

## **Policies that Challenge Food Sustainability and Public Health**

Baylen J. Linnekin, JD, LLM

Food Law and Policy Attorney; Adjunct Faculty, Department of Anthropology, American University; Adjunct Professor, School of Law, George Mason University

Note: Baylen J. Linnekin is a food lawyer, adjunct law professor, author, expert, and scholar. Learn more about him at <http://www.baylenlinnekin.com>. He is author of the book, [Biting the Hands that Feed Us: How Fewer, Smarter Laws Would Make Our Food System More Sustainable](http://www.amazon.com/Biting-Hands-that-Feed-Sustainable/dp/1610916751/), at <http://www.amazon.com/Biting-Hands-that-Feed-Sustainable/dp/1610916751/>.

Our food system is awash in rules. Some of these rules—like those that help keep toxins or harmful bacteria out of the food supply—are vitally important. But many food rules are wasteful and counterproductive. Rather than combating many of the environmental, economic, and health problems that plague our food system, such rules instead exacerbate these problems. Consider that local laws on the books in many cities around the country prohibit people from growing fruits and vegetables in their yards. If produce can be expensive, and if there are important public-health benefits to be gained from eating more fruits and vegetables, then laws that make it more difficult to grow one’s own food are simply counterproductive.

It’s terrible rules like these that are the focus of my forthcoming book, [Biting the Hands that Feed Us: How Fewer, Smarter Laws Would Make Our Food System More Sustainable](http://www.amazon.com/Biting-Hands-that-Feed-Sustainable/dp/1610916751/). The book, which will be published by leading environmental publisher Island Press in September 2016, focuses on federal, state, and local laws that hinder sustainable food practices and promote unsustainable practices. While there are many definitions of “sustainability,” as I use it in the book the term refers to a set of practices that aspire to maximize the benefits of the food system while minimizing its negative impacts.

[Biting the Hands that Feed Us](http://www.amazon.com/Biting-Hands-that-Feed-Sustainable/dp/1610916751/) looks at several broad types of rules that hinder sustainability. It explores overly strict food-safety rules that leave little room for many entrepreneurs to produce and market safe food. It also examines laws that promote food waste. And the book discusses rules that prohibit people from providing food for themselves and their families outside of the commercial sphere—just like in the example above, where laws sometimes prohibit home gardens. Rules like these don’t just hinder sustainability efforts. They can also have negatively impact nutrition and public-health outcomes. And those impacts are felt in states across the country—including Delaware.

Consider that the state’s cottage food law<sup>1</sup> is one of the most severe in the nation. Cottage food laws, which are on the books in nearly every state, allow home-based food entrepreneurs to make and sell certain homemade foods at farmers markets and elsewhere.<sup>2,3</sup> They generally allow for the home preparation of what are typically referred to as “non-potentially hazardous” foods, or ones that are generally recognized by food-safety experts as posing no inherent risk to consumers. These include many spice mixes, candies, and baked goods. Items that are generally not permitted under cottage food laws include higher-risk items like baked goods that contain meat or foods that require refrigeration.

According to a 2013 Harvard Food Law & Policy clinic report, Delaware is one of only four states in the country that only allows people who are farmers to make and sell foods under the state’s cottage food law. Farmers are often too busy with their day jobs—farming—to have the time to devote to other entrepreneurial food pursuits like those envisioned under cottage food laws. On the other hand, the typical cottage food entrepreneur is often a budding chef, stay-at-

home parent, or full-time worker who's wowed friends with a flavorful dried-herb mix or sourdough bread but who wants to test out the market for the mix or the bread before they invest in a large commercial operation. But Delaware law excludes this latter category of entrepreneur. The law may be good for a handful of farmers. "Anyone else wanting to sell homemade goods for a profit is out of luck," notes a recent Delaware State News piece. And that means Delaware is missing out on a large segment of the potential market for cottage food sales. Thankfully, though, that may be changing.<sup>4</sup>

Just this month, Delaware's Division of Public Health proposed to expand the state's existing cottage food law to include food sales beyond those made just by farmers.<sup>5</sup> Under the proposed rules, any state resident who registers with the state, pays a small cottage food licensing fee, and agrees to abide by basic food-safety requirements could then sell their non-potentially hazardous foods directly to consumers at farmers markets and other outlets in the state. As the proposed rule states, it would "allow for development of a new business community serving a niche market of customers" in Delaware.

While loosening Delaware's overly burdensome cottage food law is likely to help small food entrepreneurs throughout the state, it's unlikely to hurt food safety. There's no evidence that rates of foodborne illness differ in states with cottage food laws than in those that lack such laws. And if the public-health community is concerned with the prevalence of overly processed foods in our diets, rules that bring more buyers and sellers to farmers markets and that permit the sale of homemade (rather than commercially processed) foods is one way to help Delaware consumers make important changes to their own diets.

While Delaware is home to at least one needlessly burdensome food-safety rule—its existing cottage food law—the state is also, like every state in America, grappling with rules that promote food waste, a term that refers to raw or processed food that is edible but that goes uneaten and is left instead to rot or spoil. This problem is dramatic in scope. As I describe in [Biting the Hands that Feed Us](#), the most recent USDA figures show that Americans wasted 133 billion pounds of food in 2010. But the wasted food is just one part of the problem. Consider all of the land, fuel, pesticides, water, transportation, and labor that it took to produce and transport the wasted food.<sup>6</sup>

Consider, too, that wasted food sent to landfills breaks down into billions of tons of potent greenhouse gases every year. The public health implications of the associated consequences of food waste, including needless pesticide use and greenhouse gas creation, are obvious.

Delaware is one state that's been home to efforts to combat this problem. One notable attempt to deal with food waste in the state—a Port of Wilmington composting project—ended in failure in 2014.<sup>7</sup> In 2007, environmentalists in the state criticized the proposed food-waste composting site even before it opened. In 2014, five years after the site opened, the State Department of Natural resources and environmental control ordered the controversial private facility—which was blamed for noxious odors that harmed the quality of life for thousands in the area—to close.<sup>8</sup>

One problem with this failed approach is that efforts to combat food waste are most effective when they prevent food from being wasted in the first place. Can we turn programs that waste food into ones that save it from being wasted? One program that causes widespread food waste in Delaware and in every American state is the USDA's National School Lunch Program.<sup>9</sup> Research shows the program wastes more than \$1 billion worth of food every year. But potential alternatives exist. As I propose in [Biting the Hands that Feed Us](#), states, including Delaware, should encourage schools, communities, and families to work together to ensure that 1) food that

might be wasted at home instead makes its way into brown bag lunches and 2) food businesses that might otherwise waste healthy, edible food instead provide it to students who can't otherwise afford to bring a brown bag lunch to school. In this way, a program that wastes food like the USDA school lunch program can be turned into one that instead combats food waste.

While Delaware residents can find solutions to combating food waste right at home—as in the case of school lunch—a growing number are also finding find tasty ways to provide food for themselves and their families right in their own yards. Ownership of egg-laying hens is booming across the country. As I detail in Biting the Hands that Feed Us, urban centers like New York, Seattle, and Salt Lake city have recently loosened rules on chicken ownership, thanks to rising demand across the country both for a deeper connection to our food supply and to easier access to farm-fresh eggs, which are an inexpensive way to obtain nutritious protein. But this trend in poultry ownership is being depressed in Delaware by rules that restrict the practice. Consider that in parts of New Castle County, the most populous county in the state, it's illegal for a person to raise egg-laying hens if they live on less than one acre of residentially zoned land.<sup>10</sup> The rule, which serves to exclude most city dwellers, isn't some ancient relic, either. Just this year, in fact, the town of Bellefonte adopted this county code as its own.<sup>11</sup>

The New Castle County rules fly in the face both of the aforementioned nationwide boom in egg-laying hens and, strangely, with Delaware's current celebration of residential poultry ownership. In fact, the State's agriculture department is currently sponsoring a "Happy and Healthy Chicken Contest," a photography contest that asks Delaware residents to submit photographs of their happy and healthy "back yard poultry."<sup>12</sup>

Delaware is home to rules that needlessly limit cottage food sales. It's home—like every state—to rules that encourage food waste and its secondary effects. And the state is home to rules that prevent many residents from gaining cheap protein from their own egg-laying hens. Together, these examples illustrate that food laws that inhibit sustainability are often equally at odds with efforts to promote nutrition and public health. Delaware is not alone in this respect. As I detail in Biting the Hands that Feed Us, many states have similar (and sometimes worse) rules in place. The prevalence of such rules means there is much work that needs to be done. Bad rules must be repealed or fixed. Currently, Delaware is taking steps to fix its defective cottage food law. This is a great first step. But much more needs to be done to ensure that food rules don't restrict efforts to promote sustainability, nutrition, and public health in the First State.

## References

1. Del. code Ann. tit. 3, § 100 (2012).
2. California Dept. of Pub. Health, Approved cottage Foods, <https://www.cdph.ca.gov/programs/Documents/fdbcFOfoodslist.pdf>
3. Condra, A. (2013, Aug). Cottage food laws in the United States. Harvard Food Law & Policy Clinic. Retrieved from: [www.chlpi.org/wp-content/uploads/2013/12/FINAL\\_cottage-Food-Laws-report\\_2013.pdf](http://www.chlpi.org/wp-content/uploads/2013/12/FINAL_cottage-Food-Laws-report_2013.pdf)
4. Bittle, M. (2016, May 8). Delaware looks to lessen limits on homemade food items. Delaware State News. Retrieved from: <http://delawarestatenews.net/government/delaware-looks-lessen-limits-homemade-food-items/>

5. Delaware Department of Health & Human Services. (2016, May 1). Notice of Proposed rulemaking, Division of Pub. Health, 16 Del. c. § 122(3)(u)(1). Retrieved from: <http://regulations.delaware.gov/register/may2016/proposed/19%20De%20reg%20989%2005-01-16.pdf>
6. Buzby, J. C., Hodan, F. W., & Hyman, J. (2014, Feb). The estimated amount, value, and calories of postharvest food losses at the retail and consumer levels in the United States. USDA Economic Research Service, Economic Information Bulletin No. (eIB-121), Retrieved from: <http://www.ers.usda.gov/media/1282296/eib121.pdf>
7. Montgomery, J. (2007, Jun 8). Recycling company wants to compost out-of-state food waste near Wilmington. Green Delaware. Retrieved from: [www.greendel.org/2007/06/08/recycling-company-wants-to-compost-out-of-state-food-waste-near-wilmington/](http://www.greendel.org/2007/06/08/recycling-company-wants-to-compost-out-of-state-food-waste-near-wilmington/)
8. Montgomery, J. (2014, Oct 22). Odor-plagued compost plant ordered to shut down. The News Journal. Retrieved from: [www.delawareonline.com/story/news/local/2014/10/21/odor-plagued-compost-plant-ordered-shut/17674401/](http://www.delawareonline.com/story/news/local/2014/10/21/odor-plagued-compost-plant-ordered-shut/17674401/)
9. Cohen, J. F. W., Richardson, S., Austin, S. B., Economos, C. D., & Rimm, E. B. (2013). School lunch waste among middle school students: Implications for nutrients consumed and food waste costs. *American Journal of Preventive Medicine*, 44(2), 114–121. [PubMed https://doi.org/10.1016/j.amepre.2012.09.060](https://doi.org/10.1016/j.amepre.2012.09.060)
10. New Castle County Del. code., Ch. 4, § 4.02.004, Prohibited animals in certain residential areas, Retrieved from: [https://www2.municode.com/library/de/new\\_castle\\_county/codes/code\\_of\\_ordinances](https://www2.municode.com/library/de/new_castle_county/codes/code_of_ordinances)
11. Town of Bellefonte. Town commission Meeting Minutes. (2016, Jan 11). Retrieved from: [www.townofbellefonte.com/wp-content/uploads/2016/02/TownMeetingMinutes-01-11-16.pdf](http://www.townofbellefonte.com/wp-content/uploads/2016/02/TownMeetingMinutes-01-11-16.pdf)
12. Delaware Dept. of Agriculture. (2016). Happy and healthy chicken contest. Retrieved from: <http://delaware.gov/marketing/agphotos.shtml>

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