FLINT URBAN AGRICULTURE LEGAL FRAMEWORK

BACKGROUND REPORT





Prepared by ENP and Associates for the Genesee County Land Bank and Applewood Initiative for Community an d Gardening







INTRODUCTION

Urban agriculture – the raising of food in the city – is occurring in Flint. Individual residents grow their own food in their back yard or a vacant lot. Block groups have established community gardens. A phytoremediation project, where plants are installed to take toxins out of the soil, is ongoing at a former industrial site. The City's ordinances, crafted decades ago, do not support these activities and often exclude them. Moreover, the gardeners are not aware of the regulations – the need for site plan review, to pull permits, etc. and end up asking for forgiveness instead of permission. When City representatives, such as the Planning Commission, try to accommodate the needs of the gardeners and meet the letter of the law, they have found themselves forcing a square peg into a round hole.

 This report is part of a process to create a square hole for the gardening peg in Flint. The report summarizes the background work done to date – a review of City Ordinances, case studies of North American cities engaged in urban agriculture, explorations of state and federal laws dealing with agriculture and inquires about the programs of successful groups in urban agriculture in Michigan.

REVIEW OF ORDINANCES

The Zoning Ordinance was originally written in 1968 and has not undergone significant revisions for over 20 years. While the adoption dates of the other ordinances were not researched, the style and type of regulation was consistent with the zoning ordinance, indicating that these local laws were enacted some time ago. Per the process outlined, ENP & Associates reviewed the Zoning Ordinance and other applicable City of Flint Ordinances. The following tables outline the challenges to urban agriculture created by existing regulations. The items in italics denote decisions or debates the Planning Commission should undertake during this process.

Zoning Ordinance Section	Challenge to Urban Agriculture	Recommended Action Items
Definitions	The zoning ordinance did not have definitions dealing with agriculture such as greenhouse, agriculture, farm, garden, non- commercial nursery (allowed use in several districts –see below), leaving it unclear what types of agricultural uses are allowed.	If new regulations are considered, well- crafted definitions of the uses allowed must be included.
Section 50-94: Appearance Standards	This regulation provides vague guidelines to assure compatibility with surrounding neighborhoods. While the regulation is currently used in historic areas like Carriage Town, the regulation, as written, could be easily used to prevent the building of a hoop house or green house in an established neighborhood.The Planning Commission may nee change this regulation to allow building agricultural uses	
Section 50-8.3	Any structure, defined by the Zoning Ordinance as any structure anchored to the ground, must go through site plan review by the Planning Commission with the exception of less than three single- family dwellings. The site plan review requirements are comprehensive and may not be appropriate for an individual or group wishing to put up a building to support an agricultural activity (barn, hoop house, green house, etc.).	The Planning Commission will need to consider what information is needed to review agricultural proposals, and who should review them – the Planning Commission or the Zoning Coordinator.
Articles II-VII	 The following uses are allowed as principal permitted uses in A-1, A-2, B, B-1, C-1, C-2 and D-1 (if the D-1 property abuts a residential zone): "Agricultural. Customary agricultural uses including noncommercial nurseries and greenhouses, but expressly excluding the keeping of animals." "Recreational. Public parks, playgrounds, neighborhood and community center buildings and grounds". 	Agricultural use and noncommercial nurseries and greenhouses are not defined. Community gardens could be construed as a recreational use but if the City wants to allow community gardens in recreational areas, the use should be explicitly listed and defined.

Zoning Ordinance Section	Challenge to Urban Agriculture	Recommended Action Items	
Articles II-VII cont.	 "Institutional and cultural. Churches and other places of worship; public and parochial schools; colleges and universities for academic instruction; public libraries, museums, art galleries and existing cemeteries". 	Many institutional and cultural entities are homes to large community gardens in other communities. The City should decide if allowance for gardening, specifically buildings like greenhouses, should be explicit.	
Articles VIII to XV	No agricultural uses are currently allowed within the commercial and industrial districts of the City. However, the sale and processing of food within the City is restricted exclusively to these districts.	The Planning Commission should consider whether agricultural uses should be allowed in these zones (e.g. food production or phytoremediation) and how the food generated by urban agriculture allowed will be distributed, sold and/or processed.	
Accessory Uses in Residence Districts	The regulations governing the setbacks of accessory buildings are complicated. However, the regulations do not restrict the number or square footage of accessory buildings. Also, this section requires that a principal building must exist on the site in order for an accessory building to be built or remain. The building code does not require review of an accessory building less than 200 square feet.	The Planning Commission should look at these regulations in terms of urban agriculture.	
Article XXIV – Height and Yard Modifications	Height limitations do not apply to barns, silos and other farm buildings or structures on farms.	While the City must abide by the provisions of the Michigan Right to Farm Act, the Planning Commission should debate whether this exception should stay if more agricultural uses are allowed.	
Article XXV – Off- street parking & loading	The parking and loading requirements do not have specific requirements for agricultural uses.	For any changes in allowed uses, the Planning Commission should recommend what parking and loading regulations are appropriate, if any.	

Flint Ordinance	Challenge to Urban Agriculture	Recommended Action Items	
Chapter 4 – Air Pollution	Section 4-13 bars open burning of refuse. Often times, gardening or farm sites are best cleared by a controlled burn, rather than the use of chemicals	The Planning Commission should examine whether regulations should be updated to allowed controlled burns to clear and/or maintain land.	
Chapter 9 – Animals and Fowl	The ordinance restricts all meat and egg production to the mainstream industrial food chain, allowing animals to only be kept at slaughterhouses. It does not allow for poultry or domestic fowl on residentially zoned lots. Other cities do allow small numbers of poultry or small livestock in residential areas.	The Planning Commission should debate the pros and cons of allowing animals in residential neighborhoods.	
Chapter 12 – Business and Occupations Generally	This ordinance has a number of restrictions on who may and how food is sold.	If the Planning Commission chooses to look at food distribution as part of this process, these regulations may need further scrutiny.	
Chapter 17 – Fences	Fences of any type require a permit. The regulations for fence placement and materials in the A, B and C zoning districts, where agricultural uses are allowed, are difficult to understand and may not be appropriate for gardeners.	The Planning Commission should examine these regulations to determine what fencing requirements will meet the needs of gardeners and the public.	
Chapter 30 – Nuisances	Some provisions of this ordinance could be used to limit composting, an often essential activity in gardening.	The Planning Commission should examine how this ordinance could be updated to explicitly allow for composting. Also, the final action plan should include educational resources or programs to assist with proper composting.	
Chapter 33 – Parks	This ordinance is silent on gardening or farming as allowed uses in the parks and places restrictions on activities that would prevent gardening. For instance, it bans the picking or breaking flowers and plants, and the removal of turf.	The Planning Commission should decide whether gardening should be allowed in city parks, if so, under what circumstances and then recommend changes to the appropriate ordinances.	
Chapter 39 – Refuse, Garbage and Weeds	This ordinance does not specify what department would be responsible for refuse collection at an urban agricultural enterprise of any size. Also, it does not specify the type of trash receptacle required. Finally, it defines harmful vegetation as greater than 8 inches in height.	As the Planning Commission makes decisions about what types of urban agriculture should be allowed, this ordinance may need to be amended to allow and enable refuse collection	

Flint Ordinance	Challenge to Urban Agriculture	Recommended Action Items	
		and growing of crops over 8 inches in height.	
Chapter 45 – Trees and Shrubs	This ordinance could be modernized to differentiate by the type of tree for spacing and requirements.	The Planning Commission should decide whether amendments to this ordinance as appropriate as part of this process.	

CASE STUDIES

In consultation with the Genesee County Land Bank and the Ruth Mott Foundation, ENP and Associates selected Toronto, Ontario; Philadelphia, Pennsylvania and Seattle, Washington as case studies for the reasons listed in the table below:

City	Reason for selection	
Toronto, Ontario	Generally recognized as the best food system planning and urban agriculture in their North American planning and governance.	
Philadelphia, Pennsylvania	Used urban agriculture as a specific tool to attack the problem of vacant land.	
Seattle, Washington	Their P-Patch community gardening program is over 30 years old.	
Cleveland, Ohio	Currently reviewing legislation to allow poultry, bees, rabbits, goats, sheep and pigs.	

Toronto, Ontario

Urban agriculture is a component of a larger food security movement in Toronto, Ontario. A non-profit umbrella agency focused on access to affordable, nutritious food at the neighborhood, city, region and national level, FoodShare, and the Toronto Food Policy Council, a division of the City's Department of Health, have been the two main actors in creating policy for and using programs to support urban agriculture to assure that all Toronto residents have access to affordable, healthy, culturally appropriate food.

FoodShare was founded in 1985, and funded by the City initially to coordinate emergency food services. It runs a number of programs – from lobbying for policy changes, to community gardens to a service where Toronto residents can purchase a weekly delivery of fresh food from local farms and community gardens.

The Toronto Food Policy Council (TFPC) was founded in 1990, as a subcommittee of the Board of Health, to seek long-term solutions to hunger and the sustainability of the food system. TFPC has developed comprehensive reports on how every aspect of Toronto government can contribute to food securing including a report on community gardens in 1995 and <u>Feeding the City from the back 40: A Commercial Food Plan for the City of Toronto</u> in 1999 showing how Toronto could produce 25% of its fruits and vegetables by 2025.¹ In 2000, the City Council adopted Toronto Food Charter which codified the city's commitment to food security.²

¹ TFPC, <u>Feeding the city from the back 40</u>, accessed at http://www.toronto.ca/health/tfpc_feeding.pdf

² Toronto's Food Charter accessed at

http://www.toronto.ca/food_hunger/pdf/food_charter.pdf

TPFC also administers a city-funded food access grant, which has been used to fund gardens, food distribution and local kitchens. TFPC's effort have been hampered by budget cuts city-wide since the early 2000's but still plays an active role as a policy watchdog and supporting existing programming.

Other city departments contribute as well. The Department of Parks and Recreation adopted a Community Garden Action Plan in 1998 and continues to run a children's gardens program. Community gardens, rooftop gardens and food security is woven throughout the City's official plan, thanks in part to efforts of the TFPC. Finally, a few urban demonstration farms exist in Toronto.³

Land use in Toronto is governed by an amalgamation of zoning by-laws from ten municipalities incorporated into Toronto in the late 1990's. The City is in the process of drafting one zoning code for the entire municipality but presently the zones and allowed uses vary from place to place. The planning department differentiates agriculture (raising of crops and animals) and market gardening (raising of crops only). Agriculture is generally restricted to agricultural zones and is anticipated as an allowed use in a "natural areas" zone. Market gardens are allowed in some residential areas and may be allowed in all zones in the revised zoning code. However, planners have discussed restricting some types of farm markets to public utility or industrial zones. Community gardens, similar to the block group gardens in Flint, are not a defined term and are treated as open space in land use regulation. Keeping of animals in residential areas is generally not allowed but the City has some advocates for allowing poultry or small animals in residential areas. ⁴

Philadelphia, Pennsylvania

Urban agriculture has a long history in Philadelphia but in the 1990's emerged as a means to stabilize and redevelop vacant land. The Philadelphia Horticultural Society (PHS) through its Philadelphia Green program partnered with the New Kensington Community Development Corporation in 1996 to implement a neighborhood-based open space management program to revitalize that neighborhood. PHS has continued to promote its "Green City Strategy, which calls for significant and sustained investment in Philadelphia's parks, plazas, recreation areas and other green spaces as the cornerstone of an overall revitalization plan for Philadelphia."⁵ In 2003, the City of Philadelphia formally adopted the Green City Strategy. Through its Neighborhood Transformation Initiative, the City has contracted PHS to do greening work – clearing and stabilizing of vacant properties, landscaping, and establishment of community gardens. PHS also provides education programs for groups to start community gardens.

⁴ Ibid.

⁵ Philadelphia Horticultural Socieity, "Greening in Progress", accessed at http://www.pennsylvaniahorticulturalsociety.org/phlgreen/greening-progress.html

³ Telephone interview with Alan Theobald, Zoning By-Law Acting Project Manager, City of Toronto, January 28, 2009.

Private agricultural enterprises exist in Philadelphia as well. An example is Greensgrow Farms, a hydroponic farm built on a former factory site in a neighborhood.

The City of Philadelphia zoning ordinance allows the following:

- Agriculture and horticulture with the exceptions of commercial keeping of farm stock or poultry, commercial greenhouses and establishments for sale of farm or horticultural products in most of the residential districts, primarily those with low-rise multiple family.
- Keeping of farm animals (poultry, goats, sheep, cows) is only allowed at certain facilities (slaughterhouses, veterinary offices, etc.) and on a parcel three acres or larger, excluding pigs.

Seattle, Washington

The P-Patch Program, which provides organic community garden space for residents of 70 Seattle neighborhoods, has been the predominant urban agriculture activity in Seattle. P-Patch began officially in 1973 when the City of Seattle bought the Picardo Farm, hence the "P" in "P-Patch", where community gardening efforts had begun a few years earlier. In 1974, the City authorized a community gardening program throughout the City. The program was originally housed in the Department of Human Resources but is now under the Department of Neighborhoods. The P-Patch Trust, a non-profit, is a partner with the Department of Neighborhoods in administering the P-Patch program.

The P-Patch program has four program areas: community gardening, market gardening, youth gardening and community food security. Participants in the community gardening program pay a fee to garden a 100 square foot to 400 square foot plot with flowers, small fruit, vegetables and/or herbs. Organic methods are exclusively allowed. The P-Patch program also offers subscriptions to receive weekly boxes of fresh produce from P-Patch market gardens. The youth gardening programs provide gardening-based nutrition education in Seattle Housing Authority communities. The Community Food Security portion of the P-Patch program supports the community gardens as way for residents to produce food for themselves but also facilitates the donations of produce from gardens to food banks, known as the "Lettuce Link". P-Patch works with immigrant gardeners to grow affordable and culturally appropriate food for their families and educates children about cooking, nutrition and gardening to assure food security.

Seattle has actively supported community gardening in legislation and planning. The City Council in 1992 passed a resolution declaring general support for community gardening and specific support for surplus land being available for gardening. Seattle's comprehensive plan, adopted in 2005 and updated annually, calls for one community garden for every 2,500 households in urban village areas in the city. The plan identifies community garden locations, which has helped either retain or create community gardens when new development has occurred. The Department of Neighborhoods has helped to fund almost all of the new community gardens in Seattle since the 1990's through its Neighborhood Matching Fund.

The land use ordinance allows the following

- Keeping of up to three small animals accessory to the principal use in all zones, including residential abiding by certain provisions. Up to three chickens may be allowed in addition to the small animals. (Chapter 23.42.052 Keeping of Animals)
- Keeping of bees is allowed outright as an accessory use when registered with the State Department of Agriculture and certain provisions such as no more than four hives on lots 10,000 square feet or less.
- Horticulture (raising of plants only) and aquaculture are permitted uses in all commercial districts, with some limitations on size in less intense districts.
- Animal husbandry is allowed as an accessory or principal use in all commercial districts.

Cleveland, Ohio

In January 2009, the Cleveland City Planning Committee recommended an ordinance to allow small poultry and bees to be kept on residential property. On the committee's website, Councilman Cimperman explains why the legislation is proposed, "Initiative such as urban gardening increase sustainable living in the City and spur community and economic development. The keeping of small poultry and bees in the City provides residents with another way to access fresh food and moves Cleveland even loser to a fully sustainable economy."⁶

Cleveland's zoning ordinance has a urban garden district, the intent of which is to "ensure that urban garden areas are appropriately located and protected to meet needs for local food production, community health, community education, garden-related job training, environmental enhancement, preservation of green space, and community enjoyment on sites for which urban gardens represent the highest and best use for the community." Greenhouses, hoop houses and cold frame as allowed as permitted accessory structures and sale of food produced on site is allowed.⁷

<u>Themes</u>

The following themes run through the case studies: non-profit partners, planning for community gardens and different zoning methods to allow for urban agriculture.

⁶ Accessed at

http://www.clevelandcitycouncil.org/Home/News/December12008/tabid/593/Default.aspx on January 28, 2009

 ⁷ Accessed at http://caselaw.lp.findlaw.com/clevelandcodes/cco_part3_336.html on January
 28, 2009

- **Non-Profit Partners** Seattle, Toronto and Philadelphia's efforts in urban agriculture are either spearheaded or supported by a non-profit. The independent agency provides education, resulting in some quality control, for gardeners. It also works to help distribute and sell food produced in the City. A non-profit partner seems essential for long-term success. As the Planning Commission discusses changes to the City's ordinances, it should also work with community groups, such as the Ruth Mott Foundation and the Genesee County Land Bank to identify potential partners for the City.
- **Planning** Community garden areas are identified in the land use plans for Seattle and Toronto. Identification of areas and quantitative requirements, such as Seattle's requirement for a community garden for every 2,500 residents of a neighborhood, has led to the development and preservation of community gardens. The planning strategy in Philadelphia for neighborhood revitalization articulates gardens as part of the essential open space. When Flint undertakes any planning process, the City should include urban agriculture, community garden location and food security as part of its efforts to support any legislative amendments made in this process.
- **Zoning Methods** Seattle allows for agricultural uses in commercial districts, Philadelphia in mid-rise multiple-family residential, Toronto in a variety of zones and Cleveland has its own zone for agricultural activity. The variety of locations allowed between the cities shows that there is not one answer, i.e. a municipality does not have to allow agricultural uses in a certain district to have successful urban gardening. The Planning Commission will need to examine the types of agricultural uses and scale of operations appropriate for Flint and in what location.

MICHIGAN LAW – RIGHT TO FARM

The Michigan Right to Farm Act (RTFA) was written to address nuisance complaints being brought against agricultural operations by new residents moving into the countryside. The RFTA states that a farm or farm operation *shall* not be found to be a nuisance if it conforms to generally accepted agricultural management practices (GAAMP). The GAAMP are determined by the Michigan Department of Agriculture and must be reviewed annually by the Michigan Commission of Agriculture.

Further, the RTFA exempts farms that existed *before* residential uses moved to land within one mile of the farm (basically saying, the farms that were there first are also exempt from nuisance complaints, as long as the farm was not a nuisance before the new residents moved in). The section below describes a recent Michigan Supreme Court case where the RTFA was applied in an urban setting.

Papadelis v. City of Troy

This case involves a family who expanded an agricultural use, a retail nursery, within a City, citing the Right to Farm act as the reason that their expansion did not require approval or permits from the City.

The Papadelis family owned two parcels of land in the City of Troy, both of which were zoned for single-family residential use. The Papadelis operated a legal non-conforming nursery on the south parcel. The family then acquired more property on the north, bringing the parcel above the minimum lot size required for agricultural operations in the City. The Papadelis then constructed a pole barn and two large greenhouses on the north property, claiming that they were exempt from City permit processes under the Michigan Right to Farm Act (RTFA).

The trial court and Court of Appeals broadly interpreted the RTFA and found for the Papadelis. These rulings essentially precluded enforcement of land use ordinances on agricultural operations unless there was a direct violation of generally accepted agricultural management practices (GAAMP).

The Michigan Supreme Court found in favor of the City of Troy, clarifying that local ordinances are only preempted under the RFTA if the ordinance directly conflicts with the RTFA or GAAMP. In addition, the court ruled that greenhouses and pole barn were not incidental to the agricultural use of the land.

This case essentially validated the position of the local unit of government that zoning ordinances still apply to agricultural operations, even *if* the farm complies with GAAMP. The RTFA does protect farms from nuisance complaints, but farms are still subject to local zoning.

How RTFA Applies to Flint

Any regulations governing agricultural uses must be in line with GAAMP. However, GAAMP are regularly updated. Urban agriculture is expanding in Michigan cities such as Detroit. GAAMP may change to deal with urban agriculture specifically and RTFA will most likely be further tested in courts. Therefore, the City must be concerned with minimizing the potential nuisances of agricultural uses in the city as entities are established.

U.S. FARM BILL

The 2008 Farm Bill contains no specific references to urban agriculture. However, Section 4402: Assistance for Community Food Projects, provides federal money to establish "Healthy Urban Food Enterprise Development Centers" and fund a "Community Food Project".

A community food project is as a community-based project that is designed to:

- 1. Meet the food needs of low-income individuals
- 2. Increase the self-reliance of communities in providing for the food needs of the communities
- 3. Promote comprehensive responses to local food, farm and nutrition issues

- 1. To meet specific State, local or neighborhood food and agricultural needs relating to:
 - a. Infrastructure improvement and development
 - b. Planning for long-term solutions
 - c. Creation of innovative marketing activities that mutually benefit agricultural producers and low-income consumers

The section defines underserved communities as, generally, areas that have limited access to affordable, healthy foods including fruits and vegetables; have a high incidence of diet-related disease; and severe or persistent poverty. In the action plan, the report should outline further steps to access this program.

URBAN AGRICULTURE PROGRAMS

We examined the programming of two successful Michigan urban agriculture programs: Growing Hope in Ypsilanti and the Detroit Garden Resource Program. The programs were selected due to their success, and location in Michigan cities facing similar challenges as Flint, such as vacant land, lack of access to fresh food. Both groups support community gardening efforts through education, demonstration projects and programming.

Growing Hope in Ypsilanti

Growing Hope provides education, maintains community gardens, links gardeners with available space, runs youth and school gardening programs for children from pre-schoolers to teenagers and facilitates donation of garden produce to local food pantries. The organization is also in the process of building a demonstration and training center. Please see http://www.growinghope.net/projects/CSGDI.shtml for more information on their specific programs.

Detroit Garden Resource Program

The resource program is the collaborative effort of four partner organizations: the Detroit Agriculture Network, The Greening of Detroit, Capuchin Soup Kitchen's Earthwork Garden and Michigan State University Extension. Each of the partner organization is active in urban agriculture in Detroit, similar to the programming of Growing Hope in Ypsilanti. The resource program provides community garden groups and individuals the basic resources for their gardens from seeds to transplants to know-how. They offer a series of education courses, put on an annual garden tour, and assist in connecting volunteers to projects and gardeners with each other to share resources and knowledge. Their website. http://www.detroitagriculture.org/garden resource program.htm, has more information about their programs.

Implications for Flint

Flint has an active gardening community. Ruth Mott Foundation and Genesee County Land Bank provide some of the support and education provided by Growing Hope and Detroit Garden Resource Program. Both organizations address the needs of established and beginning gardeners in their communities. Through their programs provide steps for their success and assure a level of quality to the food produced. As the Planning Commission develops regulations, it should also work with partner organizations to explore whether an umbrella educational entity focused on urban agriculture is needed in Flint.

RESOURCES REFERENCED

Toronto:

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Telephone interview with Alan Theobald, Zoning By-Law Acting Project Manager, City of Toronto, January 28, 2009.

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Kaufman, Jerry and Martin Bailkey, "Farming Inside Cities: Entrepreneurial Urban Agriculture in the United States", Lincoln Institute of Land Policy Working Paper, 2000.

Lawson, Laura J. <u>City Bountiful: A Century of Community Gardening in America</u>. University of California Press: 2005.

http://www.amlegal.com/library/pa/philadelphia.shtml

Seattle:

http://www.seattle.gov/Neighborhoods/ppatch/ http://www.seattle.gov/Neighborhoods/ppatch/history.htm http://www.ppatchtrust.org/ Lawson, Laura J. <u>City Bountiful: A Century of Community Gardening in America</u>. University of California Press: 2005. http://clerk.ci.seattle.wa.us/~public/code1.htm

<u>Cleveland</u>:

http://www.clevelandcitycouncil.org/Home/News/December12008/tabid/593/Default.aspx http://caselaw.lp.findlaw.com/clevelandcodes/

Urban Agriculture Organizations:

http://www.detroitagriculture.org/garden_resource_program.htm http://www.growinghope.net/projects/CSGDI.shtml