to hold government accountable for achieving a more equitable and sustainable food system.

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blog/category/stories/2015-03-03/meet-barbara-turk-mayors-director-food-policy-just-food-conference [https://perma.cc/N867-PKSM] (responding to the question, “How big is the [office]?” with “I have a senior policy advisor”).

198. Cf. WILLINGHAM ET AL., *supra* note 34, at 28–32 (listing strategies used by advocates to promote food policy, which focus on grassroots campaigns and do not include formal meetings or consultations).

199. Boyd Swinburn et al., *Strengthening of Accountability Systems to Create Healthy Food Environments and Reduce Global Obesity*, 385 LANCET 2534, 2354 (2015).

200. See, e.g., WILLINGHAM ET AL., *supra* note 34, at 28–32 (listing strategies used by advocates to promote food policy); see also DESIREE FIELDS, CONTESTING THE FINANCIALIZATION OF URBAN SPACE: COMMUNITY ORGANIZATIONS AND THE STRUGGLE TO PRESERVE AFFORDABLE RENTAL HOUSING IN NEW YORK CITY 20 (2015); WALLACE SAYRE & HERBERT KAUFMAN, GOVERNING NEW YORK CITY 76 (1960); Susan M. Chambre, *Civil Society, Differential Resources, and Organizational Development: HIV/AIDS Organizations in New York City, 1982–1992*, 26 NONPROFIT & VOLUNTARY SECTOR Q. 466, 466 (1997).

201. Freudenberg et al., *supra* note 188, at 633–34.

### C. Ensures Sustainability

Fair urban food policy does not solve this generation's food problems by deferring environmental solutions to future generations. In the last decade, the City has implemented several new sustainability initiatives. In 2011, for example, Mayor Bloomberg released a revised report *PlaNYC: A Greener, Greater New York*,<sup>202</sup> an update of his 2007 proposal for ensuring sustainability over the next thirty years.<sup>203</sup> At the behest of food activists, the 2011 report included recommendations for reducing food waste and protecting upstate farmland.<sup>204</sup> It also designated ensuring access to healthy food as part of neighborhood sustainability and cited FRESH as a policy initiative that helped to achieve that goal.<sup>205</sup> The de Blasio administration also expanded sustainability initiatives by creating citywide composting programs and supporting efforts to make regionally grown food more available in the city.<sup>206</sup> On the governance front, it has proved challenging to convert sustainability goals and targets into actionable plans that make progress towards reducing the carbon footprint of the city's food system.<sup>207</sup> For example, the city's food distribution system still relies overwhelmingly on trucks, an inefficient and pollution-contributing mode of transporting food.<sup>208</sup>

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202. See generally OFFICE OF THE MAYOR, CITY OF NEW YORK, *PLANYC: A GREENER, GREATER NEW YORK* (2011) [hereinafter *PLANYC 2011 UPDATE*], [http://www.nyc.gov/html/planyc/downloads/pdf/publications/planyc\\_2011\\_planyc\\_full\\_report.pdf](http://www.nyc.gov/html/planyc/downloads/pdf/publications/planyc_2011_planyc_full_report.pdf) [<https://perma.cc/K54D-UPNC>].

203. See generally OFFICE OF THE MAYOR, CITY OF NEW YORK, *PLANYC: A GREENER, GREATER NEW YORK* (2007), [http://www.nyc.gov/html/planyc/downloads/pdf/publications/full\\_report\\_2007.pdf](http://www.nyc.gov/html/planyc/downloads/pdf/publications/full_report_2007.pdf) [<https://perma.cc/P9CL-LG35>].

204. *City Farms Markets Shape City Policy*, JUST FOOD (May 3, 2011), <http://justfood.org/blog/category/stories/2011-05-03/city-farms-markets-shape-city-policy> [<https://perma.cc/6MJA-R2PB>]. Just Food led a coalition that persuaded Mayor Bloomberg to add food policy recommendations to the 2011 Update to his original 2007 PlaNYC. See *PLANYC 2011 UPDATE*, *supra* note 202, at 164–65.

205. See *PLANYC 2011 UPDATE*, *supra* note 202, at 164–65.

206. Emily Rueb, *How New York Is Turning Food Waste into Compost and Gas*, N.Y. TIMES (June 2, 2017), <https://www.nytimes.com/2017/06/02/nyregion/compost-organic-recycling-new-york-city.html> [<https://nyti.ms/2ryuNtn>].

207. ENVTL. JUSTICE ALL. OF N.Y.C., *THE NYC CLIMATE JUSTICE AGENDA: STRENGTHENING THE MAYOR'S ONENYC PLAN 16–17* (2016), <http://theasthmafiles.org/content/nyc-climate-justice-agenda-strengthening-mayors-onenyc-plan-2016> [<https://perma.cc/6A4D-FAXX>].

208. N.Y.C. ECON. DEV. CORP., *FIVE BOROUGH FOOD FLOW: 2016 NEW YORK CITY FOOD DISTRIBUTION & RESILIENCY STUDY RESULTS 1* (2016) [hereinafter *FIVE BOROUGH FOOD FLOW 2016*], [https://www.nycedc.com/system/files/files/resource/2016\\_food\\_supply-resiliency\\_study\\_results.pdf](https://www.nycedc.com/system/files/files/resource/2016_food_supply-resiliency_study_results.pdf) [<https://perma.cc/Q8T2-WB8W>].

#### D. Fosters Inclusion and Participation

In the last decade, a “gorgeous mosaic”—former Mayor David Dinkins’s description of the city’s diversity—of constituencies have burst into food policy governance. These include community gardeners and urban farmers who want to get their hands into city dirt; parents in low-income neighborhoods who want free, healthy, tasty school meals for their children; Jewish and Muslim parents who want to ensure that schools serve their children healthy lunches that meet kosher and halal standards; immigrants wanting policies that don’t bar their access to public food benefits; patient advocacy groups who seek better availability of foods that control or prevent diabetes and heart disease; millennial foodies who want healthy, affordable, locally grown food in neighborhood stores; religious groups whose faith is offended by the persistence of hunger and food insecurity in the richest city in the world; children and young people objecting to fast food and soda advertisements that target them for marketing campaigns; food workers demanding a living wage, benefits, and an end to wage theft; environmental activists concerned about climate change; and many more.<sup>209</sup> Despite their many differences, these groups share a dissatisfaction with a food system that makes it hard to find healthy and affordable food, while making it easy to consume unhealthy, inexpensive products that contribute to premature death and preventable illnesses.

Through their activism, these groups have forged new paths to influence food policy. In each of the five policy vignettes, one or more of these constituencies claimed a voice that influenced policy outcomes. In aggregate, these voices pose an alternative to the established policies and governance mechanisms of the mainstream food system. They have used formal and informal governance processes to advance their goals and have helped to bring food policy onto the mayoral agenda.<sup>210</sup> In Sabatier’s terms, they have created an advocacy coalition that can advance more participatory and democratic food policy in New York City.<sup>211</sup> This is one of the most significant contributions to urban food policy governance of the last decade. In their campaigns to reform food policy and food

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209. Cf. Freudenberg et al., *supra* note 188, at 623 (noting that social movements are often made up of heterogeneous coalitions). See also WILLINGHAM ET AL., *supra* note 34, at 16 (noting the broad scope of advocacy in New York City).

210. Nicholas Freudenberg & Sue Atkinson, *Getting Food Policy on the Mayoral Table: A Comparison of Two Election Cycles in New York and London*, 129 PUB. HEALTH 295, 296 (2015).

211. Sabatier, *supra* note 158.

governance, these food activists have encountered the persistent efforts of neoliberal urban governance regimes to convert transformative demands into more modest and incremental proposals for change, to favor market over public solutions, and to rely on expert guidance rather than community participation, trends observed in studies of urban food governance in a variety of cities, including Detroit, London, and New York.<sup>212</sup> While more diverse constituencies participate in food policy-making in New York now compared to a decade ago, those advocating alternative solutions to current food policies, as noted in Section III.B, have yet to articulate a coherent alternative policy agenda.

### E. Uses Data and Evidence to Inform Decisions

Several previously mentioned food policies illustrate the growing use of data and evidence. Since 2012, the Annual Food Metrics Reports have provided data on the implementation of several city food policies.<sup>213</sup> The Bloomberg administration emphasized using data to guide policy and created annual community health surveys to track changes in health at the district level, a system for monitoring child obesity in public schools, and reports to assess progress in achieving sustainability goals.<sup>214</sup> Both recent mayoral administrations have used other municipal reporting systems, including the semi-annual Mayor's Management Reports, budget reports, and a public data platform to share data on the performance of city programs and population characteristics.<sup>215</sup> The mayor's office has also issued

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212. See Cretella, *supra* note 39, at 9; Richard C. Sadler et al., *Local Food Networks as Catalysts for Food Policy Change to Improve Health and Build the Economy*, 20 LOCAL ENV'T 1103, 1103 (2014); Jana Sisnowski et al., *Targeting Population Nutrition Through Municipal Health and Food Policy: Implications of New York City's Experiences in Regulatory Obesity Prevention*, 58 FOOD POL'Y 24, 24–25 (2016).

213. See *generally* FOOD METRICS REPORT 2017, *supra* note 128.

214. See *generally* Frieden et al., *supra* note 3 (describing how Bloomberg's health department used data to inform public health policy).

215. See, e.g., *NYC OpenData*, CITY OF NEW YORK, <https://opendata.cityofnewyork.us/> [<https://perma.cc/22AH-W65H>]. New York City Open Data is a publicly accessible database which allows residents, policymakers and advocates to examine and analyze multiple New York City databases. *Id.* To date, it does not include data on food or food policy. See *generally* OFFICE OF DATA ANALYTICS & DEP'T OF INFO. TECH. & TELECOMM., CITY OF NEW YORK, OPEN DATA REPORT: 2017 PROGRESS REPORT (2017), [https://opendata.cityofnewyork.us/wp-content/uploads/2017/07/OD4A-report\\_2017-1.pdf](https://opendata.cityofnewyork.us/wp-content/uploads/2017/07/OD4A-report_2017-1.pdf) [<https://perma.cc/UX4E-ZE3S>].

special reports on supermarkets,<sup>216</sup> the resilience of the food system,<sup>217</sup> and childhood obesity.<sup>218</sup>

Missing so far, however, is any aggregation of all sources of data on the city's food system that would allow comprehensive monitoring of the outcomes of multiple food policies, independent analyses of data that assess progress towards goals, or systematic access to food data collected by private food companies to monitor changes in sales. As a result, food policy decisions in New York City are often made in the absence of data that could inform more effective, efficient, or equitable approaches.

#### F. Advances Intersectoral Action

At its best, food policy governance encourages horizontal and vertical integration of policy initiatives across levels and branches of government, municipal sectors, and local, regional, national, and global scales. It also promotes collaboration across public, civil society, and commercial entities. New York City has attempted to meet this aspirational challenge of horizontal and vertical policy integration. The City has successfully adopted a number of horizontal intersectoral initiatives over the last decade, including the creation of the Food Policy Coordinator, who brings mayoral agencies together to work on food initiatives; Mayor Bloomberg's Obesity Task Force,<sup>219</sup> through which several city agencies planned joint activities to reduce obesity; and Mayor de Blasio's OneNYC plan, an integrated multi-faceted response to promote equity across sectors.<sup>220</sup> Despite these successes, vertical integration across levels of government has proven more challenging. The historic competition between the New York City Mayor and the New York State Governor has made city-state collaboration on food policy difficult.<sup>221</sup> On the federal level, the Obama administration turned down the City's request for a waiver that would have allowed the City to bar

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216. *See generally* GOING TO MARKET 2008, *supra* note 124.

217. *See generally* FIVE BOROUGH FOOD FLOW 2016, *supra* note 208.

218. *See generally* OFFICE OF THE MAYOR, REVERSING THE EPIDEMIC: THE NEW YORK CITY OBESITY TASK FORCE PLAN TO PREVENT AND CONTROL OBESITY (2012), [http://www.nyc.gov/html/om/pdf/2012/otf\\_report.pdf](http://www.nyc.gov/html/om/pdf/2012/otf_report.pdf) [<https://perma.cc/LSJ6-R7L5>].

219. *Id.*

220. *See generally* ONE NEW YORK CITY, *supra* note 185.

221. *See generally* Terry Golway, *The de Blasio-Cuomo Feud, in Perspective*, POLITICO (July 14, 2015), <https://www.politico.com/states/new-york/albany/story/2015/07/the-de-blasio-cuomo-feud-in-perspective-000000> [<https://perma.cc/MZ6Y-C9FF>].



the use of SNAP for soda purchases,<sup>222</sup> and during the Trump administration both the mayor and the governor have opposed federal cuts in SNAP and other safety net programs proposed by President Trump and Republican congressional leaders.<sup>223</sup>

The growing experience in intersectoral collaboration in food policy has provided a framework for future endeavors. To date, however, New York City lacks any systematic plan for integrated food policies designed to achieve specific measurable objectives. The most comprehensive plan, the 2010 FoodWorks prepared by City Council Speaker Christine Quinn,<sup>224</sup> presented an ambitious list of policy proposals but did not include a governance plan, budget allocations, or measurable goals—essential prerequisites for fair and effective food governance. By creating these basic elements for food governance in the coming years, New York City can create the infrastructure needed for more effective intersectoral collaboration.

#### IV. RECOMMENDATIONS

This assessment of New York City's observance of the proposed standards for fair and effective urban food governance reveals both significant accomplishments and shortfalls. On the one hand, over the last decade, New York City has implemented dozens of new food policy initiatives, many constituencies have claimed a voice in shaping food policy, and food policy has become a higher priority concern for the mayor, city council, and other city officials. These accomplishments provide a strong foundation for future progress.

On the other hand, despite a decade of food policy initiatives, key indicators of nutritional well-being and food equity have barely budged, and wide socioeconomic and racial/ethnic gaps in health and

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222. Patrick McGeehan, *U.S. Rejects Mayor's Plan to Ban Use of Food Stamps to Buy Soda*, N.Y. TIMES (Aug. 19, 2011), <https://www.nytimes.com/2011/08/20/nyregion/ban-on-using-food-stamps-to-buy-soda-rejected-by-usda.html> [https://nyti.ms/2k667EZ].

223. Erin Durkin, *De Blasio: Trump Budget Neglects Sick Kids, Ups NYC Terror Risk*, N.Y. DAILY NEWS (May 23, 2017), <http://www.nydailynews.com/news/politics/de-blasio-trump-budget-neglects-sick-kids-ups-nyc-terror-risk-article-1.3190064?cid=bitly> [https://perma.cc/H8B9-F77P]; Press Release, Office of the Governor, Governor Cuomo Calls on Congress to Protect New York's Families and Reject Federal Government's Devastating Cuts to SNAP (Feb. 23, 2018), <https://www.governor.ny.gov/news/governor-cuomo-calls-congress-protect-new-yorks-families-and-reject-federal-governments> [https://perma.cc/G294-XV6J].

224. See generally SARAH BRANNEN, FOODWORKS, A VISION TO IMPROVE NYC'S FOOD SYSTEM (2010), [http://ngfn.org/resources/ngfn-database/knowledge/foodworks\\_fullreport\\_11\\_22\\_10.pdf](http://ngfn.org/resources/ngfn-database/knowledge/foodworks_fullreport_11_22_10.pdf) [https://perma.cc/E9ZL-Y2HN].

food access persist.<sup>225</sup> New York City lacks clear objectives for food policy and residents still lack significant power to shape their local food environments.<sup>226</sup> Current governance structures seem inadequate to create effective responses to some of the most serious threats to a healthy food system for New York City, including continuing gentrification,<sup>227</sup> Republican Party federal initiatives to roll back the advances in food policy of the last decade,<sup>228</sup> growing income inequality,<sup>229</sup> and the disruption of food retail in New York and the nation.<sup>230</sup>

To enable the food policy governance system in New York City to build on its food policy accomplishments of the last decade, this Article proposes four actions to achieve more substantial progress over the next decade: (1) develop a New York City food plan; (2) create a central interactive repository of city food data; (3) strengthen the public sector in food; and (4) create new democracy and governance processes to expand local control of our food system.

#### A. Develop a New York City Food Plan

In *Alice in Wonderland*, the Cheshire Cat tells Alice that if she doesn't know where she is going, any road will get her there.<sup>231</sup> The problem in New York City is that no one has decided where the city's food policy is going, leaving the city with too many goals and no clear policy agenda or strategic plan. Without such a plan, it is difficult to monitor progress or identify problems or opportunities. In the

225. FREUDENBERG ET AL., *supra* note 2, at 41.

226. Some scholars have proposed that by adding the "right to food" to the "right to the city" it would be possible to deepen food democracy. See Mark Purcell & Shannon K. Tyman, *Cultivating Food as a Right to the City*, 20 LOCAL ENV'T 1132, 1133 (2015). In New York City, the lack of public participation in mitigating the food consequences of gentrification or in shaping the response to the consolidation and disruption of traditional food retail illustrates two important arenas where residents lack a voice in shaping their food environments.

227. See generally PHIL HUBBARD, THE BATTLE FOR THE HIGH STREET: RETAIL GENTRIFICATION, CLASS AND DISGUST 3 (2017).

228. Nevin Cohen et al., *Food Justice in the Trump Age: Priorities for Urban Food Advocates*, 13 CUNY J. FOOD L. & POL'Y 43, 50 (2017).

229. See Debipriya Chatterje, *How Has the Distribution of Income in New York City Changed Since 2006?*, N.Y.C. INDEP. BUDGET OFFICE (Apr. 19, 2017), <http://ibo.nyc.ny.us/cgi-park2/2017/04/how-has-the-distribution-of-income-in-new-york-city-changed-since-2006/> [<https://perma.cc/B2T3-QAP6>].

230. Ronda Kaysen, *Where Did My Supermarket Go?*, N.Y. TIMES (Nov. 4, 2016), <https://www.nytimes.com/2016/11/06/realestate/new-york-city-small-supermarkets-are-closing.html> [<https://nyti.ms/2jMS3Q4>].

231. LEWIS CARROLL, ALICE'S ADVENTURES IN WONDERLAND 75 (1941).

coming years, New York City should develop a formal multi-year food plan with specific goals and defined strategies for achieving these goals. Several other world cities have developed such plans, including Los Angeles, Chicago, Toronto, London, and others,<sup>232</sup> providing useful starting points for New York City.

### **B. Create a Central Interactive Repository of City Food Data**

The New York City municipal government, civil society organizations, and academic researchers collect and analyze multiple sources of data on the city's food system.<sup>233</sup> To date, however, there is no central repository of food data, no independent analyses of the progress the City is making in achieving its food goals, and no capacity for communities to monitor real-time changes in their local food environments. Because of these shortcomings, New York City is missing the opportunity to use new data technologies to inform and improve food policy.<sup>234</sup> The annual Food Metrics Reports provide a starting point; however, there is room for significant improvement. By creating an independent, user-friendly digital repository of food data, New York City could provide policymakers, health professionals, advocates, community leaders, researchers, and food businesses with additional evidence needed to guide more effective and equitable food policies. Establishing such a database would require an iterative, participatory process, and experiences in other cities could provide helpful guidance.<sup>235</sup> Existing data systems for monitoring performance of schools and police in New York City demonstrate that municipal governments can create such

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232. See generally, e.g., CITY OF CHI. DEP'T OF HOUS. & ECON. DEV., A RECIPE FOR HEALTHY PLACES, ADDRESSING THE INTERSECTION OF FOOD AND OBESITY IN CHICAGO (2013) [https://www.cityofchicago.org/content/dam/city/depts/zlup/Sustainable\\_Development/Publications/Recipe\\_For\\_Healthy\\_Places/Recipe\\_for\\_Healthy\\_Places\\_Final.pdf](https://www.cityofchicago.org/content/dam/city/depts/zlup/Sustainable_Development/Publications/Recipe_For_Healthy_Places/Recipe_for_Healthy_Places_Final.pdf) [<https://perma.cc/822H-G6E8>]; LONDON FOOD LINK, GOOD FOOD 2016 FOR LONDON 2016 (2017); L.A. Food Policy Council, *Good Food for All Agenda 2017*, GOODFOODLA.ORG (Nov. 13, 2017), <http://goodfoodla.org/2017/11/13/good-food-for-all-agenda-2017/> [<https://perma.cc/K2UN-KY5T>]; Catherine L. Mah & Helen Thang, *Cultivating Food Connections: The Toronto Food Strategy and Municipal Deliberation on Food*, 18 INT'L PLAN. STUD. 96, 106–08 (2013).

233. WILLINGHAM ET AL., *supra* note 34, at 2.

234. See Susan Athey, *Beyond Prediction: Using Big Data for Policy Problems*, 355 SCIENCE 483, 485 (2017).

235. Megan Horst, *Food Justice and Municipal Government in the USA*, 18 PLAN. THEORY & PRAC. 51, 51 (2017); Megan Horst et al., *The Intersection of Planning, Urban Agriculture, and Food Justice: A Review of the Literature*, 83 J AM. PLAN. APPROACH 277, 289–90 (2017).

databases;<sup>236</sup> therefore, the City is capable of creating and implementing an effective database for food policy.

### C. Strengthen the Public Sector in Food

Perhaps the most significant food policy accomplishment of the last decade is the strengthening of New York's public sector in food. New York City has implemented several policies that demonstrate the government's willingness to use its municipal power to improve the city's food system. Some of these programs include the New York City Food Standards, universal free school lunch, Green Carts, FRESH, calorie labeling, the trans-fat ban, facilitating enrollment in SNAP and the Special Supplemental Nutrition Program for Women, Infants and Children ("WIC"), and higher minimum wages for fast food workers.<sup>237</sup>

Despite these accomplishments, conventional wisdom still holds that the current food system operates almost wholly in the market sector and that there is no alternative to having giant food companies make most decisions about who gets to eat what.<sup>238</sup> In fact, the United States—and especially New York City—has a robust public sector in food. This public sector includes SNAP and WIC, multi-billion-dollar programs in New York City alone,<sup>239</sup> school food, hospital food, jail food, child care food, and other public institutional food programs;<sup>240</sup> local, state, and national subsidies and tax breaks for food growers and sellers;<sup>241</sup> the food safety system;<sup>242</sup> and restaurant and store inspections.<sup>243</sup> By making a systematic effort to map, analyze, and improve the success of the public sector in food,

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236. Steffen Nielsen et al., *Exploring Big (Data) Opportunities: The Case of the Center for Innovation Through Data Intelligence (CIDI), New York City*, in CYBER SOCIETY, BIG DATA, AND EVALUATION: COMPARATIVE POLICY EVALUATION 147, 150 (Ray C. Rist ed., 2017).

237. See *supra* Section II and accompanying footnotes; see also FREUDENBERG ET AL., *supra* note 2, at 76.

238. TIM LANG & MICHAEL HEASMAN, *FOOD WARS: THE GLOBAL BATTLE FOR MOUTHS, MINDS AND MARKETS* 126 (2004).

239. See FOOD METRICS REPORT 2017, *supra* note 128.

240. See *generally* PUBLIC PLATE REPORT, *supra* note 106.

241. Abigail M. Okrent & Julian M. Alston, *The Effects of Farm Commodity and Retail Food Policies on Obesity and Economic Welfare in the United States*, 94 AM. J. AGRIC. ECON. 611, 612 (2012).

242. See COMM. ON THE REVIEW OF THE FOOD & DRUG ADMIN.'S ROLE IN ENSURING SAFE FOOD, ENHANCING FOOD SAFETY: THE ROLE OF THE FOOD AND DRUG ADMINISTRATION xi (2010).

243. Wendy McKelvey et al., *Letter Grading and Transparency Promote Restaurant Food Safety in New York City*, 78 J. ENVTL. HEALTH 46, 46, 48 (2015).

New York City can use its authority over this sector to realize public goals, such as reducing hunger, preventing diabetes, or protecting low wage food workers.<sup>244</sup> Some specific ways that city and state governments could use their authority to improve the food public sector include:

- Strengthen the New York City Food Standards and apply them to more public institutions such as all hospitals, City University of New York, and more publicly funded non-profits;
- Improve the city's food procurement rules to better leverage market power for improved nutrition, support regional farmers more substantially, and protect food workers who produce for the public sector;
- Create city- and state-funded public food assistance programs that serve all immigrants, regardless of documentation status; and
- End promotion of unhealthy foods such as soda, fast food, and high sugar, fat, and salt snacks in all city-owned or supported facilities. The ubiquity of the unhealthy food that drives epidemics of diet-related diseases encourages consumption and sends a message that this food is acceptable.<sup>245</sup> By using its existing authority to set rules about what can be sold or marketed in public spaces, New York City can contribute to reducing unhealthy food consumption. The biggest weakness of New York City's current food governance is its limited power to influence the market sector, a system that does not provide enough healthy affordable food to feed all Americans and depends for profits on aggressive marketing of products associated with premature death and preventable illnesses.<sup>246</sup> An expanded public sector in food is the antidote to these market failures and capitalizes on the existing strengths of the food governance system that has evolved over the last decade.

#### **D. Create New Democracy and Governance Processes to Expand Local Control of Our Food System**

The emergence of a New York City food policy advocacy coalition that includes elected officials, community leaders, and advocacy

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244. FREUDENBERG ET AL., *supra* note 2, at 76.

245. Thomas A. Farley et al., *The Ubiquity of Energy-Dense Snack Foods: A National Multicity Study*, 100 AM. J. PUB. HEALTH 306, 306, 309 (2009).

246. PHILIP HOWARD, CONCENTRATION AND POWER IN THE FOOD SYSTEM: WHO CONTROLS WHAT WE EAT? 2 (2016).

organizations increases the likelihood that food policy will continue to make progress in the coming decade. Even though the coalition is sometimes fragmented<sup>247</sup> and has not yet developed a coherent policy agenda, its very existence represents a significant step forward for food policy in New York City. Other measures that could amplify the voices of those that have previously been excluded from food policy-making include:

- Developing the capacity of community boards, the most local face of city government in New York, to play a stronger role in food policy;
- Strengthening existing community-based food policy councils that bring together individuals and organizations concerned about food in their neighborhoods to identify problems and propose and advocate for solutions; and
- Implementing new measures that would restrict the influence of special interest in food and other policy domains, such as limiting campaign contributions and lobbying, strengthening and enforcing ethics rules for elected officials, and increasing government transparency.

#### CONCLUSION

Making progress on these recommendations would propel New York City to better achieve each of the six proposed standards for effective and fair food governance. It would also increase the likelihood that five or ten years from now, New York City could confidently report that it has made progress in creating a food system that is more equitable, more sustainable, more democratic, more efficient, and more effective in ensuring the well-being of the city.

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247. See generally Michael Pollan, *The Food Movement, Rising*, N.Y. REV. BOOKS (June 10, 2010), <http://www.nybooks.com/articles/2010/06/10/food-movement-rising/> [<https://perma.cc/HMR5-NZWK>].