



ChangeLab Solutions
Law & policy innovation for the common good.

nplan

NATIONAL POLICY & LEGAL ANALYSIS NETWORK
TO PREVENT CHILDHOOD OBESITY

Model Produce Cart Ordinance

Increasing Access to Fresh Produce by Creating a Permit Program for Sidewalk Produce Vendors

Developed by the National Policy & Legal Analysis Network
to Prevent Childhood Obesity (NPLAN), a ChangeLab Solution

The National Policy & Legal Analysis Network to Prevent Childhood Obesity (NPLAN) is a project of ChangeLab Solutions. ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

Support for this document was provided by a grant from the Robert Wood Johnson Foundation.

© 2013 ChangeLab Solutions

Introduction

Eating healthier foods – including more fresh fruits and vegetables – helps to reduce the risk of obesity and chronic disease. The Dietary Guidelines for Americans recommend that children and adolescents consume five servings of fruits (1½ cups) and vegetables (2½ cups) every day,¹ yet most young people do not meet this goal.

Today, 16.9 percent of children and adolescents ages 2 to 19 are obese, and 31.7 percent are obese or overweight.² The rates of overweight and the related health problems are highest and rising fastest for Latino, Black, American Indian and Alaska Native youth living in low-income communities.³

Families and children from low-income communities and communities of color are less likely to have diets that meet nutrition guidelines. Better access to supermarkets and large grocery stores – which offer the greatest variety of healthy, high-quality products, including fresh produce, at the lowest cost – is related to having a healthier diet. Studies have shown that residents of rural areas, low-income neighborhoods, and communities of color have less access to supermarkets and large grocery stores and the fresh produce they sell.⁴

Just as there are multiple causes of obesity, communities must use multiple approaches to increase residents' access to food and beverages that support a healthy diet. One strategy local governments can employ is to create a produce cart program. NPLAN's Model Produce Cart Ordinance, inspired by New York City's Green Cart program and other mobile vending ordinances around the country, is a cost-effective and efficient means of increasing residents' access to fresh produce.⁵ It creates a streamlined permit program for the sale of fresh whole fruits and vegetables from sidewalk carts. Depending on state and local law (see "State and Local Regulation of Mobile or Sidewalk Food Vendors," below), vendors may need to obtain other types of health permits or licenses to handle fresh produce.

Implementing the Produce Cart Ordinance

Before enacting the ordinance, we recommend that a community conduct a mapping study or assessment to identify neighborhoods that lack access to fresh produce.⁶ Once underserved neighborhoods have been identified, the community can implement the produce cart ordinance to require produce vendors to sell in those neighborhoods or offer incentives for them to do so. In New York City, for example, where vendors seeking permits can face a lengthy waiting list, Green Cart (fresh produce) vendors who sell in underserved areas are given priority in obtaining permits.⁷ Other incentives a municipality could offer include discounted or waived permit fees, no- or low-interest loans to purchase vending carts, or reserved sales locations at preferred locations, such as near transit stops, community centers, libraries, or parks.

In addition to identifying underserved neighborhoods, a community mapping study can help identify optimal locations for produce cart vendors within those neighborhoods – locations with high pedestrian traffic, community or private landowner support, and complementary uses (such as community centers, schools, or other service providers) nearby. The model ordinance allows for private entities to request produce vendors on the sidewalk bordering their property. Developing community support for the fresh produce vendors can ensure a more successful program.

USE MULTIPLE STRATEGIES TO COMBAT OBESITY

A community that implements NPLAN's Model Produce Cart Ordinance to increase healthy vending should consider restricting or banning unhealthy forms of vending – particularly in certain areas, such as schools, parks, or other areas children frequent. NPLAN's Model Healthy Food Zone Ordinance prohibits fast food restaurants and mobile food vending within a certain (community-determined) distance of schools and other locations.⁸ Implementing the two strategies together has distinct advantages. Limiting unhealthy foods while promoting fresh produce near schools and parks helps parents ensure that their children make healthier food choices. And allowing vendors to sell produce (instead of simply banning all vending) allows vendors to pursue their economic livelihoods.

Communities can also increase access to healthy food by promoting community gardens and farmers' markets – particularly farmers' markets that accept federal, state or local food assistance benefits. NPLAN has developed Model Community Gardens and Farmers' Markets policies for communities to implement.⁹

State and Local Regulation of Mobile or Sidewalk Food Vendors

Mobile food vendors – including produce cart vendors – may be regulated by both state and local law. In most communities, state law regulates the health and sanitation aspects of most mobile food vendors. Frequently, local law, through zoning and other laws, determines the location within a community where vendors may sell their goods.

State Health and Safety Laws

In most communities nationwide, state law regulates the sanitation requirements for most types of mobile food vending. The U.S. Food and Drug Administration (FDA) developed a model Food Code to improve food safety nationwide. The Food Code sets forth sanitation and food-handling requirements for restaurants and other food establishments – including mobile catering facilities – to ensure that food offered to the public is “unadulterated, prepared in a clean environment, and honestly presented.”¹⁰ Forty-eight states and three of six U.S. territories have adopted some form of the Food Code to regulate food retail sales.¹¹

The model Food Code exempts from its provisions produce stands that offer only whole, uncut fresh fruits and vegetables.¹² Many states have included this exemption when adopting their food retail codes.¹³ Thus, in those states, the sale of whole fresh produce from produce stands is *not* regulated under state food retail codes. In those states, local laws are likely the sole regulations affecting mobile produce sales. NPLAN’s Model Produce Cart Ordinance is designed to take advantage of this exemption. It limits sales to whole fresh produce so that communities in those states simply need to implement the ordinance to increase access to fresh produce in underserved neighborhoods.

Because state law varies, before a community enacts NPLAN’s Model Ordinance it is important to review the state retail food code to determine whether and how state law regulates whole fresh produce vending. If the state food retail code applies to fresh produce stand vendors, the community must ensure that the ordinance is consistent with the state law’s requirements.

Local Laws Regulating Vending

Cities and counties use zoning and other “police power” measures to regulate private conduct. Zoning determines what can be built and what activities can take place on the parcels of land throughout a community. Police power refers to the government’s power to regulate private conduct to protect and further the public’s health, safety, or general welfare. Local governments have considerable discretion when enacting regulations, including those determining where and when mobile vendors may sell.¹⁴

Most communities already regulate mobile vendors. Many communities have separate regulations for sidewalk vendors and street vendors (those who sell from vehicles parked on the street) and different regulations for mobile food vendors and those who sell non-food products. Typically, communities require vendors to have some type of license or permit to sell and regulate where, when, and from what type of vehicle or conveyance vendors may sell.

Enacting the Ordinance

Because communities regulate mobile vendors in many different ways, NPLAN’s Model Produce Cart Ordinance is designed to be enacted as a discrete program, by adding a chapter or article to a municipal code. But it can also be integrated into existing mobile vending regulations. While it is designed as a sidewalk vending ordinance, it could be adapted to serve as a street vending ordinance. When enacting the Model Ordinance, the local jurisdiction will need to determine where within its existing code the provisions in the ordinances fit, make other amendments as necessary for consistency, and follow the appropriate procedures for amending the law.

Because communities vary so widely in how they regulate vendors, there is no one model for giving incentives to vendors to locate in underserved neighborhood. The following chart provides guidance to assist local communities in structuring the model ordinance to meet local conditions.

If your municipality currently bans mobile vending:¹⁵	If your municipality allows mobile vending without restriction as to location or number of permits:	If your municipality allows mobile vending but restricts the location, hours, or number of permits:	If your municipality currently has other restrictions on food sales from non-fixed locations:
Adopt the Model Produce Cart Ordinance to allow fresh produce vending	Adopt the Model Produce Cart Ordinance to allow fresh produce vending AND <ul style="list-style-type: none"> • Grant priority locations to produce cart vendors • Restrict the location of non-produce vendors • Restrict the number of non-produce mobile vending permits issued 	Grant priority to or expand the locations, hours or number of permits to produce vendors	Review those policies and consider amendments to encourage the vending of fresh produce

The language in the model ordinance is designed to be tailored to the needs of an individual community. The language written in italics provides different options or explains the type of information that needs to be inserted in the blank spaces in the ordinance. The “comments” provide additional information and explanation. In considering which options to choose, the community should balance public health benefits against practical and political considerations in the particular jurisdiction. One purpose of including a variety of options is to stimulate broad thinking about the types of provisions a community might wish to explore, even beyond those described in the model. NPLAN is interested in learning about novel provisions that communities are considering; the best way to contact us is through our website: **www.nplan.org**.

Model Produce Cart Ordinance

Increasing Access to Fresh Produce by Creating a Permit Program for Sidewalk Produce Vendors

COMMENT: This model ordinance is intended to amend a jurisdiction’s existing municipal code. A jurisdiction that adopts some or all of its provisions must consider where they would best fit into its existing code, and must cross-reference appropriate existing provisions that stipulate the means of enforcing zoning ordinances, as well as provisions concerning notification, fines, and penalties.

The [*Municipality*] does ordain as follows:

SECTION I. FINDINGS. The [*Municipality*] hereby finds and declares as follows:

SEE APPENDIX A: FINDINGS

A draft ordinance based on this model should include “findings” of fact that support the need for the municipality to enact the law. The findings section is part of the ordinance, but it usually does not become codified in the local government code. The findings contain factual information supporting the need for the law – in this case, documenting the need for increasing residents’ access to fresh produce. A list of findings supporting this model ordinance appears in “Appendix A: Findings.” Findings from that list may be inserted here, along with additional findings addressing the need for the ordinance in the particular community.

NOW THEREFORE, it is the intent of the [*City/City Council*] in enacting this ordinance to promote residents’ access to fresh produce by implementing a fresh produce cart program.

SECTION II. [*Article / Section*] of the [*Municipality*] Municipal Code is hereby amended to read as follows:

Sec. One. PURPOSE. The purpose of this [*article / chapter*] is to promote the health of the community by increasing access to fresh produce.

Sec. Two. DEFINITIONS. The following words and phrases, whenever used in this [*article / chapter*], shall have the meanings defined in this section:

- (a) “Produce Cart Spot” means one of the following designated public spaces where Produce Cart Permit holders may sell Fresh Produce, subject to the regulations listed in Section Four:

- (1) On the sidewalk bordering any [jurisdiction] public buildings, including city hall, libraries, recreation centers, parks, [schools, others].

COMMENT: If the municipality bans mobile vending near schools, it will need to amend the ban to permit Produce Cart vendors to sell at or near schools.

- (2) On the sidewalk bordering any private entity [*that has requested a Produce Cart Vendor from the Produce Cart Program Administrator or*] from which the Produce Cart Vendor has express written permission.

- (3) In any other location designated by regulations issued by the [*Produce Cart Permit Program Administrator.*]¹⁶

COMMENT: The goal of this section of the Model Ordinance is to ensure that Produce Cart vendors are centrally located in high-traffic areas to ensure maximum access to produce for consumers and maximum sales for vendors. Communities may tailor this provision to meet local conditions.

- (b) “Fresh Produce” means unprocessed, unfrozen, whole, raw fruits and vegetables that have not been combined with other ingredients.

COMMENT: The Model Ordinance limits vendors to selling whole fresh fruits and vegetables, because many state food retail codes do not apply to the sales of whole fresh produce from produce stands. This limitation allows for a more streamlined process to get fresh produce to those neighborhoods lacking access. Before implementing the Model Ordinance, communities should review their state food retail code to ensure that the ordinance is consistent with state provisions.

- (c) “Produce Cart Permit” means a permit for the selling of Fresh Produce from a Produce Cart at a Designated Produce Cart Sales Spot.

- (d) “Produce Cart” means

Option One:

any showcase, table, stand, bench, rack, handcart, pushcart, wagon, stall, or any other fixture, device, or other wheeled conveyance from which a Produce Cart Permit holder sells Fresh Produce.

Option Two:

any pushcart or stand approved by the [*Produce Cart Program Administrator*] in accordance with the provisions of this [*chapter, article*].

COMMENT: Some communities may wish to specify the type of conveyance from which Produce Cart Vendors may sell. (For example, New York City requires Green Cart produce vendors to sell from a particular type of cart.¹⁷) The community may select either option.

- (e) “Sidewalk” means the area legally open to public use as a pedestrian public way between the curb line and the legal boundary line of the abutting property.

Sec. Three. PRODUCE CART PERMIT PROGRAM.

- (a) Produce Cart Permit Program. There is hereby established a Produce Cart Permit Program to be implemented, administered and enforced by the [*Produce Cart Program Administrator*].

- (a) The [*Produce Cart Program Administrator*] shall issue Fresh Produce Permits annually for a fee of \$_____, subject to the requirements and prohibitions listed below in Section Four.

- (2) The [*Produce Cart Program Administrator*] is hereby authorized to issue all rules and regulations consistent with this chapter and shall have all necessary powers to carry out the purpose of this chapter.

- (3) The [*Produce Cart Program Administrator*] shall be responsible for: developing rules and regulations that designate locations for Produce Carts, impartially assign locations to Produce Cart Permit holders, and establish procedures for issuing and accepting applications; issuing identification cards for Produce Cart Permit holders; performing inspections; and enforcing the Produce Cart Permit program.

COMMENT: Communities vary in how they implement their vending permit programs. In some municipalities all aspects of a program (including the processes for issuing and accepting applications, inspections, identification badges, and enforcement programs) are enumerated in the municipal codes. In others, the city official or employee charged with implementing the program issues rules and regulations detailing these procedures. Municipalities can adjust the provision above according to local practice.

- (b) Program Incentives. In order to increase the access of community residents in the following designated neighborhoods/districts:

[*List designated neighborhoods*]

COMMENT: As described above in the Introduction, municipalities should assess their community to identify underserved neighborhoods that lack access to fresh produce. The municipality can implement the Produce Cart Ordinance to attract fresh produce vendors by requiring or offering incentives to vendors who sell in those targeted neighborhoods.

Fresh Produce Permits shall be issued as follows:

- (1) Applications for Produce Cart Permits for the designated neighborhoods will be considered before applications for other neighborhoods;
- (2) Produce Cart Permits shall be available for a reduced fee of \$_____ for Produce Cart Vendors who locate in the designated neighborhoods;
- (3) Produce Cart Vendors who sell in the designated neighborhoods shall be eligible for no-interest/reduced-interest loans administered by _____ for purchase of Produce Carts;
- (4) Produce Cart Vendors who sell in the designated neighborhoods shall be eligible for small business counseling services from _____;
- (5) [Add other incentives here.]

COMMENT: The strategies listed above are some types of incentives that municipalities can adopt to encourage Produce Cart vendors to locate in underserved neighborhoods. Successful strategies will depend on local circumstances. For example, New York City caps the number of vending permits, and there are long waiting lists; Green Cart vendors who sell in underserved neighborhoods may move ahead on the waiting list. The municipality may work with community development and redevelopment agencies, nonprofit agencies, the local Private Industry Council or Workforce Investment Board, a local Chamber of Commerce, and other local business associations to offer incentives to permit holders to locate in underserved neighborhoods. If the community restricts mobile food vending near schools or other locations (see NPLAN's Model Healthy Food Zone Ordinance, which restricts fast food restaurants and mobile food vending near schools),¹⁸ Produce Cart vendors should be exempt from that restriction.

Sec. Four. Requirements and prohibited CONDUCT.

- (a) It shall be unlawful for any person, firm, or corporation to engage in the business of a Produce Cart Permit holder without having first obtained a permit from the [*Produce Cart Program Administrator*].
- (b) It shall be unlawful to sell any items other than Fresh Produce with a Produce Cart Permit.
- (c) Produce Cart Vendors shall keep the sidewalks, roadways, and other space immediately adjoining and adjacent to their Produce Carts clean and free from paper, peelings, and refuse of any kind generated from the operation of their businesses. Produce Cart Vendors shall affix to their Produce Carts a marked receptacle for litter, which shall be maintained and emptied regularly.
- (d) No Produce Cart Vendor shall:
 - (1) Conduct business in such a way as to restrict or interfere with the ingress or egress of the abutting property owner or tenant, or in such a way as would create or become a nuisance or hazard to public health, safety, or welfare, or increase traffic congestion or delay, or constitute an obstruction to adequate access to fire, police, or sanitation vehicles;
 - (2) Leave any Produce Cart unattended at a sidewalk at any time;
 - (3) Load or unload a Produce Cart for a period exceeding twenty minutes;
 - (4) Conduct business between [*10:00*] p.m. and [*6:00*] a.m.;
 - (5) Conduct business within [*600 feet or two blocks*] distance of an established business that sells Fresh Produce or of any location previously established and currently being operated by a Fresh Produce Vendor.
 - (6) Conduct business at any location that would reduce the unobstructed pedestrian right-of-way to less than [*seven*] feet;
 - (7) Conduct business within ten feet of a crosswalk, fire hydrant, or the outer edge of any entranceway to any building or facility used by the public, including doors, driveways, and emergency exits;

- (8) Conduct business more than 18 inches from the curb line, except with the express, written consent of the abutting owner, a Produce Cart Vendor may place a Produce Cart at the building line.

Sec. Five. ENFORCEMENT.

- (a) A violation of this [*chapter/article*] shall be grounds for the [*Produce Cart Program Administrator*] to deny, refuse to renew, suspend, or revoke the permit to operate.
- (b) Any person who violates any of the provisions of section _____ shall be subject to an administrative penalty not to exceed _____ for each violation. Administrative penalties authorized by this section shall be assessed, enforced, and collected in accordance with Section _____ of this [municipal] Code.

COMMENT: The municipality will have existing methods for enforcing its vending regulations. Generally, these enforcement mechanisms include penalties such as suspending or revoking the permit or license to operate, or financial penalties.

Sec. Six. REPORT. The [*Produce Cart Program Administrator*] shall submit a report to [*legislative body*] not later than one year after the effective date of this law and for each year thereafter, on the Produce Cart Permit Program, including:

- (1) The number of applications for Permits issued;
- (2) The number of Permits issued, disaggregated by neighborhood;
- (3) The number of violations issued to Permit holders;
- (4) The aggregated sales of produce by Fresh Produce vendors; and
- (5) [*Additional Information required to be reported*]

-
- ¹ US Department of Health and Human Services and US Department of Agriculture. *Dietary Guidelines for Americans 2005*. Available at: www.health.gov/dietaryguidelines/dga2005/document/pdf/DGA2005.pdf
- ² Ogden C, Carroll M, Curtin L, et al. "Prevalence of High Body Mass Index in US Children and Adolescents, 2007-2008." *Journal of the American Medical Association*, 303(3): 242-249, 2010.
- ³ Healthy Eating Research. *Bringing Healthy Foods Home: Examining Inequalities in Access to Food Stores: A Research Brief*. July 2008.
- ⁴ *Id.*
- ⁵ Local Laws of the City of New York, Local Law 9 (2008); New York City Admin. Code §§ 17-306 -17-309, 17-311, 17-321, 17-325.2.
- ⁶ The following resources provide guidance for communities to conduct food assessments:
- Siedenburg K and Pothukuchi K. "What's Cooking in Your Food System: A Guide to Community Food Assessment." *Community Food Security Coalition*. 2002. Available at: www.foodsecurity.org/pubs.html#cooking. This Guide includes case studies of nine Community Food Assessments; tips for planning and organizing an assessment; guidance on research methods and strategies for promoting community participation; and ideas for translating an assessment into action for change.
 - *How to Create and Implement Healthy General Plans*. Planning for Healthy Places. 2008. Available at: www.phlpnet.org/healthy-planning/create_implement_gp. Section II: Assessing Existing Health Conditions has general information about assessing and mapping nutrition-related community features such as food retail.
 - *Community Food Security Assessment Toolkit*. USDA Economic Research Service, Publication No. E-FAN-02-013. July 2002. Available at: www.ers.usda.gov/publications/efan02013/. This comprehensive publication explains mapping assessments and contains guidance and charts for conducting assessments.
- ⁷ New York City Admin. Code § 17-307.
- ⁸ NPLAN's *Model Healthy Food Zone Ordinance* is available at: <http://nplanonline.org/products/model-healthy-food-zone-ordinance>.
- ⁹ NPLAN's Model Farmers' Market policies are available at: <http://nplanonline.org/products/establishing-land-use-protections-farmers-markets>. NPLAN's Model Community Garden policies are available at: <http://nplanonline.org/products/establishing-land-use-protections-community-gardens>.
- ¹⁰ FDA Model Food Code, Preface § 3 (2009).
- ¹¹ North Carolina and Kentucky have yet to adopt the FDA Food Code but are actively pursuing Food Code adoption rulemaking. U.S. Food & Drug Administration. *Real Progress in Food Code Adoptions*. Available at: www.cfsan.fda.gov/~ear/fcadopt.html.
- ¹² FDA Model Food Code § 1-202.10(B) Food Establishment. (3)(b)(2009).
- ¹³ See, e.g., Ark. Dep't. of Health, Rules and Regulations Pertaining to Retail Food Establishments, § 1-201.10(B)(81)(c)(ii), at 24; ILL. Admin. Code tit.77 § 750.10; 105 Mass. Code Regs. 590.002.
- ¹⁴ Ziegler E, Rathkopf A and Rathkopf D. 1 Rathkopf's *The Law of Zoning and Planning* § 1:2 (4th ed. 2009).
- ¹⁵ Vendors who sell goods protected by the First Amendment, such as print materials and art, are often exempt from mobile vending restrictions. Discussion of vending of First Amendment-protected goods exceeds the

scope of this memorandum and ordinance. This chart is designed simply to assist readers in thinking about incentives to expand access to produce to underserved neighborhoods and not to discuss the legality or merits of vending restrictions.

¹⁶ Each municipality will determine the agency, official or employee charged with implementing the Produce Cart Permit program. For the purposes of this ordinance, we will refer to a “Produce Cart Program Administrator.”

¹⁷ New York City Admin. Code § 17306(s).

¹⁸ NPLAN’s *Model Healthy Food Zone Ordinance* is available at: <http://nplanonline.org/products/model-healthy-food-zone-ordinance>.