

# Homegrown; The Growing Need For Local Ordinances Suitable For The Expansion Of Community Gardens

Daniel Schramm  
Heather Shoemaker

## I. Introduction

Community gardens are becoming increasingly more popular in urban or densely populated neighborhoods across the United States. This is in large part because communities want a local source of food that they can share and assist with production. The trend has grown so large as to affect our lexicon with local food enthusiasts being coined the label of “Locavore”. A locavore is one who eats locally grown food whenever it is possible.<sup>1</sup> Localities are addressing the trend in two ways. One way is to pay limited attention to this trend for locally grown food and defer to private parties. In doing so many municipal governments display no impetus to embrace a change in local land use and land regulation. The other way a locality could approach this trend is by embracing and utilizing it for sustainable development. Unfortunately, the former appears to be the commonplace across municipalities in Pennsylvania.

This narrative, along with the complementary proposed model ordinance, seeks to aid in a comprehensive approach to implementing local laws to address the increasing desire to establish community gardens. This might beg the question, what is a community garden? What does one look like and how is it used and managed? Quite simply, a community garden is a shared space used for the production of vegetables, herbs, and a variety of other suitable edible plants. Gardens address a growing need in a variety of communities, not only revitalizing bare or blighted spaces, but it also provides neighborhoods with food security, dietary benefits, and establishes community institutions. Additionally, community gardens shorten the average distance traveled to buy or obtain food, decrease the need for transported food from outside

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<sup>1</sup> OUPAcademic, *Oxford Word Of The Year 2007: Locavore*, OUPblog (2015), <http://blog.oup.com/2007/11/locavore/> (last visited Dec 7, 2016).

sources, and decrease the use of food processing and packaging. This paper explores the rationale for enacting local ordinances and will address the need for local food production and communal space. Additionally, it will address how jurisdictions, both inside and outside of Pennsylvania, have enacted ordinances regulating the implementation and use of community gardens. Lastly, this paper provides several policy considerations that representatives of community governments should internalize when enacting a community garden ordinance.

## **II. Problems with Existing Garden Laws**

As highlighted before, urban communities have been at the forefront of implementing community gardens. It appears that there is a lack of drive in many smaller Pennsylvania community governments to address the growing desire for local food production and implementation of community gardens. Many of the ordinance codes for Pennsylvania townships and boroughs do not cover a great deal of substance regarding the regulation or implementation of gardens. Most of the ordinance codes lack provisions on gardening altogether, especially community gardens. This could be in part, due to municipal governments experiencing some backlash with attempts to implement community gardens. It may also be due to the large agriculture industry in much of the state. With agriculture being present in many townships in Pennsylvania, it is surmise to say perhaps there may be less motivation for community green spaces with the large amounts of crop production in those communities. That being said, local governments must be adopted ordinances permitting and encouraging long-lasting community gardens.

One example where the municipal code is not conducive to community gardens is Northampton County, Hellertown. Their borough code only addresses gardens as a land use that

does not require a grading permit.<sup>2</sup> Unfortunately, the borough code does not address anything further in regards to gardens or community green spaces.

Most of the ordinances are completely silent on community gardens. If they address gardens it is only including garden waste in the definition of yard or leaf waste. Unfortunately, many townships only include the term garden when referring to their definition for yard waste, but do not provide anything on community gardens.<sup>3</sup> Many boroughs include this provision in their definitions too, but do not provide anything further.<sup>4</sup>

Localities that have not adopted any formal ordinance on community gardens could be a result of, at least in part, because neighbors may be slightly disinclined to embrace the locavore movement. Insofar as, some communities, may be averse to the idea of bringing agricultural activities into their suburban or borough neighborhoods, which would include the noises, smells, and health concerns that are associated with gardens or other food production.<sup>5</sup> This community concern may also stem from community gardens traditionally being run by private landowners with limited local government oversight.<sup>6</sup> Neighbors often have concerns about unintended nuisances such as mice and rabbits proliferating as a result of putting in a community garden.<sup>7</sup>

The concerns for many rural townships might be a lot different. There may not be a large number of spots that may be suitable for a community garden within a walkable distance to residential neighborhoods. Furthermore, many rural townships with a prominent agricultural

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<sup>2</sup> Borough of Hellertown, PA., Municipal Code § 360-8

<sup>3</sup> See for example, these municipalities which include garden waste in yard waste definition: Township of Charlestown, PA., Municipal Code § 20-102; Township of Chartiers, PA., Municipal Code § 285-33; Township of Hempfield, PA., Municipal Code § 70-3; Township of Jackson, PA., Municipal Code § 20-102;

<sup>4</sup> See for example Borough of Perkasio, PA., Municipal Code § 96-22A

<sup>5</sup> Tricia Kline, *Camp Hill Strikes Down Request to Expand Ordinance on Backyard Chicken Raising*, PENNLIVE, September 14, 2016, [http://www.pennlive.com/community-news/2016/09/camp\\_hill\\_strikes\\_down\\_request.html](http://www.pennlive.com/community-news/2016/09/camp_hill_strikes_down_request.html) (last visited Sep 16, 2016).

<sup>6</sup> Cate McKissick, *Carlisle Borough Adopts Community Garden Ordinance*, Pennlive, July 11, 2013, [http://www.pennlive.com/midstate/index.ssf/2013/07/carlisle\\_borough\\_adopts\\_commun.html](http://www.pennlive.com/midstate/index.ssf/2013/07/carlisle_borough_adopts_commun.html) (last visited Nov 8, 2016).

<sup>7</sup> Id.

presence may not see the need to implement a garden when produce crops are so readily available. Nevertheless, local ordinances could provide guidance on the use of a common space even in a largely rural area and provide a space for a local community to gather and produce locally grown food.

Because many municipal codes do not address community gardens, Pennsylvania ordinances do not provide space protections for groups to implement a community garden if the local government authorizes community gardening on public land. If groups wish to establish community gardening on private land, ordinances are usually limited to structures on parcel, or the growth of weeds.<sup>8</sup> Private groups can be instrumental in organizing and implementing community gardens. However, they could be greatly assisted if there were a comprehensive ordinance. An ordinance with the proper permitting, oversight, and municipal protection can assure that the garden will be a lasting communal resource rather than a short term, lackluster experiment.<sup>9</sup>

### **III. Why an Ordinance for a Community Garden?**

As highlighted before, Pennsylvania ordinance codes are lacking in legislation on the topic of community gardens. Pennsylvania should address the growing need for community gardens by and through its local ordinances. An ordinance will help meet community needs by providing a framework for implementation and oversight regarding a community garden. In implementing a community garden ordinance, the residents' needs are met for a local, productive green space and eliminates the problem with the local government having to turn a blind eye to pop-up

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<sup>8</sup> See a more comprehensive example of an ordinance (including private or public land) for the Borough of Carlisle. Borough of Carlisle, PA., Municipal Code § 255-12

<sup>9</sup> Amy Laura Cahn, *It's Time To Double Down On Protecting Community Gardens*, Grid Philly (2016), <http://www.gridphilly.com/grid-magazine/2016/3/28/its-time-to-double-down-on-protecting-community-gardens> (last visited Nov 2, 2016).

gardening on a vacant/bare lots or parcels.<sup>10</sup> The implementation of community gardens also creates innumerable social, environmental, and economical benefits with minimal to no cost to localities or adjoining property owners.

An additional benefit to implementing a community garden by and through a comprehensive ordinance is that the space could provide for a community social hub. Gardens often provide avenues of expression for people and provides personal investment in their community. A case study, analyzed by professors at Western Illinois University, found that community gardens provide social interaction amongst persons living in an area that may not otherwise interact with one another and heightens social awareness of community influences and community problems.<sup>11</sup> Collective gardened spaces may become an indicator of the strength of a community.<sup>12</sup> Gardens and greens spaces allow persons of different socio-economic groups to participate in a shared activity while benefiting the community as a whole.

A common problem with unused spaces, or blighted parcels, is that they may become a magnet for the dumping of rubbish and other criminal activity. The implementation of a green, productive social space is a sustainable way of abating such nuisances. Sofya Aptekar, University of Massachusetts, found that with the implementation of community gardens within developing neighborhoods in New York City there was a decrease in dumping on the lot and surrounding litter.<sup>13</sup> Pennsylvania localities may also reap the rewards of a revitalized space that manifests social benefits such as abating public dumping and illicit activity.

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<sup>10</sup> Bethany Henderson & Kimberly Hartsfield, *Is Getting into the Community Garden Business a Good Way to Engage Citizens in Local Government?*, National Civic Review (Winter 2009).

<sup>11</sup> Heather Mcilvaine-Newsad & Rob Porter, *How Does Your Garden Grow? Environmental Justice Aspects of Community Gardens*, 16 JOURNAL OF ECOLOGICAL ANTHROPOLOGY JEA (2013).

<sup>12</sup> *Id.*

<sup>13</sup> Sofya Aptekar, *Visions of Public Space: Reproducing and Resisting Social Hierarchies in a Community Garden*, Sociological Forum 2015 - Wiley Online Library, <http://onlinelibrary.wiley.com/doi/10.1111/socf.12152/full> (last visited Nov 3, 2016).

Community gardens also meets the desires of locavores in that they provide access to unprocessed foods. The growing number of locavores have a well-founded desire to supplement their food with locally grown produce. The community garden establishes a dietary source for much needed fruits and vegetables. The locavores often criticize the high intake of “processed” foods and want a local source void of additives or preservatives. As Hugh Bartling, Associate Professor of Public Policy Studies at DePaul University, points out, the desire to have local raised or cultivated foods including meats and vegetables can be attributed to the highly industrialized production of our foods and the sense of uncertainties make persons wary of the source and treatment of it before it reaches the table.<sup>14</sup> As ominous and amorphous as the term “processed food” is, there is an argument to be made for local food apologists. A recent study published in the BMJ Open, a peer-reviewed medical journal, found that over half of the average Americans’ diet contains “ultra-processed food.”<sup>15</sup> The processing is the addition of sugars not otherwise naturally present in these foods. According to the findings, processed foods make up to about 90 percent of Americans added sugar intake. Furthermore, the ratio of calorie intake from these added sugars are 4 percent higher than the recommended intake of 10 percent caloric intake from added sugars.<sup>16</sup> The local growth movement is one approach to combating the growing obesity problem. Gardens supplement a community’s diet with much needed vegetables and or fruits, etc. without the added sugars and sodium from processing.

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<sup>14</sup> Hugh Bartling, *A Chicken Ain't Nothin' But A Bird: Local Food Production And The Politics Of Land-Use Change*, 17 *Local Environment* (2012).

<sup>15</sup> Julie Beck, *More Than Half of What Americans Eat Is 'Ultra-Processed*, *The Atlantic*, March 10, 2016, <http://www.theatlantic.com/health/archive/2016/03/more-than-half-of-what-americans-eat-is-ultra-processed/472791/> (last visited Sep 15, 2016).

The Atlantic attributed much of their discussion to the abovementioned BMJ Open journal publication.

<sup>16</sup> *Id.*

Along those same lines, community gardening also provides individuals with recreation and activity needed for healthy living. Although some of the activities may seem minuscule and certainly more vigorous exercise is recommended, gardening provides healthy physical activity for many people of all ages.

As mentioned before, community garden might receive some backlash with disputes over land use. In many ways the discourse for implementing a garden creates better dialogue with local officials. According to Bethany Henderson, founder and executive of the sustainability nonprofit group City Hall Fellows, community gardens actually increase community engagement.<sup>17</sup> With adopting an ordinance that addresses community gardens, it may bring with it an unexpected attraction of neighbors wanting to participate in the decision making process. Alternatively, community gardens on public lands, may increase community activity and better maintenance of these shared spaces.

Community gardens also provide a local source of food in a variety of communities that may include food insecure households. Food insecurity for family households is a growing problem in the United States. Food insecurity severely impacts the elderly in addition to low-income households. Food insecurity can lead to a variety of dangerous health conditions, especially for an elderly or aging demographic.<sup>18</sup> Food insecurity may be harmful to those in the later stages of life, but food insecurity is a clear problem for persons in lower socio-economic status. According to Feeding America, a non-profit organization dedicated to curbing hunger, one in seven Americans live in food insecure homes and often have to make critical choices in allocating

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<sup>17</sup> Bethany Rubin Henderson & Kimberly Hartsfield, *Is Getting into the Community Garden Business a Good Way to Engage Citizens in Local Government?* 98 National Civic Review (2009).

<sup>18</sup> J. S. Lee & E. A. Frongillo, *Nutritional and Health Consequences Are Associated with Food Insecurity among U.S. Elderly Persons*, 131 The Journal of Nutrition (2001).

money to buy food over housing, transportation, and medical costs.<sup>19</sup> Community gardens can greatly decrease the gap in food insecure homes and provide greater access to fresh fruit and vegetables.

The implementation of community gardens also has abounding beneficial environmental impacts, including decreasing the ground-to-table mileage in food intake, providing for rain water absorption and runoff retardation, as well as a site for growing diverse unmodified crops.

A great lament of the locavore is the distance food travels from farm to table. In general, food products travel an average of over 1000 miles before reaching a consumer's plate.<sup>20</sup> Christopher Weber and H. Scott Matthews, of Carnegie Mellon University, write that eighty-three percent of Americans' average 8.1 t CO<sub>2</sub> e/yr footprint associated with food consumption is attributed to production and transportation.<sup>21</sup> In other words, for about eighty-three percent of the American populace, food consumption leads to, on average, 8.1 tonnes of carbon dioxide per person being emitted into the atmosphere annually. This adds to the increasing composition of greenhouse gasses. This is also a sizable portion if Americans average annual carbon output is roughly 19 tonnes per person.<sup>22</sup> With a suitable local ordinance providing for the implementation and regulation of community gardens, local residents can lower their food mileage while providing green spaces in their neighborhoods.

As highlighted above, the implementation of community gardens may lead to the abatement of nuisance, dumping, and illicit activity on abandon or blighted spaces. Community

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<sup>19</sup> Feeding America, <http://www.feedingamerica.org/> (last visited Sep 16, 2016).

<sup>20</sup> Christopher L. Weber & H. Scott Matthews, *Food-Miles and the Relative Climate Impacts of Food Choices in the United States*, 42 ENVIRONMENTAL SCIENCE & TECHNOLOGY ENVIRON. SCI. TECHNOL. 3508-3513 (2008).

<sup>21</sup> *Id.*

<sup>22</sup> Adam Vaughan, *Carbon Emissions Per Person, By Country*, The Guardian, <https://www.theguardian.com/environment/datablog/2009/sep/02/carbon-emissions-per-person-capita>



gardens have also been found to increase the property value of adjoining land owners.<sup>23</sup> Property values, of course, would be subject to numerous factors and conditions, but a community garden may nevertheless assist in a growing pride in a neighborhood possibly incentivizing adjoining property maintenance, which may ultimately lead to higher property values.<sup>24</sup> Green spaces and gardens are generally desirable and community gardens can be readily implemented to revitalize a blighted space. This again prevents dumping or unsightly rundown properties.

#### **IV. How have Community Gardens been implemented in other Jurisdictions?**

Community gardens are becoming more prevalent in communities all over the United States with a large push for them in cities. Many local governments deal with regulating community gardens in a variety of different ways. Community gardens largely appear in specific land use ordinances with limited direction or guidance on how to start a garden. Many Pennsylvania jurisdictions only address community gardens in the definition section of their municipal code.

One example is Phoenixville Borough, which provides a resourceful definition in their borough code. The code provides that a community garden is, “a plot of land (public or private) for the use of individual small garden plots by residents for producing food for their own use and recreation or donation to nonprofit groups and not for commercial use or sale.”<sup>25</sup> Their code provides further that community gardens are permitted in all zoning districts.<sup>26</sup> This is an effective definition because it captures the essence of the locavore movement. Furthermore, by permitting community gardens in all zoning districts it also provides a greater incentive to provide green spaces in many different environments. Also with permitting the gardens in any of

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<sup>23</sup> Megan Heckert & Jeremy Mennis, *The Economic Impact of Greening Urban Vacant Land: A Spatial Difference-in-Differences Analysis*, 44 *Environ. Plann. A Environment and Planning A* 3010–3027, (2012).

<sup>24</sup> Vicki Been & Ioan Voicu, *The Effect of Community Gardens on Neighboring Property Values*, SSRN Electronic Journal, [http://furmancenter.org/files/publications/The\\_Effect\\_of\\_Community\\_Gardens.pdf](http://furmancenter.org/files/publications/The_Effect_of_Community_Gardens.pdf).

<sup>25</sup> Borough of Phoenixville, PA., Municipal Code § 27-202

<sup>26</sup> Borough of Phoenixville, PA., Municipal Code. § 27-301

the zoned districts is creates a better chance of garden actually getting established. By amending existing zoning laws to permit gardens, it also embodies the borough's willingness to establish community gardens within their borough.

Another example is the Township of Aleppo. They included "Community Gardens" in their definition section of their municipal code. The code specifically writes out community gardens from the definition of Agriculture Uses<sup>27</sup>. The township code provides further in defining community garden as: "Community gardens may be divided into separate plots for cultivation by one or more individuals or may be used collectively by members of the group and may include common areas maintained and used by group members. No retail sales shall be permitted to occur on the lot where a community garden exists."<sup>28</sup> This provides a short, succinct definition of community gardens but furthers the initiative of the locavore trend. The separate plot division is also effective in that it projects the image of compartmentalized gardening.

As mentioned before, one of the benefits of gardens is additional absorption area for rain water. Some jurisdictions like Township of Birmingham, Township of Radnor, and the Borough of Perkasie specifically exclude non-retail gardening from the type of land disturbance that requires application and other conformity to the Storm water Management Ordinance.<sup>29</sup> In excluding non-retail gardening from the storm water ordinances it provides for greater incentives to implement gardens. Likewise, it removes more impediments to implementing a garden.

The Borough of Camp Hill addressed the issue of gardens and rain water a little differently. Although this ordinance regulates buildings to be placed on the site of a community garden, setbacks, and signage, the ordinance provides in part that an applicant seeking to

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<sup>27</sup> Township of Aleppo, PA., Municipal Code § 400-8

<sup>28</sup> *Id.*

<sup>29</sup> See Township of Birmingham, PA., Municipal Code § 105-106; Township of Radnor, PA., Municipal Code § 245-6; Borough of Perkasie, PA., Municipal Code § 158-5

implement a community garden must also demonstrate the impact on potential rain runoff with approval of Borough engineer and provide evidence that the impacts of the proposed use will fall within the acceptable ranges of storm water run-off.<sup>30</sup> As highlighted before storm water is a great concern for many municipalities in Pennsylvania but with this approach it does place additional costs on organizers seeking to establish a community garden.

The Town of Huntington, New York has an interesting approach to the implementing community gardens with perhaps the most encouraging provisions and provides a more encompassing approach to community gardens. The town's ordinance includes requirements of the Town Planner to inventory vacant properties, making all vacant lots available for organizations to use for the use of community gardens, and includes a provision on the prohibition on the sale of produce from the community garden.<sup>31</sup> This ordinance is rather extraordinary compared to Pennsylvania ordinances, especially with the authorization of vacant being available for the use of gardening. The ordinance also provides a specific provision for filing an application for implementing a community garden with the Town Board. This ordinance allows for greater control by the municipality over community gardens. These progressive approaches are perhaps the most ideal for the proliferation of the community gardens and shows the local governments willingness to embrace the growing locavore and sustainable trends.

Another approach in New York is the ordinance adopted by the Town of Ithaca, which provides a process of applying for the establishment of a community garden by way of special permit in any district.<sup>32</sup> This ordinance provides for a permit for the use of a community garden upon the completion of a site plan. The ordinance also leaves open the possibility for the Zoning

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<sup>30</sup> Borough of Camp Hill, PA., Municipal Code § 11-34

<sup>31</sup> Town of Huntington New York, Town Code. Chapter 95. Community Garden Program

<sup>32</sup> Town of Ithaca, New York. Town Code. Chapter 325. Zoning. Art III. Special Conditions and Special Permits

Board to impose any and all conditions it may “deem necessary or desirable.”<sup>33</sup> This type of ordinance is an effective way of allowing the establishment of a community garden while providing a revocable permit, which maintains Board authority over the use of the property.

The Town of Royal Oaks, Michigan, addresses community gardens in its zoning ordinance and includes a purpose and intent section largely absent from many other jurisdictions. The purpose and intent section highlights the importance of locally grown food, preservation of natural resources, and preservation of green spaces.<sup>34</sup> Furthermore, the code also includes provisions for prohibition on nuisance activities, burning, signage, the use of heavy machine, and other general use provisions. The code goes on further to permit these gardens in any type of zoned district.<sup>35</sup> The code does not explain how a lot would be divided or how one goes about seeking to establish a community garden.

None of the abovementioned ordinances indicate how a plot of land will be divided or organized for the growth of produce. A popular approach is the adopt-a-lot or rental plot approach, which is typically on private land or land held in private trust protection and rented to gardeners. This is a common approach in places like Baltimore with organizations like Baltimore Greenspace.<sup>36</sup> These types of land trusts are an efficient way to preserve a green space or community garden. Although these approaches do not display a local government’s embrace of the idea of community gardens, they are an effective way of implementing gardens.

Harrisburg City also has a similar approach. Although the City does not have a specific community garden ordinance, the City has several gardens. These gardens are actually registered with a national online registry run by the American Community Garden Association. The

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<sup>33</sup> Id.

<sup>34</sup> City of Royal Oaks, Michigan. City Code. 770-56

<sup>35</sup> Id.

<sup>36</sup> Our Mission, BALTIMORE GREEN SPACE, <http://baltimoregreenspace.org/who-we-are/our-mission> (last visited Sep 27, 2016).

gardens that the city has held by the Redevelopment Authority, which utilizes blight seizure under the Urban Renewal Law.<sup>37</sup> The parcels that have community gardens on them are organized and run by a non-profit group that rents subdivided plots.<sup>38</sup> This is an interesting approach to the revitalization of blighted spaces. The gardens are run and organized by private organizations but established upon a space held by a public entity. This is an interesting approach, but raises the issue of permanency of the gardens for many of the organizers.<sup>39</sup>

The City of Seattle, Washington provides successful example of local governments promoting community gardens. The city's "P-patch" program has been established for over 40 years and has over 88 established gardens.<sup>40</sup> The P-Patch program actually embraces three forms of implementation, gardener organized, municipal managed, and non-profit managed.<sup>41</sup> As seen in many of the other effective ordinances, the Seattle amended their zoning ordinance to permit community gardening in all zoning districts.<sup>42</sup> The P-Patch program has been considered a tremendous successful for many proponents of urban gardening. The P-Patch program also utilizes an inventory system for vacant parcels similar to that of Huntington New York. The number of participating people who tend to a P-Patch plot has reached over 1,500 people as of 2008.<sup>43</sup>

As stated before, Pennsylvania has limited garden ordinances, with most regulating the type of structure to be on it and the prohibition of nuisance activities and weeds. Some decide to exempt gardens from the application process in the Storm water ordinance, while others do not.

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<sup>37</sup> Urban Renewal Law, Act 385, of 1945, P.L. 991 at 35 P.S. § 1701 et seq.

<sup>38</sup> Green Urban Initiative, <http://www.greenurban.org/>

<sup>39</sup>Eric Veronikis, *Harrisburg Tears Down Community Garden; Green Urban Initiative Outraged*, [http://www.pennlive.com/midstate/index.ssf/2012/09/harrisburg\\_tears\\_down\\_communit.html](http://www.pennlive.com/midstate/index.ssf/2012/09/harrisburg_tears_down_communit.html)

<sup>40</sup> About the P-Patch Program, <http://www.seattle.gov/neighborhoods/programs-and-services/p-patch-community-gardening/about-the-p-patch-program> (last visited Nov 27, 2016).

<sup>41</sup> *Id.* (Informative Sheet)

<sup>42</sup> City of Seattle WA, Municipal Code § 123378

<sup>43</sup> Lorraine Johnson, *City Farmer: Adventures In Urban Food Growing* (2011).

Some of the most effective ways of implementing community gardens are through municipal amending their zoning ordinances and encouraging non-profit organizations to spearhead the community garden initiative. This approach many times utilizes public ownership or private land with the implementation of a protective trust. Additionally, whether the community garden is intended to be established on private or public land, local governments can amend their zoning laws to allow community gardens in all zoning districts. Local governments may also utilize an inventory list of vacant parcels in their jurisdictions that could be revitalized for community gardens. The revitalized of blighted properties also appears to be an efficient way of implementing community gardens if the implementation is honored long-term by the respective municipality. As mentioned above, organizers may be wary of the tenure of a garden if the local government only grants temporary or indefinite use. The Model Ordinance attached, attempts to make an amalgamation of the best parts of each and allows the municipality to choose which approach works best for their community.

## **V. Key Policy Issues**

A great benefit in implementing an ordinance for community gardens is that there are relatively few costs associated with them, but many benefits. Nevertheless, officials should take into consideration the imposition of fees for permits, applications or rentals, the division of garden plots or allocation of growing space, internal dispute resolution, requirement of site plans, the testing for safety and suitability of soil, the consequence for rain water runoff, the collection of rain water, and carrying liability insurance.

Fees and permit costs may be an effective approach to overseeing the implementation of a community garden. The implementation of fees, and the amount of fees, may vary depending on the respective municipality. Additionally, the supervision requirement of community gardens is

generally minimal. The municipalities may have even less responsibility if the community garden is organized and run by a non-profit organization. Therefore, implementing community gardens would yield revenue for a municipal government without having much cost due to their limited need for oversight. Plot rental is also another form of revenue after the community garden is already established and recognized by the municipality. If the garden is established on public land, plot rentals payments may also provide more money.<sup>44</sup>

Application fees for the implementation of gardens may also be a revenue consideration. However, take note that with the imposition of costs there might be less of an incentive to establish a community garden. Along those same lines, municipalities might consider waiving possible storm water effect plans, as highlighted in above ordinances. The implementation of community gardens create additional absorption which may be effective in the slowing of rain waters and help, at least in part, from inundating existing storm water-sewer systems.

The division of plots should in practice minimalize disputes among gardeners. However, with the use of any shared spaces disputes are foreseeable. The compartmentalization of garden plots is meant to precisely address possible disputes over the spaces. However, there is a growing trend towards the implementation of permaculture gardening, which rejects the intuitive methods of gardening.<sup>45</sup> Permaculture garden specifically subscribes to non-compartmentalization of gardening sites, minimal human manipulation, and the allowance of plant species considered to be weeds.<sup>46</sup> The shared idea behind implementing a permaculture is that the space, whether garden or farm, is a “closed loop” system.<sup>47</sup> This means for example, that fertilizer should not be

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<sup>44</sup> See for example, Dauphin County’s rental agreement at: Community Gardens, <http://www.dauphincounty.org/government/Parks-and-Recreation/Programs/Pages/Community-Gardens.aspx>

<sup>45</sup> Brian Barth, *Permaculture: You've Heard of It, But What the Heck Is It?* The Modern Farmer, <http://modernfarmer.com/2016/04/permaculture/>(last visited Dec 22, 2016)

<sup>46</sup> Id.

<sup>47</sup> Id.

brought into the space, and the waste produced on site should be utilized to provide nutrients for subsequent growth.<sup>48</sup> This approach to gardening is considered unconventional but has been becoming more popular, even in Pennsylvania<sup>49</sup>. Due to the unconventional nature of this approach it was not addressed in the model ordinance because of foreseeable disputes. Although there are debates over conventional gardening, the model ordinance embodies a compartmentalized approach.

Depending on the approach that the locality would like to take with the establishment of the garden, a community garden could be on public or private land. If there are disputes amongst gardeners on private land, the organization would require their own internal policies for dispute resolution; likely within its plot rental agreements. Should a dispute arise with the use of public lands, the municipalities have the ultimate authority in revoking plot rentals. It is advised however, that municipalities should provide gardeners with notice of any termination of plot disbursement and some meaningful opportunity to be heard before a public official.<sup>50</sup>

A potential problem with implementing community gardens is whether the soil is both suitable and safe to grow on. A common problem with establishing a community garden on a vacant or blighted spot is the prevalence of lead or harmful residue of industry and waste. A study published in the Journal of Environmental Health found that in one community garden in Terre Haute, Indiana there were high levels of lead in the soil, with little ability to remedy.<sup>51</sup> This type of incident is of not isolated and with our country's widespread use of lead based paints and other lead based products, hazardous soil is a serious consideration. Take for example the

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<sup>48</sup> Id

<sup>49</sup> George Weigel, *Permaculture Puts Down Roots in Harrisburg*, [www.pennlive.com/life/2013/05/permaculture\\_puts\\_down\\_roots\\_i.html](http://www.pennlive.com/life/2013/05/permaculture_puts_down_roots_i.html) (last visited Dec 22, 2016).

<sup>50</sup> In order to prevent contravention of a gardener's procedural due process in revoking the benefit provided to them by the local government, the municipality should provide notice and a meaningful opportunity to be heard. See for example *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532 (1985).



community of Homewood in Pittsburgh Pennsylvania. The Community wanted to make use of a vacant lot by establishing a learning lab community garden and unfortunately the high prevalence of lead in the soil would create a serious hazard to the children planned to utilize the soil.<sup>52</sup> Municipalities should seriously consider if they want to include a requirement of testing soil before the implementation of a garden. This could be in the application process or a condition made put in the site plan for a piece of land chosen to be the site of a community garden.

As discussed above, rainwater is an ever increasing problem for municipalities. Community gardens may also be a great way to offset rain water run-off. This could be through collection, by way of rain barrels or through absorption in the cultivated plots. Certain municipalities exempt gardening from specific uses required to comply with their respective storm water management ordinance.<sup>53</sup> This implies that gardening is not viewed as a land disturbance that creates negative impacts on the flow of storm water. Gardens can also be an excellent buffer to increase rain water absorption or run-off retardation. As the non-profit Green Trek, Inc. points out with their initiative of Storm Water PA, greening spaces can improve water quality while providing wildlife habitat and opportunities for outdoor recreation.<sup>54</sup> Local governments can help achieve the many benefits of community gardens mentioned before as well as utilizing them to assist with federal and state requirements in regards to storm water management.

Following that concern, many community gardens wish to have rain barrels to maintain a water source for plants. With the collection of water, there must be a covering required for

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<sup>52</sup> Jim Daly, *Teaching Project on Empty Lots Foiled by Soil Contaminated with Lead*, <http://www.post-gazette.com/news/health/2016/12/20/Teaching-project-on-empty-lots-foiled-by-soil-contaminated-with-lead/stories/201612200006>

<sup>53</sup> Township of Birmingham, PA. Municipal Code § 101-106; Township of Brecknock, PA. Municipal Code § 93-19

<sup>54</sup> StormwaterPA, *How to Apply Best Case Practices*, <http://www.stormwaterpa.org/how-to-apply-best-practices.html>

collecting rain water to avoid the spread of mosquito population. With Pennsylvania warming, it is becoming more inviting for insect populations such as the Aedes aegypti Mosquito. This mosquito often proliferates West Nile virus as well as Zika.<sup>55</sup> Local leaders do not need to give in to the hysteria surrounding the spread of these diseases, however it is prudent to prevent the unwanted spread of this insect.

The last consideration is the matter of liability on the owner of the land. Some organizations address this in a variety of waives. In the ordinance attached, it requires parties to execute a “hold-harmless clause” if the municipality provide land to be used by private parties for a community garden. If a private entity chooses to maintain ownership of the community garden insurance on the land is also a practical need.<sup>56</sup>

Although, gardening may not seem like a controversial issue, the key policy concerns should be considered in adopting or redrafting the model ordinance. Community gardens may be a revenue source for municipal governments but they can also have some hidden hazards such as hazardous materials or hidden liabilities. Nevertheless, community gardens will surely have a positive impact on different communities across Pennsylvania.

## **VI. Conclusion**

The townships and boroughs of Pennsylvania should enact suitable ordinances to better meet the need of the growing garden and local food trend movement. The benefits of local gardens that are shared conceptually by the entire community and yields innumerable benefits; including greater access to healthy foods, the building of community institutions, the decrease in food

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<sup>55</sup> Kara Seymour, *Parts Of Pa. Now Within Range Of Zika Virus Mosquitoes: CDC*, Doylestown Patch, <http://patch.com/pennsylvania/doylestown/parts-pa-now-within-range-zika-virus-mosquitoes-cdc>

<sup>56</sup> Brunswick Co, *Insurance for Community Gardens*, <https://www.brunswickcompanies.com/commercial-insurance/community-garden-insurance/>

mileages, the removal of blight and decreases in crime, and the slowing of run-off and providing additional absorption. Community gardens also spawn economic benefits and creates community institutions which leads to a more civically engaged population. Community gardens also have been shown to inadvertently raise property values. With the absence of ordinances legislating on the matter, many community gardens are taken on by private landowners, and with limited or no municipal oversight. Communities may experience on authorized gardening on abandon lots without the consent of the owner or local government. The townships and boroughs of Pennsylvania should internalize these considerations as well as the needs and wants of their community residents and enact the garden ordinance that best suits its locality and community. Community gardens may also be implemented in such a wide-variety of ways that it allows for a locality to experiment in establishing their own best practice. The model ordinance provides a starting point for municipal governments to embrace the locavore movement and proliferating the other abounding benefits.

**Community Garden Model Ordinance**

Heather Shoemaker and Daniel Schramm

Fall 2016

\_\_\_\_\_ MUNICIPALITY<sup>57</sup>

\_\_\_\_\_ COUNTY, PENNSYLVANIA

ORDINANCE No. \_\_\_\_\_ - \_\_\_\_\_

AN ORDINANCE AMENDING \_\_\_\_\_'S MUNICIPAL ZONING CODE TO PROVIDE FOR THE USE OF COMMUNITY GARDENS IN ALL SPECIFIED ZONING DISTRICTS AS A PRINCIPAL OR ACCESSORY USE, SUBJECT TO THE SPECIFIED REQUIREMENTS HEREIN.

WHEREAS, \_\_\_\_\_ Municipality Board of Commissioners/Council, of \_\_\_\_\_ County, Pennsylvania hereby finds that the creation of community gardens serve numerous purposes.

WHEREAS, community gardens facilitate food security by promoting locally grown produce and healthy dietary choices;<sup>58</sup>

<sup>57</sup> Since this ordinance may be used by either a borough or a township in PA, there are a few locations where information may be picked from two choices. Within this model ordinance alone, there are italicized phrases or words that should be checked in accordance with specific ordinances already previously enacted. Additionally, many numbers are either replaced by "XX" or italicized and are decided within the discretion of the governing body for this ordinance.

<sup>58</sup> J. S. Lee & E. A. Frongillo, *Nutritional and Health Consequences Are Associated with Food Insecurity among U.S. Elderly Persons*, 131 THE JOURNAL OF NUTRITION. (2001).

**WHEREAS,** community gardens promote an increase in food accessibility in more urbanized areas;<sup>59</sup>

**WHEREAS,** community gardens revitalize bare and blighted property within the community, thus promoting more green space utilization;

**WHEREAS,** community gardens enhance the environment by shortening the distance citizens travel to purchase food, thus decreasing the need for transported food and decreasing the amount of food packaging necessary;<sup>60</sup>

**WHEREAS,** community gardens promote an avenue of expression through an increase in social interaction within the community;<sup>61</sup>

**WHEREAS,** community gardens reduce stormwater runoff in an immediate area; and

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<sup>59</sup> Cultivating Community Gardens, <https://www.lgc.org/case-study-1/> (last visited Oct. 27, 2016).

<sup>60</sup> Christopher L. Weber & H. Scott Matthews, *Food-Miles and the Relative Climate Impacts of Food Choices in the United States*, 42 ENVIRON. SCI. TECHNOL. 3508-3513 (2008).

<sup>61</sup> Bethany Henderson & Kimberly Hartsfield, *Is Getting into the Community Garden Business a Good Way to Engage Citizens in Local Government?*, NATIONAL CIVIC REVIEW. (Winter 2009).

**WHEREAS,** community gardens increase residential property values.<sup>62</sup>

**NOW, THEREFORE,** be it enacted and ordained by the \_\_\_\_\_ *Municipality Board of Commissioners/Council,* \_\_\_\_\_ County, Pennsylvania:

**Section 1. Short Title.**

This ordinance shall be known as the Municipality Community Garden Ordinance.<sup>63</sup>

**Section 2. Definitions.**

The following words and phrases used in this ordinance shall have the meanings given to them in this section unless the context clearly signifies otherwise:

``Accessory use'' means property used primarily for residential or other purposes, but the owners use part of the property as a community garden.

``Blighted property'' shall include:

- (1) Any premises which because of physical

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<sup>62</sup> Megan Heckert & Jeremy Mennis, *The economic impact of greening urban vacant land: a spatial difference-in-differences analysis*, 44 ENVIRONMENT AND PLANNING A. 3010-3027, (2012).

<sup>63</sup> Model Recycling Ordinance

condition or use is regarded as a public nuisance at common law or has been declared a public nuisance in accordance with the local housing, building, plumbing, fire and related codes;

(2) Any premises which because of physical condition, use or occupancy is considered an attractive nuisance to children, including but not limited to abandoned wells, shafts, basements, excavations, and unsafe fences or structures;

(3) Any dwelling which because it is dilapidated, unsanitary, unsafe, vermin-infested or lacking in the facilities and equipment required by the housing code of the municipality, has been designated by the department responsible for enforcement of the code as unfit for human habitation;

(4) Any structure which is a fire hazard, or is otherwise dangerous to the safety of persons or property.

(5) Any structure from which the utilities, plumbing, heating, sewerage or other facilities



have been disconnected, destroyed, removed, or rendered ineffective so that the property is unfit for its intended use;

(6) Any vacant or unimproved lot or parcel of ground in a predominantly built-up-neighborhood, which by reason of neglect or lack of maintenance has become a place for accumulation of trash and debris, or a haven for rodents or other vermin;

(7) Any unoccupied property which has been tax delinquent for a period of two years prior to the effective date of this act, and those in the future having a two year tax delinquency;

(8) Any property which is vacant but not tax delinquent, which has not been rehabilitated within one year of the receipt of notice to rehabilitate from the appropriate code enforcement agency; or

(9) Any abandoned property.<sup>64</sup>

“Cold frame” means an unheated outdoor structure consisting of a wooden or concrete frame and a top of glass

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<sup>64</sup> 35 Penn. Stat. § 1712.1.

or plastic used for protecting seedlings and plants from the cold.<sup>65</sup>

“Community Garden” means land managed and maintained by a group of individuals sharing responsibility for a particular site, either independently or under the auspices of a public or nonprofit organization to grow and harvest food crops or ornamental plants for individual or group use.<sup>66</sup> A community garden may include division of separate plots for cultivation by individuals or members of a group.

<sup>67</sup> A community garden may also be a principal or accessory use of a particular site.<sup>68</sup>

“Community garden operator” includes any non-profit or other organization that has obtained both application and permitting approval under this ordinance.

“Compost” includes decomposed organic matter for use in growing practices, usually consisting of materials such as grass, leaves, yard waste, and worms.<sup>69</sup>

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<sup>65</sup> Borough of Carlisle, Pa., Municipal Code § 255.

<sup>66</sup> City of Springfield, Ma., Municipal Code § 7.70.

<sup>67</sup> Id.

<sup>68</sup> Id.

<sup>69</sup> City of Muskegon, Mi., Municipal Code § 2313.

``Cultivate'' means to break up the soil in preparation for sowing or planting.<sup>70</sup>

``Food crops'' include any food for personal or group use or consumption including the following:

(1) harvested tree crops;

(2) row crops; or

(3) field crops.<sup>71</sup>

``Greenhouse'' means a structure generally made of glass or other transparent material for which the primary purpose is the cultivation or the protection of plants.<sup>72</sup>

``Hold harmless clause'' means an agreement whereby the community gardener or operator agrees to hold harmless and indemnify the municipality, and any of its officers, elected officials, agents and employees from and against all claims, damages, or liability incurred in defending any

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<sup>70</sup> City of Springfield, Ma., Municipal Code § 7.70.

<sup>71</sup> City of Austin, Tx., Municipal Code § 25.

<sup>72</sup> Borough of Carlisle, Pa., Municipal Code § 255.

claims arising out of or in connection with the activities permitted in this ordinance.<sup>73</sup>

“Hoophouse” means a structure made of piping or other material covered with translucent plastic, constructed in a half round or hoop shape.<sup>74</sup>

“License agreement” means a written agreement, including an amendment to a previously executed license agreement, between the municipality and a non-profit organization approved by \_\_\_\_\_<sup>75</sup> that allows eligible municipal land to be used as a municipal-supported community garden.<sup>76</sup>

“Municipality” means \_\_\_\_\_ Borough, City, or Township within \_\_\_\_\_ County, Pennsylvania.

“Ornamental plants” means plants of horticultural or flora cultural specialties, including flowers, shrubs and trees intended for ornamental or landscaping purposes.<sup>77</sup>

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<sup>73</sup> City of Claremont, Ca., Municipal Code §12.

<sup>74</sup> Id.

<sup>75</sup> In the blank spaces within this Model Ordinance, insert the name of the Municipality implementing it, or the official.

<sup>76</sup> City of Austin, Tx., Municipal Code § 25.

<sup>77</sup> Id.

“Principal use” means use of a property solely for the purpose of community gardening.

“Rain water collection” means a system for both stormwater runoff containment and collection of rain water for irrigation uses such as watering crops and plants within a community garden.

“Tool house” means a structure for storing tools, supplies and materials.<sup>78</sup>

### **Section 3. Amendments.**

The following provisions within the Zoning Code of \_\_\_\_\_ Municipality, within \_\_\_\_\_ County, Pennsylvania are hereby amended to include Community Gardens as a principal use or an accessory use in the following Zoning Districts:<sup>79</sup>

### **Section 4. Application.**

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<sup>78</sup> Id.

<sup>79</sup> Here is where there would be space to implement amendments based on the specific municipality’s zoning code.

**(a) Permitted Accessory Uses.** All of the following are permitted accessory uses in compliance with section (3) above:<sup>80</sup>

(1) greenhouses, hoophouses, cold-frames, and similar structures used to extend the growing season;<sup>81</sup>

(2) open space associated with and intended for use as community garden areas;<sup>82</sup>

(3) signs shall be limited to identification, information and directional signs, including sponsorship information where the sponsorship information is clearly secondary to the above permitted information on any particular sign, in conformance with the *Municipality/Borough's signage ordinances under Section XX.*<sup>83</sup>

(4) benches, bike racks, raised or accessible planting beds, compost bins, picnic tables,

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<sup>80</sup> Sizing is going to be different depending upon the zoning district with which the community garden is implemented. In order to promote green space usage, and allow for adjacent properties to continue being able to see such green spaces, consider limiting these to a specific size (such as no more than 7 ft tall or 15 feet wide).

<sup>81</sup> City of Cleveland, Oh., Municipal Code §336.

<sup>82</sup> Id.

<sup>83</sup> City of Cleveland, Oh., Municipal Code §336; Check your signage ordinance to fill in the correction section number.

seasonal farm stands, fences, rain barrels and garden art;<sup>84</sup>

(5) buildings, limited to tool sheds, shade pavilions, barns, rest-room facilities with composting toilets, and planting preparation houses, in conformance with the provisions of this section;<sup>85</sup>

(6) off-street parking and walkways, in conformance with the provisions of this section, nurseries, tool houses, gardening sheds, which are no less than XX feet from the lot line.<sup>86</sup>

**(b) Hours of Operation.** The following apply:

(1) Community gardening shall be permitted between dawn and dusk every day of the week.<sup>87</sup>

(2) Use of hand tools and domestic gardening tools are encouraged.<sup>88</sup>

(2) Any machinery or equipment usage must be used within the hours of operation of subsection (b)(1).

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<sup>84</sup> Id.

<sup>85</sup> Id.

<sup>86</sup> Id.

<sup>87</sup> Borough of Carlisle, Pa., Municipal Code § 255.

<sup>88</sup> City of Dade, Fl., Municipal Code § 5.28.

**(c) Nuisance.** A community garden shall be conducted in such a way that no traffic congestion, noise, glare, odor, smoke, vibration, fire hazards, safety hazards or electromagnetic interference shall be noticeable at or beyond the property line.<sup>89</sup>

**(d) Signs.** The following apply:

(1) A sign may not exceed XX square feet in area per side and not exceed XX feet in height.<sup>90</sup>

(2) One identification sign shall be permitted.<sup>91</sup>

**(e) Parking.**

(1) Off-street parking shall be permitted only for those community garden sites exceeding 15,000/XX square feet in lot area.<sup>92</sup>

(2) The parking shall be limited in size to 10% of the community garden site lot area and shall be either unpaved or surfaced with gravel or similar loose

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<sup>89</sup> Id.

<sup>90</sup> Id.

<sup>91</sup> City of Springfield, Ma., Municipal Code § 7.70.

<sup>92</sup> City of Cleveland, Oh., Municipal Code §336.



material or shall be paved with pervious paving material.<sup>93</sup>

(3) Walkways shall be unpaved except as necessary to meet the needs of individuals with disabilities.<sup>94</sup>

**(f) Sale of produce.** There shall be no retail sale allowed of any produce in a community garden.<sup>95</sup>

**(g) Appearance of plots.**

(1) The community garden operator shall maintain the site and tree belt, including cutting of the grass and overgrown vegetation and removal of trash and debris.<sup>96</sup>

(2) At the end of the growing season, all community garden beds shall be cleared and cultivated, as appropriate.<sup>97</sup>

**(h) Trash collection and removal.**

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<sup>93</sup> Id.

<sup>94</sup> Id.

<sup>95</sup> See City of Springfield, Ma., Municipal Code § 7.70; or City of Little Rock, Ar., Municipal Code §12.28. This may be revised to include retail sale of grown produce if the Municipality so chooses. Other ordinances allow for retail at licensed vendors as long as the produce was grown in a raised bed, to compensate for the fact that some gardeners will want to use fertilizers, and the raised beds accommodate for these issues of contamination.

<sup>96</sup> City of Springfield, Ma., Municipal Code § 7.70.

<sup>97</sup> Id.

(1) The municipality shall provide trash collection services on municipal-owned property and shall assess an annual trash fee.<sup>98</sup>

(2) A community gardener shall collect the trash from the lot and the adjoining sidewalk and place it in designated trash collection barrels for pick-up.<sup>99</sup>

**(i) Water and sewer.**

(1) \_\_\_\_\_ currently waives sewer disposal fees for accounts that are used for community gardening purposes.<sup>100</sup>

(2) If there is an existing water main installed near the lots, under Section (6), the \_\_\_\_\_<sup>101</sup> may install a water service or tap for a fee to be paid by the community garden entity.<sup>102</sup> Requests for installing a water service and/or tap must be made at least six months of anticipated installation.<sup>103</sup>

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<sup>98</sup> Id.

<sup>99</sup> Id.

<sup>100</sup> Id.; Here is an incentive for the use of community gardens on a property; Another possibility includes the use of tax-forfeited land as a community garden site without charge. See Minneapolis, Mn Comprehensive Plan.

<sup>101</sup> This space is intended for whichever Water commission or like entity and should be filled in accordingly.

<sup>102</sup> City of Springfield, Ma., Municipal Code § 7.70.

<sup>103</sup> Id.

(3) Community gardeners shall be responsible for paying water fees, including the turn on/turn off fee and monthly fees even when the water main is not in use.<sup>104</sup>

(4) Rain barrel water collection systems for irrigation purposes are encouraged. If a rain barrel water collection system is used, the community gardener must cover the rain barrel.<sup>105</sup>

**(j) Composting and fertilizers.** The following apply:

(1) No fresh manure or other animal waste or other animal by-products may be composted at a community garden.<sup>106</sup>

(2) Composting materials may only be generated onsite.<sup>107</sup>

(3) If a community gardener plans to compost on-site, the community gardener shall take steps to ensure that the community garden is in compliance with \_\_\_\_\_

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<sup>104</sup> Id.

<sup>105</sup> Since this ordinance is meant to be beneficial to the community, use of a rain barrel system is encouraged, and even used in other locations, however the covering of the barrels would allow for negation of nuisance such as mosquitos, the prevalence of which increases the likelihood of disease within communities.

<sup>106</sup> City of Royal Oak, Mi., Municipal Code §770-56.

<sup>107</sup> Borough of Carlisle, Pa., Municipal Code § 255; This suggestion is meant to keep gardeners from using unwanted chemicals for composting or fertilizing.

*Municipality Zoning Ordinance* \_\_\_\_\_ including setback regulations.<sup>108</sup>

(4) Fertilizer and compost shall be stored in sealed, rodent-proof containers.<sup>109</sup>

(5) Designated composting areas shall be screened from adjoining residential districts with either a fence or suitable screening material.<sup>110</sup>

**(k) Keeping of Animals.** The keeping of animals as part of any community garden shall be prohibited.<sup>111</sup>

**(l) Equipment.** The following apply:

(1) Agricultural machinery, equipment or vehicles used in tending a community garden shall be limited to XX<sup>112</sup> horsepower or a fully equipped weight of XX pounds, and XX horsepower or a fully-equipped weight of XX pounds for any community garden.<sup>113</sup>

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<sup>108</sup> City of Springfield, Ma., Municipal Code § 7.70.

<sup>109</sup> Id.

<sup>110</sup> Id.

<sup>111</sup> City of Royal Oak, Mi., Municipal Code §770-56.

<sup>112</sup> Some suggestions would be 10, or 35 horsepower or less is allowed, which would keep noise nuisance to a minimum. See City of Dade, Fl., Municipal Code §5.28; or City of Royal Oak, Mi., Municipal Code §770-56.

<sup>113</sup> City of Royal Oak, Mi., Municipal Code §770-56

(2) While operating equipment, any noise, odors, and vibration may not adversely affect abutting properties.<sup>114</sup>

(m) **Structures**. A building or other structure may not be greater than XX feet in height.<sup>115</sup>

(n) **Fences**. Fences may meet the following requirements:

(1) not exceed XX<sup>116</sup> feet in height;

(2) be at least XX%<sup>117</sup> open if they are taller than XX feet; and

(3) be constructed of the following material:

(i) wood;

(ii) chain link; or

(iii) ornamental metal.<sup>118</sup>

(4) Fencing is required for any community garden that is 15,000 square feet in area or greater and is in a

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<sup>114</sup> City of Springfield, Ma., Municipal Code § 7.70.

<sup>115</sup> City of Cleveland, Oh., Municipal Code §336.

<sup>116</sup> Id.; Some suggestions include six feet in height so that it does not negatively affect the adjacent properties.

<sup>117</sup> Id.; Similar to above, the suggestion from other ordinances that seems to work is 50%.

<sup>118</sup> Id.

location that is subject to design review and approval  
by \_\_\_\_\_.<sup>119</sup>

**(o) Setback requirements.** The following apply:

(1) Buildings and accessory structures must comply with the setback, height and size requirements of the zoning district in which the garden or farm is located.<sup>120</sup>

(2) Rain barrel systems, crop areas, and planting beds must be set back at least five (5) feet from all property lines. This may be reduced to three (3) feet within the presence of a fence.<sup>121</sup>

(3) All crops reaching a height of five (5) feet at maturity shall be set back at least fifteen (15) feet from all property lines. The side and back setbacks may be reduced to five (5) feet within the presence of a fence.<sup>122</sup>

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<sup>119</sup> Id.

<sup>120</sup> City of Muskegon, Mi., Municipal Code § 2313.

<sup>121</sup> City of Muskegon, Mi., Municipal Code § 2313.

<sup>122</sup> Id.

(4) The required setback areas must be covered with ground plants, which may include native or ornamental grasses and low ornamental plantings. Mulch may also be used as an appropriate ground covering except in the first five (5) feet of the front setback.<sup>123</sup>

(5) Compost areas or waste bins must be less than sixteen (16) square feet in size and must be set back at least ten (10) feet from all property lines and at least twenty (20) feet from the nearest principal residential structure.<sup>124</sup>

(p) **Insurance.** A community gardener on municipal-owned land shall sign a **hold harmless clause** with the municipality.<sup>125</sup>

**Section 5. Permitting process.** An applicant proposing a new community garden must submit a *community garden permit application or zoning permit application* to the *zoning officer*

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<sup>123</sup> Id.

<sup>124</sup> Id.

<sup>125</sup> City of Springfield, Ma., Municipal Code § 7.70.

for approval.<sup>126</sup> The application shall include all of the following<sup>127</sup>:

(1) The property address with a location map.<sup>128</sup>

(2) The name and contact information for the organization or landowner.<sup>129</sup>

(3) A list of existing and proposed structures and buildings on the premises.<sup>130</sup>

(4) The location and height of the structures under paragraph (3).<sup>131</sup>

(5) A description of the proposed operation or activities;<sup>132</sup>

(6) The distance between any structures or activity and adjacent properties.<sup>133</sup>

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<sup>126</sup> Whomever is designated to enforce permitting within the municipality should go here. Also, these are italicized for the purpose of providing the municipality with a choice of what to designate to the municipal official making the decisions regarding permitting.

<sup>127</sup> Borough of Carlisle, Pa., Municipal Code § 255.

<sup>128</sup> Id.; Additionally must be in compliance with the appropriate zones amended in Section (3).

<sup>129</sup> Borough of Carlisle, Pa., Municipal Code § 255.

<sup>130</sup> Id.

<sup>131</sup> Id.; These structures include sheds, containers, landscaping and fencing

<sup>132</sup> Borough of Carlisle, Pa., Municipal Code § 255.

<sup>133</sup> Id.



(7) Any driveways, access drives, parking areas or loading areas.<sup>134</sup>

(8) The estimated number of plots to be cultivated by individuals.<sup>135</sup>

(9) A certification of compliance with all applicable local, state, and federal regulations and permits.<sup>136</sup>

(10) A copy of the executed land control document, if applicable. and/or<sup>137</sup>

(11) Any accompanying fees, if required.<sup>138</sup>

**Section 6. Identification and security of municipal-owned land.**

(a) Requests and Inventory.

(1) Requests for community garden lots will be accepted by \_\_\_\_\_<sup>139</sup> between the months of *January and May.*

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<sup>134</sup> Id.

<sup>135</sup> Id.

<sup>136</sup> Id.

<sup>137</sup> City of Austin, Tx., Municipal Code §14.

<sup>138</sup> Id.

<sup>139</sup> Whichever Municipal department or entity supervising is placed on this blank space.

(2) \_\_\_\_\_<sup>140</sup> will identify and inventory available lots.

(3) The \_\_\_\_\_<sup>141</sup> shall prepare a report to the \_\_\_\_\_ Board within 10 days recommending determination by the \_\_\_\_\_ Board as the \_\_\_\_\_<sup>142</sup> believes warranted.<sup>143</sup>

(4) Upon receipt of any recommendation required by this Subsection and upon public notice and hearing, the \_\_\_\_\_ Board shall determine whether to approve or disapprove such vacant land for community gardens use within 45 days after the application is filed.<sup>144</sup>

(5) In making its determination, the Municipal Board shall consider at least the following factors:

(i) The community to be served by the community garden use proposed.

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<sup>140</sup> Same as above—label whichever department or entity is supervising the acceptance of community garden requests and identification of lots.

<sup>141</sup> Insert municipal department, entity or agent supervising this inventory.

<sup>142</sup> Id.

<sup>143</sup> Town of Huntington, NY, Municipal Code § 95.

<sup>144</sup> Id.

(ii) The equal opportunity of town residents to participate in the community garden use proposed.

(iii) Terms of reasonable tenure by users of a proposed community garden.<sup>145</sup>

(b) Denial of application or recommendation. The Municipal Board may deny any application or recommendation for community garden use of any vacant land, if it shall find that such use:

(1) Conflicts with the primary purpose for which the vacant land is held.

(2) Construction or municipal activity incompatible with community garden uses is imminent.

(3) The vacant land is subject to valid and subsisting use restrictions inconsistent with community garden use.<sup>146</sup>

(c) Criteria for identifying lots for a community garden. Identification of lots for a community garden shall be based on the following criteria:

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<sup>145</sup> Town of Huntington, NY, Municipal Code § 95.

<sup>146</sup> Id.

(1) lot is unlikely to be developed in the foreseeable future;<sup>147</sup>

(2) there is a water line on or near the property, or the buildings on the property have non-toxic roofs for the use of rainwater from the roof.;<sup>148</sup>

(3) the lot receives adequate sunlight between April and October; and/or<sup>149</sup>

(4) street lighting is available nearby.<sup>150</sup>

(d) Requirements for Application Approval. The following apply:

(1) A non-profit organization desiring to operate a municipal-supported community garden on eligible land must file a supplemental application for a license agreement.<sup>151</sup>

(2) \_\_\_\_\_<sup>152</sup> may approve a supplemental application by a non-profit organization for a license

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<sup>147</sup> City of Austin, Tx., Municipal Code §14.

<sup>148</sup> Id.

<sup>149</sup> Id.

<sup>150</sup> Id.

<sup>151</sup> City of Austin, Tx., Municipal Code §14.

<sup>152</sup> Whichever department or entity is supervising the acceptance of community garden requests and identification of lots.

agreement for the private use of eligible land for a municipal-supported community garden, unless:<sup>153</sup>

(i) \_\_\_\_\_ determines that the proposed license agreement interferes with the public use of the eligible municipal land;<sup>154</sup>

(ii) \_\_\_\_\_ is not provided with a copy of the application; or<sup>155</sup>

(iii) the community garden permit is not issued.<sup>156</sup>

**Section 7. Fees.**

(a) Municipal fees. \_\_\_\_\_ Municipality, of \_\_\_\_\_ County, Pennsylvania may establish a schedule of fees to be imposed on community garden users to recover the cost of administration of the community garden program.<sup>157</sup>

(b) Community garden operator imposed fees. A community garden operator may also establish a schedule of fees to be

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<sup>153</sup> Id.

<sup>154</sup> Id.

<sup>155</sup> Id.

<sup>156</sup> Id.

<sup>157</sup> Town of Huntington, NY, Municipal Code § 95.

imposed on community garden users for the purpose of plot rentals.

**Section 8. Enforcement.**

(a) The applicant or property owner shall enforce the internal operation of the community garden, including any disputes among gardeners, maintenance of plots, and the overall site in accordance with its own established rules and guidelines.<sup>158</sup> \_\_\_\_\_<sup>159</sup> will enforce the provisions of this ordinance.

(b) At any time after October 31 and before May 1 of any year, a user of a community garden may be evicted by the Municipal Board on 30 days' notice. Notice shall be given by the \_\_\_\_\_ posting the particular premises and by certified mail to the user. No user shall be evicted from any community garden during the period from May 1 through October 31 of any year, except upon determination by the \_\_\_\_\_ Board that an emergency exists requiring such eviction.<sup>160</sup>

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<sup>158</sup> City of New Port Richey, Fl., Municipal Code §21.

<sup>159</sup> Municipality can either establish a new position for the administration of this ordinance, or use their Municipal code enforcement official in this spot, whichever is preferred or provides for better administrability.

<sup>160</sup> Town of Huntington, NY, Municipal Code § 95.

**Section 9. Safety.**<sup>161</sup>

(a) The municipality will forward to the Police Department a list of all registered community gardens with contact information for each one every spring so the department knows that the land is not abandoned and who to contact in case of emergency.<sup>162</sup>

(b) Police will take notice of garden sites when they drive by.<sup>163</sup>

**Section 10. Severability.**

Each section, subsection, sentence, clause and phrase of this ordinance is declared to be an independent section, subsection, sentence, clause and phrase, and the finding or holding of any such portion of this ordinance to be unconstitutional, void, or ineffective for any cause, or reason, shall not affect any other portion of this ordinance.<sup>164</sup>

**Section 11. Repeal.**

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<sup>161</sup> This isn't a common inclusion in community garden ordinances, however if the municipality prefers to have more enforcement regarding the safety of the community, this section has been provided here.

<sup>162</sup> City of Springfield, Ma., Municipal Code § 7.70.

<sup>163</sup> City of Springfield, Ma., Municipal Code § 7.70.

<sup>164</sup> Model Pet Waste Ordinance

All other ordinances of \_\_\_\_\_ Municipality, within \_\_\_\_\_ County, Pennsylvania, that are in conflict with this ordinance are hereby repealed to the extent of such conflict.<sup>165</sup>

**Section 12. Effective Date.**

This ordinance shall take full force and effect in \_\_\_\_\_ Municipality, within \_\_\_\_\_ County, Pennsylvania thirty (30) days from and after its adoption.<sup>166</sup>

ALL OF WHICH IS ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by the *Board of Commissioners/Council/Supervisors*.<sup>167</sup>

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<sup>165</sup> Model Animal Control Ordinance.

<sup>166</sup> City of San Francisco, Ca., Municipal Code § 53A.

<sup>167</sup> Id.