



Seeding the City

Land Use Policies to Promote Urban Agriculture

nplan

NATIONAL POLICY & LEGAL ANALYSIS NETWORK
TO PREVENT CHILDHOOD OBESITY


public health
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Introduction

Communities around the country are looking to promote healthier eating by encouraging urban agriculture. “Urban agriculture” is an umbrella term encompassing a wide range of activities involving the raising, cultivation, processing, marketing, and distribution of food in urban areas.

In many communities, urban agriculture takes the form of backyard gardens and community gardens – places on public or private property where neighbors gather to cultivate vegetables and fruits, and even keep bees or raise poultry and small livestock. The food in community gardens is typically grown for the gardeners’ own consumption or donation. Urban agriculture also encompasses urban farms (also called “market gardens” or “entrepreneurial agriculture”) –enterprises, both for- and nonprofit, that grow produce on a larger or more intensive scale for sale.

Urban agriculture in its many forms benefits communities in many ways, promoting *health, environmental sustainability, and economic vitality.*

Increasing the amount of locally grown, minimally processed food promotes community health by expanding residents’ access to fresh, nutritious food and decreasing hunger. Community gardeners eat significantly more fruits and vegetables than both home gardeners and nongardeners, and 56 percent of community gardeners met national recommendations to consume fruits and vegetables at least 5 times per day, compared with 37 percent of home gardeners and 25 percent of nongardeners.^{1,2} Gardeners also eat a more balanced diet, consuming fewer sweets and sugar-sweetened beverages and a wider variety of vegetables.³

Definitions of Urban Agriculture Types

Throughout this toolkit, we use a number of terms to describe urban agriculture activities. These terms are not yet “terms of art” – in other words, different communities may use them to mean different things, and some communities use alternative terminology. Urban agriculture could be defined and classified into many categories (e.g., community gardens with sales versus those without, indoor urban farms versus outdoor, community gardens on institutional land versus those on public land). We’ve chosen to use the following terms for both simplicity and clarity, with the caveat that they should be used or modified as local circumstances dictate. More information on alternative definitions can be found in the model zoning code section of this toolkit.

Urban agriculture is an umbrella term that describes a range of food-growing practices, from backyard gardens to urban farms.

Home gardens are food-producing spaces on private, residential property (multifamily or single family) that are used primarily by the property’s residents or guests.

Community gardens are smaller-scale urban agriculture sites (often serving a neighborhood) where individuals and families grow food primarily for personal consumption or donation.

Urban farms are larger-scale, more intensive sites where food may be grown by an organization or private enterprise, and often include entrepreneurial opportunities such as growing food for sale.

While there is certainly some overlap between these categories, this framework is helpful for understanding both the purpose for and the needs of (in terms of land, people, and other resources) each type of activity.

Urban agriculture promotes environmental sustainability by reducing greenhouse gas emissions caused by transporting food over long distances. It could also increase food security by ensuring a local food source in the event of natural or man-made disasters that interrupt transportation networks.

Urban agriculture provides green space in urban areas and can provide ecological and environmental benefits, such as preventing storm water runoff. Furthermore, adding organic content, such as compost, leaf mulch, and

soil amendments to support plant growth improves both the quality of soil and its water capacity, so that less water is needed to support growth.

Local food promotion also may benefit local economies by providing jobs for local residents. Urban agriculture can boost property values,⁴ promote community engagement, and be part of an effective crime-prevention strategy,⁵ by activating underutilized community space, promoting community engagement, and increasing “eyes on the street” (a term coined by urbanist Jane Jacobs to describe the crime-prevention affect that neighbors and residents have when they are able to watch over space).⁶

At the same time, if not implemented carefully, urban farming could have unwelcome effects. In densely populated cities, residents may not welcome the noise, smells, increased foot and vehicular traffic, and other potential effects. To be successful, urban agriculture must be cultivated in a way that promotes food production without creating a nuisance for surrounding property owners and users. In addition, it should follow safe agricultural practices to protect farmers and gardeners, neighboring residents, and city governments from harm or potential liability costs. With careful planning and zoning, urban agriculture can be successfully and seamlessly integrated into urban environments.

Communities can support, promote, and preserve urban agriculture through land use laws. Land use policies can assist in securing access to and ensuring the preservation of land for agricultural uses. Zoning regulations can ensure that agriculture occurs in suitable locations and under the proper conditions. But there is no one-size-fits-all urban agricultural land use policy. Urban areas vary in availability of land for agriculture, population density, soil suitability, and resident interest. This toolkit sets forth a framework and model language for urban agriculture land use policies that communities can tailor to their particular context and needs.

¹ Litt et al. “The Influence of Social Involvement, Neighborhood Aesthetics, and Community Garden Participation on Fruit and Vegetable Consumption.” *American Journal of Public Health*, 101(8): August 2011.

² Lee SH. “Community gardening benefits as perceived among American-born and immigrant gardeners in San Jose, California.” 2002. Available at: <http://nature.berkeley.edu/classes/es196/projects/2002final/Lee.S.pdf>.

³ *Id.*

⁴ Been V and Voicu I. “The Effect of Community Gardens on Neighboring Property Values.” *New York University School of Law and Economics Working Paper*, 2006. Available at: www.community-wealth.org/_pdfs/articles-publications/urban-ag/paper-been-voicu.pdf.

⁵ Handlin L and Tranel M. “Planting Seeds; Growing Community.” University of Missouri–St. Louis Public Policy Research Center. Available at: www.gatewaygreening.org/assets/pdf/WhitmireStudy_FullReport.pdf.

⁶ Jacobs J. *The Death and Life of Great American Cities*. New York: Random House. ISBN 0-679-60047-7. 1961.



A Framework for Developing Urban Agriculture Land Use Policy

What Are Land Use Laws?

Regulating the use of land is fundamentally a local government function that takes place through planning and zoning laws. Cities and counties derive their power to enact zoning regulations through either their state constitutions or their state enabling acts.⁷ Local governments use zoning and other land use measures to regulate the growth and development of the city in an orderly manner.

Although state laws vary in the type of legal authority they provide to local governments, most states either require or allow local governments to adopt comprehensive plans (also called general, master, or community plans).⁸ While plan requirements vary from state to state, they typically apply to all land within the jurisdiction of the local governmental entity. Comprehensive plans establish long-term guidelines for the permissible land uses in the different areas within the community and guide future public and private development. Common issues addressed in comprehensive plans are land use, transportation and circulation, housing, park and recreation areas, and public facilities.⁹

Zoning is a regulatory mechanism by which a local government divides a community, such as a city or county, into distinct districts with different land use regulations. Simply stated, zoning determines what can and cannot be built, and what activities can and cannot take place, on any given parcel of land.

Local governments have considerable discretion when enacting zoning regulations. Governments enact zoning laws under their “police power” – the power of the government to regulate private conduct to protect and further the public’s health, safety, or general welfare.¹⁰ Courts generally defer to the government’s judgment in determining whether or not a zoning regulation is legal. Because, by its nature, land use regulation cannot

be done with scientific precision, courts presume zoning ordinances are valid and, provided there is a rational basis for different zoning treatment of similar lands, land uses, or land users, courts will generally uphold the regulations.¹¹

Key Questions to Consider

To create an effective urban agriculture land use policy, cities need to consider five key questions:

1. *What form(s) of urban agriculture should the community allow?*

Urban agriculture can range from backyard gardens to community and institutional gardens to commercial farms, and may be operated by a nonprofit or for-profit entity. It also may include farms that existed prior to urban expansion and still operate within city limits. Some communities may wish to allow all forms of agriculture; others may only want to permit them in some areas, or not at all. We encourage communities to plan for a range of possible forms of urban agriculture and to develop policies and regulations appropriate for each type. The model comprehensive plan language and zoning regulations included in this toolkit are designed to allow communities to consider a range of urban agriculture activities and tailor their regulations to match the forms they wish to allow.



2. *Where should different forms of urban agriculture occur?*

Even cities that want to encourage all kinds of urban agriculture are unlikely to want all forms in every part of the community. For example, large commercial farms may not be appropriate in a downtown commercial district. Communities need to consider both the availability of land and neighboring land uses when determining where different forms of urban agriculture will be most compatible. Conducting a land inventory or other comprehensive analysis of sites suitable for urban agriculture before developing zoning regulations may be helpful in answering this question.

3. *Should urban agriculture be a “permitted” or “conditional” use?*

Most cities have “use-based” zoning laws. Use-based codes divide the jurisdiction into distinct districts, such as residential, commercial, multi- or mixed-use, and industrial, and regulate the use and development of the land within the districts based on the designation.¹² Where a particular use of land, such as a community garden, is not included within a community’s zoning code, it is vulnerable to being closed down as “illegal” or displaced by development that is expressly permitted in the zoning district. Local governments can use their zoning ordinances either to permit urban agriculture as-of-right or use a discretionary process known as “conditional use” to impose certain standards and requirements.

Approved, Permitted, As-of-Right, or By Right Use

An “approved,” “permitted,” “as-of-right,” or “by right” use is a use of property allowed “as a right” in the zoning code. If, for example, a community garden is included as an approved use of property in particular types of districts, community members may develop and maintain community gardens in those districts without obtaining a permit, finding, variance, or other government land use approval. (Note that occasionally jurisdictions require “change of use” or “establishing a use” permits when an allowed use changes, and that other, non-land

use permits may be required.) The community may still place restrictions or regulations on that use but, provided that residents comply with those regulations, no land use approval is required. Kansas City, Mo., for example, allows community gardens in residential and other zones as an approved use.¹³

Conditional Use

A “conditional” use is a use that is suitable to a zoning district but not necessarily to every location within that district. For example, urban farms may be appropriately zoned as-of-right in industrial areas, but communities may wish to make them conditional in residential zones. Conditional uses require the landowner to seek approval before using a particular piece of property in that particular manner. In communities where large-scale urban agriculture, on-site sales, or raising animals prompt practical or political concerns, conditional use gives planners and decision makers a tool to ensure that residents’ issues are heard and addressed appropriately when an urban agriculture development is proposed. However, conditional use review can be a time-consuming and expensive process, and the costs associated (which may run into the thousands of dollars) are generally borne by the use permit applicant. Cities can look for other ways to ensure compatibility and mitigate against possible conflicts, such as developing good operating standards (see “Model Zoning Ordinance for Urban Agriculture,” page 20).

4. *What operating standards should be placed on urban agriculture activities?*

Cities need to consider how a particular agricultural activity should be carried out to ensure that the agricultural use is operating safely and does not infringe upon neighboring property owners. Zoning codes may place restrictions on operations of an activity (such as hours of operation, or whether on-site sales or animal rearing are allowed). Such operating standards can be imposed whether the activity is a permitted or conditional use. Providing concrete regulations to guide land use can ensure that operations will be carried out in a way that preserves and enhances the urban environment and is compatible with neighbors.

5. What activities related to urban agriculture should the community allow and what conditions should be placed on those activities?

Accessory or Incidental Use

An “accessory” or “incidental” use is a use that is dependent on or affiliated with the land’s primary use. While practices vary, zoning codes often enumerate accessory uses permitted with the main use. Sometimes a particular land use is permitted but particular accessory uses require express approval.

For example, urban farmers may wish to sell or process produce at the farm site. Or they may wish to build a storage facility. Communities should consider what accessory uses will be allowed on these sites when drafting their zoning code.

Additional Considerations

Suitability of Property

Whether a parcel of land is suitable for agricultural use depends on factors such as access to water, sufficient sunlight, slope, and the soil type, quality, and condition. Guidance on assessing the suitability of a parcel of land for a garden or farm is beyond the scope of this publication, but we list helpful resources in the “Resources” section (see p. 39).

Evaluating Sites for Contamination

One of the greatest concerns in establishing a garden or farm is the safety of the soil, due to environmental contaminants. The EPA’s website offers a number of resources addressing soil testing and safety, including interim guidelines for urban agriculture.^{14, 15} It suggests, in keeping with accepted commercial “due diligence” practice, a two-step approach (similar to the Phase I Environmental Site Assessment [ESA]).¹⁶ First, it suggests researching the past uses of a site to help determine the potential for and type(s) of soil contamination that may be present. Historical research can include searching property records (title documents, deeds), looking at Sanborn fire insurance maps (available at local libraries), talking to people familiar with the site, and contacting your state or local

government’s environmental department to see if they have record of the site. Second, if historical research reveals past uses that suggest the possibility of soil contamination, the EPA recommends soil testing and/or mitigation measures.¹⁷

Municipalities and urban farmers and gardeners may be concerned about the costs of these measures and staff capacity for evaluating test results and proposed remediation/mitigation plans. In addition, municipalities may be concerned about potential liability in the event of harm to garden users from exposure to contaminants. There is no standard answer to this issue, and many cities have not addressed it in their urban agriculture land use policies. Our model zoning ordinance includes options for soil testing requirements that range from submitting the results of a site evaluation and plan for remediation (if necessary), to requiring raised beds with non-contaminated soil and protections from soil dust, to conducting a Phase I ESA (see p. 25). In practical terms, any requirement to submit information prior to establishing an urban agriculture use is likely to go hand-in-hand with urban agriculture as a conditional, rather than permitted, use. Applicants would submit their findings as a component of the conditional use process.

Where historical industrial use, illegal dumping, or presence of fill or demolition debris suggests likely contamination, local governments may wish to seek EPA, state, or local brownfield grants or technical assistance to identify best practice measures needed to remove or reduce contaminants or exposures to identified or suspected hazards. Municipalities should partner with community-based nonprofit organizations, state university extensions, or other local partners to educate gardeners and farmers on how to conduct and interpret soil testing and how to mitigate exposure to potential hazards.

Farm Management Plans

Under federal law, some types of agriculture, particularly those involving large agricultural operations, are required to submit management plans to ensure that their operations are not harming the environment. In King County, Wash., the King Conservation District

works with farmers to develop a farm management plan to improve farm productivity and reduce impacts on natural resources.

Seattle has applied the concept of farm management plans to urban farms. Requiring a farm management plan for larger farms or more intensive cultivation practices can assist in preventing adverse effects on the environment and neighbors. In Seattle, urban farms in residential zones must apply for a conditional use permit. The applicant must provide a proposed farm management plan that includes a site plan; the type and intended use of equipment; the type and use of pesticides or other agricultural chemicals to be used and frequency and duration of use; whether the farm will require drainage approval; a proposed sediment and soil erosion plan; and any required mitigation measures.¹⁸

Madison, Wis., has proposed an ordinance requiring urban farms to prepare a management plan if they intend to engage in animal husbandry, food processing, manure spreading, application of agricultural chemicals, use of heavy equipment, or anticipate off-street parking of more than 10 vehicles. The management plan must address how the applicant will manage these activities to avoid impacts on surrounding land uses and natural systems.

⁷ 8 McQuillin Mun. Corp. § 25.48 (3d ed. 2009).

⁸ Breggin L and George S. "Planning for Biodiversity: Sources of Authority in State Land Use Laws." *Virginia Environmental Law Journal*, 22 (81-121): 88-91, 2003.

⁹ *Id.*

¹⁰ Ziegler E, Rathkopf A and Rathkopf D. 1 Rathkopf's The Law of Zoning and Planning § 1:2 (4th ed. 2009).

¹¹ Ziegler E, Rathkopf A and Rathkopf D. 1 Rathkopf's The Law of Zoning and Planning § 4:1 (4th ed. 2009).

¹² Another form of zoning that is becoming increasingly popular with smart growth advocates is "form-based zoning." While form-based zoning is broader in how it defines allowed uses, use definitions still apply. Most of the provisions here could be applied to form-based codes. For more information, see Section V of "How to Create and Implement Healthy General Plans." Available at: www.phlpnet.org/healthy-planning/create_implement_gp.

¹³ Kansas City, Mo. Zoning and Devel. Code Table 110-1, §88-312-02B (2010).

¹⁴ See "Brownfields and Urban Agriculture: Interim Guidelines for Safe Gardening Practices," Summer 2011, available at: http://www.epa.gov/brownfields/urbanag/pdf/bf_urban_ag.pdf

¹⁵ More information is available at: <http://clu.in.org/ecotools/urbangardens.cfm#subhead1>

¹⁶ A Phase I Environmental Site Assessment, also known as "All Appropriate Inquiries," is the process of conducting due diligence to determine prior uses and ownership of a property and assess conditions at the property that may be indicative of releases or threatened releases of hazardous substances at, on, in, or to the property. "EPA Brownfields Grants, CERCLA Liability, and All Appropriate Inquiries." EPA Publication No. 560-F-09-026. April 2009. Available at: www.epa.gov/brownfields/aai/cerclafs.pdf

¹⁷ *Id.*

¹⁸ Seattle, WA. Municipal Code § 23.44.051(B)(1) (2010).



Preserving Urban Agriculture

Many urban farmers and gardeners are concerned about securing their plot of land over time. Some urban agriculture is developed as a temporary land use, particularly when a plot of land is available only for a short term. But usually, gardeners and farmers seek long-term use of the land, given the time, energy, and investment needed to improve soil quality for growing healthy plants. Preserving agricultural uses can be challenging, especially in densely populated cities where available land is scarce and where public and private interests often compete for use of the land. Here we offer a brief discussion of some of the ways to protect agricultural uses (for more information, see the Resources section on page 39).

Land tenure for urban agriculture is determined by both the right to possess or occupy the land – in the present and the future – and the right to use the land for agriculture. There are a number of legal tools to ensure a gardener’s right to occupy a plot of land: ownership, a property lease, or occupancy through a land trust or conservation easement. The right to use the land for urban agriculture occurs through zoning laws.

Depending on the form of occupancy and the zoning laws, urban agriculture may have varying levels of protection. Least secure would be, for example, a community garden planted in a zoning district that does not allow for urban agricultural uses and whose gardeners have no right to occupy the land. That garden would be very vulnerable to displacement. A garden created in a zoning district that permits urban agriculture and whose gardeners have entered into a lease with the owner to use the land as a garden would be protected for the duration of the lease. Most protected would be a garden in a zoning district that permits urban agriculture and whose gardeners own the underlying property or whose owners are required to allow continued use of the property for agriculture.

The greatest level of protection is not always possible or desirable. And communities will always change; no strategy individually or even in combination can

guarantee that urban agriculture will be permanently protected. Additionally, protection strategies may vary depending on the urban context (growing versus shrinking cities; cities that wish to protect periurban or existing rural agriculture versus those establishing urban agriculture as a new use). Still, communities should be aware of the level of protection each strategy provides and apply them as appropriate.

Open Space Zoning Districts

Some cities preserve undeveloped property or recreation space by designating those areas as “protection districts” or “overlay protection zones.” Protection districts, such as open space districts, generally apply to publicly owned open and recreation spaces but can also apply to private land, where, for example, the community requires a development to contain open or undeveloped land on a portion of the site. Applying open space zoning protections to privately owned land requires caution, since government cannot “take” property without providing adequate compensation.

For more information on takings law, see PHLP’s “Limits on Government Power over Private Property: What Advocates and Government Officials Need to Know About Takings Law.” Available at: www.nplan.org/nplan/products/takings_survey.

Open space districts enhance the protection of land as open or green space, because once the district is established, a change of use requires a vote by the local legislative body (e.g., a public hearing and a vote by the city council) or, in some places, a vote by the citizens. In contrast, changing property use from one allowed use to another *within* a district – for example, replacing a community garden with a residential development in a residential district where both uses are allowed – generally does not require public hearing or a policy change.

Boston, for example, has enacted an ordinance creating community garden open space subdistricts.¹⁹ This ordinance allows community gardens to be designated as open space subdistricts to receive the same protections as other open space uses.

Land Banks

Property ownership, while providing a high level of protection for urban agriculture, can be challenging – especially when the cost of acquiring land is significant or when there isn't a willing seller of the property. Land banks and land trusts offer ownership strategies that can be well suited to urban agriculture. A land bank is a governmental entity that takes title to tax-delinquent property, secures the property, and transfers it back to private ownership with a clear title, so that the property can be put to productive (and tax-paying) use.²⁰ In January 2009, the Ohio legislature authorized a county-wide land bank to acquire tax-delinquent properties in Cuyahoga County, Ohio, which includes Cleveland and adjacent suburbs.²¹ Cleveland hopes to acquire the vacant land and put some of it to use for agricultural purposes.²² Columbus, Ohio, is also developing community gardens on land bank properties it has acquired.²³

Conservation Easements and Land Trusts

A conservation easement is a right or interest in property that imposes restrictions or obligations on the property's owner or lessee to retain or protect natural, scenic, or open space values of the property and ensure its availability for agricultural, forest, recreational, or open space use. The land remains in existing ownership but the easement “runs with the title,” ensuring that the protections remain in place regardless of who may own the land in the future. Troy Gardens, in Madison, Wis., is an example of a conservation easement established over property owned by the Madison Area Community Land Trust to protect land for use as a community garden.²⁴ The easement may be held by a governmental entity or by a qualified nonprofit entity, such as a land trust.

Land trusts are nonprofit entities that work to conserve land by assisting in land or conservation easement acquisition or by managing the land or easements. The Southside Community Land Trust in Providence, R.I., was established to purchase a blighted, vacant city lot and turn it into a community garden. Now, the trust manages a number of garden sites (some of which they own, others they lease) throughout Greater Providence.²⁵

Leases on Public and Private Land

A lease is a contract where the owner of land gives another party the right to use and occupy the land in exchange for receiving a benefit (usually rent). The party's right to use the land lasts for the term of the lease (provided that no conditions of the lease are violated or “breached”). Many communities have underutilized land – owned by government entities, individuals and other private entities, and nonprofit entities such as faith-based organizations, local colleges, universities, or hospitals – that could be used for a range of urban agriculture activities.

PHLP's “Ground Rules: A Legal Toolkit for Community Gardens” provides legal resources for establishing community gardens by lease agreement. Available at: www.nplan.org/nplan/products/CommunityGardenToolkit.

¹⁹ Boston, Mass. Zoning Code § 33-8.

²⁰ LaCroix C. “Urban Agriculture and Other Green Uses: Remaking the Shrinking City.” *Urban Lawyer*, 225(41): Spring 2010.

²¹ *Id.*; S.B. 353, 127th Gen. Assem., Reg. Sess. (Ohio 2007).

²² *Id.*

²³ More information on the community garden program in Columbus is available at: <http://development.columbus.gov/landdevelopment/content.aspx?id=40112>.

²⁴ More information about Troy Gardens, including its conservation easement language, is available at: www.troygardens.net.

²⁵ More information about the Southside Community Land Trust is available at: <http://southsideclt.org>.

Other Laws Affecting Urban Agriculture

The model policies included in this toolkit address only one aspect of urban agriculture: where and under what conditions it may occur within a community. There are many other legal and practical issues that affect urban agriculture that should be considered when implementing these model land use policies. Below, we provide a summary of some of the federal, state, and local laws that may affect urban agriculture.

The Americans with Disabilities Act

The Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities.²⁶ The ADA applies to all state and local governments and to private entities that are places of “public accommodation.”

The ADA requires all local government facilities to be physically accessible to people with disabilities. More specifically, any government facility built or altered after January 26, 1992, must be “readily accessible to and usable by” persons with disabilities. To meet this standard, buildings and facilities must be built in strict compliance with either the ADA Standards for Accessible Design or the Uniform Federal Accessibility Standards (UFAS).²⁷

Community gardens and urban farms located on government property, operated through a government program, or open to the public generally are subject to some provisions of the ADA. However, neither the ADA Standards for Accessible Design nor the UFAS provide design standards for urban agriculture, so there are no explicit federal design standards for local communities to follow to ensure compliance with the ADA.

ADA requirements for playgrounds offer some comparison for determining what an accessible community garden requires. Among other requirements, compliant playgrounds must have an accessible entrance, accessible routes connecting certain “play components” (swings, spring riders, etc.), and sufficient maneuvering space to use those components.²⁸

Increasing numbers of communities have established community gardens to accommodate people with disabilities. The Palm Desert, Calif., community garden has 151 accessible gardening plots.²⁹ In June 2007, Somerville, Mass., opened a garden designed to be accessible for those with physical disabilities.³⁰ The Brookfield Farm in Amherst, Mass., is a community-supported farm with an accessible garden.³¹ The City of Cambridge, Mass., requires all newly established community gardens to contain a minimum of 5 percent, but not less than one, of the plots to have raised beds.³²

Broadly, communities are interpreting accessibility to include:

- Accessible routes and entrances to the facility as established by the ADA Standards for Accessible Design or the UFAS.³³
- Accessible routes of sufficient width so that wheelchair users can navigate between garden components (garden beds or plots).³⁴
- Raised beds or plots about two feet high and 30 inches wide for disabled access from one side or 60 inches wide to be accessible from all sides, in at least some portion of the garden or in some gardens within a larger gardening program.³⁵

Because gardening is a lifelong physical activity enjoyed by people of diverse ages and abilities, community gardens designed to be accessible for those with disabilities will likely also benefit children and seniors.

Pesticide and Other Environmental Laws³⁶

A complex web of federal and state environmental laws and incentive programs regulate aspects of agriculture. Before including environmental or pesticide regulation in local land use laws, it is important to check with your local government attorney. We briefly describe a few of the most pertinent laws here.

Federal, and in some places state, laws regulate the use of pesticides. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) is the primary federal law controlling the regulation, sale, distribution, and use of

pesticides in the United States.³⁷ FIFRA requires the EPA to review and register pesticides for specified uses and prohibits the use of any pesticide not registered by the EPA. It also governs training and licensing requirements for pesticide applicators and a range of handling, storage, and disposal requirements. In addition, under the Federal Food, Drug, and Cosmetic Act (FDCA), the EPA sets maximum residue or tolerance levels for pesticides used in or on foods or animal feed.³⁸ FIFRA allows a state to regulate the sale or use of any federally registered pesticide, provided that the state does not impose less stringent requirements than allowed under the federal law.³⁹ Some states have enacted their own laws regulating pesticides.⁴⁰

A local government's ability to control pesticide application or use is generally limited.⁴¹ FIFRA provides that states may regulate pesticides, but it does not specify that local governments may do so. In addition, some states expressly preempt (or prohibit) cities and counties from regulating pesticides.⁴² As a result, most urban communities will be prevented from imposing stricter pesticide standards within their city than allowed by their state – an issue that cities must consider when allowing larger-scale agricultural operations in densely populated areas.

The federal Coastal Zone Management Act (CZMA) and the Coastal Zone Act Reauthorization Amendments of 1990 protect the natural, commercial, recreational, ecological, and aesthetic resources of coastal and Great Lakes areas.⁴³ CZMA makes funding available to each of the 35 states with coastal zone areas to control nonpoint source pollution – generally caused by runoff or snowmelt from cropland, pastures, barnyards, and impervious surfaces such as roads, parking lots, and roofs. These states must develop state Coastal Nonpoint Pollution Control programs with enforceable policies. These state programs may require farmers or ranchers to implement particular management practices or apply for and obtain certain permits.⁴⁴

In addition to laws regulating the environment, the federal and some state governments offer many grants, loans, and other incentive programs to improve

environmental practices in agriculture and other industries. The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) is the federal agency that works to conserve natural resources on private lands.⁴⁵ The NRCS manages many agricultural programs to assist farmers in environmentally sound practices. Conservation districts, local units of government established under state law, carry out natural resource management programs at the local level. Conservation districts coordinate assistance from all available sources—public and private, local, state, and federal—in an effort to develop locally driven solutions to natural resource concerns.⁴⁶

Brownfields and Environmental Cleanup Laws

Federal and state laws also regulate the ability of public and private property owners to develop or reuse land that contains toxic or other harmful chemicals (including developing such sites as urban agriculture).⁴⁷ The EPA, under the Small Business Liability Relief and Brownfields Revitalization Act, provides competitive funding to state, regional, local, and tribal governments to assess and clean “brownfield” properties, defined as “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”⁴⁸ The EPA's brownfield program also provides competitive grants for job training to community-based organizations and workforce development boards to train residents living in or near a brownfield area to work in a range of environmental occupations. The EPA also funds regional organizations to provide technical assistance to communities on brownfield issues and provides funding for the assessment and cleanup of sites.⁴⁹

In addition to funding, the Brownfields Act provides certain legal protections to landowners seeking to reuse brownfield sites. In order to receive the protections and be eligible for funding, as well as satisfy most commercial lender requirements, the property owner (including state and local governments) must conduct an “All Appropriate Inquiries,” also known as a Phase I, Environmental Site Assessment (ESA). This assessment is the process of conducting due diligence to determine prior uses and ownership of a

property and to assess conditions at the property that may be indicative of releases or threatened releases of hazardous substances at, on, in, or to the property.⁵⁰

Right-to-Farm Laws

“Right-to-farm” laws seek to protect existing farms from lawsuits by neighboring property owners seeking to curb agricultural activities. All 50 states have some type of right-to-farm law.⁵¹ As urban areas began to expand, existing farms were subject to lawsuits from new neighbors alleging that the agricultural activities were a “nuisance,” a legal term meaning a condition, activity, or situation (such as a loud noise or foul odor) that interferes with the use or enjoyment of property. States passed the right-to-farm laws primarily as a means to protect existing farms from those nuisance lawsuits. In its most basic form, a right-to-farm law establishes that no agricultural operation will be deemed a nuisance due to changed circumstances in the area where it is located, so long as the operation is not conducted in a negligent or unlawful manner and was not a nuisance when it was begun.

Generally, a state’s right-to-farm law should not impede the development of a community’s urban agriculture zoning laws. But because in some states right-to-farm laws regulate farm management practices, they may inhibit a community’s ability to regulate farm management practices through their land use policies.⁵² For more information, contact the National Agricultural Law Center at the University of Arkansas School of Law (www.NationalAgLawCenter.org).

Laws Regulating Commercial Farms and Produce Sales

Urban farmers are often interested in selling their harvest or products made from food they’ve grown. Zoning laws regulate only whether sales may occur on a particular parcel of property. Farmers, whether nonprofit or for-profit, must comply with other federal, state, or local laws before they may sell their produce or food products. Compliance may include registering and obtaining various permits and licenses. Because these laws vary by locality, we can provide only a brief overview of the types of laws that likely apply. The National Agricultural Law Center

has a much more comprehensive guide, titled “Arkansas Direct Farm Business Guide.” Before selling produce or food products, it is important to seek local guidance.

State and Local Laws Establishing and Regulating a Business Entity

To conduct their business, persons or entities that run a business, including the selling of produce, must choose a business entity: sole proprietor, partnership, cooperative, for- or nonprofit corporation, or other type allowed by their state. Produce sellers must follow state law when forming their entity, which generally includes registering their entity with the Secretary of State or other comparable office.

Some municipalities require business entities located within their jurisdiction to obtain a business operating license, which is essentially a requirement that the business register locally and pay a fee.

Federal, State, and Local Taxation Laws

Some sellers may need to register with the federal government and obtain a federal employer identification number. In many states, business entities, even nonprofit organizations, must obtain a sales and use tax permit (even when the products they are selling are not taxable) from the state’s finance department or equivalent entity. Most entities must report earned income, and likely pay taxes on it, to the federal and state governments. Sellers may need to collect and pay state sales tax on the goods they sell. Finally, those enterprises with employees must withhold and submit federal and state withholding taxes.

Federal, State, and Local Employment and Volunteer Laws

Farms that employ workers are subject to federal, state, and sometimes local laws regulating employment conditions and safety, wages and benefits, unemployment insurance, and workers’ compensation. Similarly, federal and state laws regulate the use of volunteer and child labor.

PHLP’s “Volunteers and Liability: The Federal Volunteer Protection Act” provides an overview of federal legal protections that shield volunteers from liability. Available at: www.nplan.org/nplan/products/volunteers-and-liability-federal-vo.

Federal and State Food Safety Laws

Federal laws regulate health and safety related to growing and processing some agricultural products, primarily those sold interstate, but many states apply those same laws and standards to products grown in-state that may not be subject to federal laws. Dairy products, eggs, and fish and animal operations are governed by additional federal and state regulations.

State laws also regulate the health and safety of retail food sales. Forty-nine of 50 states have retail food laws based on the FDA's model Food Code versions from 1993 or later.⁵³ Updated most recently in 2009, the model Food Code sets forth sanitation and food-handling requirements for restaurants, retail food stores, and food-processing operations.⁵⁴ Briefly, the model code establishes definitions; sets sanitation standards for personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, and permit suspension.⁵⁵

The model Food Code exempts from its provisions produce stands that sell only whole, uncut fresh fruits and vegetables.⁵⁶ Many, but not all, states have included this exemption in their retail food laws. In those states, sellers of fresh whole produce at produce stands are not required to obtain a food handler's license or permit, and are not subject to the other requirements under their food retail code. Those who make and sell products processed from fresh produce – even if sold at the produce stand – generally must comply with the food code's safety requirements for food handling and preparation, which may require undergoing training, obtaining a license, and preparing food in a commercial kitchen.

Animal Welfare and Control Laws

A number of cities regulate the keeping of farm animals under an animal welfare or control ordinance in the municipal code. These codes limit which animals are allowed within the community and often specify the conditions that are required for lawful keeping of specified animals. Some codes require owners to obtain a permit and pay a fee to keep animals such as chickens

or bees on their property. In addition to paying a fee, Minneapolis requires prospective bee or chicken keepers to obtain the written approval of 80 percent of the occupants of real estate located within 100 feet of the premises before Animal Care and Control will issue a permit.⁵⁷ The Seattle City Council approved an amendment to its code that allows residents to keep miniature goats as pets with a license similar to dog and cat owners.⁵⁸ Milwaukee has a detailed animal code regulating the keeping of chickens and bees, which specifies standards for coop construction, feeding, setbacks, and flyway barriers.⁵⁹

State and Local Building Safety Laws

If farmers or gardeners erect structures, even sheds or other storage facilities, they need to adhere to state and local building code laws.

Medical Marijuana Laws

A number of states have laws approving the use and cultivation of marijuana (*cannabis sativa*) for medical use. Because the cultivation and sale of marijuana raises unique issues beyond the scope of other types of agriculture, communities may want to address marijuana cultivation separate from a general urban agriculture land use policy.

Local Composting Laws

A number of communities have laws addressing garden compost. Some, like San Francisco, require city residents or businesses to separate out their garden and food waste for curbside removal. The trash collector is then required to remove the biowaste to a composting facility.⁶⁰ Others, like Minneapolis and Chicago, allow noncommercial backyard composting, but regulate it by limiting the type of waste allowed in composting and set requirements for the size and placement of composting containers on a property.⁶¹ Chicago encourages composting by providing training and giving rebates to those who purchase composting bins.⁶²

- ²⁶ 42 U.S.C. §§ 12101 *et. seq.* The U.S. Department of Justice, responsible for enforcement of the ADA, has a website containing the statute, regulations, and many helpful technical assistance documents at: www.ada.gov.
- ²⁷ The ADA Standards for Accessible Design are located in 28 CFR pt. 36 app. A. The Uniform Federal Accessibility Standards (UFAS) are the architectural design standards originally developed for facilities covered by the Architectural Barriers Act, a law that applies to buildings designed, built, altered, or leased by the federal government. State and local governments have the option to use the UFAS or the ADA Standards to meet their obligations under the ADA. “Americans with Disabilities Act: Questions and Answers,” U.S. Equal Opportunity Commission, U.S. Department of Justice Civil Rights Division (Nov. 2008). Available at: www.ada.gov/q%26aeng02.htm.
- ²⁸ 36 C.F.R. Part 1191 Appendix A §§15.6 *et. seq.* Play Areas.
- ²⁹ More information on the Palm Desert community garden is available at: www.cityofpalmdesert.org/Index.aspx?page=422.
- ³⁰ More information on the Somerville garden is available at: www.somervillema.gov/section.cfm?org=consbd&page=233.
- ³¹ More information is available at: www3.brookfieldfarm.org/accessibleGarden.html.
- ³² City of Cambridge Community Garden Program Policy for City-Owned Property (rev. January 2009). Available at: www.cambridgema.gov/CityOfCambridge_Content/documents/2010-garden_policyrevised.pdf.
- ³³ The ADA requires all public facilities to have an entrance on an accessible route. 28 CFR pt. 36, app. A, §36 describes the design requirements for an accessible route. *See also* “Making Your Garden Accessible,” Together 4 Health: Partners for Healthy Living (2008). Available at: www.together4health.ca/workgroups/community-gardens-waterloo-region/accessible-gardens.
- ³⁴ “Making Your Garden Accessible” *supra* note 28. The City of Palm Desert’s community garden has raised plots that are four feet wide for easy maneuvering and gardening from either side of the plot.
- ³⁵ Information on how to build raised beds is available from the Dowling Community Garden in Minneapolis, Minn., at: www.dowlingcommunitygarden.org/pages/projects.htm#.
- ³⁶ The Environmental Protection Agency is charged with enforcing federal laws protecting the environment. The EPA provides a summary of these federal laws in “Major Existing EPA Laws and Programs That Could Affect Agricultural Producers,” Environmental Protection Agency Agricultural Counselor Office of the Administrator (June 2007). Available at: www.epa.gov/agriculture/agmatrix.pdf.
- ³⁷ 7 U.S.C. § 136a *et seq.*
- ³⁸ 7 U.S.C. § 136a.
- ³⁹ 7 U.S.C. § 136v(a).
- ⁴⁰ *See, e.g.*, Cal. Food & Agric. Code §§ 12811 *et. seq.*
- ⁴¹ 1 L. of Chemical Reg. and Hazardous Waste § 3 :90 (2011).
- ⁴² *See, e.g.*, Cal. Food & Agric. Code § 11501.1.
- ⁴³ 16 U.S.C. § 1451.
- ⁴⁴ 16 U.S.C. § 1455.
- ⁴⁵ More information on the Natural Resources Conservation Service is available at: www.nrcs.usda.gov.
- ⁴⁶ More information on conservation districts is available at: www.nrcs.usda.gov/programs/rcd/pdf_files/RCD_2009_factsheet.pdf.
- ⁴⁷ The EPA also has laws and programs directed toward “Superfund” sites (abandoned hazardous waste sites).
- ⁴⁸ 42 U.S.C. 9601(39)(a).
- ⁴⁹ More information on the EPA’s brownfield programs is available at: www.epa.gov/brownfields/index.html.
- ⁵⁰ “EPA Brownfields Grants, CERCLA Liability, and All Appropriate Inquiries.” EPA Publication No. 560-F-09-026. April 2009. Available at: www.epa.gov/brownfields/aai/cerclafs.pdf. For more information on Brownfields Redevelopment and Local Agriculture, see “How Does Your Garden Grow? Brownfields Redevelopment and Local Agriculture.” EPA Publication No.560-F-09-024. March 2009. Available at: www.epa.gov/brownfields/success/local_ag.pdf. More information on “All Appropriate Inquiries” requirements is available at: www.epa.gov/brownfields/regneg.htm, and “All Appropriate Inquiries Final Rule,” EPA Publication No. 560-F-05-240. November 2005. The standards and practices for conducting “All Appropriate Regulations” are set forth in regulations at 40 CFR Part 312.
- ⁵¹ Centner T. “Governments and Unconstitutional Takings: When Do Right to Farm Laws Go Too Far?” 33 *Boston College Environmental Affairs Law Review*, 2005. Available at The National Agricultural Law Center at the University of Arkansas School of Law: www.NationalAgLawCenter.org.
- ⁵² *See, e.g.*, Mich. C.L.A. § 286.474(c) (“ . . . it is the express legislative intent that this act preempt any local ordinance, regulation, or resolution that purports to extend or revise in any manner the provisions of this act or generally accepted agricultural and management practices developed under this act”).
- ⁵³ F.D.A. “Real Progress in Food Code Adoptions.” Quarterly Report. December 31, 2010. Available at: www.fda.gov/food/foodsafety/retailfoodprotection/federalstatecooperativeprograms/ucm108156.htm. North Carolina has adopted a law based upon the 1976 model food service code. The District of Columbia, Puerto Rico, and the Virgin Islands have also adopted versions of the Food Code. Of the 345 federally recognized tribes with food service operations, as of February 2010, only 63 have adopted a tribal food code, 54 of which are based on the FDA Model Food code. (*Id.*)
- ⁵⁴ F.D.A. Model Food Code, Preface § 3 (2009).
- ⁵⁵ F.D.A. Model Food Code § 1-103.10 (2009).
- ⁵⁶ F.D.A. Model Food Code § 1-202.10(B) Food Destablishment. (3)(b) (2009).
- ⁵⁷ Minneapolis, MN Code of Ordinances. Title 4 §§ 70.10 (2011).
- ⁵⁸ Seattle, WA City Council Ordinance 122508, passed September 24, 2007. Seattle, Wash. Municipal Code § 23.42.052 (2010)
- ⁵⁹ Milwaukee, WI Common Council Ordinance 101416, passed May 24, 2011.
- ⁶⁰ San Francisco, Cal. Environment Code ch. 19.
- ⁶¹ Title 12 Minneapolis, Minn. Muni. Code § 244.770; Chicago, Ill. Muni. Code § 7-28-715.
- ⁶² More information on the Chicago Sustainable Backyard Program is available at: www.cityofchicago.org/city/en/depts/doc/provdrs/nat_res/svcs/how_can_i_get_a_rainbarrelorcompostbinrebateform.html.

Model Comprehensive Plan Language for Urban Agriculture

The following comprehensive plan language establishes a land use policy to promote urban agriculture as an important community feature. The language is designed to be tailored to the needs of an individual community. The local jurisdiction will need to determine where to add the language to its existing plan and/or include it during a comprehensive plan update, make other amendments as necessary for consistency, and follow the appropriate procedures for amending and adopting comprehensive plans. Language written in italics provides different options or explains the type of information that needs to be inserted in the blank spaces in the policy. “Comments” describe the provisions in more detail or provide additional information.

More information about comprehensive plans and healthy land use planning can be found in PHLP’s “How to Create and Implement Healthy General Plans.” Available at: www.phlpnet.org/healthy-planning/create_implement_gp.

Goal 1: Protect existing and establish new urban agriculture sites, including home gardens, community gardens, and urban farms as important community resources that improve healthy food access and food literacy; build social connections; offer recreation, education, and economic development opportunities; and provide open space and a source of local food.

Objective 1a: Ensure that urban agriculture can flourish on public and private property, where appropriate, throughout the [jurisdiction].

Policies:

- [The Planning Department/responsible entity] will identify and eliminate any zoning, design, or other restrictions on home gardens and edible landscaping on residential properties, including [single-family, multifamily, and residential mixed use].
- Adopt zoning regulations that establish community gardens as a permitted use in appropriate locations. Community gardens are compatible with the [insert names (e.g., Residential, Multifamily, Mixed Use, Open Space, Industrial, Public Facility)] land use designations shown on the [Comprehensive Plan land use map].
- Adopt zoning regulations that establish urban farms as a conditional [or permitted] use in appropriate locations. Urban farms are compatible with the [insert names (e.g., Commercial, Industrial)] land use designations shown on the [Comprehensive Plan land use map].
- [The Planning Department/responsible entity] will identify existing and potential community garden sites on public property, including parks, recreation and senior centers, public easements and right-of-ways, and surplus property, and give high priority to community gardens in appropriate locations.
- [The Planning Department/responsible entity] will identify existing and potential urban farm sites within the community (including on private and public land), and remove regulatory barriers to developing urban farms where appropriate.
- In collaboration with relevant [jurisdictional] agencies as well as private and nonprofit stakeholders, develop an Urban Agriculture Plan for the [jurisdiction] that 1) identifies and inventories potential urban agriculture sites,

2) recommends policy and programmatic revisions as appropriate, and 3) sets forth specific actions to support and expand urban agriculture, including home gardens, community gardens, and urban farms.

COMMENT: The policy to develop an “Urban Agriculture Plan” might seem redundant given the other detailed policies presented here, but we offer this as an additional option for communities to consider as they update their comprehensive plans. Some jurisdictions may prefer to develop a topical plan (similar to an open space plan or pedestrian master plan) specifically focusing on urban agriculture, rather than tackle all the relevant policies and actions for urban agriculture in their comprehensive plan. For example, the City of Alameda, Calif., is currently developing an “Urban Farm and Garden Plan.” However, the legal weight of policies not adopted as part of the comprehensive plan may be less than if they were included there. Communities should weigh the pros and cons of each option.

Objective 1b: Distribute urban agriculture resources equitably throughout the community.

Policies:

- [The Planning Department/responsible entity] will identify neighborhoods that are underserved by open space and healthy eating opportunities, including access to existing urban agriculture resources.

COMMENT: Communities should undertake an assessment of existing conditions relevant to urban agriculture, such as existing urban agriculture sites, parks, and open space, and nutrition-related health data, such as food insecurity. Such an assessment could be undertaken as part of the existing conditions analysis for a comprehensive plan or as a future action (including as part of an urban agriculture master plan). Understanding where needs are greatest will help direct public resources to be most beneficial. The lead or responsible implementing partner may be the planning department, or it may be another public or private partner, such as the local health department.

- Establish a standard for the creation and operation of one community garden of no less than [one] acre for every [2,500] households.

COMMENT: The standard presented here is based on Seattle’s standard – one community garden per 2,500 households.⁶³ This standard matches closely the National Recreation and Park Association’s widely used best practice standards for a neighborhood park or tot lot (1/2 acre per 2,500 households for a tot lot; 1 acre per 5,000 households for a neighborhood park⁶⁴). Other options for standards could be distance-based (such as developing a community garden within one-quarter to one-half mile of all residences). Distance-based standards may not account for differences in residential density throughout a community, however, and communities that are more or less urban will need to assess which standard is appropriate for them.

- Identify development incentives, grants, and other sources of funding for developing new urban agriculture sites.
- Prioritize the development of new urban agriculture sites in low-income and underserved neighborhoods.

Goal 2: Maximize opportunities to incorporate urban agriculture into new development.

Objective 2a: Ensure that new development includes opportunities for urban agriculture, including rooftop and home gardens, community gardens, and urban farms, where appropriate.

Policies:

- Amend [zoning and/or subdivision codes] to encourage [or require] all new housing units [or multifamily housing units] to contain designated yard, rooftop, or other shared space for residents to garden.
- Amend [zoning and/or building codes] to encourage [or require] all [or some, such as multifamily residential, commercial, institutional, or public] new construction to incorporate green roofs and edible landscaping, and encourage the use of existing roof space for community gardening.

COMMENT: Communities should ensure that building codes address safety concerns, including appropriate fencing and added load weight, when permitting roof gardens.

- Community gardens shall count towards park and open space allocations required by [*reference state or local law requiring park or open space allocations for new subdivisions and multifamily development*].

COMMENT: Some states require, or permit local governments to require, developers to dedicate land or pay fees (in lieu of dedicating land) for park and recreation purposes as a condition for approval of the development. For example, the Quimby Act is a California law that authorizes cities and counties to pass ordinances requiring developers to dedicate land or pay in lieu fees, or a combination of both, for park or recreational purposes as a condition to approving a tentative map application for the development.⁶⁵ The Quimby Act requires setting aside between three and five acres of the land to be developed for every 1,000 new residents generated by the proposed development.⁶⁶

Goal 3: Promote urban agriculture through ongoing programming and partnerships.

Objective 3a: Establish partnerships and initiatives with public agencies and private and nonprofit groups that expand urban agriculture throughout the [jurisdiction].

Policies:

- Designate a Community Gardening Coordinator within the [*Parks and Recreation Department*] to support existing and assist in the creation of additional community gardens.
- The [*Community Gardening Coordinator/local food policy council*] will identify opportunities to increase support for community gardens and urban farms through partnerships with other governmental agencies and private institutions, including school district(s), neighborhood groups, senior centers, businesses, and civic and gardening organizations.

COMMENT: Communities with active food policy councils may choose to identify the food policy council or its lead agency/organization as the implementing partner for several of these policies.

- The [*Community Gardening Coordinator*], in collaboration with relevant partners, will develop a streamlined process to apply for and access public land for urban agriculture through long-term leases on City-owned land.
- The [*jurisdiction*] will seek to secure additional urban agriculture sites through long-term leases or other mechanisms on land owned by nonprofit organizations and public or private institutions like universities, colleges, school districts, hospitals, and faith communities.
- Encourage local law enforcement agencies to recognize the risk of vandalism of and theft from community gardens and urban farms and provide appropriate surveillance and security.
- The [*Community Gardening Coordinator/local food policy council*], in collaboration with relevant partners, will identify additional regulatory or programmatic changes that could support the expansion of urban farms and community gardens as engines of local food system economic development and activity, such as establishing community kitchens, promoting shared use (or joint use) of school and community-based organizations' commercial kitchens, and conducting outreach on safe food-handling and sustainable-growing practices.

⁶³ City of Seattle, Department of Planning and Development. *City of Seattle Comprehensive Plan, Urban Village Appendix*. 2005, p. UV-A5. Available at: www.seattle.gov/DPD/cms/groups/pan/@pan/@plan/@proj/documents/Web_Informational/cos_004485.pdf.

⁶⁴ Lancaster R (ed). *Recreation, Park and Open Space Standards and Guidelines*. Ashburn, VA: National Recreation and Park Association. 1990; and see also Mertes J and Hall J (eds). *Park, Recreation, Open Space and Greenway Guidelines*. Ashburn, VA: National Recreation and Park Association. 1996, Tables D1.2, D1.3, D1.4, D1.5 and D1.6.

⁶⁵ Cal. Govt. Code § 66477 (West 2009).

⁶⁶ The formula to calculate a proposed development's requirement under the Quimby Act is as follows:

(persons per household)* X (number of units in development) X (3 to 5 acres per 1,000 residents)**

* Estimates for "persons per household" can be found in the housing element of a city or county's general plan or via the census website, available at: www.census.gov

** Specific acreage requirements will be determined by local ordinance.

Model Zoning Ordinance for Urban Agriculture

The following section contains model language for communities to tailor and adopt as amendments to their existing zoning laws, or as part of a comprehensive zoning update. As noted above, cities vary considerably by size, density, availability of land, and demand for urban agricultural activities. There is no one-size-fits-all approach when it comes to zoning for urban agriculture, so we present a number of options in an à la carte fashion for communities to select as appropriate.

Language written in italics provides alternate options or explains the type of information that should be inserted in the blank spaces in the ordinance. “Comments” discuss alternatives, examples from different cities, or additional information. The local jurisdiction will need to determine where the ordinances would best fit within its existing code, make other amendments as necessary for consistency, and follow the appropriate procedures for amending the zoning law.

Definitions and Types of Uses

The way a community defines the different types of agriculture is extremely important because those definitions will guide decisions about what types of agriculture are appropriate in different areas within the community. “Urban agriculture” describes a spectrum of activities. We divide it into three major types of agricultural activities (home garden, community garden, and urban farm), but some communities may wish to subdivide it into more, or different, categories.

Key considerations are:

- The size of the land area;
- The location of the area;
- The number of users of the property (and possibly traffic generated by the activity); and
- The purpose of the operation (e.g., private or commercial).

Some communities may wish to distinguish between community gardens and urban farms by the nature of the activity and intensity of use (food grown for personal consumption or donation versus food grown for sale). Others will want to distinguish by the size of the operation. The advantage to providing multiple definitions is that it allows the jurisdiction the flexibility to apply appropriate standards and regulations to each type; for example, there is likely no need to require a conditional use permit for a small-scale neighborhood garden, but there may be important reasons for doing so with larger-scale gardens where food grown is sold on-site. Additionally, it allows the jurisdiction to designate specific zones where different types of activity may be allowed, allowed conditionally, or prohibited altogether. Make sure that the definitions are sufficiently distinct so that residents and officials are clear about the differences.

The key to promoting urban agriculture within a community is to eliminate unnecessary barriers while ensuring safe practices and adequate protection for gardeners, farmers and neighboring landowners.

USE DEFINITIONS

| | Home Garden | Community Garden | Urban Farm |
|--------------------|--|--|--|
| Definitions | <p>A home garden shall mean the property of a single-family or multifamily residence used for the cultivation of fruits, vegetables, plants, flowers, or herbs by the residents of the property, guests of the property owner, or a gardening business hired by the property owner.</p> <p>Comment: <i>This definition is drafted specifically for residential properties. It is broad enough to include on-site gardens at home daycare sites or board and care homes, without permitting a home gardening business.</i></p> <p><i>Few communities place restrictions on the growing of produce in backyards. Some communities, however, restrict landscaping in front yards. In Sacramento, Calif., for example, residents were limited in the percentage of space they could use for cultivating fruits and vegetables in their front yards (but were successful in amending their zoning ordinance to eliminate that restriction).⁶⁷</i></p> | <p>A community garden shall mean privately or publicly owned land used for the cultivation of fruits, vegetables, plants, flowers, or herbs by multiple users. Community gardens may be divided into separate plots for cultivation by one or more individuals or may be farmed collectively by members of the group and may include common areas maintained or used by group members.</p> <p>Comment: <i>Community gardens may be cultivated on a wide variety of sites, including underutilized or vacant public or private property, schools, universities, hospitals, or private companies, and as a temporary or permanent use.⁶⁸ Community gardens may be used to fill different needs: a food source or recreation for individuals lacking access to home gardens, community building, education (such as school gardens), or to support an institution’s food services (such as hospital or institutional gardens). This definition is broad enough to encompass all of these types of community gardens. Some communities may wish to expressly include institutional gardens in their definition of community gardens.</i></p> | <p>An urban farm shall mean privately or publicly owned land used for the cultivation of fruits, vegetables, plants, flowers, or herbs, [and/ or for animal products, livestock production, or value increase] by an individual, organization, or business with the primary purpose of growing food for sale.</p> <p>Comment: <i>This definition is drafted to identify urban farms as commercial enterprises (including both for-profit and nonprofit), regardless of the type of land upon which they are sited and the type of entity operating the site (i.e., individual, private, or nonprofit corporation).</i></p> <p><i>From a land use perspective, a profit-making enterprise is distinguished from the primarily non-commercial activities of home and community gardens by the scale of activities and intensity of use. Whether the farm is owned or operated by a for-profit or not-for-profit entity does not affect the actual use of property. Some communities, however, may wish to distinguish farms based on type of corporate structure. In that event, the community could subdivide the urban farm category into two categories (for-profit and nonprofit commercial enterprises.)</i></p> |

USE DEFINITIONS

| | Home Garden | Community Garden | Urban Farm |
|---|--|------------------|---|
| <p>Alternative or Additional Definitions</p> | <p><i>Describe property more specifically:</i> Home gardens include the front or backyard, rooftop, courtyard, balcony, windowsills, fence, and walls.</p> | | <p><i>Alternate terminology:</i> Market Gardens Commercial Gardens Small-Scale Entrepreneurial Agriculture</p> <p>Comment: <i>In some communities, state laws may limit “agricultural” uses in urban areas. For this reason as well as local preference or political palatably, communities have used other terms for urban farms. Cleveland uses the term “market garden,” defined as “an area of land managed and maintained by an individual or group of individuals to grow and harvest food crops and/or non-food, ornamental crops, such as flowers, to be sold for profit.”⁶⁹</i></p> <p><i>Nashville uses the terms “commercial community gardening” and “non-commercial community gardening” to distinguish between agriculture for personal consumption and agriculture where the intent is growing food for sale.⁷⁰</i></p> <p><i>Kansas City defines “Community Supported Agriculture” as “an area of land managed and maintained by an individual or group of individuals to grow and harvest food and/or horticultural products for shareholder consumption or for sale or donation.”⁷¹</i></p> |

USE DEFINITIONS

| | Home Garden | Community Garden | Urban Farm |
|--------------------|--|---|---|
| Size Limits | <p>[No regulation]</p> <p>Comment: <i>In many communities, there is likely no need to regulate home gardens, including size limits.</i></p> | <p>Community gardens may consist of lot sizes of no more than [number of square feet/acres].</p> <p>Comment: <i>Some communities may prefer to distinguish community gardens from urban farms by size limitations rather than by commercial and noncommercial activity.</i></p> <p><i>If the community is allowing sales on- or off-site at community gardens, it needs to make sure that the community garden can be distinguished from an urban farm. Some communities may wish to limit the size of community gardens to ensure they remain primarily noncommercial activity.</i></p> <p><i>In San Francisco’s urban agriculture law, urban agriculture is divided into two categories: neighborhood agriculture and large-scale urban agriculture. “Neighborhood agriculture” is defined as an urban agricultural activity that is less than one acre in size, including backyard gardens, community gardens, community-supported agriculture, market gardens, and private farms, and allows limited sales and donation on the site of production.</i></p> <p><i>“Large-scale urban agriculture” is defined as a use of land for the production of horticultural crops that occurs on a site greater than one acre or on lots smaller than one acre but that do not meet the physical and operational standards for the neighborhood agriculture use.⁷²</i></p> <p><i>Pittsburgh requires a minimum lot size of three acres for urban agriculture use.⁷³</i></p> | <p>Size limitations.</p> <p>Comment: <i>See comment on size limitations under “Community Gardens.”</i></p> |

USE DEFINITIONS

| | Home Garden | Community Garden | Urban Farm |
|-----------------------------|---|--|--|
| Where Use Is Allowed | <p>Home gardens are a permitted use in all residential districts.</p> <p><i>Comment: To promote and protect urban agriculture, it is important to make sure home gardens are included in all residential districts, including multifamily and public housing.</i></p> | <p>Community gardens are a permitted use in the following zones: residential, multifamily, mixed-use, open space, industrial, [add other zoning districts] subject to regulations.</p> <p><i>Comment: To promote and protect urban agriculture, it is important to make sure community gardens are an allowed use in all appropriate districts. Provided the garden use is subject to adequate regulations, a community garden should need no additional land use authorization.</i></p> | <p>Urban farms shall be a conditional use in [residential] districts and subject to regulations in all districts:</p> <p><i>Comment: Communities may be comfortable with allowing all farms or smaller urban farms as a permitted use in certain districts, including residential.</i></p> <p><i>San Francisco’s ordinance permits the Neighborhood Agriculture use, defined as an urban agricultural activity that is less than one acre in size, in nearly all zoning districts (subject to physical and operational standards) and requires conditional use authorization for urban industrial agriculture in residential districts.⁷⁴</i></p> |

Regulations of Uses

Setting forth the rules under which the property can be used for agricultural purposes ensures success. We offer proposed regulations that communities can use to develop their own policy. In some situations, these regulations can be part of a permitted or approved use; in other communities, these regulations could be part of a conditional use.

REGULATION OF USES/OPERATING STANDARDS

| | Home Garden | Community Garden | Urban Farm |
|---------------------------------|--|--|---|
| Compliance with All Laws | [No regulation] | <p>All community gardens and their users must comply with all federal, state, and local laws and regulations relating to the operation, use, and enjoyment of the garden premises. Site users may not introduce heavy metals or other harmful contaminants to garden or farm sites. Site users may use pesticides only to the extent permitted by law.</p> <p><i>Comment: Generally, municipalities are preempted from regulating pesticide use. Consult with your local government attorney before prohibiting all pesticide use.</i></p> | <p>All urban farms and their owners, lessees, employees, volunteers, and visitors must comply with all federal, state, and local laws and regulations relating to the operation, use, and enjoyment of the farm premises. Site users may not use materials such as inappropriate fill that introduce heavy metals or other harmful contaminants to garden or farm sites. Site users may use pesticides only to the extent permitted by law.</p> <p><i>Comment: See comment on pesticide use under “Community Gardens.”</i></p> |
| Soil Testing | <p>[No regulation]</p> <p><i>Comment: Most communities will want to encourage all gardeners, including home gardeners, to test their soil for lead and other harmful contamination and to implement precautionary measures, particularly where children are gardening. Ensuring children are not ingesting soil and preventing soil dust is particularly important to prevent children’s exposure to lead exposure. Municipalities should work with local gardening organizations, state university extensions, and others to help educate residents about soil safety and health. See the “Resources” section for more information on safe gardening practices.</i></p> | <p>Prior to establishment, site users [or municipal employees] shall inquire into historical use of the property and undertake soil testing to measure nutrients, heavy metals, and any other harmful contaminants that may be present. The soil testing results and proposed remediation methodology (if needed) shall be provided to and kept on file with the City [insert department name] Department.</p> <p><i>Comment: Soil safety is one of the most difficult issues facing municipalities when developing urban agriculture programs. Municipalities and advocates need to consider what requirements to impose before converting property into an agricultural use. The EPA’s interim guidelines for safe gardening practices suggests that historical property assessments, soil testing for hazardous ...</i></p> | <p>Prior to establishment, site users shall inquire into historical use of the property and undertake soil testing to measure nutrients, heavy metals, and any other harmful contaminants that may be present. The soil testing results and proposed remediation methodology (if needed) shall be provided to and kept on file with the City [insert department name] Department.</p> <p><i>Comment: See the comments on soil safety under “Community Gardens.” The option above is an informal version of the Phase I ESA, suggested by the EPA.</i></p> |

REGULATION OF USES/OPERATING STANDARDS

| | Home Garden | Community Garden | Urban Farm |
|----------------------------|-----------------|--|---|
| Soil Testing con't. | [No regulation] | <p>Comments continued: ... materials, and mitigation measures are all methods for determining site safety.⁷⁵</p> <p><i>The language listed above, essentially a modified form of an ESA, is suggested by the EPA. Municipalities need to consider who should do the assessment – the municipality or site users – and who should interpret the testing results and determine what, if any, mitigation measures are required. Many municipalities lack staff with expertise in soil testing. Municipalities should consider partnering with local gardening organizations and universities.</i></p> <p><i>In practical terms, any requirement to submit information prior to establishing an urban agriculture use is likely to go hand-in-hand with urban agriculture as a conditional, rather than permitted, use. Applicants would submit their findings as a component of the conditional use process.</i></p> | <p>Continued: <i>Alternate soil testing requirement:</i></p> <p>Site users must provide a Phase I Environmental Site Assessment (ESA). Any historical sources of contamination identified in the ESA must be tested to determine type and level of contamination; appropriate remediation procedures must be undertaken to ensure that soil is suitable for cultivation.</p> <p>Comment: <i>Alternatively, localities could require a Phase I ESA.⁷⁶ This is a potentially more resource-intensive requirement for the urban farm applicant. A Phase I ESA is a historical search of the property to determine if there are any past uses that could have caused contamination to the soil. To minimize costs, the municipality could conduct the assessment. Or, they could require those wishing to establish a new urban farm to have an assessment conducted.</i></p> |
| Operating Standards | [No regulation] | <p>Site users must have an established set of operating rules addressing the governance structure of the garden, hours of operation, maintenance, and security requirements; must have a garden coordinator to perform the coordinating role for the management of the community gardens and to liaise with the City; and must assign garden plots in a fair and impartial manner according to the operating rules established for that garden. The name and telephone number of the garden coordinator [or those of the leadership team members] and a copy of the operating rules shall be kept on file with the City [insert department name] Department [or the lead community garden nonprofit organization, as appropriate].</p> | <p>Management plan required.</p> <p>Urban farms must prepare a management plan, to be reviewed as part of the conditional use process, to address how activities will be managed to avoid impacts on surrounding land uses and natural systems. The management plan must include:</p> <ul style="list-style-type: none"> • A site plan, including lighting; • Operating hours; • A description of the type of equipment necessary or intended for use in each season and the frequency and duration of anticipated use; |

REGULATION OF USES/OPERATING STANDARDS

| | Home Garden | Community Garden | Urban Farm |
|-----------------------------------|-----------------|---|--|
| Operating Standards con't. | [No regulation] | <ul style="list-style-type: none"> • The land shall be served by a water supply sufficient to support the cultivation practices used on the site. • The site must be designed and maintained so that water and fertilizer will not drain onto adjacent property. • All seed, fertilizer, and animal feed shall be stored in a sealed, rodent-proof container [and housed within an enclosed structure]. • To the extent permitted under federal and state law, site users must use organic and sustainable growing practices. <p><i>Comment: To function effectively, a community garden must have established operating rules and a garden coordinator or leadership team.⁷⁷ In this ordinance, a municipality could 1) require that gardens have rules, as the model language does above; 2) provide a complete listing of rules; or 3) give authority for a particular city or county department or officer to establish community garden rules and require each community garden to adhere to those rules. A municipality could also choose to address some or all of the requirements for operating a community garden in this or an accompanying ordinance.</i></p> <p><i>As described more fully in the section on “Pesticide and Environmental Laws,” pesticide use is regulated under federal and state law. A city may be prohibited from regulating pesticide use through local law. A city may be able to restrict or prohibit pesticide use in community gardens on its property in its proprietary capacity (as the property owner as opposed to as a regulator). Consult with your local government attorney.</i></p> | <ul style="list-style-type: none"> • Disclosure of any intent to spray or otherwise apply agricultural chemicals or pesticides, frequency and duration of application, and the plants, diseases, pests, or other purposes they are intended for; • Disclosure of the spreading of manure; • A proposed sediment and erosion control plan; • Disclosure of parking impacts related to the number of staff on-site during work hours, and the number of potential visitors regularly associated with the site; • A proposed composting and waste management plan. <p><i>Comment: Not all communities will want to require management plans. Communities could instead set forth standards regulating the above practices and impose them as regulations. Take care to ensure that any environmental or pesticide regulations are consistent with federal and state law and that composting, waste management, equipment use, and operating hours are addressed.</i></p> |

REGULATION OF USES/OPERATING STANDARDS

| | Home Garden | Community Garden | Urban Farm |
|-------------------------------------|--|--|---|
| Compost and Waste Management | Compost materials shall be stored [<i>at least _____ feet from adjacent property</i>] and in a manner that is not visible from adjacent property (shielded from view by shrubbery or an enclosure), controls odor, prevents infestation, and minimizes runoff into waterways and onto adjacent properties. | Compost materials from the garden or gardeners shall be stored [<i>at least _____ feet from adjacent property</i>] and in a manner that is not visible from adjacent property (shielded from view by shrubbery or an enclosure), controls odor, prevents infestation, and minimizes runoff into waterways and onto adjacent properties. Waste shall be collected regularly by the municipality. Gardeners shall ensure that containers are placed in specified location to assist municipality in waste removal. | Composting and waste management must be managed according to the farm management plan. |
| Accessibility | [<i>No regulation</i>] | <p>The garden must comply with Americans with Disabilities Act design standards for accessible entrance routes and accessible routes between different components of the garden and must follow universal design principles whenever possible.</p> <p>[<i>A minimum of _____ percent of the garden must contain raised beds that are designed for access by gardeners using wheelchairs or with other mobility impairments.</i>]</p> <p>Comment: <i>Communities are using different strategies to address the needs of gardeners with disabilities. The Palm Desert, Calif., community garden has an entire garden (151 plots) that is handicapped accessible; Cambridge, Mass., requires that all newly established community gardens have a minimum of 5 percent, but not less than one, raised bed plots. Communities should ensure that all residents have access to community gardens.</i></p> | The farm must comply with Americans with Disabilities Act design standards for accessible entrance routes and accessible routes between its different components and must follow universal design principles whenever possible. |

REGULATION OF USES/OPERATING STANDARDS

| | Home Garden | Community Garden | Urban Farm |
|---|---|---|---|
| Landscaping and Setback Requirements | <p><i>Comment: Some communities have particular landscaping or setback requirements, such as limits on tree or plant heights, which may restrict the type of plants used in home gardens. Some restrictions serve important purposes such as fire safety; others are purely aesthetic. Communities should be sure to reconcile new urban agriculture provisions with existing landscaping requirements.</i></p> <p><i>Kansas City, Miss., prohibits row crops in the front yard of some residentially zoned and occupied property.⁷⁸</i></p> | <p><i>Comment: Some communities have particular landscaping or setback requirements and may want to require urban agriculture uses to blend with neighboring properties. Communities should consider existing requirements to determine their impact on the agricultural uses and whether the standards need adjusting.</i></p> | <p><i>Comment: See comment under “Community Gardens.”</i></p> |

Incidental and Accessory Uses

As described above, an incidental or accessory use is a use that is dependent on or affiliated with the land’s primary use. Zoning codes often enumerate accessory uses permitted with the main use. We list incidental uses below for communities to include and decide whether they may be permitted as part of the primary use or require express approval.

INCIDENTAL AND ACCESSORY USES

| | Home Garden | Community Garden | Urban Farm |
|----------------|--|--|---|
| Fencing | Fences are permitted as regulated in the underlying zoning district. | <p>Fences are permitted as regulated in the underlying zoning district.</p> <p><i>Alternative:</i></p> <p>Fences shall not exceed [eight feet] in height, shall be at least [50 percent] open if they are taller than [four feet], and shall be constructed of wood, chain link, or ornamental metal. For any garden that is [15,000 square feet in area or greater] and is in a location that is subject to design review and approval by the [City Planning Commission or Landmarks Commission], no fence shall be installed without review by the [City Planning Director, on behalf of the Commission], so that best efforts are taken to ensure that the fence is compatible in appearance and placement with the character of nearby properties.</p> <p><i>Comment: Municipalities usually have requirements regarding fences in their zoning or building codes. If the municipality has existing regulations, it may not need this provision, unless the preferred fencing for urban agriculture differs from existing law.</i></p> <p><i>In many urban areas, community gardeners prefer the security of locked gates to prevent vandalism and theft; in other areas, garden users might oppose fencing due to the cost and the desire to allow public access to gardens or portions of gardens.</i></p> | <p>Fences are permitted as regulated in the underlying district.</p> <p><i>Alternative:</i></p> <p>Fences shall not exceed [eight feet] in height, shall be at least [50 percent] open if they are taller than [four feet], and shall be constructed of wood, chain link, or ornamental metal. For any garden that is [15,000 square feet in area or greater] and is in a location that is subject to design review and approval by the [City Planning Commission or Landmarks Commission], no fence shall be installed without review by the [City Planning Director, on behalf of the Commission], so that best efforts are taken to ensure that the fence is compatible in appearance and placement with the character of nearby properties.</p> <p><i>Comment: Municipalities usually have requirements regarding fences in their zoning or building codes. If the municipality has existing regulations, it may not need this provision, unless the preferred fencing for urban agriculture differs from existing law.</i></p> |

INCIDENTAL AND ACCESSORY USES

| | Home Garden | Community Garden | Urban Farm |
|-------------------|--|---|--|
| Structures | Structures are permitted as regulated in the underlying zoning district. | <p>Definitions:</p> <p>A greenhouse shall mean a temporary or permanent structure typically made of, but not limited to, glass, plastic, or fiberglass in which plants are cultivated.</p> <p>A hoophouse shall mean a temporary or permanent structure typically made of, but not limited to, piping or other material covered with translucent plastic, constructed in a “half-round” or “hoop” shape, for the purposes of growing plants.</p> <p>A cold frame shall mean an unheated outdoor structure consisting of a wooden or concrete frame and a top of glass or clear plastic, used for protecting seedlings and plants from the cold.</p> <p>Only the following accessory uses and structures shall be permitted: <i>[sheds for storage of tools limited in size to [_____] or subject to the requirements of section ____], greenhouses, hoophouses, and cold frames, in which plants are cultivated, benches, bike racks, raised/accessible planting beds, compost or waste bins, picnic tables, seasonal farm stands, fences, garden art, rain barrel systems, [beehives, chicken coops, barbecue grills, outdoor ovens, and children’s play areas]</i> shall be permitted. The combined area of all buildings or structures shall not exceed <i>[15 percent]</i> of the garden site lot areas.</p> | <p>Definitions:</p> <p>A greenhouse shall mean a temporary or permanent structure typically made of, but not limited to, glass, plastic, or fiberglass in which plants are cultivated.</p> <p>A hoophouse shall mean a temporary or permanent structure typically made of, but not limited to, piping or other material covered with translucent plastic, constructed in a “half-round” or “hoop” shape, for the purposes of growing plants.</p> <p>A cold frame shall mean an unheated outdoor structure consisting of a wooden or concrete frame and a top of glass or clear plastic, used for protecting seedlings and plants from the cold.</p> <p>Only the following accessory uses and structures shall be permitted:</p> <ul style="list-style-type: none"> • Benches, bike racks, raised/accessible planting beds, compost bins, picnic tables, garden art, rain barrel systems, <i>[chicken coops, beehives, and children’s play areas]</i>; • Greenhouses, hoophouses, cold frames, and similar structures used to extend the growing season; • Buildings, limited to tool sheds, shade pavilions, restroom facilities with composting toilets, planting preparation houses and <i>[barns]</i>, in conformance with <i>[reference regulations or requirements relating to building and setback standards here]</i>, <i>[provided that maximum lot coverage of all buildings, structures, and paved areas does not exceed [15 percent] of the farm lot area]</i>. |

INCIDENTAL AND ACCESSORY USES

| | Home Garden | Community Garden | Urban Farm |
|--------------------------|-----------------------|--|---|
| Structures con't. | | <p>Comment: Some communities may wish to allow community gardeners to erect sheds for the storage of tools on garden sites. The municipality should make sure that any provision regarding sheds conforms to state and local building laws.</p> | <ul style="list-style-type: none"> • Roadside stand, farm stand: The stand may not be permanently affixed to the ground and must be readily removable in its entirety. • The maximum area of a roadside stand shall be [300] square feet in ground area. No more than one roadside stand is allowed on any one premise. • Off-street parking and walkways, in conformance with [reference regulations or requirements related to parking and walkways here]. <p>Comment: Erection of buildings or other structures is governed by state and local building laws. The municipality should make sure that any provision regarding structures conforms to other applicable laws (e.g., allowing annual or biannual sales as a fundraiser).</p> |
| Signage | No signage permitted. | <p>Any signs shall comply with applicable [City/County] ordinances.</p> <p><i>Alternative:</i></p> <p>[One] unilluminated sign not exceeding [six square feet or three feet in height] in conformance with the regulations of [reference other sign laws or requirements].</p> <p>Comment: Sign requirements may raise First Amendment issues. Be sure to consult with your local government attorney on sign requirements.</p> | <p>Any signs shall comply with applicable [City/County] ordinances.</p> <p><i>Alternative:</i></p> <p>Allowed [one] temporary, unilluminated sign not exceeding [six square feet or three feet in height] is permitted on-site, in conformance with the regulations of [reference other sign laws or requirements].</p> <p>Comment: See signage comment under “Community Garden.”</p> |

INCIDENTAL AND ACCESSORY USES

| | Home Garden | Community Garden | Urban Farm |
|--|---|--|--|
| Use of Produce/ Produce Sales | <p>Produce shall be grown [<i>primarily</i>] for resident’s use or donation [<i>only</i>].</p> <p><i>Alternative:</i></p> <p>Food and/or horticultural products grown in the home garden may be used for personal consumption, and [<i>only whole, uncut, fresh food</i>] and/or horticultural products grown in a home garden may be donated or sold on-site within a reasonable time of its harvest. The sales may only take place during [<i>add seasonal or time of day limitations on sales</i>].</p> <p>Comment: <i>Some communities enable home gardeners in certain districts to sell homegrown produce from their homes. Kansas City, Miss., allows home growers to sell whole, uncut fresh food from May 15 through October 15.⁷⁹</i></p> <p><i>Communities considering home sales should consider the following issues:</i></p> <ul style="list-style-type: none"> • <i>Whether commercial activity is compatible with the other uses in the district;</i> • <i>The potential for increased pedestrian and automobile traffic;</i> • <i>State food retail codes (which may require a food retail permit to sell produce or products made from produce).</i> | <p>Produce shall be grown primarily for personal or shared use or donation [<i>or for sale</i>].</p> <p>Comment: <i>One option is for communities to prohibit sale of community garden produce; another is to allow limited sales of community garden produce on- or off-site (e.g., allowing an annual sale as a fundraiser). If so, it is important to ensure that related laws are addressed (see comments under “Home Garden”) and that the community garden is distinguishable from a commercial farm, if both definitions will be used in the code.</i></p> | <p>Retail sales [<i>of plants and produce grown on-site or products that are processed off-site but made from products grown on-site</i>] and other public use of the farm may occur between [___] and [___] [<i>add hours</i>] every day of the week during [___] and [___] [<i>add months or seasons</i>].</p> <p>Comment: <i>If needed to accommodate neighboring property owners, communities may want to limit sales according to growing seasons.</i></p> |

Animals

Animals are an important part of agriculture, but can raise concerns about nuisances, including noise and odors, particularly in densely populated cities. Many communities have existing laws related to the keeping of poultry and farm animals. Some are remnants of earlier times, when it was common to keep a kitchen garden and raise animals at home for food.

Our model policy addresses beekeeping and chickens, two of the most common forms of urban livestock.⁸⁰ (Some communities, such as Seattle, are including a wide range of animals in their urban agriculture ordinances, such as pigs, rabbits, and other poultry like geese.⁸¹) We address only the land use considerations related to animal raising; that is, we address factors specific to the use of the land for raising animals without causing nuisances or other negative impacts for neighboring property users. As noted in the text below, community regulations vary regarding animals, due to factors such as environmental density, climate, political will, and types of natural predators. We do not address all of the factors required for ensuring that animals are adequately tended and cared for. Similarly, we do not address the federal, state, or local laws that control animal slaughtering or sales of animals or animal products. Municipalities interested in allowing home or commercial slaughtering should consult a local attorney with expertise in this area.

Animal welfare is controlled primarily by state and local law. (The federal Animal Welfare Act⁸² applies to animals in interstate or foreign commerce used in research, in exhibitions, or as pets.⁸³ It does not apply to farm animals, including poultry or livestock, used or intended to be used for food.⁸⁴) All 50 states and the District of Columbia have animal cruelty laws that

protect animals from unnecessary suffering or cruel mistreatment.⁸⁵ Although the state laws prohibit cruelty, they often do not set standards determining appropriate care for farm animals. Some states and local governments do set standards for cats, dogs, and other animals raised as pets.⁸⁶

Two animal welfare organizations provide standards for humane farm animal care. Humane Farm Animal Care, a nonprofit charity dedicated to improving the lives of farm animals by providing viable and monitored standards for humane food production, has established Humane Farm Animal Care standards.⁸⁷ The Animal Welfare Institute has established Animal Welfare Approved standards for the care and keeping of animals. These standards are formulated for large farming operations, but are helpful models for municipalities to consider when drafting standards of care.⁸⁸ The City of Vancouver has established regulations regarding appropriate care of backyard chickens.⁸⁹

Before adopting land use laws related to animals, be sure to check state and local animal welfare and control laws to ensure that the land use laws are compatible with the other requirements relating to the inspection, licensing, and enforcement of animal welfare. Communities should be clear whether state or local animal control officers are responsible for enforcement of these laws and, if local enforcement is required, that local officers have sufficient training in the care of these animals. Finally, if state law permits, communities should consider adopting local animal welfare standards to ensure that farm animals within their jurisdictions are adequately and humanely cared for.

ANIMALS

| | Home Garden | Community Garden | Urban Farm |
|-------------------|--|--|--|
| Beekeeping | <p>Honeybee apiaries are a [<i>permitted accessory</i>] use to a home, subject to the following regulations:</p> <p>The apiary is properly registered pursuant to [<i>state law</i>];</p> <p>Beekeeping practices are consistent with the standards of [<i>enter organization name here</i>];</p> <p>The number of hives is limited to one per each [<i>24,000</i>] square feet of lot area; no beehive shall be kept on a lot smaller than 2,400 square feet in area;</p> <p>Hives are not located within 25 feet of any lot line except when situated eight feet or more above the grade immediately adjacent to the grade of the lot on which the hives are located or when situated less than eight feet above the adjacent existing lot grade and behind a solid fence or hedge six feet high.</p> <p>No beehive shall be kept in a front or side yard. The front of any beehive shall face away from the property line of the residential property closest to the beehive.</p> <p>Comment: <i>Many states regulate beekeeping; some require owners to register the number of colonies and location of each apiary.⁹⁰</i></p> <p><i>Both Cleveland and Seattle allow beekeeping as a permitted use in residential districts, subject to certain regulations.⁹¹ Seattle requires hives to be located more than 25 feet from any lot line except if the hive is situated eight feet or more above the grade immediately adjacent to the grade of the lot on which the hives are located or situated less than eight feet above the adjacent existing lot grade and behind a solid fence or hedge six feet high ...</i></p> | <p>Honeybee apiaries are a [<i>permitted accessory</i>] use to community gardens, subject to the following regulations:</p> <p>The apiary is properly registered pursuant to [<i>state law</i>];</p> <p>Beekeeping practices are consistent with the standards of [<i>enter organization name here</i>];</p> <p>The number of hives is limited to one per each [<i>24,000</i>] square feet of lot area; no beehive shall be kept on lots smaller than 2,400 square feet in area;</p> <p>Hives are not located within 25 feet of any lot line except when situated eight feet or more above the grade immediately adjacent to the grade of the lot on which the hives are located or when situated less than eight feet above the adjacent existing lot grade and behind a solid fence or hedge six feet high.</p> <p>No beehive shall be kept in a front or side yard. The front of any beehive shall face away from the property line of the residential property closest to the beehive.</p> <p>Comment: <i>See comments under “Home Garden.” Some communities may not be comfortable with allowing beekeeping as a permitted use in all community gardens. The community could require conditional use or allow beekeeping as a permitted use upon additional conditions, such as allowing the gardeners to vote annually on whether to allow an apiary on-site.</i></p> | <p>Honeybee apiaries are a [<i>permitted accessory</i>] use to urban farms, subject to the following regulations:</p> <p>The apiary is properly registered pursuant to [<i>state law</i>];</p> <p>Beekeeping practices are consistent with the standards of [<i>enter organization name here</i>];</p> <p>The number of hives is limited to one per each [<i>24,000</i>] square feet of lot area; no beehive shall be kept on lots smaller than 2,400 square feet in area;</p> <p>Hives are not located within 25 feet of any lot line except when situated eight feet or more above the grade immediately adjacent to the grade of the lot on which the hives are located or when situated less than eight feet above the adjacent existing lot grade and behind a solid fence or hedge six feet high.</p> <p>No beehive shall be kept in a front or side yard. The front of any beehive shall face away from the property line of the residential property closest to the beehive.</p> <p>Comment: <i>See comments under “Home Garden.”</i></p> |

ANIMALS

| | Home Garden | Community Garden | Urban Farm |
|-------------------------|---|---|--|
| Beekeeping con't | <p><i>Comment con't: ...parallel to any lot line within 25 feet of a hive and extending at least 20 feet beyond the hive in both directions.⁹²</i></p> <p><i>Several cities require minimum lot sizes for the keeping of colonies. Cleveland requires a minimum lot size of 2,400 square feet to host a hive.⁹³ Seattle allows for no more than four hives, each with only one swarm, on lots containing less than 10,000 square feet.⁹⁴ The City of Vancouver allows two hives on lots containing less than 10,000 square feet.⁹⁵</i></p> | | |
| Chickens | <p>The keeping of hens is a [permitted accessory] use to a home garden, subject to the following regulations:</p> <p>The chicken owner is properly registered and licensed pursuant to [state/local] law;</p> <p>Animal care practices are consistent with the standards of [enter reference to animal welfare laws or organization name here];</p> <p>There must be no less than [10] square feet allocated per chicken;</p> <p>The coops or cages housing the chickens may not be located in the front or side yard areas and shall not be located within [five feet] of the property line.</p> <p>The chickens, coops, and cages must be adequately maintained to control odor and prevent infestation.</p> <p>[No more than [4] hens may be permitted per home garden.]</p> <p>Comment: Some communities permit the raising of hens in home gardens for personal use (i.e., no chicken or egg sales or slaughtering) as a permitted accessory use (i.e., without requiring any land use permits).⁹⁶</p> | <p>The keeping of hens is a [permitted accessory] use to a community garden, subject to the following regulations:</p> <p>The chicken owner(s) is properly registered and licensed pursuant to [state/local] law;</p> <p>There must be no less than [10] square feet allocated per chicken;</p> <p>The coops or cages housing the chickens may not be located in the front or side yard areas and shall not be located within [five feet] of the property line.</p> <p>The chickens, coops, and cages must be adequately maintained to control odor and prevent infestation.</p> <p>[No more than [5] hens may be permitted per community garden.]</p> <p>Comment: See comments under "Home Garden." Like beekeeping, some communities will not want to permit the keeping of chickens in community gardens without further approvals.</p> <p>Allowing animals in community gardens presents the problem of oversight as gardeners may not attend to the garden every day.</p> | <p>The keeping of hens is a [permitted accessory] use to an urban farm, subject to the following regulations:</p> <p>The chicken owner is properly registered and licensed pursuant to [state/local] law;</p> <p>There must be no less than [10] square feet allocated per chicken;</p> <p>The coops or cages housing the chickens may not be located in the front or side yard areas and shall not be located within [five feet] of the property line.</p> <p>The chickens, coops, and cages must be adequately maintained to control odor and prevent infestation.</p> <p>[No more than [x] hens may be permitted per urban farm.]</p> <p>Comment: See comments under "Home Garden" and "Community Garden." Depending upon where the urban farms are located, communities may wish to permit additional hens and require fewer square feet per chicken and lesser setbacks from adjoining property.</p> |

ANIMALS

| | Home Garden | Community Garden | Urban Farm |
|------------------------|--|---|------------|
| Chickens con't. | <p>Comment con't: <i>Regulations regarding the number of chickens permitted, the space allocation per bird, and the size or type of structure vary across cities; there is no gold standard as of yet.</i></p> <p><i>Factors such as climate, density of the environment, and the type or urban predators impact standards. One option is to limit the total number of birds per lot regardless of lot size, or to limit the number by virtue of lot size. Another option is to allow a certain number of birds as a permitted use and require a conditional use permit to exceed those standards.</i></p> <p><i>Some communities permit only hens and prohibit or limit the keeping of roosters due to concerns about noise and cockfighting operations. Some communities, including Cleveland and Seattle, allow a variety of domestic fowl.</i></p> <p><i>Cleveland requires a minimum of 100 square feet per animal (fowl and rabbits). It requires coops and cages to be located more than five feet from a side yard and 18 inches from a rear yard.⁹⁷</i></p> <p><i>Seattle does not expressly address the amount of space per bird and allows up to 8 domestic fowl on any residential lot as a permitted accessory use. Structures housing domestic fowl must be located at least 10 feet from any structure that includes a dwelling unit on an adjacent lot.⁹⁸</i></p> <p><i>Vancouver requires structures to be more than one meter from any property line.⁹⁹ It prohibits roosters and limits backyard hens to four per lot.¹⁰⁰</i></p> <p><i>Animal Welfare Approved requires 1.8 square feet of indoor space and an additional 4.0 square feet of additional foraging area for a total of 5.8 square feet minimum space per chicken.¹⁰¹</i></p> <p><i>Animal slaughtering and sales and the sale of eggs are regulated by federal and, often, state law.</i></p> | <p>Comment con't: <i>Some cities only permit animals on property where there is residence, presumably to ensure that caretakers manage the animals regularly and are more easily identified and held accountable for nuisance or animal welfare violations.</i></p> | |

- ⁶⁷ Sacramento, Calif. Zoning Code § 17.68.010(A)(1).
- ⁶⁸ For more information on establishing a community garden see PHLP's "Ground Rules: A Legal Toolkit for Community Gardens." Available at: www.nplan.org/nplan/products/CommunityGardenToolkit.
- ⁶⁹ Cleveland, Ohio Zoning Code § 336.02(b).
- ⁷⁰ Nashville, Tenn. Metropolitan Code §17.04.060.
- ⁷¹ Kansas City, Mo. Zoning and Devel. Code § 88-312-02C.
- ⁷² San Francisco, CA Planning Code § 102.35.
- ⁷³ Pittsburgh, Penn. Zoning Code § 911.04A2(a).
- ⁷⁴ San Francisco, CA Planning Code § 102.35.
- ⁷⁵ See "Brownfields and Urban Agriculture: Interim Guidelines for Safe Gardening Practices," Summer 2011, available at: http://www.epa.gov/brownfields/urbanag/pdf/bf_urban_ag.pdf
- ⁷⁶ A Phase I Environmental Site Assessment, also known as "All Appropriate Inquiries," is the process of conducting due diligence to determine prior uses and ownership of a property and assess conditions at the property that may be indicative of releases or threatened releases of hazardous substances at, on, in, or to the property. "EPA Brownfields Grants, CERCLA Liability, and All Appropriate Inquiries." EPA Publication No. 560-F-09-026. April 2009. Available at: www.epa.gov/brownfields/aai/cerclafs.pdf
- For more information on brownfields redevelopment and local agriculture, see "How Does Your Garden Grow? Brownfields Redevelopment and Local Agriculture." EPA Publication No.560-F-09-024. March 2009. Available at: www.epa.gov/brownfields/success/local_ag.pdf. More information on "All Appropriate Inquiries" requirements is available at: www.epa.gov/brownfields/regneg.htm, and "All Appropriate Inquiries Final Rule," EPA Publication No. 560-F-05-240. November 2005. The standards and practices for conducting "All Appropriate Regulations" are set forth in regulations at 40 CFR Part 312.
- ⁷⁷ Model rules are included in PHLP's "Ground Rules, a Legal Toolkit for Community Gardens." Available at: www.nplan.org/nplan/products/CommunityGardenToolkit
- ⁷⁸ Kansas City, Mo. Zoning and Devel. Code § 88-312-02A.
- ⁷⁹ Kansas City, Mo. Zoning and Devel. Code § 88-312-02A.
- ⁸⁰ Seattle and Cleveland address other types of farm animals and are a resource for municipalities interested in permitting other animals.
- ⁸¹ Seattle, Wash. Municipal Code § 23.42.052.
- ⁸² 7 U.S.C. §§ 2131 *et. seq.*
- ⁸³ *Id.*
- ⁸⁴ 7 U.S.C. § 2132(g).
- ⁸⁵ Ibrahim D. "Anticruelty statute: A Study in Animal Welfare." *Journal of Animal Law & Ethics*, 175(1): 2006.
- ⁸⁶ See, e.g., Nev. Rev. Statutes 574.210, providing standards for operators of cat and dog shelters, commercial operations, and retailers.
- ⁸⁷ More information on Humane Farm Animal Care standards is available at: www.certifiedhumane.org.
- ⁸⁸ More information on Animal Welfare Approved Standards is available at: www.animalwelfareapproved.org/standards.
- ⁸⁹ Vancouver, British Columbia, Can. Animal Control By-Law No. 9150, § 7.16 (2010). Available at: <http://vancouver.ca/bylaws/9150c.PDF>.
- ⁹⁰ See, e.g., Cal. Food & Agric. Code § 29000 *et. seq.*
- ⁹¹ Cleveland, Ohio Zoning Code Title VII §§ 337.23 (2010); Seattle, Wash. Municipal Code § 23.42.052 (2010).
- ⁹² Seattle, Wash. Municipal Code § 23.42.052 (2010).
- ⁹³ Cleveland, Ohio Municipal Code § 347.02(d).
- ⁹⁴ *Id.*
- ⁹⁵ City of Vancouver. Canada Hobby Beekeeping Policies. 2007. Available at: <http://vancouver.ca/commsvcs/BYLAWS/bulletin/H005.pdf>.
- ⁹⁵ Animal slaughtering, sales, and the sales of eggs are regulated by federal and, often, state law.
- ⁹⁷ Cleveland, Ohio Muni. Code § 336A.06.
- ⁹⁸ Seattle, Wash. Muni. Code § 23.42.052(C).
- ⁹⁹ Vancouver, British Columbia, Can. Zoning and Develop. Bylaw No. 3571, § 10.18.2.
- ¹⁰⁰ Vancouver, British Columbia, Can. Animal Control Bylaw No. 9150; § 7.5(c).
- ¹⁰¹ Animal Welfare Approved Standards for Laying Hens Standards 5.4.11; 8.1.1.

Resources

Accessible Design

Community Action Coalition for South Central Wisconsin, Inc.

www.cacscw.org/gardens/handbook/CommGardensFinal_UnivDesign.pdf

The Chicago Botanic Gardens Horticultural Therapy Services Program

<http://chicagobotanic.org/therapy>

National Center of Physical Activity and Disability (NCPAD)

www.ncpad.org

Together 4 Health: Partners for Healthy Living

“Making Your Garden Accessible”

www.together4health.ca/workgroups/community-gardens-waterloo-region/accessible-gardens

Agricultural Law

Drake Law School Agricultural Law Center

www.law.drake.edu/academics/agLaw

University of Arkansas School of Law National Agricultural Law Center

www.NationalAgLawCenter.org

Agricultural Product Sales and Commercial Farms

**University of Arkansas School of Law National Agricultural Law Center
Arkansas Direct Farm Business Guide**

www.nationalaglawcenter.org/assets/articles/tarr_directfarm.pdf

Animal Rearing

Animal Welfare Institute's Animal Welfare Approved Standards

www.animalwelfareapproved.org/standards

Humane Farm Animal Care's Humane Farm Care Standards

www.certifiedhumane.org

Environmental Laws and Agriculture

National Association of State Departments of Agriculture

“Federal Environmental Laws Affecting Agriculture”

www.nasda.org/nasda/nasda/foundation/state/Federal.pdf

Individual summaries of state environmental laws affecting agriculture are available at:

www.nasda.org/nasda/nasda/foundation/state/states.htm

Land Banks and Land Trusts

U.S. Department of Housing and Urban Development

“Revitalizing Foreclosed Properties with Land Banks”

www.huduser.org/portal/publications/affhsg/landbanks.html

Land Trust Alliance

www.landtrustalliance.org

Land Use Laws and Urban Agriculture

American Planning Association

“Urban Agriculture: Growing Healthy, Sustainable Places”

www.planning.org/apastore/Search/Default.aspx?p=4146&a=1003

“Zoning for Urban Agriculture, Zoning Practice March 2010”

www.planning.org/ZoningPractice

Safe Growing Practices

National Sustainable Agriculture Information Center

“An Illustrated Guide to Growing Safe Produce on Your Farm - IP382”

<http://attra.ncat.org/attra-pub/PDF/foodsafety.pdf>

Site Suitability and Soil Testing

American Community Garden Association

“How Do I Pick a Site? Site Considerations and Analysis”

www.communitygarden.org/rebeltomato/roots/pick-a-site.php

American Planning Association

“Creating Community-Based Brownfields Redevelopment Strategies”

www.planning.org/research/brownfields

Cornell Waste Management Institute, Department of Crop and Soil Sciences in the College of Agriculture and Life Sciences at Cornell University.

“Sources and Impacts of Contaminants in Soils”

“Guide to Soil Testing and Interpreting Results”

“Soil Contaminants and Best Practices for Healthy Gardens”

<http://cwmi.css.cornell.edu/soilquality.htm>

U.S. Department of Agriculture, Natural Resources Conservation Division

“Urban Soil Primer”

[www.soils.usda.gov/use/urban/downloads/primer\(screen\).pdf](http://www.soils.usda.gov/use/urban/downloads/primer(screen).pdf)

U.S. Environmental Protection Agency

“Brownfields and Urban Agriculture: Interim Guidelines for Safe Gardening Practices”

www.epa.gov/brownfields/urbanag/pdf/bf_urban_ag.pdf

“EcoTools: Urban Gardens and Potentially Contaminated Land”

<http://clu.in.org/ecotools/urbangardens.cfm>

“Steps to Create a Community Garden or Expand Urban Agriculture”

www.epa.gov/brownfields/urbanag/steps.htm

“How Does Your Garden Grow? Brownfields Redevelopment and Local Agriculture”

www.epa.gov/brownfields/success/local_ag.pdf

“Urban Gardening Fact Sheet”

www.clu-in.org/s.focus/c/pub/i/1843/

Starting a Community Garden

American Community Garden Association

“Starting a Community Garden”

www.communitygarden.org/learn/starting-a-community-garden.php#sample

Public Health Law & Policy

“Ground Rules: A Legal Toolkit for Community Gardens”

www.nplan.org/nplan/products/CommunityGardenToolkit

University of Missouri Extension

“Community Garden Toolkit”

<http://extension.missouri.edu/publications/DisplayPub.aspx?P=MP906-6#Resources>

Starting an Urban Farm

U.S. Partnership for Sustainable Communities

“Urban Farm Business Plan Handbook”

www.epa.gov/brownfields/urbanag/pdf/urban_farm_business_plan.pdf

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