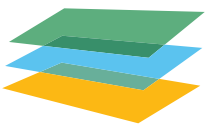


TOWARDS **PLANT-FORWARD** DIETS

A Toolkit for Local Policymakers

CEAP

Center for Environmental
& Animal Protection



Guarini Center
on Environmental, Energy
& Land Use Law

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Authors

Adalene Minelli

Legal Fellow, Guarini Center on Environmental, Energy, and Land Use Law, NYU School of Law

Jeff Sebo

Clinical Associate Professor, Department of Environmental Studies, New York University

Danielle Spiegel-Feld

Executive Director, Guarini Center on Environmental, Energy, and Land Use Law, NYU School of Law

Katrina Wyman

Professor of Law, NYU School of Law

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Note: The purpose of this policy brief is to provide ideas to cities that they can use in thinking about how to encourage a transition away from meat consumption. Options presented in this brief do not reflect the views of New York University.

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INTRODUCTION

This policy brief presents a number of options that cities could use to encourage a transition away from meat consumption and towards plant-forward diets.¹ While the focus of this policy brief is cities, many of the options presented may be viable for other forms of local government to adopt, including towns and counties.

There are many reasons to reduce meat consumption. First, doing so would improve human health. For example, processed meats (such as hot dogs) are widely recognized to be a carcinogen and there is evidence that red meat causes cancer.² Factory farming of meat also increases the risks of antibiotic resistance and pandemics.³ Second, reducing meat consumption would help the environment. Farmed animals (such as cattle) raised for human consumption are a major source of greenhouse gas (GHG) emissions causing climate change.⁴ Factory farming also harms the environment in other ways, for example through water pollution from animal waste and the conversion of land for grazing and growing animal feed. Third, reducing meat consumption would reduce harms to animals, over 74 billion of whom are bred, raised, and killed each year for human consumption, typically in intensive, industrialized conditions.⁵

The most comprehensive way to address the harms caused by consuming meat is to transition from an animal-based food system to a plant-based food system. Granted, we can reduce some harms by substituting one form of meat with another, but there is a limit to how much we can do that. For instance, if we replace beef with chicken, then we can reduce the environmental impacts of meat production, since beef farming consumes more land and produces more methane per meal.⁶ But we will also increase the estimated animal welfare impacts of meat production, since chicken farming harms more animals per meal. And if we replace chicken with beef, then this policy will have the reverse effects. In contrast, if we replace all of these animal products with plant-based alternatives, then we can reduce these harms across the board.⁷

Cities are well-poised to help facilitate the transition towards plant-forward diets.⁸ American cities have proven to be fertile ground for a number of progressive policy ideas, often stepping in front of their states and the federal government. For example, cities have been at the vanguard of efforts to promote low-carbon transportation,⁹ prevent discrimination against LGBTQ

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- 1 We use the term “meat” broadly to refer to animal products such as beef, pork, lamb, and poultry, but not eggs or dairy.
 - 2 Parke Wilde et al., [Legal Feasibility of US Government Policies to Reduce Cancer Risk by Reducing Intake of Processed Meat](#), 97 *Milbank Quarterly* 420 (2019).
 - 3 H. Charles J. Godfray et al., [Meat Consumption, Health, and the Environment](#), 361 *Science* 243 (2018).
 - 4 IPCC, [Special Report on Climate Change and Land](#) (Ch. 5: Food Security) (2019); Tim Searchinger et al., [Creating a Sustainable Food Future: A Menu of Solutions to Feed Nearly 10 Billion People by 2050](#), World Resources Institute (2019).
 - 5 Christopher Schlottmann & Jeff Sebo, *Food, Animals, and*

-
- the Environment* (2018).
 - 6 Laura Scherer, Paul Behrens & Arnold Tukker, [Opportunity for a Dietary Win-Win-Win in Nutrition](#), *Environment, and Animal Welfare*, *One Earth* 1:3, 349-360 (2019).
 - 7 Jeff Sebo, *Saving Animals, Saving Ourselves* (Oxford University Press, 2022).
 - 8 Amelia Linn, [Climate-Friendly Diets: How Cities can Cut Emissions and Improve Public Health](#), *Guarini Center on Environmental, Energy and Land Use Law* (2018).
 - 9 See, e.g., Katrina Wyman & Danielle Spiegel-Feld, [The Urban Environmental Renaissance](#), 108 *Cal. L. Rev.* 305, 347 (2020).

individuals,¹⁰ and protect immigrants.¹¹ Some cities have also begun to develop progressive food policies, including policies to reduce meat consumption. But there is room for cities to go further, and many cities have yet to take any significant action at all.¹²

The brief proceeds as follows. Part I presents background information on cities' legal authority to regulate the food system, which determines the types of policies they can employ to achieve their aims. Part II maps out some examples of policies that cities have employed thus far, and Part III describes some new types of policies that cities might adopt to reduce meat consumption.¹³ We pay particular attention here to mechanisms that have been employed in other contexts, but which have not yet been employed to facilitate a transition away from meat. Part IV concludes by offering some general principles that local policymakers should bear in mind in devising new policies to reduce meat consumption.

10 See, e.g., Nestor Davidson, [The Dilemma of Localism in an Era of Polarization](#), 128 Yale L. J. 954, 957 (2019) (describing North Carolina's decision to bar Charlotte from adding LGBT protection to its municipal antidiscrimination statute).

11 See Christopher N. Lasch et al., [Understanding "Sanctuary Cities,"](#) 59(5) B.C. L. Rev. 1703 (2018).

12 The focus of this policy brief is U.S. cities, and while some aspects of the discussion might extend to other contexts, other aspects might not.

13 While the focus of this policy brief is on meat, many of the proposals discussed can be applied to other animal products too.



SUMMARY OF OPTIONS

EXISTING POLICY OPTIONS

Procurement

- Reduce the procurement of animal-based food products and expand the procurement of plant-based food products
- Impose standards for food procurement that take into account the impacts of meat consumption

Strategic Planning

- Incorporate meat reduction targets into citywide strategic plans

Informational Campaigns

- Adopt informational campaigns aimed at educating the public and raising public awareness

Subsidies

- Offer subsidies for plant-based foods

Bans

- Adopt targeted bans on certain animal-based food products

NEW POLICY OPTIONS

Divestment

- Adopt a resolution calling on managers of investments not under the city's control to divest from animal agriculture
- Divest from investments (including stocks, bonds, and investment funds) in companies involved in animal agriculture that are under the city's exclusive control

Securities Law

- Use securities regulations to compel the disclosure of the risks of meat production and consumption

Voluntary Restaurant Grading & Certifications

- Develop an opt-in program for food establishments to be certified based on certain environmental, health, animal welfare criteria

Required Menu Offerings

- Require private establishments to offer vegan or vegetarian food options

Labeling Menus

- Require restaurants to include an environmental disclaimer on menus
- Require restaurants to disclose the relative GHG impact of menu offerings

Taxes

- Adopt targeted taxes on animal-based food products

I. CITIES' LEGAL AUTHORITY TO REGULATE MEAT

This section reviews some of the common constraints that city lawmakers face in making policy as well as some of the key areas of flexibility. While the precise scope of cities' authority to make policy varies from state to state (and sometimes even varies among cities within a single state¹⁴), all cities operate in a constrained legal environment. Thus, to understand which strategies cities may adopt to encourage a transition towards plant-based diets, it is important to first understand some general principles about the scope of cities' legal authority to regulate the food system.

Home Rule & Preemption

As is often stated in judicial opinions, cities are creatures of the states that house them. In other words, states define the extent of their cities' legal authority. Many, if not most, U.S. states have granted their cities a degree of **home rule authority** to initiate legislation and in some states this authority is quite broad. Yet, even where this is the case, the state government generally retains the authority to preempt local laws that conflict with state policy objectives.¹⁵ States can also prohibit local governments from regulating in a given field altogether, even where there would not be a direct conflict between the state and local laws.

Federal law can impede local legislation as well. The U.S. Constitution's **Supremacy Clause** makes clear that federal law is the "supreme Law of the Land,"¹⁶ which means that congressional acts preempt conflicting state and local laws. Moreover, like state legislatures, Congress can choose to occupy an entire regulatory field, thereby preempting state and local governments from enacting any regulations in the field whether or not there is a conflict.

Cities that seek to regulate meat production and consumption have to find space within a thicket of **preempting federal and state laws**. For example, the Federal Meat Inspection Act (FMIA) regulates slaughterhouse conditions and preempts state and local governments from enacting regulations that are "in addition to, or different from" the FMIA requirements.¹⁷ This provision has previously been used to preempt a California law restricting the sale of nonambulatory animals.¹⁸ The FMIA and another federal law, the Poultry Products Inspection Act (PPIA), may also preempt local government labeling requirements for meat products.¹⁹ Many states regulate elements of meat distribution and sale as well. For example, Arizona, California, Michigan, and Washington have all passed preemption statutes expressly limiting cities' authority to impose new taxes or fees on food items (see Part III.F.).

14 For example, Illinois gives distinctive authorities to cities of more than 25,000 people.

15 See, e.g., *Jancyn Mfg. Corp. v. County of Suffolk*, 71 N.Y.2d 91, 96 (1987) ("[A]lthough the constitutional home rule provision confers broad police powers upon local governments relating to the welfare of its citizens, local governments may not exercise their police power by adopting a law inconsistent with the Constitution or any general law of the State").

16 U.S. Const. art. VI, cl. 2.

17 21 U.S.C. § 678.

18 *Nat'l Meat Assoc. v. Harris*, 565 U.S. 452 (2012) (holding the FMIA preempted a California law that prohibited "federally-inspected swine slaughterhouses from buying nonambulatory animals or selling their meat, required immediate euthanization of those animals, and imposed requirements for their humane treatment").

19 See, e.g., *Amer. Meat Inst. v. Lehman*, 180 Cal.App.4th 728 (2009) (holding that the FMIA preempts California from requiring that meat products containing certain substances be labeled as carcinogenic).

Other Constitutional Restrictions

Federal and state constitutional law narrows cities' toolkit in other ways as well. For example, under the federal Constitution, the **Dormant Commerce Clause** prohibits states from enacting statutes that discriminate against interstate commerce.²⁰ This may prevent cities from restricting the purchase of meat produced outside the state, although courts have upheld restrictions that apply even-handedly to in- and out-of-state producers.²¹

As for state constitutions, many states restrict cities' ability to impose **taxes**, removing a major economic instrument that cities could use to reduce meat consumption. Importantly, even where cities are prohibited from imposing taxes, they may still be able to develop narrowly tailored fees or other economic charges; this is an important and understudied area of research.²² Still, it is clear that cities do not have free reign to tax meat production or consumption.

Both the federal and state constitutions include protections for **free speech** and **free exercise of religion** that could constrain the types of policies that cities could adopt to reduce meat consumption. For example, First Amendment protections for free speech in the federal constitution might be used to challenge local requirements to provide information to consumers about the impacts of menu offerings on public health, the environment and animal welfare.²³

International Law

International economic law, particularly the law of the **World Trade Organization (WTO)**, may constrain cities' options as well because the WTO disciplines member states' ability to restrict trade. For instance, product bans (such as a ban on a certain type of meat) or new food labeling requirements could run afoul of WTO agreements unless there is a clear environmental or moral objective for the measure and there is no alternative means for achieving the same goal that is less restrictive of trade.²⁴ As with the Dormant Commerce Clause, this is not an impossible standard to meet—indeed, the WTO upheld a European Union ban on seal products on the grounds that the ban reflected public morals²⁵—but the standard underscores the importance of articulating clear public policy rationales for the measures taken and applying them in an even-handed manner.

Despite these constraints, a number of American cities have found space in the legal architecture to develop innovative policies to reduce the consumption of meat within their jurisdictions. We review some of the leading examples of such policies below.

20 [CTS Corp. v. Dynamics Corp. of Am.](#), 481 U.S. 69, 87 (1987).

21 [N. Am. Meat Inst. v. Becerra](#), 420 F. Supp. 3d 1014 (C.D. Cal. 2019), *aff'd*, No. 19-56408 (9th Cir. Oct. 15, 2020) (rejecting a Dormant Commerce Clause challenge from an association of meat processors to a California law prohibiting the sale of veal or pork products from inhumanely confined animals, regardless of whether the meat was produced in California or another state).

22 Erin Adele Scharff, [Green Fees: The Challenge of Pricing Externalities under State Law](#), 97 Neb. L. Rev. 168, 171, 180 (2018).

23 Jennifer L. Pomeranz et al., [Mandating Front-of-Pack-age Food Labels in the U.S.—What Are the First Amendment Obstacles?](#), 86 Food Policy 101722 (2019); see generally Lauren L. Sherman, [A Warning for Environ-](#)

[mental Warnings: Regulatory Uncertainty in the Face of First Amendment Litigation](#), 27 N.Y.U. Envtl. L.J. 241 (2019).

24 See, e.g., [Reports of the Panels, United States—Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products](#), WT/DS381/RW2 (Oct 26, 2017) (concerning challenges to the United States' regulations regarding the labeling of "dolphin safe" tuna).

25 Report of the Appellate Body, [European Communities - Measures Prohibiting the Importation and Marketing of Seal Products](#), WT/DS401/AB/R (May 22, 2014).

II. EXISTING POLICY OPTIONS

This section maps policies that American cities have adopted to promote a reduction in meat consumption.²⁶ The existing policies we identify can be grouped into five broad categories: procurement policies, strategic planning, informational campaigns, subsidies, and bans. Broadly considering social, legal, political, and administrative challenges, we discuss these categories from easiest to most difficult to implement.

Cities' efforts to develop progressive food policies have helped to raise awareness of the impacts of meat consumption among residents and policy-makers. They have also generally tended to focus on increasing demand for plant-based foods (and reducing demand for meat). By influencing demand, cities aspire to indirectly affect the food that gets produced, sold, and eaten within their borders. Cities' use of demand-side strategies aligns with their jurisdictional competence because cities generally have very limited authority to directly regulate the production and sale of meat.

A. Procurement

Reduce the procurement of animal-based food products and expand the procurement of plant-based food products

Impose standards for food procurement that take into account the impacts of meat consumption

Examples. Various cities have adopted commitments to reduce the amount of animal-based food products purchased for government buildings and operations. For example:

- Berkeley (CA) was the first city to adopt Vision

2025, a progressive new food purchasing policy, and committed to replace 50% of the city's animal-based food purchasing for governmental operations (including schools and jails) with plant-based alternatives.²⁷

- New York (NY) has committed to reducing the city's beef purchases for all city government operations by 50% and phasing out all purchasing of processed meat by 2030.²⁸
- San Francisco (CA) passed a resolution committing to reduce purchases of animal products in jails by 50% in 2024 and in hospitals by 15% in 2023.²⁹

Others have expanded plant-based offerings in city-owned facilities.

- School districts in several cities have adopted Meatless Mondays, including Baltimore City Public Schools (MD), Buffalo Public School District (NY), and New York City Public Schools (NY).
- The school districts in Berkeley (CA) and New York (NY) now offer plant-based options at every school meal, and four public schools in New York (NY) are fully vegetarian.
- Berkeley (CA) requires vegan-only food to be served at city events and meetings on Mondays.

Some have stopped procuring certain animal

27 City of Berkeley, [Resolution No. ___, Adopting Vision 2025 for Sustainable Food Policies](#) (n.d.).

28 City of New York, [OneNYC 2050, Ch. 7: A Liveable Climate](#) (2019).

29 San Francisco Board of Supervisors, [Enactment No. 134-20](#) (enacted Aug. 21, 2020).

26 See Linn, [Climate-Friendly Diets: How Cities can Cut Emissions and Improve Public Health](#) (2018).

products in certain contexts altogether:

- The cities of Santa Barbara (CA) and New York (NY) have introduced bans on processed meat from school lunch menus on the basis that these products are carcinogenic.

Cities might also choose to require that the animal products they do purchase, as well as the suppliers they purchase from, meet certain standards.

For example, the UK government has imposed mandatory Government Buying Standards for Food and Catering for all food procurement and catering services for all UK governmental bodies, which include standards for food production, animal welfare, and environmental production.³⁰ Cities that adopt procurement standards can tailor them to encourage plant-forward food purchasing.³¹

Benefits. Cities generally have the authority to manage their own affairs, including how they spend their dollars. Thus, cities should not face legal challenges to changes in their food procurement policies, and past procurement policies enacted by cities do not appear to have been challenged in the courts as unlawful.

Reducing meat purchases can also save cities money. For example, when Oakland Unified School District reduced its purchases of animal products by 30%, replacing them with plant-based proteins and more fruits and vegetables, it saved an estimated \$42,000 annually by trimming costs 1% per meal.³² There may also be indirect cost savings associated with reducing meat procurement. For example, one study estimated that continuing

30 United Kingdom, [Guidance: Government Buying Standard for Food and Catering Services](#) (last updated July 15, 2021).

31 See Kari Hamerschlag, et al., [A Municipal Guide to Climate Friendly Food Purchasing](#), Friends of the Earth &

Responsible Purchasing Network (2017).

32 Kari Hamerschlag & Julian Kraus-Polk, [Shrinking the Carbon and Water Footprint of School Food: A Recipe for Combating Climate Change](#), Friends of the Earth (2017).

BOX 1 // GOOD FOOD PURCHASING PROGRAM

The Good Food Purchasing Program was created by the Los Angeles Food Policy Council, and was adopted by the City of Los Angeles and Los Angeles Unified School District in 2012. The program is aimed at ensuring that the city is spending its dollars in ways that are aligned with its food system values.¹ Each year, the city's food purchasing is independently analyzed against five value categories: local economies, health, valued workforce, animal welfare, and environmental sustainability. The city is awarded points for meeting certain standards within each category. Points are then totalled and a star rating is awarded based on the number of points accumulated.² Notably, the UN Food and Agriculture Organization (FAO), the World Future Council (WFC), and the International Federation of Organic Agriculture Movements gave Los Angeles an honorary mention for the Future Food Policy Award in 2018 for the city's work in developing this program.³ The Good Food Purchasing Program is now a national initiative led by the Center for Good Food Purchasing, with numerous other cities and local institutions having adopted the program.⁴

1 Los Angeles Food Purchasing Council, [Good Food Purchasing Policy](#).

2 Center for Good Food Purchasing, [The Program](#).

3 Center for Good Food Purchasing, [Los Angeles Shortlisted for Future Policy Award 2018](#).

4 Center for Good Food Purchasing, [Local Partners](#).

to follow current trends of meat consumption could cost the United States between \$197 billion and \$289 billion annually by 2050 in health- and climate-related costs.³³

Moreover, while procurement policies affecting the public (such as changes to school lunch menus) may help expose the public to plant-based food options, they can also help to raise awareness among the local lawmakers responsible for approving changes to a city's food procurement plan, and can help to bring the issue onto the city's political agenda.

Challenges. City budgets are typically negotiated by local lawmakers who may encounter political opposition to changing the city's food procurement plan. Opposition to changing procurement policies may be rooted in cultural beliefs that meat consumption should not be stigmatized or that dietary choices are personal decisions that governments should not seek to influence.

The source of procurement funding could also pose legal challenges. For example, food purchased by local agencies using federal dollars must follow federal procurement guidelines, and food purchased using state funds must follow state procurement guidelines. To the extent that cities are relying on state or federal funding to purchase food, federal or state procurement guidelines could potentially limit their ability to develop independent procurement standards.

Geographically preferential laws have been challenged under the Commerce Clause on the basis that they impose a "substantial burden" on commerce from other states.³⁴ If procurement policies favoring plant-based products over animal-based products were implemented, parties in states that rely heavily on the meat industry might bring Dormant Commerce Clause challenges, although

cities might be able to rely on the market participant doctrine because they are product purchasers when engaged in procurement.³⁵

B. Strategic Planning

Incorporate meat reduction targets into citywide strategic plans

Examples. Cities have incorporated meat reduction targets into various types of citywide strategic plans:

- Some cities have committed to reducing meat consumption as a means of reducing greenhouse gas emissions in their city's climate action plans, including Oakland (CA), Portland (OR), and Seattle (WA).
- Others have developed sustainable food plans which support reducing meat consumption. These include New York City's Food Forward NYC 10-Year Food Policy Plan and San Francisco's Healthy and Sustainable Food for San Francisco.

Benefits. Incorporating meat reduction targets into citywide strategic plans can help to put (and keep) the issue on the city's policy agenda.

Challenges. City strategic plans are typically non-binding. Accordingly, planning is often regarded as aspirational and doesn't always lead to concrete action. Absent complementary actions, strategic planning can create a false sense of security that society is making progress on important issues when in fact it is not. Periodic reporting on progress made towards targets can

33 Lauren Cassani Davis, [The Economic Case for Worldwide Vegetarianism](#), *The Atlantic* (Mar. 28, 2016), citing Marco Springman et al., [Analysis and valuation of the health and climate change cobenefits of dietary change](#) (2016).

34 See, e.g., [White v. Mass. Council of Constr. Employers](#), 460 U.S. 204 (1983).

35 On the market participant doctrine, see [White v. Mass. Council of Constr. Employers](#), 103 S.Ct. 1042 (1983) (city can require that construction projects it funds employ city residents because the city is a market participant). The market participant doctrine exempts state and local government action from scrutiny under the Dormant Commerce Clause where the state or local government acts as a "market participant, rather than a regulator." *Florida Transportation Services Inc. v. Miami Dade County* 757 F. Supp.2d 1260, 1281 (2010).

BOX 2 // ACCOUNTING FOR THE GHG IMPACT OF MEAT CONSUMPTION

Many cities rely heavily on the supply of goods and services from outside their physical boundaries. A recent study by C40 shows that the GHG emissions associated with these supply chains are significant, particularly meat and dairy.¹ Yet, the methodologies for accounting for GHG emissions used by most cities do not accurately capture the full GHG impact of goods consumed locally, including foods imported from outside their jurisdictions. For this reason, many experts have called for cities to adopt consumption-based GHG accounting methods, which more accurately show the value of reducing meat consumption.² In developing strategies for addressing climate change, several U.S. cities have begun to consider emissions from the consumption of animal-based food products:

Long Beach, CA. City of Long Beach Climate Action and Adaptation Plan: “[T]he greatest opportunities to reduce consumption emissions are to pursue low-emissions diets (e.g. reduced meat and dairy consumption, which contribute 39 percent and 15 percent of food emissions, respectively), minimize purchases of goods and services, and increase the use of preowned goods or the purchase of products that minimize packaging and are produced locally.”³

Portland, OR. City Of Portland and Multnomah County Climate Change Action Plan: “In Multnomah County, an estimated 15 percent of carbon emissions result from supplying food and beverages to residents and businesses. On a per calorie basis, consumption of red meat results in three times the carbon emissions of cheese, nearly six times the emissions of chicken, fish, and eggs, and more than twenty times that of many grains and vegetables.”⁴

Eugene, OR. A Community Climate and Energy Action Plan for Eugene: “While there is growing national interest in buying locally-produced foods and there are many good reasons to support local growers, when it comes to reducing GHG emissions associated with food, the most effective approach is to reduce the consumption of carbon-intensive foods such as dairy products and red meat.”⁵

1 C40 Cities, [Consumption-Based GHG Emissions of Cities](#) (2018).

2 Linn, [Climate-Friendly Diets: How Cities can Cut Emissions and Improve Public Health](#) (2018).

3 City of Long Beach, [Climate Action and Adaptation Plan](#), p. 128.

4 City Of Portland and Multnomah County, [Climate Change Action Plan Summary](#) (2015). See also City Of Portland and Multnomah County, [Climate Change Action Plan](#) (2015) (“[15%] of consumption-based carbon emissions in Multnomah County come from food (e.g., energy used to pump water for irrigation, and make fertilizers and pesticides, as well as methane from livestock).”)

5 City of Eugene, [A Community Climate and Energy Action Plan for Eugene](#) (2010). See also, City of Eugene, [Eugene Community’s Climate Action Plan 2.0](#) (2020) (“The food and beverages consumed in Eugene represent the largest source (16%) of community consumption-based emissions. ... [T]here are several high-leverage intervention points to significantly reduce food-related emissions [including] shifting from high-carbon to low-carbon food types.”)

help keep cities accountable. Another challenge is that by focusing too narrowly on one kind of impact (e.g. carbon footprint), cities risk missing other kinds of impacts (e.g. social, health, and animal welfare). This could lead to harmful substitution effects.

C. Informational Campaigns

Adopt informational campaigns aimed at educating the public and raising public awareness

Examples. Cities around the world have introduced policies aimed at raising public awareness about the benefits of limiting meat consumption or, conversely, the harm of continuing to consume meat at current levels. Some cities have published and distributed informational materials to educate residents. For example:

- The NYC Mayor’s Office of Animal Welfare has sent newsletters with information on the harms of meat consumption and resources to help residents shift towards plant-forward diets.³⁶
- Austin (TX) has published “Tips for Sustainable Eating,” which encourages residents to reduce meat consumption and prioritize plant-based foods as a means of improving health and reducing impacts on the environment.³⁷

Other cities have sought to supplement public outreach with public-private partnerships. For example:

- As part of a recent campaign to share information about sustainable and healthy eating, Dallas (TX) developed a “Meat-Free Mondays” program aimed at partnering with local restaurants to encourage plant-based options.³⁸ Portland (OR) proposed a similar outreach and

education program in its 2015 Climate Action Plan, committing to “work with partners to support efforts to encourage plant-based diets, including Meatless Monday campaigns.”³⁹

- The mayor of Minneapolis partnered with a local restaurant to host a series of monthly vegan dinners. The “Climate Series Salon and Supper Club” brought together community members, policy stakeholders, and experts to discuss the environmental benefits of plant-based eating.

Benefits. Informational campaigns can help to raise public awareness of the harms of meat consumption and benefits of plant-forward diets. Public awareness, in turn, can help shift consumer preferences and help build the public’s enthusiasm and support for sustainable food policies.

Because they do not require new laws to be enacted, informational campaigns are also relatively easy to implement, provided program resources are available. City-implemented informational campaigns also appear to pose minimal legal obstacles. Because these policies are generally non-binding or otherwise voluntary, there are likely no legal grounds to challenge them.⁴⁰

People may be more open to education when it comes from cultural insiders as opposed to when it comes from cultural outsiders (like the government itself). Cities may find that informational campaigns are more effective when they enlist the support of groups that engage in advocacy within the community, such as through public-private partnerships.

Challenges. Informational campaigns might not always be effective in changing consumer behavior, and a campaign’s audience might not always be swayed by the information presented to them. For

36 N.Y.C. Mayor’s Office of Animal Welfare, [Email: Working Towards a Healthier and More Humane City](#) (Feb. 2021).

37 City of Austin, [Tips for Sustainable Eating](#).

38 City of Dallas, Dallas [Comprehensive Environmental and Climate Action Plan](#) (2020).

39 City Of Portland and Multnomah County, [Climate Change Action Plan](#) (2015).

40 Notably, prior examples of city-implemented informational and educational initiatives do not appear to have encountered legal challenges.

example, individual preferences for animal-based foods may matter more to some consumers than perceived health, animal welfare, or environmental benefits of plant-based diets.⁴¹

Even where informational and educational campaigns are successful in shifting preferences, they may not necessarily lead to a reduction in meat consumption in the target population. For example, one study found that while educational campaigns for children have been “excellent in increasing awareness, there has been less success in changing the targeted behavior.”⁴² A major reason for this is that children’s meals are prepared by their parents and guardians who may not share the same preferences. Even where parents and guardians share their children’s preferences for plant-based options, preparation time and cost can also act as a major impediment.⁴³

D. Subsidies

Offer subsidies for plant-based foods

Examples. Some cities have used subsidies to create positive financial incentives for consumers to purchase plant-based food products. For example:

- A number of cities have introduced programs that match fruit and vegetable purchases made through the Supplemental Nutrition Assistance

Program (SNAP),⁴⁴ including cities participating in the federally-funded Double Up Bucks program. Similarly, New York City matches every \$2 spent on fruits and vegetables at farmers markets using SNAP benefits with \$2 in “Health Bucks.” Community- and faith-based organizations are entitled to receive free Health Bucks to distribute to community members as an incentive to participate in nutrition education.⁴⁵

- Some cities have sought to promote urban agriculture through in-kind subsidies. New York City has the largest urban agriculture system in the United States, with approximately 600 community gardens which are supported, in part, through funding from the City Council.⁴⁶

Benefits. Numerous studies have shown that price signals can effectively influence consumer behavior. For example, a study of fruit and vegetable consumption among youths in the United States found lower prices were associated with increased consumption. Unsurprisingly, lower income youths were found to be particularly sensitive to price fluctuations.⁴⁷

Challenges. Subsidy programs can be expensive to implement, though there may be external funding options available. For example, the U.S. Department of Agriculture provides funding for the Double Up Food Bucks⁴⁸ and offers subsidies for urban agriculture.⁴⁹ In theory, cities might offset some of the costs of subsidizing plant-based foods through reductions in healthcare costs associated with lack of access to fresh fruits and vegetables.

41 Roni A. Neff, et al., [Reducing meat consumption in the USA: a nationally representative survey of attitudes and behaviours](#), 21(10) Public Health Nutrition 1835 (2018).

(“The most common reasons for reduction [in meat consumption] were cost and health; environment and animal welfare lagged.”)

42 Laura Young, et al., [Using Social Marketing Principles to Guide the Development of a Nutrition Education Initiative for Preschool-Aged Children](#), 36(5) J. of Nutrition Education & Behavior 250 (2004).

43 Id.; Ransley et al., [Does nutrition education in primary schools make a difference to children’s fruit and vegetable consumption?](#), 13(11) J. of Nutrition Education & Behavior 250 1898 (2010); Goldberg et al., [Great Taste, Less Waste: A cluster-randomized trial using a communications campaign to improve the quality of foods brought from home to school by elementary school children](#), 74 Preventive Medicine 103 (2015).

44 [Double Up Food Bucks](#).

45 N.Y.C. Dept. of Health, [Health Bucks](#).

46 N.Y.C. Council Speaker Corey Johnson, [Growing Food Equity in New York City: A City Council Agenda](#) (2019).

47 Lisa M. Powell et al, [Food Prices and Fruit and Vegetable Consumption Among Young American Adults](#), 15(4) Health & Place 1064 (2009).

48 U.S. Dept. of Agriculture, [Gus Schumacher Nutrition Incentive Program](#).

49 U.S. Dept. of Agriculture, [Urban Agriculture Grants and Engagement Opportunities](#).

E. Bans

Adopt targeted bans on certain animal-based food products

Examples. While no U.S. city has enacted a blanket ban on meat, a few cities have adopted targeted bans on specific animal products. For example, Los Angeles (CA), Chicago (IL), and New York (NY) have all introduced bans on the sale of foie gras at the urging of animal rights activists.⁵⁰ Cities might consider bans on other animal-based food products and on other bases. For example, cities might choose to enact a ban on the sale of processed meats on the basis that they are harmful to public health.

Benefits. Rather than relying on consumers to make the choice to eliminate certain animal-based food products from their diets, bans can make it difficult for consumers to purchase those products in the first place. Bans also play an informational role, because they express that a particular practice is unacceptable, which makes it easier to stigmatize that practice and harder to normalize it. Some bans have also started a “domino effect,” influencing other jurisdictions to enact similar bans in response.⁵¹

Challenges. Bans on meat or other animal-based products face potential political challenges, especially where there is strong consumer preference for the banned products or where local industries rely on those products as part of their business. Local bans also might not be as effective

where consumers can easily cross borders to another jurisdiction to purchase the products.

Moreover, bans on specific animal products have faced legal challenges. For example, Chicago’s foie gras ban was challenged on the grounds that it exceeded the scope of the city’s home rule authority, though this challenge was ultimately unsuccessful.⁵² While cities might need to devote resources to defending novel legal bans, it is likely that cities will receive aid in doing so from well-resourced non-governmental groups that support innovative laws.⁵³

Local attempts to enact bans also face a risk of preemption by federal or state law. For example, the U.S. Supreme Court has held that California’s ban on the buying, selling, or slaughter of downer animals by slaughterhouses was preempted by the Federal Meat Inspection Act (FMIA).⁵⁴ Retaliatory laws might even be passed to preempt newly adopted city bans. As a case in point, after Cleveland (OH) passed a law banning industrially-produced trans fats, the state amended its budget to preempt cities from regulating ingredients used in the fast-food industry.⁵⁵

50 While not strictly related to food, San Francisco (CA), Berkeley (CA), West Hollywood (CA), and Los Angeles (CA) have all passed laws banning the sale of animal fur out of similar animal welfare concerns. Notably, San Francisco’s fur ban was challenged on the basis that it improperly discriminates against interstate commerce in violation of the Dormant Commerce Clause, though the claim was ultimately dismissed. *Int’l Fur Trade Fed’n v. City & Cty. of San Francisco*, 472 F. Supp. 3d 696 (N.D. Cal. 2020).

51 Bans on animal products appear to be more widespread at the state level, some of which have been inspired or influenced by local initiatives. In 2019, for example, California became the first state to ban the manufacture and sale of animal fur, following prior local initiatives.

52 The court held that the law was valid, despite its extra-territorial effects, because it was aimed at a sufficiently local problem. *Illinois Restaurant Association v. City of Chicago*, 492 F. Supp. 2d 891 (N.D. Ill. 2007).

53 For example, the Animal Legal Defense Fund prepared an amicus curiae brief in support of Chicago’s foie gras ban. Animal Legal Defense Fund, *Defense of Chicago’s Foie Gras Ban*.

54 *Nat’l Meat Ass’n v. Harris*, 132 S.Ct. 965 (2012). Notably, the California law being challenged under the FMIA involved a ban on certain activities by slaughterhouses. There appears to be plenty of room under the FMIA for cities to enact bans on activities by other actors and on activities other than slaughter.

55 The state law was challenged by the city and overruled on the basis that it “unconstitutionally attempt[ed] to limit municipal home-rule authority.” *Cleveland v. State*, 989 N.E.2d 1072 (2013). Shortly after, the federal government issued a ban on artificial trans fats, effectively preempting state or local action in this area. FDA, *Final Determination Regarding Partially Hydrogenated Oils* (Jun. 17, 2015).

III. NEW POLICY OPTIONS

In this section, we provide a menu of new policy options for reducing meat consumption. We also discuss examples of analogous policies from other contexts that could help to inform future policy options for transitioning away from meat consumption, including lessons learned that should be taken into consideration when developing new policies.

The policy options we identify can be grouped into six broad categories: divestment, securities law, voluntary restaurant grading and certifications, required vegan or vegetarian offerings, labeling menus, and taxes. Broadly considering social, legal, political, and administrative challenges, we discuss these categories from easiest to most difficult to implement.

Of course, cities can also make a lot of progress simply by enforcing laws that are already on the books. For example, cities could undertake stronger enforcement of existing environmental, health and sanitation, or animal cruelty laws to address violations in slaughterhouses and live animal markets located within the city borders.⁵⁶

56 As an example, see [Slaughter Free NYC](#) for a map of known slaughterhouses and live animal markets in New York City. In August of 2020, New York State passed a law temporarily prohibiting the Department of Agriculture and Markets from issuing a license to animal slaughter establishments or live poultry markets within 1,500-foot radius of residential buildings in New York City, noting that these facilities often “failed to dispose of remains properly, creating odors and clogging sewer drains and air conditioning and heating ducts, which also presented health impacts such as asthma, allergy and respiratory hazards.” Katherine Donlevy, [Legislation to Close NY Slaughterhouses](#), Queens Chronicle (Aug. 13, 2020).

A. Divestment

Adopt a resolution calling on managers of investments not under the city’s control to divest from animal agriculture

Divest from investments (including stocks, bonds, and investment funds) in companies involved in animal agriculture that are under the city’s exclusive control

Examples. Elected officials in at least two cities have proposed divesting from animal agriculture:

- Berkeley City Council has adopted a resolution urging its public employees’ retirement system (CalPERS)⁵⁷ to divest from industrial animal protein and factory farming companies.⁵⁸
- City Council members in New York City (NY) have introduced a resolution urging divesting from certain agricultural industries for their role in accelerating climate change.⁵⁹

Analogous policies. Numerous cities have joined a broader social movement aimed at divesting from the fossil fuel industry for its contributions to climate change. In 2020, twelve major cities across the world (representing more than 36 million residents) pledged to divest from fossil fuel companies in the assets that they control directly, and called on the managers of city pension

57 The city of Berkeley provides retirement benefits through the California Public Employees’ Retirement System (CalPERS), a state government agency that manages public employee pension funds.

58 Berkeley City Council, [Resolution Requesting CalPERS Divest from Industrial Animal Protein and Factory Farming Companies and Invest in California’s Local Plant-Based Food Economy](#) (adopted Apr. 21, 2021).

59 N.Y.C. Council, [Res. 1151-2019](#).

funds to do the same. In response, New York City pension funds announced that they would divest an estimated \$4 billion in securities related to fossil-fuel companies.⁶⁰

Benefits. Divestment campaigns can help to raise public awareness about the harms being perpetuated through public shaming. The public scrutiny that divestment campaigns bring also may lead to socially beneficial changes in policies and practices within targeted firms. Such campaigns also may shift norms among investors, leading them to disfavor the sectors targeted by divestment advocates. The “stigmatization” resulting from divestment campaigns also may contribute to building a political climate supportive of regulating the harmful activity.⁶¹ Moreover, to the extent that cities recommend divestment, as opposed to requiring it, city efforts appear very likely to survive legal scrutiny.

There also may be an economic rationale for divesting from industrial animal agriculture. From an investment perspective, there are a variety of risks associated with animal agriculture that can significantly damage the financial value of companies throughout the industry’s supply chain (including disease outbreak and reputational damage), and divestment from high risk companies can help insulate investors from potential financial loss. In fact, there are already a number of leading private investors that are integrating environmental, social, and governance (ESG) risks associated with animal agriculture into their investment decisions.⁶²

Challenges. Cities don’t always have exclusive control over their investments, and it might be more difficult to divest from animal farming when the city needs approval from non-city decision-

makers. For example, the board of the New York City Employees’ Retirement System (NYCERS) is made up of the heads of three unions, as well as elected and appointed city government representatives.⁶³ There may also be fiduciary obligations on the managers of city pension funds that might limit their scope for divesting (or conversely provide a justification for divesting if managers think it’s in the beneficiaries’ best financial interests).⁶⁴

From a strictly financial perspective, divestment campaigns are likely to have little effect on the valuations of the targeted companies, as other investors will likely buy the assets being divested.⁶⁵ Concerns also might be raised about the impact of divestment on the value of the divesting investor’s portfolio.⁶⁶ Municipal divestment policies also run the risk of retaliatory legislation from higher levels of government. For example, Texas lawmakers recently passed a law prohibiting the state from contracting with companies boycotting fossil fuels or investing in financial companies boycotting fossil fuels.⁶⁷

63 One of NYC’s five pension plans, NYCERS was founded by the state legislature in 1920, but its “Board of Trustees, as prescribed by law, consists of eleven members: the Mayor’s Representative, the City Comptroller, the Public Advocate, the heads of the three unions with the largest number of participating employees, and the five Borough Presidents.” NYCERS, [Board of Trustees](#).

64 Some experts think that there is good reason for investment managers to consider ESG factors in discharging their duties. Norton Rose Fullbright, [ESG and the duties of investment managers examined](#) (2020); see also Surbhi Sarang, [Note: Combating Climate Change Through a Duty to Divest](#), 49 Colum. J.L. & Soc. Probs. 295 (2015). Indeed, the UK regulations actually define the “financially material considerations” that pension fund managers must consider as including ESG factors. Id.; United Kingdom, Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations 2018, SI 2018/988, Regulation 4.

65 Auke Plantinga & Bert Scholtens, [The financial impact of fossil fuel divestment](#), 21(1) Climate Policy 107 (2020).

66 Ryan & Marsciano, [Examining the Impact of Fossil Fuel Divestment on University Endowments](#) (2020).

67 [Texas Senate Bill No. 13](#) (enacted Jun. 14, 2021).

60 Hazel Bradford, [New York City pension funds surpass climate change goal](#), Pensions and Investments (Mar. 23, 2021).

61 Christopher J. Ryan, Jr. & Christopher R. Marsciano, [Examining the Impact of Fossil Fuel Divestment on University Endowments](#), 17 N.Y.U. J.L. & Bus. 95 (2020).

62 Farm Animal Investment Risk and Return, [Factory Farming: Assessing Investment Risk](#) (2016).

B. Securities Law

Use securities regulations to compel the disclosure of the risks of meat production and consumption

Analogous strategies. Cities can call on the U.S. Securities and Exchange Commission (SEC) to investigate corporations for failing to sufficiently disclose to shareholders material financial risks. For example, in December 2020, N.Y.C. Comptroller Scott Stringer urged the SEC to investigate the adequacy of Tyson's annual report to investors, including the New York City Retirement Systems, about COVID-19 protections the company provided to workers.⁶⁸ As investors, cities might

urge the SEC to investigate the adequacy of meat producers' disclosures of the risks of governments regulating processed meats to reduce cancer.

Relying on existing federal securities laws, cities, as investors, also might sue meat producers for failing to disclose risks that are likely to affect the financial performance of the corporations. For example, cities might argue that public corporations' securities filings do not sufficiently disclose risks such as: the risks of disease outbreaks among animals owned by factory farms; the risks that governments may regulate processed meats, which are a known carcinogen; or the risks that governments may seek to regulate meat producers for their contributions to climate change, creating a risk of stranded assets.⁶⁹

68 N.Y.C. Comptroller Scott Stringer, [Press Release: Comptroller Stringer Calls on SEC to Investigate Tyson Foods' Worker Health and Safety Disclosures Amid](#)

[COVID-19 Pandemic](#) (Dec. 15, 2020).

69 See, e.g., Madison Condon et al., [Mandating Disclosure](#)

BOX 3 // GREENWASHING AND HUMANEWASHING IN THE MEAT INDUSTRY

New York City is suing fossil fuel companies for greenwashing, alleging violations of the city's Consumer Protection Law through false advertising and deceptive trade practices.¹ In light of the growing evidence of the meat industry's impact on the environment, including climate change, water pollution, and deforestation, efforts by the industry to downplay its environmental impact or otherwise portray itself as an environmental leader might be construed as a form of greenwashing. For example, statements by the industry that exaggerate the potential of agricultural innovations to reduce environmental impacts or cast doubt on the environmental benefits of plant-based alternatives compared to meat products might mislead consumers into believing that they are purchasing ecologically sound products.² Such statements might provide a basis for cities to sue firms for violating consumer protection laws. Cities might bring similar consumer protection challenges where there is evidence of humanewashing. For example, cities might challenge the use of voluntary animal welfare labels that mislead consumers by certifying products from animals raised in concentrated animal feeding operations (CAFOs) as humane.³

1 City of New York, [Press Release: New York City Sues ExxonMobil, Shell, BP, and The American Petroleum Institute for Systematically and Intentionally Deceiving New Yorkers](#) (Apr. 21, 2021).

2 Caroline Christen, [Investigation: How the meat industry is climate-washing its polluting business model](#), Nation of Change (Jul. 20, 2021); Bettina Makalintal, [Big Meat Is Selling Veggie Burgers—But It's Still Destroying the Environment](#), Vice (Sep. 25, 2020).

3 [The Dirt on Humanewashing](#), Farm Forward (2020).

Benefits. Because existing laws are already in place, no additional legislative action is needed. Challenging the meat industry's failure to disclose risks might raise public awareness of the public health, environmental and animal welfare impacts of meat products and potentially reduce consumer demand for the products.

Challenges. Litigation can be very costly and can put a significant strain on city resources. To avoid the costs of litigating, cities might use the threat of litigation to incentivize compliance, for example through cease and desist letters. Alternatively, cities might urge other bodies, such as the SEC, to investigate industrial agriculture for legal violations. City litigation—and threats of litigation—might lead states, under pressure from interest groups, to preempt local litigation against meat corporations.⁷⁰

C. Voluntary Restaurant Grading & Certifications

Develop an opt-in program for food establishments to be certified based on certain environmental, health, animal welfare criteria⁷¹

Analogous policies. Cities might develop a new system for rating restaurants based on the restaurants' public health, environmental, social and animal welfare impacts, or some subset of these. The simplest system might reward restaurants for having vegetarian or vegan options on their menus, and identifying these options on their menus.

A more complex rating system might differentiate restaurants based on their compliance with a basket of criteria. Restaurants would opt into being graded, and receive grades and certifications that they could publicly display. A logo might be designed to convey a restaurant's grade or certification. Cities or private actors (such as restaurant guides or online ordering services) also might disseminate the grades and certifications online and in other formats accessible to consumers.

Others have experimented with similar policies:

- Los Angeles, New York City, San Diego, and a number of other local jurisdictions require restaurants to post letter grades that correspond to scores received on sanitary inspections.⁷²
- New York City requires buildings greater than 25,000 square feet to display grades that correspond to their level of energy efficiency,⁷³ and Chicago requires buildings over 50,000 square feet to post placards rating their buildings based on energy use.⁷⁴
- The Leadership in Energy and Environmental Design (LEED) is a voluntary, private certification program which rates buildings based on their sustainability and assigns them different grades which they can display on their facade.⁷⁵
- New York City has also experimented with environmental labels as part of its GreenNYC campaign, and hybrid medallion taxicabs are required to display labels on their vehicles.⁷⁶

of Climate-Related Financial Risk, Institute for Policy Integrity & Environmental Defense Fund (2021).

70 Jennifer L. Pomeranz et al., [State Preemption of Food and Nutrition Policies and Litigation: Undermining Government's Role in Public Health](#), 56 Am. J. Prev. Med. 47, 48 (2019).

71 There may also be potential for cities to require restaurants to post grades based on environmental, health, and animal welfare criteria.

72 Daniel E. Ho, [Fudging the Nudge: Information Disclosure and Restaurant Grading](#), 122 Yale L.J. 574, 602 (2012); N.Y.C. Health, [Letter Grading for Restaurants](#).

73 New York City Council, [Local Law 33 of 2018](#).

74 City of Chicago, [Chicago Energy Rating](#).

75 U.S. Green Building Council, [Green Building 101: What is LEED?](#)

76 Rules of the City of New York, tit. 35 § 82-33. See also N.Y.C. Taxi and Limousine Commission, [Accessible and Clean Air Vehicles](#); N.Y.C. Taxi and Limousine Commission, [Industry Notice # 07-27](#) (Dec. 13, 2007).

Benefits. Providing consumers with readily accessible information about which restaurants offer plant-forward menu items would increase consumers' ability to realize their food preferences. By rewarding restaurants with plant-forward offerings, a grading system might encourage more restaurants to experiment with such offerings, leading to pioneering developments in cuisine, and increased public interest in such foods. There are few legal risks to establishing a voluntary grading and certification program because restaurants can choose not to participate.

Challenges. Using city resources to reward restaurants for offering vegetarian or vegan offerings might be perceived as using these resources to cater to the interests of high-income groups that can afford to dine at restaurants, and taking away resources from higher public priorities, such as promoting food safety. It would likely be more time-consuming and politically sensitive to identify criteria and metrics for grading restaurants on multiple dimensions. Any rating system would need to take into account differences between restaurants and divergent social understandings of what restaurants should be expected to do to promote public health, environmental sustainability and animal welfare.⁷⁷

Restaurants might not sign up to be voluntarily graded because they may not perceive much financial benefit to being graded, depending on the resources that restaurants need to expend to be graded. Consumers might be confused by the introduction of a new grading system (for example in cities where there already is a sanitation-based grading system), and may not change their behavior in response to the grades if they do not perceive the information it conveys as salient to their decisions about which restaurants to patronize.

D. Required Menu Offerings

Require private establishments to offer vegan or vegetarian food options

Examples. A bill has been introduced in Los Angeles (CA) that, if passed, would require large-scale entertainment and travel venues to put at least one "vegan protein entree" on their menus.⁷⁸

Analogous policies. The cities of Baltimore (MD), New York (NY), Philadelphia (PA), Stockton (CA), and Davis (CA) have all passed laws requiring restaurants to make healthy beverages the default option for menu items designated for children.

Benefits. The number of individuals identifying as vegetarian or vegan—whether for health, animal welfare, cultural, social, religious or other reasons—has continued to grow in recent years. Requiring certain private establishments to include plant-based foods on their menus would help to accommodate this frequently underserved population. Moreover, because plant-based menu options cater to everyone, not just vegans and vegetarians, this policy would help to expand consumer choice, making it more politically palatable than policies aimed at restricting the availability of animal-based foods.

Challenges. Requiring restaurants to include certain offerings on their menus might increase their costs or lower their profit margins, particularly where there is little or no demand for those required offerings. To the extent that menus can be considered a form of expression, restaurants may challenge a requirement to serve plant-based options as a violation of the First Amendment (**Box 4**).

77 For a critical assessment of restaurant gradings, which discusses the costs of mandatory grading systems, see Ho, [Fudging the Nudge: Information Disclosure and Restaurant Grading](#) (2012).

78 Los Angeles City Council, [11-1678-S3](#) (introduced Dec. 5, 2018). Notably, the bill initially included a [reference to movie theatres](#), but was later [amended to exclude the reference](#).

BOX 4 // ARE MENUS AND MENU OFFERINGS PROTECTED SPEECH?

Restaurant menus are a form of commercial speech protected under the First Amendment.¹ Accordingly, restaurants might challenge requirements that they offer plant-based options on their menus, or that menus inform consumers about the carbon or other environmental impacts of food offerings, as a violation of the First Amendment (see Part III.E.). However, there may be room for cities to act in this area, notwithstanding First Amendment protections for free speech. For example, governments are allowed to require the disclosure of factual information, and prior restaurant free speech challenges to requirements that they post the calorie content of menu offerings and sodium warnings have failed on this basis.²

An interesting question is whether a restaurant could claim that requiring it to serve plant-based food interferes with artistic expression protected under the First Amendment, on the basis that the food the restaurant serves (not merely the menu's description of the food) is a form of expression. In *Masterpiece Cakeshop Ltd. v. Colorado Civil Rights Commission*, the U.S. Supreme Court did not reach the question of whether it would violate freedom of speech (or free exercise of religion) under the First Amendment to force Masterpiece Cakeshop to design and bake a cake for a same-sex wedding. Instead, the Court found that the Colorado Civil Rights Commission had expressed impermissible hostility to religion and thus violated the free exercise clause of the First Amendment.³ Thus, it remains an open question whether requiring a restaurant to serve plant-based foods would be considered to violate constitutional protections for free speech or free exercise.⁴

1 [N.Y. State Rest. Ass'n v. N.Y.C. Bd. of Health](#), 556 F.3d 114 (2d Cir. 2009).

2 *Id.*; [Am. Bev. Ass'n v. City & Cnty. of S.F.](#), 916 F.3d 749 (9th Cir. 2019).

3 [Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n](#), 138 S.Ct. 1719 (2018).

4 Erwin Chemerinsky, [Not a Masterpiece: The Supreme Court's Decision in Masterpiece Cakeshop v. Colorado Civil Rights Commission](#), American Bar Association (n.d.).

E. Labeling Menus

Require restaurants to include an environmental disclaimer on menus

Require restaurants to disclose the relative GHG impact of menu offerings

Examples. We are not aware of a U.S. city that has passed a law requiring menus to contain environmental or animal welfare labels. However, some restaurants have begun to voluntarily include on menus information such as the carbon footprint

of menu offerings.⁷⁹ Several federal laws constrain the authority of cities to require labels on food products and menus. However, one option that might be open to cities is to require restaurants to include information about the environmental impacts of food offerings on menus. For example, cities might be able to require restaurants to include disclaimers about the GHG impacts of menu offerings. Alternatively, restaurants of a certain size might be required to identify the relative GHG impact of different menu offerings.

79 For example, [Just Salad](#) provides carbon calculations for each of the items on its menu.

Analogous policies. Beginning in 2008, cities started requiring chain restaurants to post the calories of menu offerings next to them, and such calorie counts were later mandated nationally under the federal Affordable Care Act.⁸⁰ Some cities require that restaurants post information about allergies. The U.S. Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) covers packaged food items, but does not require retail food establishments to give ingredient lists or allergy warnings to customers. However, New York City (NY) and Saint Paul (MN) have both passed laws requiring information about food allergies to be posted in multiple languages in all food service establishments.⁸¹

Benefits. As with other informational strategies, labels can help to raise consumer awareness as to the environmental, health and animal welfare costs of their purchasing decisions and steer consumers to purchase menu offerings that impose fewer such costs. For example, studies find that consumers are willing to pay more for foods that carry eco-labels than for regular products, which suggests consumer demand for eco-friendly products.⁸²

Challenges. Local governments have some scope to require labeling of food sold within their borders. However, they need to tread carefully because of various federal laws with preemptive effect (**Box 5**). They also need to attend to the potential for challenges on constitutional grounds (**Box 4**). For example, New York City's Bloomberg-era calorie count laws were challenged as violating commercial free speech under the First Amendment. Notably, New York City ultimately prevailed on the basis that the information

requiring disclosure was purely factual and uncontroversial, and that the law was reasonably related to the city's goal of combating obesity.⁸³

It might also be difficult to develop a labeling system for menu offerings that accurately captures the myriad of environmental, social, and health harms associated with animal-based food products. For example, a carbon label on meat might ignore the animal welfare, health, or other environmental impacts (such as water pollution) of that product. It might also be difficult to develop reliable methodologies for calculating environmental impacts, and restaurants, particularly smaller ones, might become burdened by a requirement to perform complex analyses.

There are also downsides to too much information. For example, labeling laws also potentially run the risk of confusing consumers who may already be overwhelmed by existing voluntary ecolabels and other marketing claims.⁸⁴

F. Taxes

Adopt targeted taxes on animal-based food products

Examples. No U.S. cities have enacted taxes on meat or animal-based food products. While Denmark, Germany, and Sweden⁸⁵ have considered taxes targeting meat or other animal-based food products, none have been enacted.

80 Emma Court, [New Federal Requirements to Put Calorie Counts on Menus Might Make Americans Eat Better—But Not In the Way You'd Think](#), Market Watch (May 7, 2018).

81 Marie Boyd, [Serving Allergy Labeling: Mitigating Food Allergen Risks in Restaurants](#), 97 Or. L. Rev. 109, 123 (2018).

82 Maimouna Yokessa & Stephan Marette, [A Review of Eco-labels and their Economic Impact](#), 13 International Review of Environmental and Resource Economics, 119, table 1 (2019).

83 *N.Y. St. Rest. v. N.Y. City Bd.*, 556 F.3d 114 (2d Cir. 2009), citing *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985). Arguably, an environmental disclosure or the GHG impact of menu offerings could be considered “purely factual and controversial” under *Zauderer*, and compelling restaurants to disclose this information could be considered reasonably related to a city's goal of addressing climate change.

84 Margot J. Pollans, [Eaters: Powerless By Design](#), Michigan L. Rev. (forthcoming 2022).

85 Emma Charlton, [This is why Denmark, Sweden and Germany are considering a meat tax](#), World Economic Forum (Aug. 28, 2019).

BOX 5 // FEDERAL PREEMPTION OF FOOD AND MENU LABELS

Local nutritional labels for food products and menus are preempted under federal law. The **Nutritional Labeling and Education Act (NLEA)** specifically regulates nutrition labeling for food products, and prohibits state or local governments from imposing nutrition labeling requirements that differ from what is required in the statute.¹ While the law promotes national uniform nutrition labeling on food products, it also regulates menu labeling at chain restaurants, and certain non-chain restaurants are permitted to opt into the federal requirements.² Notably, however, the statute provides for some exceptions. For example, the NLEA exempts state or local laws requiring labels that provide warnings to consumers regarding food safety.³

The **Federal Meat Inspection Act (FMIA)** and the **Poultry Products Inspection Act (PPIA)** preempt state or local laws that require labels on meat and poultry food products⁴ sold in interstate commerce that are not identical to those set at the federal level.⁵ Under these statutes, the USDA will pre-approve certain product labels that are not deemed to be false or misleading, preempting challenges against these labels. There appears, however, to be room in this federal framework for the labeling of menus,⁶ or labeling of any non-meat or non-poultry food products.⁷ Notably, a number of private corporations have already begun to include labels on food products that meet certain social or environmental standards.⁸

In addition to existing laws that might preempt city labeling of food products and menus, there is always the potential for higher levels of government to introduce new laws to preempt city requirements. For example, after Vermont passed a law requiring special labeling on genetically modified foods, the federal government adopted the **National Bioengineered Food Disclosure Standard**, effectively preempting the state's law.

1 21 U.S.C. § 343-1(a)(4).

2 Restaurants and similar retail food establishments with 20 or more locations are required to provide caloric information on their menus, as well as other nutritional information upon request. ACA § 4205. Other restaurants may voluntarily opt in. *Id.* See also [Food Labeling; Nutrition Labeling of Standard Menu Items in Restaurants and Similar Retail Food Establishments](#), 128 Harv. L. Rev. 2098 (2015).

3 ACA § 4205(d)(2). [National Rest. Ass'n v. New York City Dept. of Health & Mental Hygiene](#), 148 A.D.3d 169 (2017) (holding that a city law requiring restaurants to indicate food items with high salt content was not preempted by the NLEA, as it constitutes a safety warning).

4 21 U.S.C. § 453(f) (PPIA) and 601(j) (FMIA).

5 21 U.S.C. §§ 467e (PPIA) and 678 (FMIA); [American Meat Institute v. Leeman](#), 180 Cal. App. 4th 728 (2009) (holding that a point of sale warning on meat products was “labeling” and thus preempted under the FMIA).

6 21 U.S.C. § 601(p) (“The term ‘labeling’ means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.”); *accord id.* § 453(s).

7 The federal Egg Products Inspection Act (EPIA) contains a preemption provision prohibiting state or local jurisdictions from imposing requirements on labeling, packaging, or ingredient requirements that are different from federal law. 21 U.S.C. § 1052(b). There is, however, no equivalent federal law covering dairy products.

8 There are numerous examples of voluntary ecolabels that companies can choose to put on their packaging that indicate the environmental or animal welfare impact of their products. See [Ecolabel Index](#). As part of a pilot program led by Foundation Earth, a non-profit organization backed by the UK government, supermarkets in the United Kingdom have recently begun including “eco scores” on the packing of food items which rank the environmental impact of each item. Foundation Earth, [Pilot Launch](#).

Analogous policies. “Sin taxes” have been imposed on soda or sugar-sweetened beverages in Albany (CA), Berkeley (CA), Boulder (CO), Oakland (CA), Philadelphia (PA), San Francisco (CA), and Seattle (WA).

Benefits. Economic incentives can be highly effective in influencing consumer behavior.⁸⁶ Taxes also help to convey a message that the people who produce and consume a harmful product should pay for the harm that it causes, rather than making taxpayers bear the burden. There is considerable scientific evidence about the cancer risks of processed meats and a targeted tax on these meats in particular might be justified as promoting public health, environmental and animal welfare goals.⁸⁷

Challenges. U.S. cities considering economic incentives, particularly new taxes on meat or animal-based food products, would likely face significant legal, political, and practical hurdles. As a foremost consideration, state law limitations on local governments’ taxation authority may restrict cities’ ability to tax. Cities requiring prior state approval to establish new taxes may have significant barriers to implementing taxes, especially where state and local priorities do not align.⁸⁸ While cities have greater authority to impose fees,⁸⁹ they may still be restricted in how the

revenues from a fee program are used. Moreover, a handful of states, including Arizona, California, Michigan, and Washington have passed preemption statutes severely limiting cities’ authority to impose new taxes or fees on food (or beverage) items or expressly prohibiting their imposition. These statutes may prohibit cities from imposing new taxes, fees, or assessments on any “groceries,” including meat and animal-based food products, or may prohibit selective taxes, fees, or assessment on specific food items.

As a practical matter, municipal taxes that increase the price of animal-based food products may not necessarily lead to a decrease in consumption where people can easily travel outside the taxed area to purchase the products.⁹⁰ Moreover, taxes or fees on animal-based food products may be politically unpopular and seen as unfairly restrictive government intrusions into personal freedom.

Importantly, charges on animal-based food products pose the risk of disproportionately impacting low-income communities. Imposing additional charges would likely increase costs for those who spend a relatively higher proportion of income on food, though there may be ways to reduce the adverse impact of taxes on low-income consumers.⁹¹

86 For example, a study found that Philadelphia’s soda tax, which raised the price of soda by 34%, led to “a 46% reduction in the quantity purchased of taxed beverages in Philadelphia.” Stephan Seiler, Anna Tuchman & Song Yao, [The Impact of Soda Taxes: Pass-through, Tax Avoidance, and Nutritional Effects](#), J. Marketing Research (2020).

87 Wilde et al., [Legal Feasibility of US Government Policies to Reduce Cancer Risk by Reducing Intake of Processed Meat](#) (2019).

88 As an alternative to taxing meat, if groceries are subject to sales taxes, cities might seek to exclude certain plant-based food items from sales taxes. See Jennifer Pomeranz et al., [Legal Feasibility and Implementation of Federal Strategies for a National Retail-Based Fruit and Vegetable Subsidy Program in the United States](#), 98(3) Milbank Quarterly 775 (2020).

89 As a rough guide, “[t]raditionally, user fees are payments for [specific] benefits (either goods or services) provided by a government,” such as a payment to play on a local-

ly-owned golf course. Scharff, [Green Fees: The Challenge of Pricing Externalities Under State Law](#) (2018). Taxes, on the other hand, are levies collected for general government services, which typically go into a general fund for use for any legitimate government expense. See id. at 185-195. “In many states, there are procedural hurdles for imposing taxes that do not apply to user fees and in most states, local governments have less authority to impose taxes than user fees.” Id. at 171.

90 While Philadelphia’s soda tax reduced taxed beverage sales by 46%, researchers have found that “over half of this reduction is offset by an increase in quantity purchased at stores up to 6 miles outside of” the city. Seiler, Tuchman & Yao, [The Impact of Soda Taxes: Pass-through, Tax Avoidance, and Nutritional Effects](#) (2020).

91 For example, customers using SNAP or WIC benefits could be exempted from the tax, as they are exempted from paying the 5 cent fee on paper bag fees in New York City, though such an exemption would likely would not fully deal with the concerns about regressivity. N.Y.S. Dept. of Taxation and Finance, [Paper carryout bag reduction fee](#).

CONCLUSION

As policymakers consider how to increase support for plant-forward diets, they might find it useful to keep in mind several general points.

Experimentation. A great deal of experimentation in food policy and related areas is already underway. Throughout the United States, policymakers are pursuing meat reduction through informational campaigns about plant-based diets, Meatless Mondays in public schools, subsidies for plant-based foods, and more. These experiments have been safer than one might expect, with support from a wide range of stakeholders. These experiments have also been extremely useful: Whether or not they succeed, they provide policymakers with information about what works. Policymakers should continue to experiment with new ideas and update their policies accordingly.

Variability. Every city is different, and every policy area is different. For example, even if some cities are legally and politically able to tax or ban particular meat products at present, other cities might not be able to do that at present. Similarly, even if some cities are legally and politically able to tax or ban other harmful products, they might not be able to do that with particular meat products at present. So, as policymakers learn from interventions in other contexts, it will help for them to take these lessons with a grain of salt: What succeeds elsewhere might or might not succeed here, and at the same time, what fails elsewhere might or might not fail here.

Equity. Food systems impact many groups: producers, distributors, retailers, consumers, workers, animals, and—via health, economic, and environmental impacts—the public at large. New food policies will be more likely to be just and effective when policymakers take into account all relevant stakeholders and impacts. An equitable

and inclusive approach to food policy will enable cities to move towards plant-based food systems that are better for humans, animals, and the environment, while ensuring that everyone has access to adequate food, income, and other basic goods along the way.

A systems approach. Policy changes may be more effective collectively than individually. The meat industry benefits from a variety of social, political, and economic advantages, and attempts to displace this industry will be more effective when they address all of these advantages. For instance, informational campaigns that make plant-based foods more desirable might not help much without economic incentives that make them more affordable, and vice versa. But both of these interventions, together with others, might help a lot. Thus, policymakers might find it useful to experiment with multiple interventions at the same time, paying attention to how these interventions interact with each other, as well as to how they interact with existing policies.

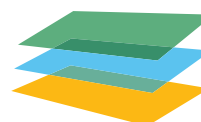
Lead from behind. In many cities, a wide range of people—advocates, workers, consumers, business owners, and more—are already working to reduce meat consumption. Policymakers are often well-positioned to leverage these activities and support citizen-led initiatives—for instance, by working with restaurants to create plant-based menus—rather than creating new initiatives in isolation from those already underway. This approach has many advantages; for instance, citizen-led initiatives are more likely to be sensitive to local conditions and accepted by local communities. So, while policymakers can and should help lead the transition to plant-forward diets, they can often do so most effectively by further empowering their fellow citizens.

TOWARDS **PLANT-FORWARD** DIETS

A Toolkit for Local Policymakers



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