

Establishing Land Use Protections for Community Gardens



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Photos Courtesy of Redwood Heights School Garden OUSD.

Introduction

Local government leaders are in a unique position to promote healthy eating and active living in their communities by supporting community gardens. Community gardens are places where neighbors and residents can gather to cultivate plants, vegetables, and fruits and, depending on local laws, keep bees and raise chickens or other livestock and poultry. Community gardens can improve nutrition, physical activity, community engagement, safety, and economic vitality for a neighborhood and its residents and provide environmental benefits to the community at large.¹

NPLAN has created a set of complementary model land use policies to help communities create and preserve community gardens. Supportive land use policies, like zoning ordinances, can help to create community gardens and ensure their long-term ability to operate on a site.

Model Comprehensive Plan Language for Community Gardens

This model language establishes a policy within a comprehensive plan (also known as “general plan,” “master plan,” or “community plan”) to protect existing and create new community gardens. It provides specific goals or actions to implement the policy. It is designed to be added to a city or county’s comprehensive plan to promote community gardens created by the private or nonprofit sector (e.g., local community groups) as well as the public sector.

Model Zoning Ordinances for Community Gardens

We have developed two types of zoning ordinances for community gardens. A community may adopt one or both policies:

- **Use Zone Protections for Community Gardens.** The model zoning code language provides that a community garden is an approved use of land in residential, multifamily, industrial, and other districts determined by the community. This designation allows citizens to develop and maintain community gardens in the enumerated districts without requiring the sponsor to obtain a permit, finding, variance, or other government land use approval. Because no land use permit is required, the ordinance sets forth basic regulations for community gardens – including requiring operating rules and an environmental assessment to ensure that the land to be used for gardens is free of contaminants.
- **Open Space Protections for Community Gardens.** The model zoning code language provides that a community garden can be zoned as a sub-district or sub-use within an open space zoning district. By enacting this policy, a community can protect and preserve community gardens as an open space use.

Community Gardens and Urban Agriculture

Cities are increasingly recognizing that urban food production can help provide food security for their residents, reduce greenhouse gas emissions, and help meet their goals to become sustainable cities. Some communities use the phrase *urban agriculture* as an umbrella term to encompass a wide range of activities – including community gardens – involving the raising, cultivation, processing, marketing, and distribution of food in urban areas. Other communities distinguish agricultural production (*urban farms*) from community gardens. These communities view urban farms primarily as a commercial or entrepreneurial enterprise and community gardens as recreation or leisure activity for gardeners to grow food for themselves or to share with neighbors. As a result, some communities may separately define and regulate urban farms and community gardens. For example, they may allow community gardens in certain areas, such as residential districts, where they would not permit an urban farm.

Both community gardens and urban farms provide important community benefits. Community members and planners should work together at the local level to customize this model to fit local needs.

Why Land Use Policies for Community Gardens?

Citizens interested in starting community gardens often face obstacles securing access to and ensuring preservation of land for community gardens. Supportive land use policies, like zoning ordinances, can help to create community gardens and ensure their long-term ability to operate on a site.

While the model zoning code ordinances address land use, they do not address other types of governmental approvals or requirements that some communities may require. For example, a community could choose to permit sales of garden produce at the community garden site. The ordinance addresses the land use issues but does not address other regulations that may affect sales, such as health and sanitation laws or business license regulations. Similarly, the ordinance does not address building code laws should a community allow gardeners to erect storage sheds. When implementing the model ordinances, the municipality must consider other state and local laws that may affect the implementation of these land use policies.

Other City Actions to Promote Community Gardens

As described below, cities around the country have adopted a variety of policies and programs to facilitate the creation and maintenance of community gardens and urban farms, including providing financial support, technical assistance, and education. Communities can also promote community gardens by encouraging interim or temporary use of underutilized land for gardens, assist in land acquisition for gardens, and help manage and program community gardens. No one model is right for every community. The following are examples of government actions promoting community gardens.

Community Gardens on Vacant Public and Private Land

- The City of Escondido, Calif., has an “Adopt-a-Lot” policy allowing community gardens to be operated as an interim use on both publicly and privately owned vacant land. A city employee works with landowners and community gardeners to develop an agreement for the conditions and tenure of use of the land as a garden.²
- Des Moines, Iowa, has a community garden program that allows the establishment of community gardens on city right-of-ways and real property.³
- A number of cities, including Washington, D.C., and Hartford, Conn., collect and maintain an inventory of public or private vacant land suitable for gardens.⁴

Financing and Acquiring Land for Community Gardens

- Seattle has provided parks with bond monies, public housing funds, and neighborhood matching grants to purchase land for and help maintain garden plots.⁵
- Chicago formed a nonprofit organization called NeighborSpace with the Chicago Park District and the Forest Preserve District of Cook County. Each entity contributed funds to purchase lands for community gardens.⁶
- Madison, Wis., has used federal Community Development Block Grant funds to support community gardens.⁷

- A number of cities—including Boston, Philadelphia, New York City, and Providence, R.I.—have begun using land trusts to acquire and preserve community gardens.⁸

Municipal Community Garden Programs

Several cities have created community garden programs operated by the city. The cities of Hartford, Conn., Palo Alto, Calif., Portland, Ore., and Sacramento, Calif. maintain a municipal garden program.⁹ San Francisco created a community gardens policy committee to establish policies and implement gardening standards and operating rules.¹⁰

Public-Private Partnerships

A number of communities have created partnerships with nonprofit organizations to acquire land for and operate community gardens.

- As noted earlier, Chicago created a city-funded nonprofit called NeighborSpace to acquire property to preserve land for community gardens. It also enters into operating agreements with local groups to use and maintain the spaces.
- The City of Seattle's P-Patch Community Garden Program works with the nonprofit Friends of P-Patch and the city housing authority to acquire, build, protect, and advocate for the gardens.

For more resources on building healthy communities, see www.phlpnet.org.

Comprehensive Plans and Zoning

Land use regulation primarily takes place at the local government level through planning, zoning, and subdivision regulations. Most states have some type of enabling act empowering municipalities to enact zoning ordinances or regulations.¹¹ 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 require local governments to adopt comprehensive (also called “general,” “master,” or “community”) plans.¹² While these plans vary from state to state, they typically cover all land within the jurisdiction of the local governmental entity. Comprehensive plans establish guidelines for the land uses that are permissible in the different areas within the community and guide public and private development. Common factors addressed in comprehensive plans are future land use, transportation and circulation, housing, park and recreation areas, and public facilities.¹³

The community’s zoning ordinances set forth the regulations to carry out the policies of the general plan. Zoning is a regulatory mechanism by which a government divides a community, such as a city or county, into separate districts with different land use regulations within each district. Simply stated, zoning determines what can and cannot be built, and what activities can and cannot take place, on the parcels of land throughout a community.¹⁴

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.¹⁵ Courts generally defer to the government’s judgment underlying a land use classification. Because, by its nature, land use regulation cannot be done with scientific precision, courts presume zoning ordinances are valid and, provided that there is a rational basis for different zoning treatment of similar lands, land uses, or land users, courts will generally uphold the regulations.¹⁶

Model COMPREHENSIVE PLAN Language to Protect and Expand Community Gardens

The following comprehensive plan language establishes a land use policy to promote the establishment of community gardens 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, make other amendments as necessary for consistency, and follow the appropriate procedures for amending the comprehensive plan. 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.

Goal/Objective: Protect existing and establish new community gardens and urban farms as important community resources that build social connections; offer recreation, education, and economic development opportunities; and provide open space and a local food source.

Policies/Actions

- Encourage the creation and operation of one community garden of no less than [*one*] acre for every [*2,500*] households. Identify neighborhoods that do not meet this standard and prioritize the establishment of new gardens in neighborhoods that are underserved by other open space and healthy eating opportunities.

COMMENT: The standard presented here is based on Seattle’s standard – one community garden per 2,500 households.¹⁷ 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: 2,500 households for a tot lot; 1 acre: 5,000 households for a neighborhood lot¹⁸). Communities that are more or less urban will need to assess whether this standard is appropriate for them.

- 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.
- 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 General Plan land use map.

- Encourage [*or require*] all new affordable housing units to contain designated yard or other shared space for residents to garden.
- Encourage [*or require*] all [*or some, such as multifamily residential, commercial, institutional or public*] new construction to incorporate green roofs, 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, 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.¹⁹ The Quimby Act requires setting aside between 3 to 5 acres of the land to be developed for every 1,000 new residents generated by the proposed development.²⁰

- Create a Community Gardening Program within the [*Parks and Recreation Department*] to support existing and create additional community gardens.
- Increase support for community gardens through partnerships with other governmental agencies and private institutions including school district(s), neighborhood groups, senior centers, businesses, and civic and gardening organizations.
- Secure additional community garden sites through long-term leases or through ownership as permanent public assets by the City, 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 and theft from community gardens and provide appropriate surveillance and security to community gardens.

Model Zoning Ordinance Language for Community Gardens

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.²¹ Community gardens are not usually addressed in zoning codes, which leaves them vulnerable to being closed down as “illegal” uses or to displacement by development that is expressly permitted in the zoning district.

The following model language is designed for communities to tailor and adopt as an amendment to their existing zoning laws.²² We offer two options: (1) an ordinance that establishes that community gardens are an approved use of land in residential, multifamily, mixed-use, open space, industrial, and any other districts in which a community garden would be appropriate; and (2) an ordinance that establishes a separate subcategory or subdistrict of open space dedicated for the use of community gardens.

The first designation allows residents to develop and maintain community gardens in the enumerated districts without requiring the residents to obtain any type of permit, finding, variance, or other government land use approval. Because no government permit is required, the ordinance sets forth basic regulations for community gardens – including provisions for an environmental assessment to ensure that the soil is free of contaminants. The second designation gives community gardens the same protections as other types of open space uses in the community. Communities can amend their zoning codes to include one or both of these designations.

The local jurisdiction will need to determine where within its existing code the ordinances would best fit, make other amendments as necessary for consistency, and follow the appropriate procedures for amending the zoning law. The language is designed to be tailored to the needs of an individual community. Language written in italics provides different options or explains the type of information that needs to be inserted in the blank spaces in the ordinance. “Comments” provide additional information.

Model Zoning Ordinance Language Establishing Community Gardens as an Approved Use

Permitted Use of Community Gardens

Community Gardens shall consist of land used for the cultivation of fruits, vegetables, plants, flowers, or herbs by multiple users. The land shall be served by a water supply sufficient to support the cultivation practices used on the site. Such land may include available public land. Community gardens are a permitted use in the following zones: residential, multifamily, mixed-use, open space, industrial _____ [*add other zoning districts*] subject to the following regulations:

COMMENT: Some communities may permit community gardeners to keep bees and raise chickens on garden sites. If so, this definition can be amended to allow these uses.

- (a) 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 gardening.

COMMENT: Most communities will want to ensure that community gardens are established on land free of contamination. 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. The municipality could conduct the assessment or require those wishing to establish a new garden to have an assessment conducted. Alternatively, the municipality could establish a soil testing protocol for new gardening sites.²³

Funds and grants for environmental site assessments, testing, and cleanup procedures may be available from a variety of state and federal sources. Site users should coordinate with their local economic development and redevelopment agencies, as well as their local/regional environmental health/protection agency.

- (b) Site users must have an established set of operating rules addressing the governance structure of the garden, hours of operation, maintenance and security requirements and responsibilities; a garden coordinator to perform the coordinating role for the management of the community gardens; 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 and a copy of the operating rules shall be kept on file with the City [*insert department name*] Department.

COMMENT: To function effectively, a community garden must have established operating rules and a garden coordinator. 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.²⁴

(c) The site is designed and maintained so that water and fertilizer will not drain onto adjacent property.

(d) There shall be no retail sales on site, except for produce grown on the site.

COMMENT: Community gardens can be a needed source of income to low-income residents, as well as a source of produce for neighbors who do not grow their own food. The model language allows gardeners to sell the produce they have grown, but permits no sales of other items. Because the model ordinance permits community gardens to be established in a variety of use districts, including residential districts, a municipality may be reluctant to allow major retail operations on garden sites. If the municipality chooses, it may allow more expansive sales at garden sites. Alternatively, it could permit gardeners to sell produce at a different site.

The model ordinance addresses land use issues when permitting sales, but does not address other regulations that may affect sales, such as health and sanitation laws or business license regulations. Before permitting sales of community garden produce, the municipality must ensure that those sales are permitted under other state and local laws.

(e) No building or structures shall be permitted on the site; however, [*sheds for storage of tools limited in size to [_____] or subject to the requirements of section _____*], greenhouses that consist of buildings made of glass, plastic, or fiberglass in which plants are cultivated, [*chicken coops*], benches, bike racks, raised/accessible planting beds, compost or waste bins, picnic tables, seasonal farm stands, fences, garden art, rain barrel systems, [*beehives*], [*barbeque grills, outdoor ovens*] and children's play areas shall be permitted. The combined area of all buildings or structures shall not exceed [*15 percent*] of the garden site lot areas. Any signs shall comply with applicable [*city/county*] ordinances.

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 other municipal code provisions regarding storage sheds on property. Additionally, if communities permit the cultivation of beehives and chickens in their community gardens, structures for the care of these animals should be included. Local laws vary on the keeping of farm animals in different use districts.

- (f) Fences shall not exceed [*six 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.

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.

(g) Other Regulations

COMMENT: Communities may wish to impose additional regulations on community gardens, including:

- Prohibiting connections to electricity or sewers without a permit or other permission from the municipality or a particular department;
- Imposing specific regulations regarding maintenance of the site, such as frequency of waste collection;
- Requiring a community garden to have a nonprofit entity or neighborhood group as a sponsor or to act as garden coordinator; or
- Requiring particular landscaping or setbacks outside of the garden within the public right-of-way.

Model Zoning Ordinance Language Establishing Community Gardens Open Space (Sub)districts

Community Garden Open Space (Sub)districts

Community Garden open space subdistricts shall consist of land divided into multiple plots appropriate for and limited to the cultivation of fruits, vegetables, plants, flowers or herbs by various users. Such land may include available public land.

COMMENT: Some communities may permit community gardeners to keep bees and raise chickens on garden sites, assuming local law so permits. This definition can be amended to allow these uses.

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- ¹ Twiss J, Dickinson J, Duma S, et al. “Community Gardens: Lessons Learned from California Healthy Cities and Communities.” *American Journal of Public Health*, 93(9): 1435-1438, 2003; Local Government Commission. *Cultivating Community Gardens: The Role of Local Governments in Creating Healthy, Livable Neighborhoods*. Available at: www.lgc.org/freepub/docs/community_design/fact_sheets/community_gardens.pdf
- ² Local Government Commission. *Cultivating Community Gardens: The Role of Local Governments in Creating Healthy, Livable Neighborhoods*. Available at: www.lgc.org/freepub/docs/community_design/fact_sheets/community_gardens.pdf
- ³ Des Moines, Iowa, Municipal Code §§ 74-201, 74-202 (2009).
- ⁴ D.C. Code § 48-402(1) (West 2009); Hartford, Conn., Municipal Code § 26-15(a)(1) (2008).
- ⁵ More information on Seattle’s community garden program is available at: www.seattle.gov/neighborhoods/ppatch/.
- ⁶ More information on NeighborSpace is available at: www.neighbor-space.org.
- ⁷ More information on Madison’s use of community development block grants is available at: www.ci.madison.wi.us/cdbg/docs/brochure_G.pdf.
- ⁸ More information on the Boston Natural Areas Network is available at: www.bostonnatural.org/communitygardens.htm; more information on the South Side Community Land Trust in Providence, Rhode Island, is available at: www.southsideclt.org/; more information on the Neighborhood Gardener’s Association/A Philadelphia Land Trust is available at: www.ngalandtrust.org; more information on the Trust for Public Land in New York City is available at: www.tpl.org/tier3_cdl.cfm?content_item_id=18995&folder_id=2928.
- ⁹ Hartford, Conn., Municipal Code § 26-15; more information on the Palo Alto program is available at: www.cityofpaloalto.org/depts/csd/news/details.asp?NewsID=457&TargetID=15; more information on the Portland program is available at: www.portlandonline.com/parks/index.cfm?c=39846; more information on the Sacramento program is available at: www.cityofsacramento.org/parksandrecreation/parks/community_garden.htm.
- ¹⁰ San Francisco Recreation and Park Department. *Community Garden Policies*. 2006, p.3. Available at: [www.parks.sfgov.org/site/uploadedfiles/recpark/CommunityGardens/POLICY%20DOCUMENT%20adopted%20REVISED\(1\).pdf](http://www.parks.sfgov.org/site/uploadedfiles/recpark/CommunityGardens/POLICY%20DOCUMENT%20adopted%20REVISED(1).pdf).
- ¹¹ 8 McQuillin Mun. Corp. § 25.48 (3d ed. 2009).
- ¹² Breggin L and George S. “Planning for Biodiversity: Sources of Authority in State Land Use Laws” *Virginia Environmental Law Journal* 22: 81-121, p. 88-91, 2003.
- ¹³ *Id.*
- ¹⁴ For more information about zoning regulations and healthy communities, see *General Plans and Zoning: A Toolkit on Land Use and Health*. Available at: www.healthyplanning.org/toolkit_gpz.html.
- ¹⁵ Ziegler E, Rathkopf A and Rathkopf D. 1 Rathkopf’s *The Law of Zoning and Planning* § 1:2 (4th ed. 2009).
- ¹⁶ Ziegler E, Rathkopf A and Rathkopf D. 1 Rathkopf’s *The Law of Zoning and Planning* § 4:1 (4th ed. 2009).
- ¹⁷ 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.
- ¹⁸ 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.

¹⁹ Cal. Govt. Code § 66477 (West 2009).

²⁰ 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 "Person's 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.

²¹ 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 on form based and use based zoning, see Section V of *How to Create and Implement Healthy General Plans*. Available at: www.healthyplanning.org/healthygp_toolkit/HealthyGP_SectionV.pdf.

²² For more information on how to amend zoning codes, see *General Plans and Zoning: A Toolkit on Land Use and Health*. Available at: www.healthyplanning.org/toolkit_gpz.html.

²³ 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/cerclaifs.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.

²⁴ There are many examples of community garden rules. For more information, see University of Missouri Extension. *Community Garden Toolkit*. April 2009. Available at: <http://extension.missouri.edu/publications/DisplayPub.aspx?P=MP906-6#Resources>; American Community Garden Association. *Starting a Community Garden*. Available at: www.communitygarden.org/learn/starting-a-community-garden.php#sample; Gardening Matters: Promoting and Preserving Community Gardening Across the Twin Cities, *Community Garden Rules*. August 2007. Available at: www.gardeningmatters.org/Resources/Garden_Rules.pdf; and the San Francisco Recreation and Park Department. *Community Garden Policies*. 2006. Available at: [www.parks.sfgov.org/site/uploadedfiles/recpark/CommunityGardens/POLICY%20DOCUMENT%20adopted%20REVISED\(1\).pdf](http://www.parks.sfgov.org/site/uploadedfiles/recpark/CommunityGardens/POLICY%20DOCUMENT%20adopted%20REVISED(1).pdf).