

Establishing Land Use Protections for Community Gardens

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Table of Contents

Introduction	3
Model GENERAL PLAN Language to Protect and Expand Community Gardens	7
Model ZONING Language Establishing Community Gardens as an Approved Use.....	10

Prepared by Planning for Healthy Places, a project of Public Health Law & Policy
www.healthyplanning.org

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Introduction

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

Planning for Healthy Places, a project of Public Health Law & Policy, has created a set of complementary model land use policies to help California communities create and preserve community gardens.

Model General Plan Language for Community Gardens

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

Model Zoning Ordinances for Community Gardens

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

- **Open Space Protections for Community Gardens.** The model zoning code language provides that a community garden can be zoned as a sub-district or sub-use within an open space zoning district. By enacting this policy, a community can protect and preserve community gardens as an open space use.
- **Use Zone Protections for Community Gardens.** The model zoning code language provides that community gardens are an approved use of land in residential, multifamily, industrial, and other districts added by the community where appropriate. This designation allows citizens to develop and maintain community gardens in the enumerated districts without requiring the sponsor to obtain a permit, finding, variance, or other government approval.

¹ Twiss J, Dickinson J, Duma S, et al. "Community Gardens: Lessons Learned from California Healthy Cities and Communities." *American Journal of Public Health*, 93(9): 1435-1438, 2003; Local Government Commission. "Cultivating Community Gardens Fact Sheet." Available at: www.lgc.org/healthycommunities.

Community Gardens and Urban Agriculture

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

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

Why Land Use Policies for Community Gardens?

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

Other Actions to Promote Community Gardens

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

Community Gardens on Vacant Public and Private Land

- The City of Escondido, California, has an “Adopt-a-Lot” policy allowing community gardens to be operated as an interim use on both publicly and privately owned vacant land. A city employee works with landowners and the community to develop an agreement for the conditions and tenure of use of the land as a garden.²
- Des Moines has a community garden program that allows the establishment of community gardens on city right-of-ways and real property.³
- New York City has a law protecting and promoting the use of vacant lots for gardens.⁴

² Local Government Commission. “Cultivating Community Gardens Fact Sheet.” Available at: www.lgc.org/healthycommunities.

³ Des Moines Municipal Code § 74-201, 74-202.

⁴ New York City Administrative Code §18-132.

- A number of cities, including Washington, D.C., and Hartford, Connecticut, collect and maintain an inventory of public or private vacant land suitable for gardens.⁵

Financing and Acquiring Land for Community Gardens

- Seattle has provided parks with bond monies, public housing funds, and neighborhood matching grants to purchase land for and help maintain garden plots.⁶
- Minneapolis allows use of tax-forfeited land (properties seized by the city from the landowner due to unpaid taxes) as garden sites without charge.⁷
- Chicago formed a nonprofit called NeighborSpace with the Chicago Park District and the Forest Preserve District of Cook County. Each entity contributed funds to purchase lands for community gardens.⁸
- Madison, Wisconsin, has used federal Community Development Block Grant funds to support community gardens.⁹
- A number of cities, including Boston, Philadelphia, Providence (Rhode Island), and New York City, have begun using land trusts to acquire and preserve community gardens.¹⁰

Municipal Community Garden Programs

Several cities have created community garden programs operated by the city. The cities of Hartford (Connecticut), Palo Alto (California), Portland (Oregon), and Sacramento (California) maintain a municipal garden program.¹¹ San Francisco has a community gardens policy committee that establishes policies and implements gardening standards and operating rules.¹²

Public-Private Partnerships

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

- As noted earlier, Chicago created a city-funded nonprofit called NeighborSpace to acquire property to preserve land for community gardens. It also enters into

⁵ D.C. ST § 48-402(1); Hartford, Connecticut, Municipal Code § 26-15(a)(1).

⁶ More information on Seattle's community garden program is available at: www.seattle.gov/neighborhoods/ppatch/.

⁷ Hennepin County Resolution 85-5-374.

⁸ More information on NeighborSpace is available at: www.neighbor-space.org.

⁹ More information on Madison's use of community development block grants is available at: www.ci.madison.wi.us/cdbg/docs/brochure_G.pdf.

¹⁰ More information on the South Side Community Land Trust in Providence, Rhode Island, is available at: www.southsideclt.org; more information on the Neighborhood Gardener's Association/A Philadelphia Land Trust is available at: www.ngalandtrust.org.

¹¹ Hartford, Connecticut, Municipal Code § 26-15; more information on the Sacramento program is available at: www.cityofsacramento.org/parksandrecreation/parks/community_garden.htm.

¹² More information on San Francisco's community gardens policy committee is available at: www.parks.sfgov.org/recpark_index.asp?id=27041.

operating agreements with local groups to use and maintain the spaces.

- The City of Seattle's P-Patch Community Garden Program works with the nonprofit Friends of P-Patch and the City Housing Authority to acquire, build, protect, and advocate for the gardens.

For more ideas and resources, see www.healthyplanning.org.

Model GENERAL PLAN Language to Protect and Expand Community Gardens

California state law requires each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city, called the *general plan*.¹³ As the “constitution” of a community, the general plan underlies all land use decisions. Legally, all local government land use policies must rest on the principles and goals of the general plan.¹⁴

General plans can be updated or amended to include policy language supporting community gardens.

For information on the general plan update and amendment process, see *General Plans and Zoning: A Toolkit on Land Use and Health*, available at www.healthyplanning.org/toolkit_gpz.html.

For additional ideas on model general plan policies that support healthy communities and ideas for implementation, see *How to Create and Implement Healthy General Plans*, available at www.healthyplanning.org/toolkit_healthygp.html.

The following model general plan language establishes a land use policy to promote the establishment of community gardens as an important community feature. The language is designed to be tailored to the needs of an individual community, and can be incorporated into the general plan in many ways.¹⁵ Language written in *italics* provides different options or explains the type of information that needs to be inserted in the blank spaces in the policy. “Comments” describe the provisions in more detail or provide additional information.

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

¹³ California Gov’t. Code §65300.

¹⁴ Planning for Healthy Places. *How to Create and Implement Healthy General Plans*, “Section III: Writing a Healthy General Plan.” Available at: www.healthyplanning.org/toolkit_healthygp.html.

¹⁵ California law requires that general plans address seven “elements,” or issue areas: land use, circulation/transportation, housing, conservation, open space, noise, and safety. Other elements are optional. Policies that support community gardens could be incorporated into land use, circulation, housing, open space, air quality, parks and recreation, safety, and economic development elements. For more information, see *How to Create and Implement Healthy General Plans*, “Section III: Writing a Healthy General Plan.” Available at: www.healthyplanning.org/toolkit_healthygp.html.

Policies/Actions

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

Comment: The standard presented here is based on Seattle, Washington's standard – one community garden per 2,500 households.¹⁶ This standard matches closely the National Recreation and Park Association's widely used "best practice standards" for a neighborhood park or tot lot (1/2 acre: 2500 households for a tot lot; 1 acre: 5000 households for a neighborhood lot¹⁷). Communities that are more or less urban will need to assess whether this standard is appropriate for them.

- Identify existing and potential community garden sites on public property, including parks; recreation and senior centers; public easements and right-of-ways; and surplus property, and give high priority to community gardens in appropriate locations.
- Adopt zoning regulations that establish community gardens as a permitted use in appropriate locations. Community gardens are compatible with the [*insert names (e.g., Commercial, Public Facility, Open Space, Multifamily Residential)*] land use designations shown on the General Plan land use map.
- Encourage [*or require*] all new affordable housing units to contain designated yard or other shared space for residents to garden.
- Encourage [*or require*] all [*or some, such as multifamily residential, commercial, institutional or public*] new construction to incorporate green roofs, edible landscaping, and encourage the use of existing roof space for community gardening.

Comment: Communities should ensure that building codes address safety concerns, including appropriate fencing and added load weight, when permitting roof gardens.

- Community gardens shall count towards park and open space allocations required by local Quimby Act ordinances for new subdivisions and multifamily development.

Comment: The Quimby Act is a California policy that authorizes cities and counties to pass ordinances requiring developers to dedicate land or pay in lieu fees, or a combination of both, for park or recreational purposes as a condition to approving a tentative map application.¹⁸ Dedication of land associated with the Quimby Act requires setting aside between 3 to 5 acres of developable land for every 1,000 population generated by the proposed development.¹⁹

¹⁶ Seattle, Washington Comprehensive Plan. Urban Village Appendix B. January 2005.

¹⁷ 1990 Recreation, Park and Open Space Standards and Guidelines, and the 1996 Park, Recreation, Open Space and Greenway Guidelines and Tables D1.2, D1.3, D1.4, D1.5, and D1.6.

¹⁸ Cal. Govt. Code § 66477.

¹⁹ The formula to calculate a proposed development's Quimby requirement is as follows:

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

For an editable (Microsoft Word) version of Model General Plan Language to Protect and Expand Community Gardens, see www.healthyplanning.org.

(persons per household)* X (number of units in development) X 3 to 5 acres**1,000* Estimates for “Person’s per household” can be found in the Housing Element of a City or County’s General Plan or via the census website, available at: www.census.gov.

** Specific acreage requirements will be determined by local ordinance.

Model ZONING Language

Establishing Community Gardens as an Approved Use

California state law requires each county and city to adopt a comprehensive, long-term plan for the physical development of the county or city, called the *general plan*.^{20,21} The community's zoning ordinances set forth the regulations to carry out the policies of the general plan. Zoning is a regulatory mechanism by which a government divides a community, such as a city or county, into separate districts with different land use regulations within each district. Simply stated, zoning determines what can and cannot be built, and what activities can and cannot take place, on the parcels of land throughout a community.²²

The majority of California's cities have "use-based" zoning laws. Use-based codes divide the jurisdiction into distinct districts, such as residential, commercial, multi- or mixed-use, and industrial, and regulate the use and development of the land within the districts based on the designation.²³ Community gardens are not usually addressed in zoning codes, which leaves them vulnerable to being closed down as "illegal" uses or to displacement by development that is expressly permitted in the zoning district.

The following model language is designed for California cities or counties to tailor and adopt as an amendment to their existing zoning laws.²⁴ We offer two options: (1) an ordinance that establishes that community gardens are an approved use of land in residential, multifamily, mixed-use, industrial and any other districts in which a community garden would be appropriate; and (2) an ordinance that establishes a separate subcategory or subdistrict of open space dedicated for the use of community gardens.

The first designation allows residents to develop and maintain community gardens in the enumerated districts without requiring the residents to obtain any type of permit, finding, variance, or other government approval. Because no permits are required, the ordinance sets forth basic regulations for community gardens.

The second designation establishes community gardens as a legitimate use in specified zoning districts and gives them the same protections as other types of open space uses in the

²⁰ California Gov't. Code § 65300.

²¹ Please see the accompanying document for **model general plan language** promoting farmers' markets.

²² For more information about **zoning regulations and healthy communities**, see *General Plans and Zoning: A Toolkit on Land Use and Health*, available at: www.healthyplanning.org/toolkit_gpz.html.

²³ Another form of zoning that is becoming increasingly popular with "smart growth" advocates is "form based zoning." While form based zoning is broader in how it defines allowed uses, use definitions still apply. Most of the provisions here could be applied to form based codes. For more information on form based and use based zoning, see Section V of *How to Create and Implement Healthy General Plans*, available at: www.healthyplanning.org/healthygp_toolkit/HealthyGP_SectionV.pdf.

²⁴ For more information on **how to amend zoning codes**, see *General Plans and Zoning: A Toolkit on Land Use and Health*, available at: www.healthyplanning.org/toolkit_gpz.html.

community. Communities can amend their zoning codes to include one or both of these designations.

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

Permitted Use of Community Gardens

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

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

- (a) Site users must provide a Phase I Environmental Site Assessment (ESA). Any historical sources of contamination identified in the ESA must be tested to determine type and level of contamination; appropriate remediation procedures must be undertaken to ensure that soil is suitable for gardening.

Comment: Funds and grant for environmental site assessments, testing and cleanup procedures may be available from a variety of state and federal sources. Site users should coordinate with their local economic development and redevelopment agencies, as well as their local/regional Department of Toxic Substances Control.

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

Comment: To function effectively, a community garden must have established operating rules and a garden coordinator. In this ordinance, a municipality could (1) require that gardens have rules, as the model language does above, (2) provide a complete

listing of rules; or (3) give authority for a particular city or county department or officer to establish community garden rules and require each community garden to adhere to those rules. A municipality could also choose to address some or all of the requirements for operating a community garden in this or an accompanying ordinance.

- (c) The site is designed and maintained so that water and fertilizer will not drain onto adjacent property.
- (d) There shall be no retail sales on site, except for produce grown on the site.

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

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

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

Comment: Some communities may wish to allow community gardeners to erect sheds for the storage of tools on garden sites. The municipality should make sure that any provision regarding sheds conforms to other municipal code provisions regarding storage sheds on property. Additionally, if communities permit the cultivation of beehives and chickens in their community gardens, structures for the care of these animals should be included. Local laws vary on the keeping of farm animals in different use districts.

- (f) Fences shall not exceed [*six feet*] in height, shall be at least [*fifty percent*] open if they are taller than [*four feet*], and shall be constructed of wood, chain link, or ornamental metal. For any garden that is [*15,000 square feet in area or greater*] and is in a location that is subject to design review and approval by the [*City Planning Commission or Landmarks Commission*], no fence shall be installed without review by the [*City Planning Director, on behalf of the Commission*], so that best efforts are taken to ensure that the fence is compatible in appearance and placement with the character of nearby properties.

Comment: Municipalities usually have requirements regarding fences in their zoning or building codes. If the municipality has existing regulations, it may not need this provision.

- (g) Other Regulations

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

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

Community Garden Open Space (Sub)districts

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

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

For an editable (Microsoft Word) version of Model Zoning Language Establishing a Community Garden as an Approved Use, see www.healthyplanning.org.