

Note: Developed by Widener Law students as an example of what similar municipal ordinances might look like. Borough council should confirm with their solicitor before utilizing these ordinances.

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

Daniel Schramm
Heather Shoemaker

I. Introduction

The trend for locally produced food is growing. 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.¹ 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. Meanwhile, community gardens shorten the average distance

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

traveled to buy or obtain food, decrease the need for transported food from outside sources, and decrease 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, it appears that there is a lack of drive in many smaller community governments to really 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. Local governments must be adopted ordinances permitting community gardens, in order to implement and prolong community gardens in place

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.² 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

² Borough of Hellertown, PA., Municipal Code § 360-8

townships only include the term garden when referring to their definition for yard waste, but do not provide anything on community gardens.³ Many Boroughs include this provision in their definitions too, but do not provide anything further.⁴

Localities that have not adopted any formal ordinance on community gardens could be a result of, at least in part, that neighbors may be slightly disinclined to embrace the locavore movement. 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.⁵ This community concern may also stem from community gardens traditionally being run by private landowners with limited local government oversight.⁶ Neighbors often have concerns about unintended nuisances such as mice and rabbits proliferating as a result of putting in a community garden.⁷

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. Furthermore, many rural townships with a prominent agricultural 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.

³ 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;

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

⁵ 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 (last visited Sep 16, 2016).

⁶ 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 (last visited Nov 8, 2016).

⁷ *Id.*

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.⁸ 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.⁹

III. Why an Ordinance for a Community Garden?

As highlighted before, Pennsylvania ordinance codes are lacking in legislating 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 in providing a framework for implementation and oversight. In implementing a community garden ordinance, the residents' needs are met for a local productive green space and removes the problem with local government having to turn a blind eye to pop-up gardening on a vacant/bare lot or parcel.¹⁰ The implementation of community gardens also creates innumerable social, environmental, and economical benefits with minimal cost or detriment to localities or adjoining property owners.

⁸ 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

⁹ 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).

¹⁰ 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).

An additional benefit to implementing a community garden by and through a comprehensive ordinance, is that the space could provide for a social hub. Gardens often provide avenues for 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.¹¹ Collective gardened spaces may become an indicator of the strength of a community.¹² 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 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.¹³ Pennsylvania localities may also reap the rewards of a revitalized space that manifests social benefits such as abating public dumping and illicit activity.

Community gardens also meets the desires of locavores in that it provides 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”

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

¹² *Id.*

¹³ 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).

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.¹⁴ 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.”¹⁵ 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.¹⁶ 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.

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.

¹⁴ Hugh Bartling, *A chicken ain't nothin' but a bird: local food production and the politics of land-use change*, 17 Local Environment (2012).

¹⁵ 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 BMJ Open journal publication.

¹⁶ Id.

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, proposed that community gardens actually increase community engagement.¹⁷ 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 provides a local source of food in a variety of communities that may include food insecure households. Food insecurity for family households are a growing problem in the United States. Food insecurity also severely impacts the elderly. Food insecurity can lead to a variety of dangerous health conditions, especially for an elderly or aging demographic.¹⁸ 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, 1 in 7 Americans live in food insecure homes and often have to make critical choices in allocating money to buy food over housing, transportation, and medical costs.¹⁹ 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.

¹⁷ 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).

¹⁸ 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).

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

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 until reaching a consumer's plate.²⁰ Christopher Weber and H. Scott Matthews, of Carnegie Mellon University, write that eighty-three percent of Americans' average 8.1 t CO₂ e/yr footprint associated with food consumption is attributed to production and transportation.²¹ In other words, 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.²² 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 gardens have also been found to increase the property value of adjoining land owners.²³ 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 incentivize adjoin property maintenance which may ultimately lead to higher property values.²⁴ Green spaces and gardens are generally desirable and community gardens can be readily implemented to revitalized a blighted space. This again prevents dumping or unsightly rundown properties.

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

²⁰ 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).

²¹ *Id.*

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

²³ 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).

²⁴ 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.

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: “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.”²⁵ Their Code provides further that Community Gardens are permitted in all zoning districts.²⁶ 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 the zoned districts is creates a better chance of garden actually getting established.

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 Uses²⁷. 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

²⁵ Borough of Phoenixville, PA., Municipal Code § 27-202

²⁶ Borough of Phoenixville, PA., Municipal Code. § 27-301

²⁷ Township of Aleppo, PA., Municipal Code § 400-8

occur on the lot where a community garden exists.”²⁸ 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 Stormwater Management Ordinance.²⁹

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 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.³⁰

The Town of Huntington New York has an interesting approach to the implementing community gardens with perhaps the most encouraging provisions. The Town of Huntington New York adopted a much 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.³¹ This ordinance is rather extraordinary compared to Pennsylvania ordinances, especially with the authorization of

²⁸ *Id.*

²⁹ 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

³⁰ Borough of Camp Hill, PA., Municipal Code § 11-34

³¹ Town of Huntington New York, Town Code. Chapter 95. Community Garden Program

vacant being available for the use of gardening. The Ordinances also provides a specific provision for filing an application for implementing a community garden with the Town Board.

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.³² 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 Board to impose any and all conditions it may “deem necessary or desirable.”³³ This type of ordinance is an effective way of allowing the establishment of a community garden while providing a revocable permit and 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.³⁴ 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.³⁵ 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 with 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 a private land or land help in private trust protection and rented to gardeners. This is a common approach in places like Baltimore with organization like Baltimore

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

³³ Id.

³⁴ City of Royal Oaks, Michigan. City Code. 770-56

³⁵ Id.

Greenspace.³⁶ These types of land trusts are an efficient way to preserve a green space or community garden.

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 gardens that the city has held by the Redevelopment Authority which utilizes blight seizure under the Urban Renewal Law.³⁷The parcels that have community gardens on them are organized and run by a non-profit group that rents subdivided plots.³⁸

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 Stormwater ordinance, while others do not. Some of the most effective ways of implementing community gardens are not through municipal ordinances but instead non-profit organization, with ownership by a public authority or in some sort of protective trust. The seizure of blighted properties and reuse appears to be an efficient way of implementing community gardens. The Model Ordinance attached, attempts to make an amalgamation of the best parts of each.

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

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

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

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

garden plots or allocation of growing space, the 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 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.³⁹

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.⁴⁰ 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.

³⁹ See for example, Dauphin County's rental agreement at: Community Gardens, <http://www.dauphincounty.org/government/Parks-and-Recreation/Programs/Pages/Community-Gardens.aspx>

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.⁴¹ 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.⁴² 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 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.⁴³ 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

⁴¹ Township of Birmingham, PA. Municipal Code § 101-106; Township of Brecknock, PA. Municipal Code § 93-19

⁴² StormwaterPA, *How to Apply Best Case Practices*, <http://www.stormwaterpa.org/how-to-apply-best-practices.html>

⁴³ 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>

“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.⁴⁴

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 as aforementioned.

VI. Conclusion

The townships and boroughs of Pennsylvania should enact suitable ordinances to better meet the need of the growing garden movement. The benefits of local gardens that are shared conceptually by the entire community yields innumerable benefits, including greater access to healthy foods, the building of community institutions, the decrease in food 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 such as localized investments and expenditures and may 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. The townships and boroughs of Pennsylvania should internalize these considerations and the needs and wants of their community residents and enact the garden ordinance that best suits its locality and its community. Community gardens may also be implemented in such a wide-variety of ways that it allows for a locality to experiment in

⁴⁴ Brunswick Co, *Insurance for Community Gardens*, <https://www.brunswickcompanies.com/commercial-insurance/community-garden-insurance/>

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

_____ MUNICIPALITY⁴⁵
_____ 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 the following purposes:

- (1) facilitate food security by promoting locally grown produce and healthy dietary choices;⁴⁶
- (2) promote an increase in food accessibility in more urbanized areas;⁴⁷
- (3) revitalize bare and blighted spaces within the community;
- (4) enhance the environment by shortening the distance citizens travel to purchase food, thus decreasing the need

⁴⁵ 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.

⁴⁶ 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).

⁴⁷ Cultivating Community Gardens, <https://www.lgc.org/case-study-1/> (last visited Oct. 27, 2016).

for transported food and decreasing the amount of food packaging;⁴⁸

(5) promote an avenue of expression through an increase in social interaction within the community;⁴⁹

(6) reduce stormwater runoff; and

(7) increase residential property values.⁵⁰

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.⁵¹

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 is used primarily for residential purposes, but the owners use part of the property as a community garden.

⁴⁸ 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).

⁴⁹ 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).

⁵⁰ 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).

⁵¹ Model Recycling Ordinance

“Cold frame” means an unheated outdoor structure consisting of a wooden or concrete frame and a top of glass or plastic used for protecting seedlings and plants from the cold.⁵²

“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.⁵³ A community garden may include division of separate plots for cultivation by individuals or members of a group.

⁵⁴ A community garden may also be a principal or accessory use of a particular site. ⁵⁵ A community garden does not include the retail sale of grown food crops or ornamental plants. ⁵⁶

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

⁵² Borough of Carlisle, Pa., Municipal Code § 255.

⁵³ City of Springfield, Ma., Municipal Code § 7.70.

⁵⁴ Id.

⁵⁵ Id.

⁵⁶ See Id. 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.

"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.⁵⁷

"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.⁵⁸

"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 claims arising out of or in connection with the activities permitted in this ordinance.⁵⁹

"Hoophouse" means a structure made of piping or other material covered with translucent plastic, constructed in a half round or hoop shape.⁶⁰

"License agreement" means a written agreement, including an amendment to a previously executed license agreement, between the municipality and a non-profit

⁵⁷ City of Austin, Tx., Municipal Code § 25.

⁵⁸ Borough of Carlisle, Pa., Municipal Code § 255.

⁵⁹ City of Claremont, Ca., Municipal Code §12.

⁶⁰ Id.

organization approved by _____⁶¹ that allows eligible municipal land to be used as a municipal-supported community garden.⁶²

“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.⁶³

“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 collecting 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.⁶⁴

Section 3. Amendments.

⁶¹ In the blank spaces within this Model Ordinance, insert the name of the Municipality implementing it, or the official.

⁶² City of Austin, Tx., Municipal Code § 25.

⁶³ Id.

⁶⁴ Id.

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:⁶⁵

Section 4. Application.

(a) Permitted Accessory Uses. All of the following are permitted accessory uses in compliance with section (3) above:⁶⁶

(1) greenhouses, hoopouses, cold-frames, and similar structures used to extend the growing season;⁶⁷

(2) open space associated with and intended for use as community garden areas;⁶⁸

(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

⁶⁵ Here is where there would be space to implement amendments based on the specific municipality's zoning code.

⁶⁶ 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).

⁶⁷ City of Cleveland, Oh., Municipal Code §336.

⁶⁸ Id.

conformance with the *Municipality/Borough's signage ordinances under Section XX.*⁶⁹

(4) benches, bike racks, raised or accessible planting beds, compost bins, picnic tables, seasonal farm stands, fences, rain barrels and garden art;⁷⁰

(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;⁷¹

(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.⁷²

(b) Hours of Operation. The following apply:

(1) Community gardening shall be permitted between dawn and dusk every day of the week.⁷³

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

⁶⁹ City of Cleveland, Oh., Municipal Code §336.

⁷⁰ Id.

⁷¹ Id.

⁷² Id.

⁷³ Borough of Carlisle, Pa., Municipal Code § 255.

(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.⁷⁴

(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.⁷⁵

(2) One identification sign shall be permitted.⁷⁶

(e) Parking.

(1) Off-street parking shall be permitted only for those community garden sites exceeding 15,000/XX square feet in lot area.⁷⁷

(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 material or shall be paved with pervious paving material.⁷⁸

(3) Walkways shall be unpaved except as necessary to meet the needs of individuals with disabilities.⁷⁹

(f) Appearance of plots.

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ City of Springfield, Ma., Municipal Code § 7.70.

⁷⁷ City of Cleveland, Oh., Municipal Code §336.

⁷⁸ Id.

⁷⁹ Id.

(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.⁸⁰

(2) At the end of the growing season, all community garden beds shall be cleared and cultivated, as appropriate.⁸¹

(g) Trash collection and removal.

(1) The municipality shall provide trash collection services on municipal-owned property and shall assess an annual trash fee.⁸²

(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.⁸³

(h) Water and sewer.

(1) _____ currently waives sewer disposal fees for accounts that are used for community gardening purposes.⁸⁴

(2) If there is an existing water main installed near the lots, under Section (6), the _____⁸⁵ may install a water service or tap for a fee to be paid by the

⁸⁰ City of Springfield, Ma., Municipal Code § 7.70.

⁸¹ Id.

⁸² Id.

⁸³ Id.

⁸⁴ Id.; Here is an incentive for the use of community gardens on a property.

⁸⁵ This space is intended for whichever Water commission or like entity and should be filled in accordingly.

community garden entity.⁸⁶ Requests for installing a water service and/or tap must be made at least six months of anticipated installation.⁸⁷

(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.⁸⁸

(4) Rain barrel water collection systems for irrigation purposes are encouraged.

(i) 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.⁸⁹

(2) Composting materials may only be generated onsite.⁹⁰

(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 _____

⁸⁶ City of Springfield, Ma., Municipal Code § 7.70.

⁸⁷ Id.

⁸⁸ Id.

⁸⁹ City of Royal Oak, Mi., Municipal Code §770-56.

⁹⁰ Borough of Carlisle, Pa., Municipal Code § 255.

Municipality Zoning Ordinance _____ including setback regulations.⁹¹

(4) Fertilizer and compost shall be stored in sealed, rodent-proof containers.⁹²

(5) Designated composting areas shall be screened from adjoining residential districts with either a fence or suitable screening material.⁹³

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

(1) Agricultural machinery, equipment or vehicles used in tending a community garden shall be limited to XX horsepower or a fully equipped weight of XX pounds, and XX horsepower or a fully-equipped weight of XX pounds for any community garden.⁹⁴

(2) While operating equipment, any noise, odors, and vibration may not adversely affect abutting properties.⁹⁵

(k) **Structures**. A building or other structure may not be greater than XX feet in height.⁹⁶

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

(1) not exceed XX feet in height;

⁹¹ City of Springfield, Ma., Municipal Code § 7.70.

⁹² Id.

⁹³ Id.

⁹⁴ City of Royal Oak, Mi., Municipal Code §770-56

⁹⁵ City of Springfield, Ma., Municipal Code § 7.70.

⁹⁶ City of Cleveland, Oh., Municipal Code §336.

(2) be at least XX% 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.⁹⁷

(4) Fencing is required for any community garden that is 15,000 square feet in area or greater and is in a location that is subject to design review and approval by _____.⁹⁸

(m) **Insurance.** A community gardener on municipal-owned land shall sign a **hold harmless clause** with the municipality.⁹⁹

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* for approval. The application shall include all of the following¹⁰⁰:

- (1) The property address with a location map.¹⁰¹

⁹⁷ Id.

⁹⁸ Id.

⁹⁹ City of Springfield, Ma., Municipal Code § 7.70.

¹⁰⁰ Borough of Carlisle, Pa., Municipal Code § 255.

¹⁰¹ Id.; Additionally, must be in compliance with the appropriate zones amended in Section (3).

(2) The name and contact information for the organization or landowner.¹⁰²

(3) A list of existing and proposed structures and buildings on the premises.¹⁰³

(4) The location and height of the structures under paragraph (3).¹⁰⁴

(5) A description of the proposed operation or activities;¹⁰⁵

(6) The distance between any structures or activity and adjacent properties.¹⁰⁶

(7) Any driveways, access drives, parking areas or loading areas.¹⁰⁷

(8) The estimated number of plots to be cultivated by individuals.¹⁰⁸

(9) A certification of compliance with all applicable local, state, and federal regulations and permits.¹⁰⁹

¹⁰² Borough of Carlisle, Pa., Municipal Code § 255.

¹⁰³ Id.

¹⁰⁴ Id.; These structures include sheds, containers, landscaping and fencing

¹⁰⁵ Borough of Carlisle, Pa., Municipal Code § 255.

¹⁰⁶ Id.

¹⁰⁷ Id.

¹⁰⁸ Id.

(10) A copy of the executed land control document, if applicable. and/or¹¹⁰

(11) Any accompanying fees, if required.¹¹¹

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

(a) Requests. Requests for community garden lots will be accepted by _____¹¹² between the months of *January and May.* _____¹¹³ will also identify available lots.

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

(1) lot is unlikely to be developed in the foreseeable future;¹¹⁴

(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.;¹¹⁵

¹⁰⁹ Id.

¹¹⁰ City of Austin, Tx., Municipal Code §14.

¹¹¹ Id.

¹¹² Whichever Municipal department or entity supervising is placed on this blank space.

¹¹³ Same as above—label whichever department or entity is supervising the acceptance of community garden requests and identification of lots.

¹¹⁴ City of Austin, Tx., Municipal Code §14.

¹¹⁵ Id.

(3) the lot receives adequate sunlight between April and October; and/or¹¹⁶

(4) street lighting is available nearby.¹¹⁷

(c) 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.¹¹⁸

(2) _____ may approve a supplemental application by a non-profit organization for a license agreement for the private use of eligible land for a municipal-supported community garden, unless:¹¹⁹

(i) _____ determines that the proposed license agreement interferes with the public use of the eligible municipal land;¹²⁰

(ii) _____ is not provided with a copy of the application; or¹²¹

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ City of Austin, Tx., Municipal Code §14.

¹¹⁹ Id.

¹²⁰ Id.

(iii) the community garden permit is not issued.¹²²

Section 7. Fees.

(a) Municipal fees. _____ may establish a schedule of fees to be imposed on community garden users to recover the cost of administration of the community garden program.¹²³

(b) Community garden operator imposed fees. A community garden operator may also establish a schedule of fees to be imposed on community garden users for plot rentals.

Section 8. Enforcement.

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.¹²⁴

_____ ¹²⁵ will enforce the provisions of this ordinance.

Section 9. Severability.

¹²¹ Id.

¹²² Id.

¹²³ Town of Huntington, NY, Municipal Code § 95.

¹²⁴ City of New Port Richey, Fl., Municipal Code §21.

¹²⁵ Municipality can either establish a new position for the administration of this ordinance, or use their Municipal code enforcement official in this spot.

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.¹²⁶

Section 10. Repeal.

All other ordinances of _____ Municipality, within _____ County, Pennsylvania, that are in conflict with this ordinance are hereby repealed to the extent of such conflict.¹²⁷

Section 11. Effective Date.

This ordinance shall take full force and effect in _____ Municipality, within _____ County, Pennsylvania thirty (30) days from and after its adoption.¹²⁸

ALL OF WHICH IS ADOPTED this _____ day of _____, 20___, by the *Board of Commissioners/Council/Supervisors*.¹²⁹

¹²⁶ Model Pet Waste Ordinance

¹²⁷ Model Animal Control Ordinance.

¹²⁸ City of San Francisco, Ca., Municipal Code § 53A.

¹²⁹ Id.