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Setting the Table for Urban Agriculture

Margot Pollans*

Michael Roberts**

I. Urban Agriculture and American Popular Culture

THIS ARTICLE PROVIDES CONTEXT FOR THE VARIOUS ROLES that law plays in the cultivation of urban agriculture. This article first reflects on how popular support for the development of a legal framework that promotes urban agriculture is rooted deeply in American agrarian traditions. The article then notes the palatable tension between the rhetoric in support of urban agriculture and the modes of urban law and planning that dominated the twentieth century. It considers how various approaches to urban planning have facilitated or thwarted urban agriculture and surveys recent legal developments designed to accommodate and encourage urban agriculture projects as alternatives to conventional industrial agriculture. Next, the article argues that, notwithstanding the growing enthusiasm for urban agriculture, serious equity and ecological concerns lie within the forms of modern urban agriculture and that careful strategic planning should align the implementation of the legal tools available not only with the traditional values of agrarianism, but also with addressing these and other concerns. This article concludes by recommending key considerations for use of legal tools in moving forward to develop urban agriculture that, if implemented, will improve food systems in general.

A. *The Urban Agriculture Trend*

Notwithstanding its recent growth in popularity, urban agriculture is not new. Through the nineteenth century, vegetable gardens and farm

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animals were common features of city life in the United States.¹ But in the twentieth century, many of the gardens and nearly all of the farm animals disappeared from the urban landscape.² A slow resurgence began in the 1970s, in the wake of urban abandonment, which left both the space for agriculture and the need for creative approaches to redevelopment.³ In the last five to ten years, the trickle turned into a flood. For instance, between 1993 and 2013, the number of community gardens in Seattle, Washington increased from thirty to eighty-one.⁴ Portland, Oregon, which had thirty gardens in 2007, has fifty today.⁵

So what exactly is urban agriculture? As we use it, the term encompasses a variety of economic and social activities related to food production, distribution, processing, eating, and disposal. Urban agriculture includes, among other things, community gardens and urban farms, and their associated distribution mechanisms, which can include farm stands, farmers markets, and community supported agriculture (CSA) ventures, through which customers contract with farmers in advance to purchase a box of produce, the contents of which are determined by the farmer based on that week's harvest.⁶ Most urban agriculture projects are part of a broadly defined alternative food movement, which includes, in particular, the local food movement. As such, urban agriculture projects emphasize paying attention to our food—knowing where it comes from, how it was produced, and what it contains.

Urban agriculture is increasingly a central feature of urban landscapes, conversations about food, and, of course, laws. Tables 1 and 2

1. Before the Revolutionary War, many cities were planned with common areas for animal grazing or lots large enough to accommodate gardens. Joshua Yellin, *The Intersection Between Urban Agriculture and Form-Based Zoning: A Return to Traditional Planning Techniques*, 19 HASTINGS W.-NW. J. ENVTL. L. & POL'Y 83, 84-85 (2013). Though less of a necessity due to increased rural production, urban agriculture continued through the late 19th century as more of a form of charity, recreation, or poverty alleviation. KIMBERLEY HODGSON ET AL., URBAN AGRICULTURE: GROWING HEALTHY, SUSTAINABLE PLACES 10 (Timothy Mennel ed., 2011).

2. JAC SMIT ET AL., URBAN AGRICULTURE: FOOD, JOBS AND SUSTAINABLE CITIES 32 (1996).

3. Catherine J. LaCroix, *Urban Agriculture and Other Green Uses: Remaking the Shrinking City*, 42 URB. LAW. 225, 228-29, 236 (2010); SMIT ET AL., *supra* note 2, at 46.

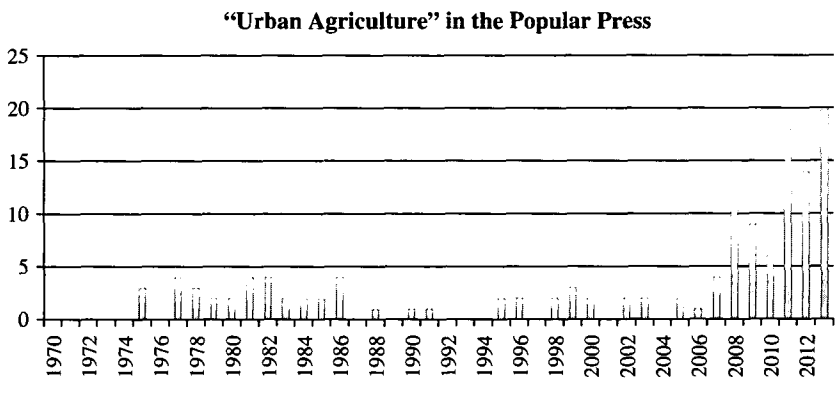
4. *P-Patch Community Gardens*, SEATTLE.GOV, <http://www.seattle.gov/neighborhoods/ppatch/aboutppatch.htm> (last visited Mar. 7, 2014).

5. PORTLAND/MULTNOMAH FOOD POLICY COUNCIL, THE DIGGABLE CITY PHASE III: IMPLEMENTATION STRATEGIES AND RECOMMENDATIONS 3 (2007), available at <http://multnomahfood.org/files/PDFs/Diggable%20City%20-%20Phase%20III.pdf>; *Community Garden Facts*, THE CITY OF PORTLAND, OREGON, <http://www.portlandoregon.gov/parks/article/388440> (last visited Mar. 7, 2014).

6. *Community Supported Agriculture*, LOCAL HARVEST, <http://www.localharvest.org/csa/> (last visited Mar. 7, 2014).

demonstrate its newfound prevalence as both an element of public dialogue and a focus of academic legal analysis. As Table 1 demonstrates, use of the term “urban agriculture” since 2010 has already exceeded totals for any previous decade. Urban agriculture has also permeated popular culture. For example, the first episode of the sketch comedy show *Portlandia* mocks the trend, particularly the desire to know where our food comes from, by taking it to an extreme—when out to dinner, the two main characters refuse to order without first paying a visit to the local source of the restaurant’s chickens to ensure the chickens were well-treated.⁷ More than just the subject of mockery, the interest in local sourcing is evident everywhere from the White House Garden⁸ to a recent episode of *The Simpsons* featuring a rooftop garden on the top of the Kwik-E-Mart.⁹

Table 1: Use of “Urban Agriculture” in the New York Times, the LA Times, and the Washington Post

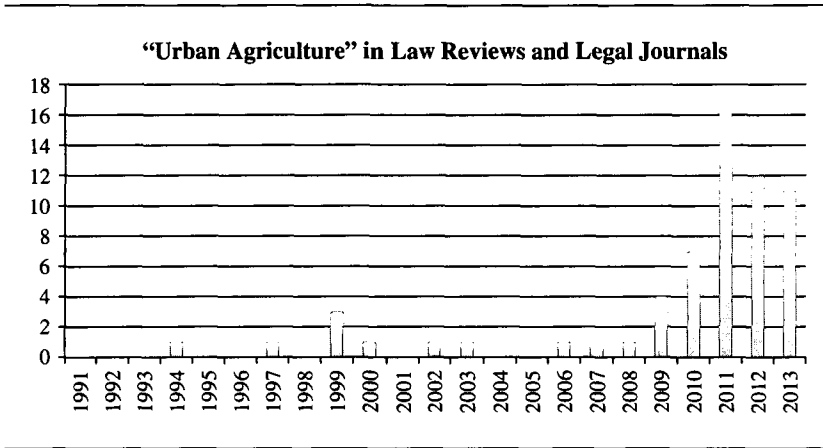


7. *Portlandia: Farm* (Broadway Video Entertainment Jan. 21, 2011).

8. Deborah Charles, *Growing Pains and Gains of a Presidential Garden*, CHICAGO TRIBUNE, June 19, 2012, http://articles.chicagotribune.com/2012-06-19/classified/sc-home-0618-garden-michelle-obama-20120619_1_community-gardens-white-house-kitchen-garden-pains-and-gains.

9. *The Simpsons: Lisa the Vegetarian* (20th Century Fox Oct. 15, 1995).

Table 2: Use of “Urban Agriculture” in Law Reviews and Legal Journals included in the Lexis database (full text search)



Urban agriculture programs also emphasize what participation in the food system can offer urban residents: food security, empowerment, healthy and tasty eating, and access to open space. Urbanites can participate via community gardens, backyard gardens, and home food processing. CSAs, farm stands, and farmers markets offer urban residents an opportunity to support and engage with urban agricultural activities by visiting farms and making purchases directly from farmers. Reflecting this new desire for participation, the upscale home goods chain Williams-Sonoma recently added a new section to its online store called “Agrarian,” which features everything from do-it-yourself canning kits to raised bed planters to chicken coops.¹⁰ Williams-Sonoma’s entry into this market suggests that a growing number of Americans are willing to invest both time and money into a different type of food system, one that is not characterized by convenience.

B. *The Jeffersonian Tradition*

As advertised on the Williams-Sonoma website, the “Agrarian” market, “supports a lifestyle of healthy-living—connecting the virtues of the homegrown and homemade to your everyday table.”¹¹ Why is agriculture virtuous? Aristotle, Horace, Virgil, and Adam Smith have all

10. *Agrarian, Garden Tools & Garden Tips*, WILLIAMS-SONOMA, <http://www.williams-sonoma.com/shop/agrarian-garden/> (last visited Mar. 7, 2014).

11. *Id.*

pointed to the moral superiority of agriculture as a way of life;¹² in the American conscience, however, “the most emblematic figure, if not the patron saint, of an agrarian mentality” is Thomas Jefferson.¹³ Although Jefferson himself never elucidated the elements of agrarianism, he often connected virtue and agriculture with lofty language, such as the following: “Those who labor in the earth are the chosen people of God, if ever He had a chosen people, whose breasts He has made His peculiar deposit for substantial and genuine virtue.”¹⁴

The interpretative tradition that has grown around the writings of Jefferson punctuates the connection. For a century after Jefferson, the agrarian ideal was imbued with a special significance in American political rhetoric, prose, and visual arts.¹⁵ In 1851, Representative George Julian of Indiana stated in a speech to Congress that “[t]he life of the farmer is peculiarly favorable to virtue . . . His manners are simple . . . his nature unsophisticated . . . [H]e lives in rustic plenty, remote from the contagion of popular vices . . .”¹⁶ The ideals of the Jeffersonian vision were also celebrated in the harmonious pastoral landscape, as evidenced in the literary works of poet William Cullen Bryant and novelist James Fenimore Cooper.¹⁷ Paintings produced by the Hudson River School, founded by Thomas Cole, paid homage to rural contentment, plentitude, and agrarian virtues.¹⁸ In the late nineteenth and early twentieth century, Jeffersonian agrarianism continued to influence political thought. Woodrow Wilson, an admirer of Jefferson, was attracted to the agrarian utopia of small, educated farmers, and embraced a platform in 1912 attacking the “wall of privilege”—the tariff, banks, and trusts.¹⁹ Populist politician, newspaper editor, and writer Thomas E. Watson, who authored a biography of Jefferson,²⁰ influenced agrarian thought for some time by his parsing

12. JEAN M. YARBROUGH, *AMERICAN VIRTUES: THOMAS JEFFERSON ON THE CHARACTER OF A FREE PEOPLE* 57 (Wilson Carey McWilliams & Lance Banning eds., 1998).

13. See PAUL B. THOMPSON, *THE AGRARIAN VISION: SUSTAINABILITY AND ENVIRONMENTAL ETHICS* 157 (2010) (noting that Jefferson believed farmers were the most valuable of citizens in the United States).

14. MERRILL D. PETERSON, *THOMAS JEFFERSON AND THE NEW NATION: A BIOGRAPHY* 256 (1970).

15. SARAH BURNS, *PASTORAL INVENTIONS: RURAL LIFE IN NINETEENTH-CENTURY AMERICAN ART AND CULTURE* 5 (Allen F. Davis ed., 1989).

16. HENRY NASH SMITH, *VIRGIN LAND: THE AMERICAN WEST AS SYMBOL AND MYTH* 171 (1950).

17. BURNS, *supra* note 15, at 5.

18. See *id.*

19. *Woodrow Wilson's New Freedom*, U.S. HISTORY, <http://www.ushistory.org/us/43g.asp> (last visited Mar. 7, 2014).

20. THOMAS E. WATSON, *LIFE AND TIMES OF THOMAS JEFFERSON* (1903).

of farmers' virtue from political theory.²¹ A review of recent agrarian literature shows that reliance on the symbol of the farmer to define citizen virtue is alive and well in contemporary discourse.²² For example, agrarian philosopher Paul Thompson argues that current discussions of sustainability need to reconnect with an agrarian philosophical and historical tradition that subverts industrialized agriculture's dominance.²³ The most prominent contemporary voice for the Jeffersonian tradition is American novelist and cultural critic Wendell Berry, who appropriates Jeffersonian ideas by arguing that the agrarian farmers' intimate and caring connection with the land distinguishes them from industrial agriculture: a "farm gives gifts because it is given a chance to do so; it is not overcropped or overused."²⁴ Although its legitimacy may be questioned,²⁵ the Jeffersonian notion that agrarianism produces virtuous individuals and communities is firmly entrenched in American moral populism, as exemplified in a 2013 Ted Talk ("Re-Growing Agrarian Roots") by rancher, author, and popular speaker Paul Schwennessen, that espoused the simple virtues of farms and living on the land.²⁶

Notwithstanding the abstractness of the Jeffersonian creed of agrarianism, three basic tenets have emerged.²⁷ The first tenet connects agrarianism to nature; through contact with nature, the agrarian acquires virtues of honor, self-reliance, and moral integrity.²⁸ Next, agrarianism engenders a sense of belonging to a community.²⁹ Jefferson believed that agricultural pursuits keep citizens in touch with communities and that Democracy requires such a connection.³⁰ Finally, agrarianism checks against the evils of urbanism, capitalism, and the

21. Christopher Michael Curtis, Thomas Watson and the Populist Reconstruction of Jeffersonian Agrarianism, Address at The Historical Society's conference (2012), available at <http://www.bu.edu/historic/conf2012/Curtis.doc>.

22. Jeff Motter & Ross Singer, *Review Essay: Cultivating a Rhetoric of Agrarianism*, 98 Q.J. SPEECH 439, 440 (2012).

23. THOMPSON, *supra* note 13, at 14.

24. WENDELL BERRY, BRINGING IT TO THE TABLE: ON FARMING AND FOOD 128 (2009).

25. See Jim Chen, *Of Agriculture's First Disobedience and Its Fruit*, 48 VAND. L. REV. 1261, 1326 (1995) (asserting that agrarian virtue is nothing more than a myth and that agriculturalists are nothing more than survivors and exploiters of land (environmental destruction) and humans (slavery)).

26. TEDx Talks, *ReGrowing Agrarian Roots: Paul Schwennessen at TEDxBozeman*, YouTube (June 18, 2013), <https://www.youtube.com/watch?v=sZYEMn9B5Gc>.

27. AGRARIANISM IN AMERICAN LITERATURE xiv (M. Thomas Inge ed., 1969).

28. *Id.*

29. *Id.*

30. J. Michael Martinez, *Jeffersonian and Hamiltonian Views of Nature in the Early American Republic*, 33 POL. & POL'Y 522, 532 (2005).

imbalances of modern society.³¹ Jefferson believed that if each farm was a self-sustaining enterprise and if a substantial portion of the populace could be employed as independent farmers, the country would stave off the power-seeking schemes of massive economic concern.³²

C. *Virtue in Urban Agriculture*

Agrarian thought among urban populations, like that among rural populations, embraces the potential virtue of a particular type of food production—the non-industrial. Realization of this non-industrial virtue hinges on urbanite participation. The best-selling author Michael Pollan captures this connection in his book *Food Rules*.³³ For example, Rule 62 advocates for readers to “[p]lant a vegetable garden if you have the space, a window box if you don’t.”³⁴ This practical suggestion calls for direct participation “in the intricate and endlessly interesting processes of providing for your sustenance”³⁵ Although active participation in food production is not always possible for urban residents, the emphasis on “food” helps make the Jeffersonian ideals relevant to urbanites: urban farming, CSAs, and frequenting farmers markets help urban dwellers connect with nature and producers, and “brush up against someone who is actually living out a life premised on self-reliance and stewardship.”³⁶

Although agriculture policy in the United States still favors large industrialized farming,³⁷ policy advocates increasingly point to the virtues of urban agriculture and promote its development.³⁸ Government initiatives have encouraged urban residents to transform the urban environment by embracing agricultural practices.³⁹ University researchers of all stripes—human geography, environmental sciences, and urban studies—have postulated that agrarian practices of small-scale agriculture can improve and beautify cities.⁴⁰ Urban agriculture may

31. AGRARIANISM IN AMERICAN LITERATURE, *supra* note 27, at xiv; M. Andrew Holowchak, *Jefferson's Moral Agrarianism: Poetic Fiction or Normative Vision?*, 28 AGRIC. & HUM. VALUES 497, 499-505 (2011).

32. Thomas Jefferson *Notes on the State of Virginia*, in AGRARIANISM IN AMERICAN LITERATURE 9-10 (M. Thomas Inge ed., 1969).

33. MICHAEL POLLAN, *FOOD RULES: AN EATER'S MANUAL* (2009).

34. *Id.* at 135.

35. *Id.*

36. THOMPSON, *supra* note 13, at 121.

37. Susan A. Schneider, *Reconsidering the Industrialization of Agriculture*, 26 J. ENVTL. L. & LITIG. 19, 25-27 (2011) (describing various federal policies that have fostered industrialization).

38. *See infra* Part II.B.

39. THOMPSON, *supra* note 13, at 121.

40. *See id.* at 140-45.

only meet a small percentage of total urban food needs, but the uses of agrarian narratives and images have a powerful influence on the way that individuals and communities imagine their relationship to nature, as well as to food and the people that produce it.⁴¹

The momentum towards connecting urban agrarianism to virtue has spawned a recurring narrative that encompasses the Jeffersonian tenets, allowing urban agriculture proponents to cite numerous potential benefits that appeal to modern urban sensibilities. These benefits include individual moral development, community development, personal health (through access to fresh fruits and vegetables), economic development, access to greenspace, environmental sustainability, and food justice (via both food access and food sovereignty).⁴² As this section demonstrates, urban agriculture is more than a trend driven by economic exigency and urban abandonment; its rhetoric is deeply rooted in the American agrarian tradition, which values connection to nature, hard work, and self-sufficiency.

II. Planning and Legislating for Urban Agriculture

Twentieth century urban land use law and planning, which call for separation of uses and isolation of cities from their agricultural hinterlands, hastened the decline of urban agriculture in the early twentieth century and thwarted its development at the turn of the twenty-first.⁴³ The widespread adoption and development of urban agriculture in recent years has required both reconceptualization of cities themselves and revamping of legal frameworks. This section describes both of these transformations, beginning with a brief history of urban planning theory in the United States. We focus on planning theory because it is essential to urban land use decisions and because two recent strands of thinking—"New Urbanism" and "agricultural urbanism"—are gaining popularity and have facilitated and encouraged the expansion of urban agriculture.

41. *Id.*

42. *See, e.g.,* La Croix, *supra* note 3, 233-34.

43. The seminal case on the rise of separation of uses is *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 387-88 (1926) ("A regulatory zoning ordinance, which would be clearly valid as applied to the great cities, might be clearly invalid as applied to rural communities . . . Thus, the question whether the power exists to forbid the erection of a building of a particular kind or for a particular use, like the question whether a particular thing is a nuisance, is to be determined, not by an abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and the locality.").

A. *History of American Urban Planning Theory*

Early colonial urban planning expressly provided for agricultural spaces. Cities such as Boston, Philadelphia, and Savannah were all designed to leave room for food production.⁴⁴ This approach reflected both conventional practice and technological necessity—without refrigeration or railroads, fresh food had to come from nearby. Over time, agricultural space gave way to denser and more industrial uses, and by the early twentieth century, the dominant mode in city planning had become separation of uses, characterized by Euclidian zoning, which designates closely related and compatible uses for each zoning district.⁴⁵

Selecting among potential uses, many communities have prioritized single-family homes over apartment houses and non-residential uses and have specified large minimum lot sizes, often as high as two acres—this planning mode has encouraged urban sprawl. These and other zoning restrictions have limited housing density thus facilitating sprawl.⁴⁶ Accordingly, zoning has been blamed for increased carbon footprints.⁴⁷

Although it is still the dominant mode of planning, Euclidian zoning is increasingly falling out of favor. Following the path of Jane Jacobs, an urban theorist who, in the mid-twentieth century, advocated for mixed-use, dynamic development, planners such as Andres Duany and Emily Talen have called for a return to form-based, rather than use-based, planning.⁴⁸ Called “New Urbanism,” this new planning mode emphasizes the importance of context-based planning in which “[n]ature . . . provide[s] the order and underlying structure of the metropolis.”⁴⁹ Just as a natural environment is diversified, so too should

44. Yellin, *supra* note 1, at 84-85.

45. For a more in-depth treatment of this history, see Jay Wickersham, *Jane Jacobs's Critique of Zoning: From Euclid to Portland and Beyond*, 28 B.C. ENVTL. AFF. L. REV. 547 (2001).

46. PETER CALTHORPE, *THE NEXT AMERICAN METROPOLIS: ECOLOGY, COMMUNITY, AND THE AMERICAN DREAM* 16 (1993); Yellin, *supra* note 1, at 97-98.

47. Yellin, *supra* note 1, at 95-96 (explaining that sprawl increases automobile dependency).

48. See JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 230-32 (1961); Andrés Duany & Emily Talen, *Transect Planning*, 68 J. AM. PLAN. ASS'N 245, 252 (2002) (promoting the development of cities that enable diversity and the integration of urban interdependencies).

49. CALTHORPE, *supra* note 46, at 25 (explaining that context-based planning parallels much of sustainable agriculture theory, which calls for the development of farming practices that mimic natural ecosystems); see, e.g., WES JACKSON, *BECOMING NATIVE TO THIS PLACE* 74 (1994) (calling for a science of agricultural sustainability relying on “nature as measure”).

be an urban landscape. Residential, commercial, and even agricultural and industrial uses can coexist, so long as they are appropriately scaled for their surroundings. Mixed-use developments, featuring combinations of residential and commercial uses and green space, are increasingly common, and many cities have experimented with “upzoning”—allowing a greater variety of uses and larger building sizes—to facilitate density, particularly around transit hubs.⁵⁰ Some examples of cities that have embraced this mode of planning include Miami, Florida, which revamped its entire zoning code to follow the tenets of New Urbanism,⁵¹ and Fremont, Michigan, which adopted a hybrid code combining elements of form-based zoning and conventional zoning with the goal of “foster[ing] a vibrant city through a lively mix of uses.”⁵²

Planner Peter Calthorpe articulates the aspirations of New Urbanism when he argues that a new type of growth should be

a search for a paradigm that combines the utopian ideal of an integrated and heterogeneous community with the realities of our time—the imperatives of ecology, affordability, equity, technology, and the relentless force of inertia. The work asserts that our . . . neighborhoods must be diverse in use and population. And . . . that the form and identity of the metropolis must integrate historic context, unique ecologies, and comprehensive regional structure.⁵³

Following this reasoning, agriculture may once again secure an appropriate and productive place in urban areas as a relief from density, a productive use of available spaces such as vacant lands and roofs, and a mechanism to attach cities to their ecological contexts.

Drawing on the philosophy of New Urbanism, a new group of “Agricultural Urbanists” have asked how planners can expressly incorporate food into planning methodologies in order to facilitate environmental sustainability, social and economic development, and public health.⁵⁴ Arguing that, for far too long, planners have assumed that food comes packaged from the supermarket, Agricultural Urbanists have called on city planners to implement a framework “that sees municipal food networks as analogous to other vital infrastructure such as

50. See David Schleicher, *City Unplanning*, 122 *YALE L.J.* 1670, 1697-99 (2013).

51. See *Project Vision*, MIAMI 21, www.miami21.org, (last visited Mar. 7, 2014).

52. H. William Freeman, *A New Legal Landscape for Planning and Zoning: Using Form-Based Codes to Promote New Urbanism and Sustainability*, 36 *MICH. REAL PROP. REV.* 117, 123 (2009); see *FREMONT, MICH., CODE*, ch. 22 (2013), available at <http://www.cityoffremont.net/web/planzone.htm>.

53. CALTHORPE, *supra* note 46, at 15.

54. See HODGSON, *supra* note 1, at 55-56; JANINE DE LA SALLE & MARK HOLLAND, *AGRICULTURAL URBANISM: HANDBOOK FOR BUILDING SUSTAINABLE FOOD SYSTEMS IN 21ST CENTURY CITIES* 14 (Janine de la Salle & Mark Holland eds., 2010).

roads or sewers.”⁵⁵ In their guide to agricultural urbanism, planners Janine de la Salle and Mark Holland developed a series of guiding principles that include: approaching planning from “an integrated food-and-agriculture-system perspective;” increasing physical access to food; integrating food systems into a broad range of urban policy, programs, institutional mandates, and development plans; and constructing sustainable infrastructure for food and agriculture.⁵⁶

B. Revamping the Legal Framework

The bottom line for Agricultural Urbanists is that food is a conscious feature of all elements of city planning. Both the New Urbanism and Agricultural Urbanism modes seek to develop integrative landscapes, where residents can live, work, and grow food—a place where agrarian ideals are fostered. Implementing this vision requires both legal change—to legalize agricultural uses—and funding—to develop agriculture projects.

The emerging application of law to urban agriculture focuses not on preservation, as rural agricultural law has done, but rather on legalization and promotion.⁵⁷ What are the legal tools being implemented to serve these two goals? We begin with state and local legislative changes and then consider federal support programs.

1. LOCAL AND STATE LEGISLATION

With primary control over local land use, state and local governments play a formative role in governing urban agriculture. Here, we summarize and provide examples of three categories of facilitative laws: (1) changes to municipal codes; (2) property tax incentives; and (3) government acquisition of land for urban agriculture purposes.

a. Changes to Municipal Codes

Many cities are updating their municipal codes to allow for urban agriculture. Although these updates primarily address zoning, others aspects of local law, such as health codes, have also been implicated. Cities that are regularly acknowledged for their comprehensive,

55. HODGSON, *supra* note 1, at 55-6; DE LA SALLE & HOLLAND, *supra* note 54, at 14.

56. DE LA SALLE & HOLLAND, *supra* note 54, at 31-32.

57. “Agricultural law” historically has served primarily as a tool to protect rural agriculture. An enormous body of legal exceptions, protections, and programs serve that end. They include: bankruptcy protection; international-trade laws and programs; exceptions to environmental and anti-trust regulations; subsidy, loans, and education programs; and farmland preservation laws and programs. See JOHN H. DAVIDSON ET AL., *AGRICULTURAL LAW: CASES AND MATERIALS* (1985). Many of these tools reflect the Jeffersonian centrality of agriculture, privileging farms above other economic endeavors. See also Susan A. Schneider, *A Reconsideration of Agricultural Law: A Call for the Law of Food, Farming, and Sustainability*, 34 WM. & MARY ENVTL. L. & POL’Y REV. 935, 946 (2010).

urban-agriculture-friendly zoning codes include Boston, Seattle, and Cleveland.⁵⁸ As demonstrated in these cities, updates to municipal codes remove impediments, create space for and regulate activities and land uses related to urban agriculture, including the sale of agricultural products and the raising of livestock. For instance, since 2011, Berkeley,⁵⁹ San Francisco,⁶⁰ and Detroit⁶¹ have all enacted laws legalizing the sale of homegrown and urban-garden grown edibles. Among many other cities, San Diego and Baltimore recently amended their zoning codes and health codes to legalize beekeeping, backyard chickens, and goats.⁶² Baltimore also legalized rabbit-raising.⁶³

These updates often provide clear definitions for relevant terms and stipulate where certain types of urban agriculture can be practiced,⁶⁴ permissible lot sizes,⁶⁵ whether commercial gardens are permitted,⁶⁶

58. See Stephanie A. Maloney, *Putting Paradise in the Parking Lot: Using Zoning to Promote Urban Agriculture*, 88 NOTRE DAME L. REV. 2551, 2583-92 (2013) (highlighting these three cities as offering “best practices”); BOSTON, MASS., ZONING CODE vol. I, art. 89 (2013), available at <http://www.bostonredevelopmentauthority.org/zoning/zonin-g-code-maps>; SEATTLE, WASH., MUN. CODE, §§ 23.42, 23.45, 23.47A, 23.54 (2010), available at <http://clerk.ci.seattle.wa.us/~public/toc/t23.htm>; CLEVELAND, OHIO, ZONING CODE § 336A (2011), available at <http://planning.city.cleveland.oh.us/zoning/cpc.php>.

59. See BERKELEY, CAL., MUN. CODE §§ 23C.20.010(B)(1)-(4) (2013) (allowing residents to sell or trade “non-processed edibles” grown on residential properties, without a permit); *Success for the Berkeley Edible Gardens Initiative!*, BERKELEY EDIBLE GARDEN INITIATIVE, <http://berkeleyediblegardens.org> (last visited Mar. 7, 2014).

60. See S.F., CAL., ADMIN. CODE § 53.1-4 (2012) (allowing gardeners to sell their produce grown on- and off-site and allowing urban agriculture in all areas of the city); Press Release, Office of the Mayor, Mayor Lee Signs Urban Agriculture Legislation for Greater Local Food Production in SF (Apr. 20, 2011), available at <http://sfmayor.org/index.aspx?page=353>.

61. See DETROIT, MICH., CITY CODE § 61-12-327 (2012) (allow products grown or produced at urban gardens and farms to be sold on site, at farmers’ markets, or directly to public and private entities).

62. E.g. SAN DIEGO, CAL., MUN. CODE § 42.07 (2013); Adrian Florido, *San Diego City Council Approves Backyard Chickens, Goats and Bees*, KPBS, Feb. 1, 2012, <http://www.kpbs.org/news/2012/feb/01/san-diego-city-council-approves-backyard-chickens-/>; *Planning/Baltimore Food Policy Initiative/Urban Agriculture*, BALTIMORE, <http://www.baltimorecity.gov/Government/AgenciesDepartments/Planning/BaltimoreFoodPolicyInitiative/UrbanAgriculture.aspx> (last visited Mar. 7, 2014).

63. E.g. Baltimore City Health Dep’t, *Regulations For Wild, Exotic and Hybrid Animals*, Sept. 26, 2013, available at <http://communitylaw.org/wp-content/uploads/2013/09/AC-Reg-Wild-Exotic-Hybrid-Animals-September-26-2013.pdf>.

64. See MINDY GOLDSTEIN ET AL., URBAN AGRICULTURE: A SIXTEEN CITY SURVEY OF URBAN AGRICULTURE PRACTICES ACROSS THE COUNTRY (2011), available at http://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-a-livable-future/_pdf/projects/FPN/Urban_Community_Planning/URBAN_AGRICULTURE_A_SIXTEEN_CITY_SURVEY_OF_URBAN_AGRICULTURE_PRACTICES_ACROSS_THE_COUNTRY.pdf.

65. E.g., SEATTLE, WASH., MUN. CODE, § 23.47A.004, Table A (2009).

66. E.g., S.F., CAL., PLANNING CODE § 703.2 (2014); NASHVILLE, TENN. ORDINANCE NO. BL2009-479 (2009).

the number of livestock that can be kept,⁶⁷ and the types of structures that can be built.⁶⁸

b. Tax Incentives

Some states have enacted laws allowing local governing bodies to lower property taxes on certain properties used for urban agriculture. For instance, Maryland's urban agriculture property tax credit, enacted in 2010, allows the Mayor and City Council of Baltimore, as well as any county or governing body of a municipal corporation, to grant a property tax credit to urban agriculture properties of a certain size.⁶⁹ Similarly, California's recently enacted Urban Agriculture Incentive Zones Act allows city governments to designate "urban agriculture incentive zones" in which landowners can receive a property tax reduction for contracting to commit land to agricultural use for a minimum of five years.⁷⁰ The California act requires the county assessor to value property at its agricultural, as opposed to market-rate, value.⁷¹ In order to qualify as an "urban agriculture incentive zone," the area encompassing the zone must be a United States Census designated urban area of 250,000 people or more.⁷²

c. Government Acquisition of Land for Urban Agriculture Purposes

Some new state laws supporting urban agriculture allow local governments to appropriate private, vacant lots or enter into lease agreements with private property owners, to open land for community gardens. The following two examples illustrate this trend.

First, in April 2009, the Ohio General Assembly amended the Land Reutilization Program to create land bank corporations.⁷³ This permits municipalities, counties, and townships to acquire nonproductive land via tax foreclosure and implement procedures for reutilization of non-productive lands.⁷⁴ Soon after this amendment, Cleveland formed the

67. *E.g.*, CHULA VISTA, CAL., MUN. CODE § 6.04 (2014); SAN DIEGO, CAL., MUN. CODE § 44.0307 (2012); MILWAUKEE, WIS., CITY ORDINANCE §§ 78-5, 78-6, 78-6.5 (2013); MINNEAPOLIS, MINN., MUN. CODE § 70.10 (2013); Baltimore City Health Dep't *supra* note 63.

68. *E.g.*, SEATTLE, WASH., MUN. CODE §§ 23.42.051(A)(6)-(7) (2013).

69. H.B. 1062, 2010 Reg. Sess. (Md. 2010).

70. Assemb. B. 551, 2013 Reg. Sess. (Cal. 2013), available at http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB551.

71. *Id.* at § 1.

72. *Id.*

73. Ohio Rev. Code Ann. §§ 5722.01-.22 (West 2009); see also LaCroix, *supra* note 3, at 231.

74. §§ 5722.02-.03 (West); see also § 5722.13 (West) (requiring disposition of the property within sixteen years).

Cleveland Land Bank Program, which makes land available to private citizens for new home construction, residential side-yard expansion, and commercial development, among other potential uses.⁷⁵ Land can be purchased for agriculture or other greening uses for \$200 per parcel or licensed for use as a community garden for \$1 per year.⁷⁶

Second, in Seattle, the Municipal Code authorizes the Director of Neighborhoods to “enter into, renew, modify and administer leases and agreements to lease any property within [t]he [c]ity . . . for use as . . . community gardens.”⁷⁷ With this authority, the city has set up the P-Patch Community Gardening Program, which currently manages eighty-one gardens throughout the city of Seattle.⁷⁸

2. FEDERAL SUPPORT FOR URBAN AGRICULTURE

In addition to implementation of the local legal tools outlined in this book and illustrated in this chapter, the legal framework for promoting urban agriculture is also shaped by federal programs that directly or indirectly support urban agriculture. For example, a recent research grant from the United States Department of Agriculture’s (USDA) National Institute of Food and Agriculture to the Pennsylvania State College of Agricultural Sciences and New York University provided \$453,000 for a report titled “The State of Urban Farming in the United States: Enhancing the Viability of Small and Medium-Sized Commercial Urban Farms.”⁷⁹ Researchers plan to examine the current and future state of urban agriculture.⁸⁰ Generally, the federal programs supporting urban agriculture fall into three categories: grants for private, local, and state research and projects; consumer food purchasing subsidies that can be used at farmers markets; and funding for and provision of education and information sharing.

75. LaCroix, *supra* note 3, at 232; see also Julie M. Slabinski, *From Wasteland to Oasis: How Pennsylvania Can Appropriate Vacant Urban Land into Functional Space Via Urban Farming*, 22 WIDENER L.J. 253, 275 (2012) (describing the Cleveland program); see also City of Cleveland, *The City of Cleveland Land Bank at Work*, available at <http://webapp.cleveland-oh.gov/aspnet/docs/get.aspx?id=1282&file=LandBank5SuccessStories.pdf> (providing examples of land bank sales).

76. City of Cleveland, *Land Bank: Guide for Agriculture/Garden Application*, available at <http://webapp.cleveland-oh.gov/aspnet/docs/get.aspx?id=1276&file=LandBankAgricultureGardenApplication.pdf>.

77. SEATTLE, WASH., MUN. CODE § 3.35.080 (1997).

78. *P-Patch Community Gardens*, SEATTLE.GOV, <http://www.seattle.gov/neighborhoods/ppatch/aboutPpatch.htm> (last visited Mar. 7, 2014).

79. *Study to Examine Trends in Urban Agriculture*, PENN STATE (Aug. 17, 2012), <http://news.psu.edu/story/147385/2012/08/17/study-examine-trends-urban-agriculture>.

80. *Id.*

a. Federal Grants for Research and Projects

Here we describe three major programs that have provided grants for urban agriculture projects.

First, started in 1996, the Community Food Project Competitive Grants Program funds projects designed to “meet the food needs of low-income people”;⁸¹ “increase the self-reliance of communities in providing for their own food needs”;⁸² and “promote comprehensive responses to local food, farm, and nutrition issues.”⁸³ Grants are also available for projects that meet specific state, local, or neighborhood food and agriculture needs for infrastructure improvement and development; planning for long-term solutions; or the development of marketing activities that mutually benefit agricultural producers and low-income consumers.⁸⁴

Second, the Farmers Market Promotion Program provides awards of up to \$100,000 for agriculture cooperatives, economic development corporations, local governments, non-profit organizations, producer associations and networks, public benefit corporations, regional farmers’ market authorities, and tribal governments.⁸⁵ The grants support direct marketing of local food systems (e.g., farmers markets, roadside stands, CSAs, agri-tourism, and electronic benefit transfer (EBT) machines, which enable the use of food stamps at farmers markets). In

81. *Community Food Projects Competitive Grants*, USDA NAT’L INST. OF FOOD & AGRIC. http://www.csrees.usda.gov/nea/food/in_focus/hunger_if_competitive.html (last updated Mar. 18, 2009).

82. *Id.*

83. *Id.*

84. *Id.* 2013 grants included support for the following projects: *Revision International (CO)* received funding to increase access to and the affordability of locally-grown, fresh, healthy produce in the food desert of Westwood, and to do so through a community-owned and operated cooperative. Among other outcomes, the project seeks to expand the number of backyard gardens and growing space at the project’s two urban farms. *Westwood Food Cooperative: Urban Farms, Food Hub, and Marketplace*, USDA NAT’L INST. OF FOOD & AGRIC., <http://cris.nifa.usda.gov/cgi-bin/starfinder/0?path=fastlink1.txt&id=anon&pass=&search=R=58197&format=WEBLINK> (last updated Aug. 1, 2013). *Youngstown Neighborhood Development Corporation (OH)* received funding to expand programming for and assistance to urban growers. The plan is to recruit and provide training, support the creation of new food-based businesses through supportive services such as small business development consulting, access to both vacant land and value-added processing facilities, create jobs through the development of a strong, diverse local food system, and increase the knowledge and capacity of community residents to both grow and prepare fresh, healthy, local foods. *Growing New Food Entrepreneurs in Youngstown*, USDA NAT’L INST. OF FOOD & AGRIC., <http://cris.nifa.usda.gov/cgi-bin/starfinder/0?path=fastlink1.txt&id=anon&pass=&search=R=58121&format=WEBLINK> (last updated Sept. 1, 2013).

85. *Farmers Markets and Local Food Marketing*, USDA AGRIC. MARKETING SERV. <http://www.ams.usda.gov/AMSV1.0/fmpp> (last updated Oct. 10, 2012).

2012, these grants resulted in 131 projects in thirty-eight states, the District of Columbia, and Puerto Rico.⁸⁶

Finally, the Farm to School Grants Program is designed to help schools source more local foods and provide educational activities around food, farming, and nutrition.⁸⁷ These grants range from \$20,000 to \$100,000 and have a matching fund requirement.⁸⁸ Applicants include schools, state and local agencies, tribal organizations, agricultural producers, and non-profit organizations.⁸⁹ First year awards, announced November 14, 2012, spanned sixty-eight projects in thirty-seven states and the District of Columbia.⁹⁰

b. Federal Consumer Food Subsidies

Another area of focus for government funding programs is facilitation of local agriculture through existing consumer food subsidies. Although these programs apply broadly, certain aspects support the development of urban and peri-urban agriculture by providing low-income consumers with financial support to purchase those products. The Senior Farmers Market Nutrition Program is designed to provide low-income seniors—many of whom reside in urban communities—

86. *Farmers Market Promotion Program—FY 2012 Awards*, USDA AGRIC. MARKET-ING SERV. (Sept. 21, 2012), <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5100605>. Under the Farmers Market Promotion Program, the USDA provided funding to the following projects, among others, in 2012:

(1) *Truly Living Well Center for Urban Agriculture (GA)* received an award to expand delivery systems from local urban farmers to markets, support the use of EBT, and promote the markets to consumers in Atlanta food deserts; (2) *New Orleans Food & Farm Network (LA)* received an award to train new urban farmers in business and farm management, marketing, and legal principles related to urban farming; and (3) *United Community Centers (NY)* received an award to provide educational tours of urban farms so as to increase awareness of and attendance at local farmers' markets.

87. *Farm to School*, USDA FOOD & NUTRITION SERV., <http://www.fns.usda.gov/farmtoschool/farm-school> (last updated Feb. 19, 2014).

88. USDA FOOD & NUTRITION SERV., FARM TO SCHOOL GRANT PROGRAM: REQUEST FOR APPLICATIONS 4, 19 (2014), available at http://www.fns.usda.gov/sites/default/files/FY2015_FSGP_RFA_2182014.pdf.

89. *Id.* at 8.

90. *USDA Farm to School FY 2013 Grand Awards*, USDA FOOD & NUTRITION SERV., http://www.fns.usda.gov/sites/default/files/F2S_Grants-FY2013.pdf (last updated Nov. 14, 2012). First year awards by the Farm to School Grants Program included funding for the following projects: (1) *Community Food Bank (AZ)* received a grant to partner with schools so as to bring local and healthy foods into cafeterias. The program has three areas of focus: food production, garden-based education, and working with local producers and developing a farm to school partnership on Tohono O'odham Nation; (2) *Healthy Foods for Healthy Kids, Inc. (DE)* received a grant for its work starting vegetable gardening programs at schools; and (3) *Growing Power, Inc. (WI)* received a grant for a project to provide children with curriculum-based education on urban sustainable food systems and facilitate the procurement of more locally produced food for the Milwaukee public school system. 82.6 percent of the student population is low-income.

with farm-direct food.⁹¹ Many states use a coupon model, allowing seniors to purchase directly; others purchase bulk quantities of produce from local farmers and provide boxes of food to participants on a regular basis;⁹² and a few states purchase a share of CSA programs on behalf of each senior participant.⁹³ The Supplemental Nutrition Assistance Program (SNAP), available to low-income individuals and families, provides food-purchasing financial benefits through EBTs—essentially debit cards.⁹⁴ Traditionally, these benefits were redeemable only at participating retail stores, but according to a USDA database, nearly one-third of the farmers markets in the country had EBT machines as of 2013.⁹⁵

Some states now also allow vouchers issued under the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) to be used at farmers markets for purchase of fruits and vegetables.⁹⁶ WIC provides food-purchasing support for pregnant women, new mothers, infants, and children up to five years of age.⁹⁷ Vouchers may be used at any participating retailer, but only on certain products. Under the WIC Farmers Market Nutrition Program, established in 1992, most states provide coupons specifically for use at farmers markets.⁹⁸

91. *Senior Farmers' Market Nutrition Program*, USDA FOOD & NUTRITION SERV. <http://www.fns.usda.gov/sfmnp/senior-farmers-market-nutrition-program-sfmnp> (last updated Dec. 13, 2013). Qualifying seniors generally are those people who are over 60 years of age and who have household incomes at or below 185% of the U.S. Poverty Income Guidelines.

92. *E.g.* 7 C.F.R. § 249.10 (2009); *Senior Farmers' Market Nutrition Program*, USDA FOOD & NUTRITION SERV. (July 1, 2013), <https://origin.drupal.fns.usda.gov/sites/default/files/SFMNP%20Fact%20Sheet%20-%20July%202013.pdf>; ILL. FARMERS MARKET ASSN., SECTION 2: MANAGING A FARMERS MARKET 26-27 (2014), available at <http://ilfarmersmarkets.org/wp-content/uploads/2013/01/IFMA-Section-II-updated-1-4-14.pdf>.

93. *See* 7 C.F.R. § 249.10; *SFMNP Profile for Participating State Agencies—FY 2012*, USDA FOOD & NUTRITION SERV. (July 1, 2013), <http://www.fns.usda.gov/sites/default/files/SFMNPFY2012Profile.pdf> (showing that Maine and Vermont lead in usage of CSA shares by a large margin); *Senior Farmers' Market Nutrition Program*, *supra* note 92.

94. *Supplemental Nutrition Assistance Program*, USDA FOOD & NUTRITION SERV., <http://www.fns.usda.gov/snap/supplemental-nutrition-assistance-program-snap> (last updated Mar. 6, 2014).

95. *Farmers Market Search*, USDA AGRIC. MARKETING SERV., <http://search.ams.usda.gov/farmersmarkets/> (last updated Feb. 7, 2014).

96. *See, e.g., Farmers' Market Programs*, CAL. DEP'T OF PUB. HEALTH, <http://www.cdph.ca.gov/programs/wicworks/pages/farmers%20market-programoverview.aspx> (last visited Mar. 7, 2014).

97. *Women, Infants, and Children*, USDA FOOD & NUTRITION SERV., <http://www.fns.usda.gov/wic/women-infants-and-children-wic> (last updated Jan. 31, 2014).

98. *WIC Farmers' Market Nutrition Program*, USDA FOOD & NUTRITION SERV., <http://www.fns.usda.gov/fmnp> (last updated Mar. 7, 2014).

c. Federal Provision of Education and Information to Consumers

Through the USDA, the federal government also supports urban agriculture through education and the provision of information. For instance, the USDA has created the Alternative Farming Systems Information Center, which identifies resources on sustainable food systems and practices.⁹⁹ Within the information architecture for the center is “Farms and Community,” under which urban agriculture, small farms, and community gardening are discrete subjects.¹⁰⁰ Similarly, the USDA Cooperative Extension System houses a nationwide educational network providing information on an array of agricultural topics including urban agriculture.¹⁰¹ The USDA Beginning Farmer and Rancher Development Program of 2008 earmarks funding for beginning farmers (individuals with ten years or less experience operating farms) and provides education and training for emerging urban producers.¹⁰²

d. Noteworthy Additional Programs

A few additional programs bear mentioning. One of the more popular USDA programs supportive of urban agriculture has been the Know Your Farmer, Know Your Food program started in 2009.¹⁰³ This program is an effort by the USDA to strengthen local and regional food

99. *Alternative Farming Systems Information Center*, USDA NAT'L AGRIC. LIBRARY, <http://afsic.nal.usda.gov> (last updated Mar. 6, 2014).

100. *Farms and Community*, USDA NAT'L AGRIC. LIBRARY, <http://afsic.nal.usda.gov/farms-and-community> (last updated Mar. 6, 2014).

101. *Cooperative Extension System Offices*, USDA NAT'L INST. OF FOOD & AGRIC., <http://www.nifa.usda.gov/Extension/> (last visited Mar. 7, 2014).

102. *Farm Loan Programs*, USDA NAT'L INST. OF FOOD & AGRIC., <http://www.fsa.usda.gov/FSA/webapp?area=home&subject=fmlp&topic=bfl> (last updated Jan. 30, 2014). In the first year, three-year grants supported training for 5,000 beginning farmers and ranchers. In 2011, grants supported training for more than 38,000 beginning farmers. USDA & NAT'L INST. OF FOOD & AGRIC., *OUTCOMES REPORT 2011: BEGINNING FARMER AND RANCHER DEVELOPMENT PROGRAM* (Scott Elliot ed., 2012). In 2010, the USDA awarded a Beginning Farmer start-up grant to the New York City School of Urban Agriculture, which serves as an agricultural training resource for New York City and the Northeast, with a particular emphasis on students from low-income communities. Through course offerings in urban agriculture production, preparation, distribution, and marketing, the School seeks to increase the capacity of established and emerging urban agriculture leadership. The project expects to train at least 3,000 students over three years. Memorandum from Kathleen A. Merrigan, Deputy Secretary of Agriculture, Urban Agriculture and Gardening—Supporting Farm Viability, Building Access to Nutritious, Affordable Food and Encouraging Rural-Urban Linkages (Oct. 14, 2011), available at <http://www.usda.gov/documents/usda-urban-ag-memo-final.pdf>.

103. *Know Your Farmer, Know Your Food*, USDA, <http://www.usda.gov/wps/portal/usda/usdahome?navid=KNOWYOURFARMER> (last updated Mar. 17, 2014).

systems by supporting small and mid-size farms. The initiative leverages existing USDA resources, promotes greater collaboration between the Department's agencies and staff offices, and identifies ways to improve the administration and implementation of programs. The Specialty Crop Block Grant Program, which provides states with funding for projects to increase the production of specialty crops, has supported urban agriculture projects.¹⁰⁴ California received funding to partner with the California Association of Nurseries and Garden Centers to market California-grown nursery products and transition consumers from "urban dwellers into urban farmers."¹⁰⁵ Florida received funding to partner with the Urban Growers Community Economic Development Corporation to expand access to fresh fruit and vegetables in underserved communities by training community gardeners to properly grow specialty crops, harvest the produce, and sell it.¹⁰⁶ Finally, the USDA's People's Garden, located at USDA headquarters, plays an important symbolic role in urban agriculture.¹⁰⁷ There, USDA employee volunteers cultivate herbs and vegetables for the DC Central Kitchen, a community soup kitchen.¹⁰⁸

These legal tools and government research and project funding programs demonstrate vividly the commitment law and policy makers have to the development of regional food systems in general, and urban agriculture in particular. This commitment reflects the belief in urban agriculture's social benefits.

III. Challenges

Notwithstanding its popularity and virtues, urban agriculture faces some challenges. Recognition of these problems does not diminish the value of urban agriculture, and, indeed, we do not wish to suggest that all urban agriculture projects suffer from the problems we identify. But it is essential to point out that urban agriculture does not in-

104. *Commodity Areas*, USDA AGRIC. MARKETING SERV., <http://www.ams.usda.gov/SCBGP> (last updated Nov. 1, 2013).

105. *Fruit and Vegetable Programs: Specialty Crop Block Grant Program, Fiscal Year 2013, Description of Funded Projects*, USDA AGRIC. MARKETING SERV., <http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5105139> (last visited Mar. 17, 2014).

106. *Id.*

107. *People's Garden*, USDA, http://www.usda.gov/wps/portal/usda/usdahome?navid=PEOPLES_GARDEN (last updated Mar. 17, 2014).

108. *USDA Employee Volunteers Are Back in the Garden & Community*, USDA (Oct. 23, 2013, 2:30 PM), <http://blogs.usda.gov/2013/10/23/usda-employee-volunteers-are-back-in-the-garden-community/>.

herently provide the touted social benefits enumerated by its supporters. Instead, those benefits follow from particular legal and design choices. Accordingly, a careful examination of the potential pitfalls is essential to inform policies, land use planning, and legal change. Two such pitfalls—equity and ecological concerns—are briefly considered here.

A. *Equity Concerns*

Who benefits from urban agriculture? Is it an equitable endeavor? If not, are the inequities inherent to the enterprise or can they be addressed? These questions preface two potential problems with urban agriculture programs: that urban agriculture is racially unjust and that it is economically unjust.

1. RACIAL JUSTICE

We begin with a critical question: does urban agriculture offer an integrated and inclusive space. This question is not so easy to answer in absolute terms. There are numerous urban agriculture projects whose primary participants and organizers come from minority communities. For instance, La Finca del Sur, a women-led farm in the South Bronx, New York City, is led by a board of advisors made up primarily of individuals self-identifying as either black or Latina.¹⁰⁹ It was named one of EcoWatch's top ten New York City farm projects in 2013.¹¹⁰ In Detroit, the Detroit Black Community Food Security Network, formed in 2006 to address food insecurity in Detroit's black community, is driven by the belief that "the most effective movements grow organically from the people they are designed to serve."¹¹¹ The organization runs a two-acre model farm and developed a food access policy that the city recently adopted.¹¹²

Some critics have alleged, however, that the alternative food movement is concentrated in white neighborhoods, the organizers are predominately white, and the whole endeavor draws from a white agrarian past that ignores other types of historical (and even more recent)

109. *About La Finca del Sur*, LA FINCA DEL SUR—SOUTH BRONX FARMERS <http://bronxfarmers.blogspot.com/p/about-la-finca-del-sur.html> (last visited Mar. 7, 2014).

110. Kaye Spector, *10 Urban Farming Projects in New York City*, EcoLIVING (Nov. 8, 2013, 3:29 PM), <http://ecowatch.com/2013/11/08/urban-farming-projects-new-york-city/>.

111. *About Us*, DETROIT BLACK COMMUNITY FOOD SECURITY NETWORK, <http://detroitblackfoodsecurity.org/about.html> (last visited Mar. 7, 2014).

112. *Id.*

experience with farming such as slavery and migrant labor.¹¹³ For instance, Julie Guthman, a geographer at UC Santa Cruz, has described farmers markets as “white spaces,”¹¹⁴ and Rachel Slocum, a geographer from the University of Wisconsin at La Crosse, has identified how “whiteness is an organizing feature of alternative food practices.”¹¹⁵ These critics cite to studies that suggest that minorities are underrepresented among farmers market and CSA customers.¹¹⁶ These critics opine that these spaces are exclusive not just because of price, discussed further below, but for two additional reasons, as discussed below.

First, many urban agriculture retail programs emphasize local production at the expense of local culinary traditions and preferences. By defining “local” based on production only, these programs exclude potential customers for whom what is locally grown is not actually what they want to eat.¹¹⁷ As a result, local residents may feel excluded from alternative food enterprises or may simply choose to shop elsewhere.

Second is the concern that Julie Guthman terms the “if they only knew” concern, a widely shared sentiment that if lower income and minority communities only knew more about where their food came from, they would be willing to change their eating habits, to spend more, or to make the extra effort to purchase local and organic produce.¹¹⁸ The paternalism of many urban agriculture projects harkens back to the turn of the last century and the prominence of Settlement Houses, at which upper-middle-class white women attempted to improve the quality of life of immigrants by teaching them “American”

113. See, e.g., *Pigford v. Glickman*, 185 F.R.D. 82, 103-04 (D.D.C. 1999) (concluding there was “a persuasive indictment of the civil rights record of the USDA and the pervasive discrimination against African American farmers.”).

114. Julie Guthman, “*If They Only Knew*”: *Color Blindness and Universalism in California Alternative Food Institutions*, 60 PROF'L GEOGRAPHER 387, 388 (2008), available at <http://www.tandfonline.com/doi/full/10.1080/00330120802013679#.UxpS7T-YblU>.

115. Rachel Slocum, *Whiteness, Space and Alternative Food Practices*, 38 GEOFORUM 520, 531 (2007), available at http://www.rslocum.com/Slocum_whiteness%20space%20and%20alternative%20food%20practice.pdf.

116. Guthman, *supra* note 114, at 392.

117. Yuki Kato, *Not Just the Price of Food: Challenges of an Urban Agriculture Organization in Engaging Local Residents*, 83 SOCIOLOGICAL INQUIRY 369, 381 (2013) (describing interviews with many residents complaining that the market did not have items they were accustomed to cooking with); *id.* at 387 (observing the “challenge of defining ‘local food’ . . . when what the locals eat may not necessarily be grown locally”), available at <http://onlinelibrary.wiley.com/doi/10.1111/soin.12008/pdf>; see also Guthman, *supra* note 114, at 394 (describing the available selection of items as exclusionary).

118. Guthman, *supra* note 114, at 391.

practices.¹¹⁹ These projects were premised on the belief that there was a single correct manner of living, which led in turn to good health, assimilation, and acceptance in American culture.¹²⁰

The same view pervades some urban food projects. Through a series of interviews with customers and employees of a food cooperative and CSA in a predominantly black neighborhood in New Orleans, Yuki Kato found this education narrative was commonly used to explain why more neighborhood residents did not shop there.¹²¹ This narrative is problematic not just because it infantilizes certain populations, but also because it presumes there is a single, correct approach to good eating.

2. ECONOMIC JUSTICE

Urban agriculture also can be economically unjust. Its products can be prohibitively expensive.¹²² In some areas, farmers markets are competitively priced with local supermarkets; often, however, participation in urban agriculture may be prohibitively expensive as some farmers markets are quite expensive relative to other retail food options.¹²³ Even reasonably priced CSAs may be cost prohibitive if they require an upfront payment for the entire growing season.¹²⁴ As a result, two classes of consumers emerge: the wealthy who can afford carefully sourced and healthy food, and the poor who are resigned to highly-processed, shelf-stable, less nutritious options.¹²⁵ Critics of this dichotomy discount the notion that better education will motivate the urban poor to prioritize their spending on local food or that the urban poor might solve this problem for themselves by participating in food production either at community gardens or in their own

119. RUTH CROCKER, *SOCIAL WORK AND SOCIAL ORDER: THE SETTLEMENT MOVEMENT IN TWO INDUSTRIAL CITIES, 1889-1930* 7-8 (1992).

120. *Id.* at 95.

121. Kato, *supra* note 117, at 379-80.

122. *Id.*; Guthman, *supra* note 114, at 393.

123. See Kato, *supra* note 117, at 378-79 (observing that many residents found the costs of the market to be prohibitive).

124. See, e.g., *CSA in NYC*, JUST FOOD, <http://www.justfood.org/csa> (last visited Mar. 7, 2014) (“CSA members pay for an entire season of produce upfront (typically \$400-\$600)”).

125. SEE JULIE GUTHMAN, *WEIGHING IN: OBESITY, FOOD JUSTICE, AND THE LIMITS OF CAPITALISM* 139 (2011) (expressing concern that the alternative food movement “is in effect producing a bifurcated food system with great, healthy, less toxic food for the few and cheap, standardized, and nutritionally vacuous food for the masses”); see also JAMES E. McWILLIAMS, *JUST FOOD* 34 (2010) (identifying that it is “generally an elite few who have the . . . money” to purchase items from local, sustainable entities).

yards.¹²⁶ That reliance on self-help, critics argue, reflects a neoliberal mentality that has permeated the health and environmental movements whereby those suffering from food insecurity are expected to take matters into their own hands, effectively releasing all levels of government from responsibility and accountability.¹²⁷

Well-structured community gardens and agriculture programs can provide an antidote to this cost problem, improving access to fresh fruits and vegetables at low-cost. Indeed, participation in a community garden might save a family on food expenses.¹²⁸ But this participation requires free time, a luxury that many urban poor can ill afford. Participation in urban agriculture may tax free time in a number of ways.¹²⁹ Community gardens and work share programs (which offer discounted or free CSA shares in exchange for work hours) can require substantial time commitments.¹³⁰ Also, purchasing locally may require making multiple shopping trips (to the farmers market for vegetables and to the grocery store for other products such as flour and sugar that are typically not available at farmers markets). Similarly, local purchasing may require having a flexible schedule to accommodate the limited hours of farmers markets and some CSA drop offs.

Another potential equity critique lies in the land use decision-making process. Devoting land to urban farming requires a trade off with other potential uses such as affordable housing or a playground. In cities such as Detroit, this is a low-cost trade off because vacant land is so plentiful; however, in San Francisco, the calculation may come out differently. This is not to say that devoting land to agriculture is the wrong choice, but it merely raises concerns about the process for decision-making and the identity of the decision makers. The nature of an urban agriculture project should be context-specific. For instance,

126. Julie Guthman, *Neoliberalism and the Making of Food Politics in California*, 39 *GEOFORUM* 1171, 1177 (2008).

127. *See, e.g., id.* (identifying concerns such as the way in which an entrepreneurial emphasis “depoliticizes hunger”).

128. *See, e.g.,* Richard Mattson et al., *The Benefits of Community Gardening: Survey Suggests Gardens Contribute Economic and Quality of Life Benefits*, *COMMUNITY GREENING REV.* 13, 13-5 (1994) (discussing a 1992 study finding that community gardens supplemented budgets for unemployed persons, students, low-income families and retirees); *see also* David Malakoff, *Community Gardening: A Key to Food Security?*, *COMMUNITY GREENING REV.* 23, 23 (1995) (discussing one study finding that a 64-square-foot plot could save a family up to \$600 in food purchases per year).

129. Kato, *supra* note 117, at 373, 383-84.

130. *See, e.g.,* *What is a Workshare?*, HEIRLOOM HARVEST COMMUNITY FARM AND CSA, <http://www.heirloomharvestcsa.com/workshare.php> (last visited Mar. 7, 2014) (requiring eight hours per week from May through Oct.).

in a high-density area with a lot of housing market pressure, a rooftop garden on a new apartment high-rise may be preferable to a community garden on a vacant lot. This approach is also more consistent with the principles of New Urbanism, which encourages both complexity and integrity of place and relies on the conclusion of urban economists that “dense, diverse cities breed innovation.”¹³¹

B. *Ecological Concerns*

In addition to equity concerns for urban agriculture, implementation challenges can frustrate the aspirations of a sustainable urban agriculture.

1. SCALING-UP CONCERNS

One such concern is that scaling up urban agriculture (increasing the size of urban agricultural projects or multiplying the number of such projects) is not viable because feeding everyone (or even some substantial percentage of the urban population) is simply not feasible. Roadblocks to scaling-up include availability of land and labor. Plus, urban agriculture projects are, by definition, small-scale; to feed entire urban populations, the number of required projects would be vast and could undermine the density that makes urban areas efficient. Scaling-up also could threaten other types of open space. This threat is particularly dire on urban fringes where urban agriculture projects may swallow up or distress more biodiverse open space that provides essential ecosystem services such as flood control, water purification, and biodiversity protection through habitat preservation.¹³²

Another unintended threat resulting from the scaling-up of urban agriculture is that the reduced need for conventional agriculture could harm rural communities that depend on the economic vitality of conventional agriculture. Millions of people are employed in the conventional agriculture industry, and, although small-scale urban agriculture is arguably more labor intensive and thus perhaps would not result in a net loss of jobs, it would nevertheless shift the location and skill set of those jobs, creating enormous transition costs and economic harm.¹³³ This concern, however, is likely overstated. Urban ag-

131. DUANY & TALEN, *supra* note 48, at 252-54.

132. See, e.g., Marielle Anzelone, Op-Ed., *Greedy Gardeners*, N.Y. TIMES, June 14, 2013, <http://www.nytimes.com/2013/06/15/opinion/greedy-gardeners.html> (criticizing urban agriculture's displacement of native species and, thus, important natural ecological processes).

133. See, e.g., McWILLIAMS, *supra* note 125, at 36 (commenting on localization's effect on employment opportunities, such as the removal of middlemen from the

riculture is neither intended to nor able to replace conventional food systems or reduce their vitality. Instead, urban agriculture is one element of a sustainable food system.

2. QUESTIONABLE ENVIRONMENTAL BENEFITS

To be sure, important environmental benefits accrue from urban agriculture. For example, conversion of urban space, such as roofs and vacant lots, to farmland may have numerous other positive environmental effects, such as providing habitat for birds and other species, thereby protecting biodiversity and reducing urban heat island effects and storm water runoff.¹³⁴ The benefits of urban agriculture may not be as widespread as assumed or claimed by supporters, however. For example, many proponents of urban agriculture argue that local food production, and urban agriculture in particular, is better than other types of production because it reduces the greenhouse gas emissions associated with transporting produce to market. Transportation to market is, however, actually just one small element of the carbon footprint of food and actually results in fewer greenhouse emissions than are caused by home cooking.¹³⁵

There are also environmental concerns that are city-specific. For instance, in many cities, the vacant land that is available for production is also heavily contaminated.¹³⁶ In other places, particular farming techniques or the presence of farm animals may give rise to nuisances.

food system supply chain, which disproportionately impact the “traditionally marginalized”).

134. See Stephanie A. Maloney, *Putting Paradise in the Parking Lot: Using Zoning to Promote Urban Agriculture*, 88 NOTRE DAME L. REV. 2551, 2564 (2013) (citing SUSAN WACHTER ET AL., REDEVELOPMENT AUTHORITY OF THE CITY OF PHILADELPHIA: LAND USE & POLICY STUDY 15 (2010), available at http://pennur.upenn.edu/uploads/media_items/urban-agriculture-final-report.original.pdf; Adrienne Lyles-Chockley, *Building Livable Places: The Importance of Landscape in Urban Land Use, Planning, and Development*, 16 BUFF. ENVTL. L.J. 95, 114 (2009); Mogk et al., *Promoting Urban Agriculture as an Alternative Land Use for Vacant Properties in the City of Detroit: Benefits, Problems and Proposals for a Regulatory Framework for Successful Land Use Integration*, 56 WAYNE L. REV. 1521, 1527 & nn.21 & 22 (2010)).

135. Sonja Brodt et al., *Comparing Environmental Impacts of Regional and National-Scale Food Supply Chains: A Case Study of Processed Tomatoes*, 42 FOOD POLICY 106 (2013) (“[L]arge-scale studies of national food systems show that transportation accounts for less than 15% of the energy use and GHG emissions of food products.”) (citing MARTIN C. HELLER & GREGORY A. KEOLEIAN, LIFE CYCLE-BASED SUSTAINABILITY INDICATORS FOR ASSESSMENT OF THE U.S. FOOD SYSTEM (2000), available at http://css.snre.umich.edu/css_doc/CSS00-04.pdf; Christopher L. Weber and H. Scott Matthews, *Food-Miles and the Relative Climate Impacts of Food Choices in the United States*, 42 ENVIRON. SCI. TECHNOL. 3508 (2008)).

136. Catherine J. LaCroix, *Urban Agriculture and the Environment*, 46 URB. LAW. XXX (2014) (notes 2-57 and accompanying text); LaCroix, *supra* note 3, at 276-80.

The underlying point of this “hard look” at the ecological consequences of urban agriculture is that the enterprise is not inherently more ecologically sustainable than regional or global production. Much depends on implementation. Planners Branden Born and Mark Purcell term this confusion of local as the ends rather than the means as the “local trap.”¹³⁷

Neither the equity nor ecological concerns raised in this section are fatal to the urban agriculture endeavor. The lesson to be conveyed is there is a need to be thoughtful about implementation of urban agriculture through the use of the legal tools outlined in this article. Planning matters. Otherwise, urban agriculture can be just as inequitable and ecologically burdensome as our global food system. Proper planning, however, can facilitate important contributions by urban agriculture to ecological sustainability, public health, and food justice. Which direction it goes depends on the implementation of legal tools and policies discussed in this article.

IV. Conclusion

The resurgence of urban agriculture reflects a variety of trends in American culture, including the continuing salience of the Jeffersonian vision and dissatisfaction with many aspects of the modern food system. This dissatisfaction covers a litany of challenges, including, among others, environmental harms, food access problems, hunger, and lack of transparency. To these ends, advocates have fought to reverse a century of laws and policies aimed at removing agriculture from city life.

This article has identified the various tools for urban agriculture’s legalization and promotion, and it has flagged the potential challenges of this endeavor, cautioning that these legal and policy tools must be designed to avoid the “local trap.” Urban agriculture laws, policies, and programs, should consciously articulate specific aspirations and identify potential pitfalls. This approach may also cultivate thoughtful and novel approaches to modern food system problems that can be applied other areas of food production and distribution.

As the urban agriculture movement picks up speed, it is increasingly essential to take a step back to evaluate the goals and methods of the movement. The virtues of urban agriculture should be subject to an ongoing, candid examination. An honest examination of urban ag-

137. Branden Born & Mark Purcell, *Avoiding the Local Trap: Scale and Food Systems in Planning Research*, 26 J. PLAN. EDUC. & RES. 195, 195-96 (2006).

riculture virtues will facilitate realistic goal-setting and meaningful planning. In addition, the legal and policy tools implemented in the cause of urban agriculture should be measured in order to determine their effectiveness in accomplishing objectives. This measurement will require meaningful research, relevant case studies, and candid analysis. Such analysis can help guide both course corrections and future policy development, and it can inform a wide variety of design decisions.

Urban agriculture exists in the context of local, regional, national, and global food systems. For the reasons described in Part III above, particularly the scaling up concerns, it is not a cure-all for the ills of modern farming, but it deserves a place at the food-policy table as part of the solution for how the United States and other countries can foster a food system that is healthy, just, and sustainable—both for people and for the environment.