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PIGS IN THE BACKYARD OR THE BARNYARD: REMOVING ZONING IMPEDIMENTS TO URBAN AGRICULTURE

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Abstract: Urban agriculture is on the rise in cities across the United States, due in part to consumers' increased interest in buying local and sustainably-produced foods. Many municipalities have recognized the benefits that urban agriculture can bring to their residents, including economically down-trodden cities that view urban agriculture as a way to revitalize their neighborhoods. Unfortunately, zoning regulations often unintentionally prohibit even the most basic farming activities. This Note examines the impact of municipal zoning regulations on urban agriculture, and suggest ways that a municipality looking to encourage urban agriculture can use zoning regulations to responsibly promote its practice.

*A nuisance may be merely a right thing in the wrong place,—like a pig in the parlor instead of the barnyard.*¹

INTRODUCTION

The popularity of urban agriculture has increased significantly in the last few decades,² pushed along in recent years by a heightened interest on the part of consumers in buying local and sustainably created foods.³ Urban agriculture can be defined generally as “[t]he growing, processing, and distributing of food and other products through intensive plant cultivation and animal husbandry in and around cities.”⁴ Proponents list numerous benefits that come from growing food and raising animals in metropolitan areas, including health, environmental,

* Articles Editor, BOSTON COLLEGE ENVIRONMENTAL AFFAIRS LAW REVIEW, 2010–11.

¹ Vill. of Euclid v. Ambler Realty Co., 272 U.S. 365, 388 (1926).

² See JAC SMIT ET AL., UNITED NATIONS DEV. PROGRAMME, URBAN AGRICULTURE: FOOD, JOBS AND SUSTAINABLE CITIES 25 (1996).

³ See Neil D. Hamilton, *Tending the Seeds: The Emergence of a New Agriculture in the United States*, 1 DRAKE J. AGRIC. L. 7, 12–13 (1996).

⁴ See KATHERINE H. BROWN & ANNE CARTER, CMTY. FOOD SEC. COAL., URBAN AGRICULTURE AND COMMUNITY FOOD SECURITY IN THE UNITED STATES: FARMING FROM THE CITY CENTER TO THE URBAN FRINGE 5 (2003).

and economic benefits.⁵ Still, the availability and types of land that can be used for urban agriculture vary wildly between municipalities, as do the types of agriculture that may be appropriate to each area.

Municipalities in the United States are increasingly recognizing the benefits of urban agriculture, especially its potential for encouraging the revitalization of communities that may have a surplus of vacant land.⁶ However, outdated zoning regulations can unintentionally impede urban agriculture.⁷ For example, zoning regulations can prohibit residents from raising farm animals in urban areas, growing produce on certain plots of land, or selling products from urban farms.⁸ Still, because zoning regulations were designed to address competing uses of land in specific areas, they are a particularly well-suited tool to balance the pros and cons associated with urban farming.⁹ For this reason, zoning regulations could be one of the most effective avenues for promoting farming in cities.¹⁰ Municipalities have begun to look at zoning regulations as a way to facilitate urban agriculture while minimizing health, safety, and nuisance concerns.¹¹ These efforts, while helpful, have been largely piecemeal.

This Note examines the impact of municipal zoning regulations on urban agriculture, and suggests ways that a municipality looking to encourage urban agriculture can use zoning regulations to responsibly promote its practice. Part I briefly explains what urban agriculture is and its potential benefits and drawbacks.¹² Part II examines how outdated zoning codes typically hinder urban farming in a city.¹³ Part III discusses ways in which municipalities have already started to address urban agriculture through their zoning codes.¹⁴ Lastly, Part IV demonstrates that these current efforts are largely inadequate, and proposes a

⁵ See *Why Is Urban Agriculture Important?*, RUAF FOUND. RESOURCE CENTRES ON URBAN AGRIC. & FOOD SECURITY, <http://www.ruaf.org/node/513> (last visited Apr. 15, 2011).

⁶ See Lynn Horsley, *Urban Farming Yields a Harvest of Hassles*, KANSAS CITY STAR, Nov. 7, 2009, at A1.

⁷ Nina Mukherji & Alfonso Morales, *Zoning for Urban Agriculture*, ZONING PRACTICE, Mar. 2010, at 1, 2.

⁸ See *infra* Part II.

⁹ See Matthew J. Parlow, *Greenwashed?: Developers, Environmental Consciousness, and the Case of Playa Vista*, 35 B.C. ENVTL. AFF. L. REV. 513, 515 (2008).

¹⁰ See Mukherji & Morales, *supra* note 7, at 4; see also ENP & ASSOCS., FLINT URBAN AGRICULTURE LEGAL FRAMEWORK 2 (2009) (assessing Flint, Michigan's zoning regulations for their impact on urban agriculture and recommending actions to remove zoning barriers).

¹¹ See *infra* Part III.

¹² See *infra* Part I.

¹³ See *infra* Part II.

¹⁴ See *infra* Part III.

comprehensive method for revising municipal zoning codes in order to fully realize the benefits of urban agriculture while minimizing potential harms.¹⁵

I. URBAN AGRICULTURE GENERALLY

A. *Defining Urban Agriculture*

The terms “urban agriculture” and “urban farming” encompass a wide variety of activities. They can include: growing tomatoes on a roof to supplement a family’s dinner; cultivating a variety of crops on vacant, industrial plots to sell at a local farmers’ market; and raising chickens in a backyard coop to produce enough eggs for a few families.¹⁶ Assigning one definition is difficult because of this diversity, but in general, urban agriculture includes “any processes that produce traditional subsistence, nutritional or commercially profitable food or other grown or raised products, removed from rural domains, and instead cultivate them in special intensive conditions within the urban context or in its surrounding buffer, peri-urban, regions.”¹⁷ Urban agriculture often employs “resources (unused or under-used space, organic waste), services (technical extension, financing, transportation), and products (agrochemicals, tools, vehicles) . . . and, in turn, generates resources (green areas, microclimates, compost), services (catering, recreation, therapy), and products (flowers, poultry, dairy) largely for this urban area.”¹⁸

Urban farmers use an array of spaces to grow food and raise animals.¹⁹ Perhaps the most common locations for urban farming activities are in the backyards of residential plots.²⁰ However, farms can be found on rooftops, decks, windowsills, vacant public or private land, community gardens, greenhouses, the sides of roads, and the land surrounding public institutions like schools, hospitals, and prisons.²¹ For example, Seattle has allowed public land under utility wires to be turned into

¹⁵ See *infra* Part IV.

¹⁶ See SMIT ET AL., *supra* note 2, at 4.

¹⁷ CHARLES W. LESHAR JR., URBAN AGRICULTURE: A LITERATURE REVIEW—URBAN AGRICULTURE: DIFFERING PHENOMENA IN DIFFERING REGIONS OF THE WORLD 5 (2006), available at <http://www.nal.usda.gov/afsic/pubs/UrbanAgLesharAFSIC.pdf>.

¹⁸ LUC J.A. MOUGEOT, GROWING BETTER CITIES: URBAN AGRICULTURE FOR SUSTAINABLE DEVELOPMENT 4–5 (2006) (internal citation omitted).

¹⁹ See SMIT ET AL., *supra* note 2, at 4.

²⁰ See *id.*

²¹ See BROWN & CARTER, *supra* note 4, at 4; MOUGEOT, *supra* note 18, at 5; SMIT ET AL., *supra* note 2, at 4.

community gardens.²² A corporation in Buffalo, New York used greenhouses and hydroponic growing techniques on contaminated industrial sites—also known as brownfields—to grow over seven million pounds of tomatoes for sale.²³ And one farmer has produced over \$30,000 worth of produce in a year, including vegetables, fruit, and herbs, using rooftops and vacant yards in crowded Vancouver neighborhoods.²⁴ In general:

Urban agriculture may take place in locations inside the cities (intra-urban) or in the peri-urban areas. The activities may take place on the homestead (on-plot) or on land away from the residence (off-plot), on private land (owned, leased) or on public land (parks, conservation areas, along roads, streams and railways), or semi-public land (schoolyards, grounds of schools and hospitals).²⁵

Because of the nature and diversity of urban agriculture's locations and forms, land use controls like zoning play an important role in shaping how amenable a city is to urban farming. Zoning regulations control the land uses allowed in any given area of a city,²⁶ often prohibiting or permitting whether and where residents can grow produce and raise animals.²⁷ Moreover, zoning regulations can also dictate structural design requirements, such as building heights, aesthetic design, and setback distances.²⁸ Such requirements have weighty implications for agricultural activities, which often require supporting structures such as greenhouses or chicken coops that may need to be placed on small plots of land.²⁹

²² KEVIN BALMER ET AL., PORTLAND STATE UNIV., *THE DIGGABLE CITY: MAKING URBAN AGRICULTURE A PLANNING PRIORITY* 51 (2005), available at <http://www.portlandonline.com/bps/index.cfm?c=42793> (reporting an inventory of all public lands suitable for cultivation within Portland, by request of City of Portland).

²³ BROWN & CARTER, *supra* note 4, at 3.

²⁴ Frances Bula, *Growing an Urban Revolution*, *GLOBE AND MAIL* (Toronto), Dec. 31, 2009, at S1.

²⁵ *What Is Urban Agriculture?*, RUAF FOUND. RESOURCE CENTRES ON URBAN AGRIC. & FOOD SECURITY, <http://www.ruaf.org/node/512> (last visited Apr. 15, 2011).

²⁶ See DONALD L. ELLIOTT, *A BETTER WAY TO ZONE: TEN PRINCIPLES TO CREATE MORE LIVABLE CITIES* 41 (2008); Michael Kwartler, *Legislating Aesthetics: The Role of Zoning in Designing Cities*, in *ZONING AND THE AMERICAN DREAM* 187, 195 (Charles M. Haar & Jerold S. Kayden eds., 1989).

²⁷ See ENP & ASSOCS., *supra* note 10, at 2, 5.

²⁸ See ELLIOTT, *supra* note 26, at 46; Kwartler, *supra* note 26, at 195.

²⁹ See ENP & ASSOCS., *supra* note 10, at 3–4.

B. *Urban Agriculture in Context: The Role of Farming in American Cities*

Interest in urban agriculture has increased in recent years in the United States, requiring municipalities to consider their treatment of farming activities within city limits.³⁰ The practice is rising in popularity in part due to new ways of thinking about our food system that emphasize purchasing food and products that are grown organically, locally, and sustainably.³¹ In addition to being increasingly common, urban agriculture provides a host of benefits that make it appealing.³² At the same time, valid concerns exist about the impact of farming activities in urban areas on health, sanitation, and neighborhood quality.³³ Perhaps because of the benefits of urban agriculture and its increased popularity among their residents, cities and towns seem to be searching for ways they can support urban agriculture within their city limits without compromising on health and safety issues.³⁴

1. A Brief Overview of the Origins of Urban Farming

“Throughout the world, there is a long tradition of farming intensively within and at the edge of cities.”³⁵ Urban food production began with ancient civilizations, and continued through nineteenth and early twentieth centuries.³⁶ However, as modern sewage and sanitation systems were instituted, city planners increasingly began to discourage farming within city limits—relegating food production to the outlying rural or suburban areas.³⁷ Technological advances in irrigation techniques and the introduction of paved roads pushed food production further out of the city.³⁸

³⁰ See BALMER ET AL., *supra* note 22, at 11. Portland’s City Council passed Resolution 36,272 in November 2004, calling for an inventory of city-owned lands suitable for agricultural uses. *See id.*; *see also* ENP & ASSOCS., *supra* note 10, at 2; Liz Shaw, *Flint to Consider Ordinance Changes to Enhance Urban Agriculture*, FLINT JOURNAL (July 7, 2009, 10:18 AM), http://blog.mlive.com/get-healthy-in-geneseec/2009/07/flint_to_consider_ordinance_ch.html.

³¹ *See* Hamilton, *supra* note 3, at 12–13.

³² *See Why is Urban Agriculture Important?*, *supra* note 5.

³³ *See* MOUGEOT, *supra* note 18, at 8–9.

³⁴ *See, e.g.*, BALMER ET AL., *supra* note 22, at 11; NATHAN MCCLINTOCK & JENNY COOPER, CULTIVATING THE COMMONS: AN ASSESSMENT OF THE POTENTIAL FOR URBAN AGRICULTURE ON OAKLAND’S PUBLIC LAND 1 (2009), *available at* http://www.oaklandfood.org/media/AA/AD/oaklandfood-org/downloads/27621/Cultivating_the_Commons_COMPLETE.pdf; P.J. Huffstutter, *Investors See Farms as Way to Grow Detroit*, L.A. TIMES, Dec. 27, 2009, at A3.

³⁵ SMIT ET AL., *supra* note 2, at 26.

³⁶ *Id.* at 28–33.

³⁷ *Id.* at 32.

³⁸ *See id.* at 36.

However, urban agriculture has seen resurgence in recent years.³⁹ Concerns over the sustainability of the world's cities, which are seeing an increase in residents and already tend to "use too many natural resources and produce too much waste," are forcing the international community to look at urban agriculture as a way to reduce the impact of cities and feed their burgeoning populations.⁴⁰ In North America, urban agriculture was also once a "significant subsector[] of the food and agriculture system," but began to decline around the 1950s.⁴¹ The 1970s and 1980s saw an increase "in community gardens and home gardens, partly as a result of a growing concern about food quality."⁴² Urban agriculture has continued to pick up momentum in the last few decades. In 1994, eighty percent of the gardeners in the United States were urban dwellers.⁴³ Moreover, "[t]he 1980 [U.S.] Census found that urban metropolitan areas produced 30% of the dollar value of [U.S.] agricultural production. By 1990, it had increased to 40%."⁴⁴

The current popularity of urban agriculture in the United States can be seen, at least in part, due to a growing environmental movement that has pushed consumers towards favoring local and organic foods.⁴⁵ Urban agriculture helps fill the market's demand for local produce both by allowing residents to supplement their meals with products from their own urban farms, and by allowing entrepreneurial urban farmers to sell their products to other local residents.⁴⁶ The development of Whole Foods Market, Inc illustrates this trend.⁴⁷ At this "rapidly expanding" and highly profitable natural grocery store chain, "[s]hoppers are provided with point of purchase information about how the food was produced, its health value, and how it can be best prepared."⁴⁸ Mainstream grocery stores are providing similar information, and stocking locally produced foods.⁴⁹ There has also been an increasing interest in farmers markets, evidenced by the almost seven

³⁹ See *id.* at 25.

⁴⁰ See TJEERD DEELSTRA & HERBERT GIRARDET, RUA FOUND., URBAN AGRICULTURE AND SUSTAINABLE CITIES 45 (2002).

⁴¹ SMIT ET AL., *supra* note 2, at 46.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 47.

⁴⁵ Hamilton, *supra* note 3, at 12.

⁴⁶ See *id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.* at 13.

percent jump in the number of farmers markets in the United States from August 2006 to August 2008 alone.⁵⁰

2. The Benefits and Drawbacks of Farming in Metropolitan Areas

Urban agriculture provides tangible benefits that make it appealing to the residents of municipalities and to the municipality itself, including health, environmental, and economic benefits.⁵¹ Farming activities in cities tend to provide cheaper, more nutritious food to low-income communities that may have limited access to fresh, inexpensive produce.⁵² Additionally, farming provides environmental benefits in the form of lowered pollution and waste products.⁵³ Urban agriculture also brings economic benefits, including the utilization of vacant land and the possibility of job creation, which make it a promising force for the economic revitalization of communities.⁵⁴ At the same time, there are still concerns about the impact of agricultural activities that make residents and cities wary of the practice, including problems with food raised on contaminated lands, pesticide use and overuse, zoonotic disease transmission, and quality-of-neighborhood concerns.⁵⁵

a. *Health Benefits*

Urban agriculture improves both the quality and price of food available in cities, especially for residents of low-income areas.⁵⁶ Markets in low-income, urban neighborhoods tend to carry less produce and charge more for lower quality produce than suburban and rural grocery stores.⁵⁷ High transportation costs that raise prices are often to blame.⁵⁸ However, “[u]rban gardeners have been shown to be able to

⁵⁰ Press Release, U.S. Dep’t of Agric., Number of Farmers Markets Continues to Rise in U.S. (Sept. 19, 2008), *available at* <http://www.ams.usda.gov/AMSV1.0/> (follow “Farmers Markets and Local Food Marketing” hyperlink; then follow “News Releases” hyperlink).

⁵¹ See *Why Is Urban Agriculture Important?*, *supra* note 5.

⁵² See BROWN & CARTER, *supra* note 4, at 3–5.

⁵³ *Id.* at 4.

⁵⁴ See *id.* at 7; Mukherji & Morales, *supra* note 7, at 3; David Whitford, *Can Farming Save Detroit?*, CNNMONEY.COM (Dec. 29, 2009, 11:37 AM), http://money.cnn.com/2009/12/29/news/economy/farming_detroit.fortune/index.htm.

⁵⁵ See MOUGEOT, *supra* note 18, at 9.

⁵⁶ Alexandra Dapolito Dunn, *Siting Green Infrastructure: Legal and Policy Solutions to Alleviate Urban Poverty and Promote Healthy Communities*, 37 B.C. ENVTL. AFF. L. REV. 41, 52–53 (2010).

⁵⁷ *Id.* at 52.

⁵⁸ United Nations Comm. on Poverty Reduction, Fourth Session, Bangkok, Thailand, Dec. 12–14, 2007, *Urban Poverty and the Working Poor*, 5, U.N. Doc. E/ESCAP/CPR(4)/4 (Sept. 24, 2007) (“In many cases, the urban poor pay up to 30 per cent more for their food

obtain forty to sixty percent of their household food from their gardens.”⁵⁹ By spending less income on food, urban agriculture “makes income available for other expenditures, including health and education.”⁶⁰ Moreover, “[f]ood from outside the cities—especially perishables like fruit, vegetables and fish—loses much of its nutritional value in transit and storage.”⁶¹ Urban farming, then, can help improve the nutritional health of urban populations that are the most in need.⁶²

b. *Environmental Benefits*

Urban agriculture also provides significant environmental benefits to municipalities. Food produced in cities uses less fossil fuel for transportation and produces less packaging and food waste.⁶³ Urban agriculture also helps to reduce pollution by improving air quality.⁶⁴ Rooftops, which are usually around thirty percent of a city’s total land area, can be used for high-yield crop production and reduce energy costs for the building they are sited on.⁶⁵

c. *Economic Benefits*

One of the most promising benefits of urban agriculture is its potential to clean up and utilize vacant lots in economically down-trodden cities.⁶⁶ “Chicago has an estimated 70,000 vacant parcels of land; Philadelphia has 31,000; and Trenton has 900 acres or 18% of it[s] total land. Between 1950 and 1990, abandoned lots in inner-city areas remained vacant for 20 to 30 years.”⁶⁷ This led to bulldozing of such lots, leaving fairly inexpensive parcels with limited economic potential. De-

than the rural poor, and spend 60 per cent or more of their total expenditure on food. Transport costs and post-harvest losses are the main causes of the higher cost of food in urban areas.”).

⁵⁹ Dunn, *supra* note 56, at 53.

⁶⁰ SMIT ET AL., *supra* note 2, at 162.

⁶¹ *Id.*; see also Susan A. Schneider, *A Reconsideration of Agricultural Law: A Call for the Law of Food, Farming, and Sustainability*, 34 WM. & MARY ENVTL. L. & POL’Y REV. 935, 954–55 (2010) (suggesting a new agriculture policy that connects consumers with local food, in part to improve the nutritional quality of consumers’ food).

⁶² See Schneider, *supra* note 61, at 954–55.

⁶³ See BROWN & CARTER, *supra* note 4, at 4; Schneider, *supra* note 61, at 954–55.

⁶⁴ MOUGEOT, *supra* note 18, at 8.

⁶⁵ Adrienne Lyles-Chockley, *Building Livable Places: The Importance of Landscape in Urban Land Use, Planning, and Development*, 16 BUFF. ENVTL. L.J. 95, 114 (2008–2009).

⁶⁶ See BROWN & CARTER, *supra* note 4, at 7; Catharine LaCroix, *Urban Agriculture and Other Green Uses: Remaking the Shrinking City*, 42 URB. LAW. 225, 235–36 (2010); Mukherji & Morales, *supra* note 7, at 3.

⁶⁷ BROWN & CARTER, *supra* note 4, at 7.

veloping urban agriculture on these vacant lots creates immediate economic benefits.⁶⁸

Detroit, Michigan is perhaps the best example of the potential for urban agriculture to help the economic revitalization of a city. It is estimated that forty square miles out of the 139 square miles within city limits are abandoned land.⁶⁹ At least forty-eight downtown buildings are empty.⁷⁰ Vacant lots and abandoned buildings are problematic for a number of reasons including the added infrastructure costs of maintaining roads and sewer systems, and collecting trash and fighting crime, in sparsely populated neighborhoods, and the obvious impacts on the real estate market.⁷¹

Urban farming is one way to help stimulate Detroit's economy.⁷² The number of urban gardens has doubled in the past two years, to a total of nearly 900.⁷³ These gardens have helped by bringing healthy and affordable food to the city, as well as providing "meaningful, if generally unpaid, work to the chronically unemployed."⁷⁴ One investor sees the potential for Detroit to be at the forefront of the growing trend in urban agriculture, so much so that he is willing to commit \$30,000,000 to developing a "large-scale, for-profit agricultural enterprise, wholly contained within the city limits of Detroit."⁷⁵

Still, there are issues that can make urban farming problematic.⁷⁶ Inexperienced urban farmers may overuse or misuse pesticides that pose health risks to both the farmers and nearby residents.⁷⁷ Additionally, "[k]eeping livestock in the city raises the possibility of zoonotic diseases—diseases that can be transmitted from animals and birds to humans (such as avian flu)."⁷⁸ Residents and municipalities also are often concerned about maintaining the residential quality of neighborhoods.⁷⁹ Opponents worry largely about smells from farming activities,

⁶⁸ *Id.*

⁶⁹ Whitford, *supra* note 54.

⁷⁰ *Id.*

⁷¹ *Id.*; see Ben Beckman, Note, *The Wholesale Decommission of Vacant Urban Neighborhoods: Smart Decline, Public-Purpose Takings, and the Legality of Shrinking Cities*, 58 CLEV. ST. L. REV. 387, 387 (2010).

⁷² Huffstutter, *supra* note 34.

⁷³ Whitford, *supra* note 54.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ See MOUGEOT, *supra* note 18, at 9.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ See Horsley, *supra* note 6.

unclean yards, and property values.⁸⁰ One Kansas City resident summed up these concerns well; “Everyone has their own picture of what a neighborhood should look like I just want to be sure the neighborhood quality of life is not compromised.”⁸¹

II. THE IMPACT OF ZONING REGULATIONS ON URBAN AGRICULTURAL ACTIVITIES

A. Overview of Zoning Regulations

Zoning laws are particularly relevant to urban agriculture because they focus on regulating the appropriate uses of a municipality’s land.⁸² Zoning laws came about in the early twentieth century when municipalities found nuisance laws were unable to keep up with land-use conflicts that were emerging with the new, rapid growth of cities.⁸³ In response, municipalities began to pass laws that divided different land uses into physically distinct zones, “thereby segregating incompatible land uses from one another.”⁸⁴ Most of these zoning laws came to follow a structure known as Euclidean Zoning, named after the landmark land use case *Village of Euclid v. Amber Realty Co.*⁸⁵ Under Euclidean Zoning, states generally pass an enabling act that “empower[s] municipalities to enact zoning ordinances or regulations.”⁸⁶ As part of this enabling act, “most states require local governments to adopt comprehensive (also called ‘general’ or ‘master’) plans.”⁸⁷ These plans set out goals, priorities, and objectives that are supposed to guide the municipality when drafting

⁸⁰ See *id.* See generally Kate H. Brown & Andrew L. Jameton, *Public Health Implications of Urban Agriculture*, 21 J. PUB. HEALTH POL’Y 20 (2000) (analyzing the public health implications of urban agriculture and making policy recommendations for addressing these implications).

⁸¹ Horsley, *supra* note 6.

⁸² See Mukherji & Morales, *supra* note 7, at 2.

⁸³ Parlow, *supra* note 9, at 515.

⁸⁴ *Id.*

⁸⁵ 272 U.S. 365, 365 (1926); Parlow, *supra* note 9, at 515.

⁸⁶ NAT’L POLICY & LEGAL ANALYSIS NETWORK TO PREVENT CHILDHOOD OBESITY, PUB. HEALTH LAW & POLICY, ESTABLISHING LAND USE PROTECTIONS FOR FARMERS’ MARKETS 8 (2009) [hereinafter LAND USE PROTECTIONS FOR FARMERS’ MARKETS], available at http://www.nplanonline.org/sites/phlpnet.org/files/nplan/Establishing%20Land%20Use%20Protections%20for%20Farmers%27%20Markets_FINAL_091203.pdf.

⁸⁷ *Id.*

zoning regulations and making decisions.⁸⁸ Zoning is the tool by which a municipality implements its comprehensive plans.⁸⁹

While the forms of zoning regulations vary significantly from municipality to municipality, most have the same basic components. Generally, land in the municipality is divided into zoning districts, each with separate, prescribed rules regarding the kind of structures and types of uses that are permitted in a particular zone.⁹⁰ In each zone, there can be both primary uses and accessory uses.⁹¹ Agricultural activities can be incorporated in these uses in a variety of ways.⁹² Some municipalities have districts that are specifically deemed “agricultural districts.”⁹³ Alternatively, a municipality can incorporate urban agriculture “as a use or set of uses that are permitted, conditional, or forbidden, depending on the district.”⁹⁴ Some municipal codes fail to mention whether agriculture or any agricultural activities are permitted or prohibited.⁹⁵

In addition to governing the use of the land, zoning regulations can prescribe design requirements for each district, such as building height limitations, yard restrictions, and requirements dictating how far buildings must be set back on the property.⁹⁶ These types of design requirements can have a large impact on agricultural activities.⁹⁷ For example, many of the supporting structures necessary for urban agriculture, such as chicken coops, greenhouses, and hoop houses, may not be compatible because of their size, aesthetic design, or placement.⁹⁸ Ad-

⁸⁸ See Linda Breggin & Susan George, *Planning for Biodiversity: Sources of Authority in State Land Use Laws*, 22 VA. ENVTL. L.J. 81, 90 (2003).

⁸⁹ *Id.*

⁹⁰ Parlow, *supra* note 9, at 515. For example, early ordinances commonly divided their land into residential, commercial, and industrial districts. See 1 EDWARD H. ZIEGLER ET AL., RATHKOPF’S THE LAW OF ZONING AND PLANNING § 10:1 (4th ed. 2009).

⁹¹ See 2 *Id.* § 33:1. A primary use, also known as a principal use, is generally a particular use that is automatically allowed in a district. See 5 *Id.* § 86:2. An accessory use is “a use which is dependent on or pertains to the principal or main use. . . . When an accessory use attains such magnitude as to no longer be incidental to the principal use, it loses its status as an accessory use.” 2 *Id.* § 33:3.

⁹² See Mukherji & Morales, *supra* note 7, at 4.

⁹³ *Id.* Generally, “designated agricultural districts [are] in rural areas or on the urban fringe” and allow a “wide range of agricultural activities,” including intensive agricultural activities. *Id.*

⁹⁴ See *id.* For example, agriculture could be a permitted use in industrial districts but not in residential districts. See *id.*

⁹⁵ For example, Culver City, California does not address or define farming or agriculture anywhere in its zoning code. See CULVER CITY, CAL., MUNICIPAL CODE §§ 17.100.005–.700.010 (2005).

⁹⁶ 3 RATHKOPF’S THE LAW OF ZONING AND PLANNING, *supra* note 90, §§ 52–53.

⁹⁷ See Mukherji & Morales, *supra* note 7, at 6.

⁹⁸ See *id.*

ditionally, requirements of this type often prescribe minimum yard sizes for owners that want to keep animals.⁹⁹

Zoning codes often make it unintentionally difficult for residents to engage in urban farming.¹⁰⁰ Variations between zoning codes in the treatment of agricultural activities make it hard to generalize about how zoning regulations impede urban agriculture.¹⁰¹ However, there are some common problems that fall into one of two categories: restrictions on the types of agricultural activities permitted in a zoning district, and restrictions on the scope of business or commercial activity permitted in a zoning district.

B. *Restrictions on Raising Animals*

Limitations on raising animals in metropolitan areas are among the most common zoning regulations that impact urban farmers. These restrictions can range from an outright ban on keeping farm animals in certain zones,¹⁰² to a limit on the number of animals a resident is allowed to keep.¹⁰³ Often there are co-requirements for a resident who is allowed to keep farm animals that dictate the amount of land for each animal and distances the animals have to be kept from residential structures.¹⁰⁴

Flint, Michigan is an example of a city whose zoning code, combined with the restrictions from other parts of the municipal code, limits the ability of residents to have animals as part of their urban farms. This is despite the fact that city has almost 2800 vacant lots, a number that is growing by close to 500 lots per year, and that residents seem eager to use them for agricultural activities.¹⁰⁵ The zoning ordinance, which expressly excludes keeping farm animals in residential districts and imposes strict restrictions on keeping poultry within city limits, demonstrates one way zoning codes can restrict raising animals.¹⁰⁶ Like most codes, it divides the city into different zoning districts.¹⁰⁷ The principal permitted uses¹⁰⁸ allowed in its A-1 single family, low density dis-

⁹⁹ See *id.*

¹⁰⁰ *Id.* at 2.

¹⁰¹ See *id.* at 7.

¹⁰² See ENP & ASSOCS., *supra* note 10, at 5.

¹⁰³ See Horsley, *supra* note 6.

¹⁰⁴ See, e.g., CLEVELAND, OHIO, CODIFIED ORDINANCES § 347.02(1) (2009).

¹⁰⁵ See Shaw, *supra* note 30.

¹⁰⁶ See FLINT, MICH., CODE OF ORDINANCES § 50-17(d) (2005).

¹⁰⁷ Parlow, *supra* note 9, at 515.

¹⁰⁸ Principal Use is defined as “the main use to which the premises are devoted.” FLINT, MICH., CODE OF ORDINANCES § 50-1.

tract include “customary agricultural uses . . . , *but expressly exclud[e] the keeping of farm animals.*”¹⁰⁹ Many other residential zoning districts also prohibit keeping farm animals.¹¹⁰ While the term “farm animals” is not defined in the statute, it likely prohibits animals like chickens, bees, and goats.¹¹¹

Other sections of the Flint Code of Ordinances further regulate the keeping of farm animals in city limits. Chapter 9 directly prohibits keeping chickens: “No poultry or domestic fowl, other than household pets such as canaries and parakeets, shall be kept upon any residentially zoned lot within the City.”¹¹² In areas that are not zoned as residential, a number of restrictions apply to people keeping poultry.¹¹³ Owners have to keep an area such as a pen or shelter that provides twenty-five square feet per fowl and the area must be fifty feet from any building used for dwelling purposes.¹¹⁴ These areas are also required to be cleaned every day, and roosters are banned altogether.¹¹⁵

Taken as a whole, these regulations make it difficult in practice for a Flint resident to raise farm animals within city limits.¹¹⁶ They likely were not written specifically to prohibit small-scale urban agriculture, however.¹¹⁷ Rather, they were written at a time when urban agriculture was not a common use of the land.¹¹⁸ In fact, Flint officials do not oppose urban farming activities.¹¹⁹ The Flint Planning Commission will be drafting proposed ordinance changes based off of recommendations and feedback from community groups interested in promoting urban agriculture.¹²⁰ “The problem is the laws on the books simply predate the city’s new urban reality.”¹²¹

¹⁰⁹ *Id.* § 50–17(d) (emphasis added).

¹¹⁰ Namely: the A-2 single family medium density district; the B two-family district; the B-1 townhouse district; the C-1 multi-family walk-up apartment district; the C-2 multi-family high density apartment district; and the D-1 office district. *Id.* §§ 50-21 (a), -25(a), -28.1(a), -29(a), -33(a), -38(b).

¹¹¹ Shaw, *supra* note 30.

¹¹² FLINT, MICH., CODE OF ORDINANCES § 9-15.1.

¹¹³ *See id.* §§ 9-15 to -19.

¹¹⁴ *Id.* §§ 9-16 to -17.

¹¹⁵ *Id.* §§ 9-18 to -19.

¹¹⁶ *See* Shaw, *supra* note 30.

¹¹⁷ *See id.*

¹¹⁸ *See id.*

¹¹⁹ *See id.*

¹²⁰ *See id.*

¹²¹ *See id.* “The zoning ordinance hasn’t been revised since 1968, when . . . [Flint was] a booming industrial city and didn’t have to think about agriculture as part of city planning’” *Id.*

C. *Restrictions on Agriculture as a Primary Use*

While homeowners and renters are generally allowed to grow their own vegetables, fruit, and flowers in their backyards, some municipalities limit residents from using whole plots of land for agricultural purposes by restricting agriculture as a primary use in certain districts.¹²² By doing so, municipalities end up prohibiting activities such as a restaurant owner buying a nearby plot to use for raising crops,¹²³ or turning a vacant public plot into an educational garden with greenhouses and a farm stand.¹²⁴

For example, Portland, Oregon's zoning ordinance impedes urban agriculture in two ways: first by having an outright ban in some zones on agriculture as a primary use,¹²⁵ and second by designating agriculture as a conditional primary use in some zoning districts.¹²⁶ The Portland Zoning Code defines agriculture to include "activities that raise, produce or keep plants or animals."¹²⁷ This definition "include[s] breeding or raising of fowl or other animals; dairy farms; stables; riding academies; kennels or other animal boarding places; farming, truck gardening, forestry, tree farming; and wholesale plant nurseries."¹²⁸ The Code also lists explicit exceptions that would fall under other use categories, such as "[p]rocessing of animal or plant products, including milk, and feed lots, [which] are classified as Manufacturing And Production."¹²⁹

Portland's Zoning Code defines primary use as: "[a]n activity or combination of activities of chief importance on the site. One of the main purposes for which the land or structures are intended, designed, or ordinarily used."¹³⁰ Additionally the code makes clear that a single site can have multiple primary uses.¹³¹ In single-dwelling zones,¹³² whether agriculture is allowed as a primary use varies according to each

¹²² See Mukherji & Morales, *supra* note 7, at 5.

¹²³ See Gene Gleeson, *Urban Farm Halted over Zoning Laws*, KABC-TV/DT (Aug. 3, 2008), http://abclocal.go.com/kabc/story?section=news/local/los_angeles&id=6946703.

¹²⁴ See BALMER ET AL., *supra* note 22, at 25.

¹²⁵ See PORTLAND, OR., ZONING CODE § 33.120-1 (2009).

¹²⁶ See *id.* § 33.110-1.

¹²⁷ *Id.* § 33.920.500(A).

¹²⁸ *Id.* § 33.920.500(C).

¹²⁹ *Id.* § 33.920.500(D)(1)-(4).

¹³⁰ *Id.* § 33.910.030.

¹³¹ PORTLAND, OR., ZONING CODE § 33.910.030.

¹³² Single dwelling zones refer to six different zones: Residential Farm/Forest (RF), Residential 20,000 (R20), Residential 10,000 (R10), Residential 7,000 (R7), Residential 5,000 (R5), and Residential 2,500 (R2.5). *Id.* § 33.110.020. The code specifies that "single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households." *Id.* § 33.110.010

zone.¹³³ In multi-dwelling zones,¹³⁴ however, agriculture is prohibited as a primary use in all six zone types: R3, R2, R1, RH, RX, and IR.¹³⁵ By banning agriculture as a primary use outright in eight out of twelve residential areas, and defining agriculture in a relatively broad manner, the Portland Zoning Code restricts residents from many varieties of urban agricultural activities.¹³⁶

Even when agriculture is listed as a conditional use, like residential zones R7 and R10 in Portland,¹³⁷ it can still hinder urban agriculture.¹³⁸ Conditional uses are uses that are not allowed automatically because they may adversely impact the area, but a resident can petition to have the use approved for their land by going through a review process.¹³⁹ The process involved with getting a conditional use approved can be burdensome and costly.¹⁴⁰ These hurdles may deter urban farmers from going through the review process.¹⁴¹

In Portland, conditional uses are “subject to . . . conditional use regulations because they may, but do not necessarily, have significant adverse effects on the environment, overburden public services, change the desired character of an area, or create major nuisances.”¹⁴² The procedures involved with a conditional use review under the Code vary according to the current use of the land and the nature of the conditional use.¹⁴³ A Portland resident trying to change the primary use of a plot of land to agricultural use or add agriculture as an additional primary use would likely have to go through either a Type II or

¹³³ See *id.* § 33.110–1. For example, in zones RF and R20, agriculture is automatically allowed. In zones R7 and R10, agriculture is allowed as a conditional use. Finally, in zones R5 and R2.5, agriculture is prohibited as a primary use.

¹³⁴ Multi-dwelling zones refer to six different zones: Residential 3,000 (R3), Residential 2,000 (R2), Residential 1,000 (R1), High Density Residential (RH), Central Residential (RX), and Institutional Residential (IR). *Id.* § 33.120.020. The code specifies that “multi-dwelling zones are intended to preserve land for urban housing and to provide opportunities for multi-dwelling housing.” *Id.* § 33.120.010.

¹³⁵ See PORTLAND, OR., ZONING CODE tbl. 33.120–1.

¹³⁶ See BALMER ET AL., *supra* note 22, at 41.

¹³⁷ See PORTLAND, OR., ZONING CODE § 33.110–1.

¹³⁸ See AMANDA RHOADS ET AL., PORTLAND MULTNOMAH FOOD POL’Y COUNCIL, THE DIGGABLE CITY PHASE II: URBAN AGRICULTURE INVENTORY FINDINGS AND RECOMMENDATIONS 30 (2006), available at <http://www.portlandonline.com/bps/index.cfm?c=42793>.

¹³⁹ See PORTLAND, OR., ZONING CODE § 33.815.010.

¹⁴⁰ CITY OF PORTLAND, OR. BUREAU OF DEV. SERVS., SUMMARY OF TYPE I, TYPE II, TYPE IIX, AND TYPE III PROCEDURES 1–2 (2008), available at <http://www.portlandonline.com/bds/index.cfm?a=71804>.

¹⁴¹ RHOADS ET AL., *supra* note 138, at 3.

¹⁴² See PORTLAND, OR., ZONING CODE § 33.815.010.

¹⁴³ *Id.* § 33.815.040.

Type III conditional use review procedure.¹⁴⁴ Both types of review applications are extremely involved.¹⁴⁵ A Type II procedure requires an application, notice to all property owners within 150 feet of the site, and can be appealed to a review body such as the Hearings Officer or Design Commission.¹⁴⁶ A Type III procedure requires a pre-application conference, public hearing, and can be appealed to the City Council.¹⁴⁷

While Portland's treatment of agriculture in its Zoning Code is considered one of the more permissive,¹⁴⁸ the restrictions that remain have been flagged as problematic in a report prepared for the City of Portland on how to make urban agriculture a planning priority.¹⁴⁹ The city passed a resolution in November 2004 that "directed various City bureaus to conduct an inventory of their properties, with the goal of determining which might be suitable for either expanding the Community Gardens Program or for future development into other kinds of agricultural uses."¹⁵⁰ Some of the areas highlighted as suitable for growing crops were in zoning districts that prohibited agricultural use.¹⁵¹ For example, one large site owned by the Portland Parks and Recreation Department would "allow[] for an exciting combination of agricultural activities" because the land has both permeable and impermeable surfaces.¹⁵² The plot is zoned R7, however, which allows agricultural activities only after going through the lengthy conditional use review process.¹⁵³ Another plot flagged as potentially useful is zoned R5, which permits a community garden, but also prohibits agricultural uses.¹⁵⁴ In a follow-up report, "zoning and land use issues" were flagged as some of the most commonly cited barriers to urban agriculture—specifically the fact that "agriculture [is] not allowed in many residential zones."¹⁵⁵

¹⁴⁴ See *id.* § 33.815.040(A)(1)–(2).

¹⁴⁵ See CITY OF PORTLAND, *supra* note 140, at 1–2.

¹⁴⁶ See *id.* at 1.

¹⁴⁷ See *id.* at 2.

¹⁴⁸ See Mukherji & Morales, *supra* note 7, at 5.

¹⁴⁹ RHOADS ET AL., *supra* note 138, at 3.

¹⁵⁰ BALMER ET AL., *supra* note 22, at 11.

¹⁵¹ *Id.* at 25, 54.

¹⁵² *Id.* at 25.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 54.

¹⁵⁵ See RHOADS ET AL., *supra* note 138, at 3.

D. Restrictions on Selling Products from Urban Farms

Zoning can also unintentionally prohibit residents from growing crops and raising animals for sale.¹⁵⁶ Regulations that discourage this kind of entrepreneurial urban agriculture often take the form of generic restrictions on retail and commercial activities in certain zones.¹⁵⁷ For example, a municipality may restrict the types of home occupations that are allowed as an accessory use in residential zones.¹⁵⁸ Restrictions on primary uses, like the ones discussed in the previous section, are also particularly problematic.¹⁵⁹ A municipality may restrict the kind of commercial activities, including agriculture, that are allowed as primary uses in a certain district.¹⁶⁰ If urban farmers are only allowed to use their fruits, vegetables, flowers, and eggs for their own personal consumption, there would be little incentive to invest any money or time in larger vacant plots, and the farm could not serve as a source of income for the farmers.¹⁶¹ For example, in Culver City, California, a resident can only grow crops for personal use, not for sale.¹⁶² The Culver City Zoning Code unintentionally ensures this in at least two ways.

First, it restricts home occupations so as to exclude urban agriculture as a home business.¹⁶³ While home occupations are permitted in residential districts, the Code lists certain occupations that are allowed and others that are prohibited.¹⁶⁴ The category of allowed uses seems to only include occupations performed within the house.¹⁶⁵ Allowed occupations include, among others, “one-on-one art, music and similar fine-art related lessons, and academic tutoring . . . [o]ffice-type uses,”¹⁶⁶ and importantly, “[o]ther uses the Director deems to be of the same general character as those listed above, and not detrimental to the applicable residential zoning district and surrounding neighborhood.”¹⁶⁷

¹⁵⁶ Jerry Kaufman & Martin Bailkey, *Farming Inside Cities: Entrepreneurial Urban Agriculture in the United States* 77 (Lincoln Inst. of Land Policy, Working Paper No. WP00JK1, 2000), available at <http://queencityfarm.org/FarmingInsideCities.pdf>.

¹⁵⁷ See Mukherji & Morales, *supra* note 7, at 5–6; Martha Groves, *Pocket Farm Could End up Dying on the Vine*, L.A. TIMES, July 31, 2009, at A12.

¹⁵⁸ See 2 RATHKOPF’S THE LAW OF ZONING AND PLANNING, *supra* note 90, §§ 33:7–10.

¹⁵⁹ See Mukherji & Morales, *supra* note 7, at 5.

¹⁶⁰ See Groves, *supra* note 157.

¹⁶¹ See *id.*

¹⁶² *Id.*

¹⁶³ See CULVER CITY, CAL., MUNICIPAL CODE § 17.400.055 (2005).

¹⁶⁴ *Id.*

¹⁶⁵ See *id.* § 17.400.055(A).

¹⁶⁶ *Id.* § 17.400.055(A)(1)–(3).

¹⁶⁷ *Id.* § 17.400.055(A)(6).

The category of prohibited uses includes many home occupations that are performed outside the house. Occupations that are prohibited include “[b]usinesses that involve the breeding, grooming, harboring, raising, or training of dogs, cats, or other animals on the premises,”¹⁶⁸ “[c]arpentry and cabinet making,”¹⁶⁹ “[p]lant nursery,”¹⁷⁰ “[r]etail sales (e.g. stock on hand and customers coming to the home are NOT allowed),”¹⁷¹ and “[o]ther uses determined by the Director not to be incidental to or compatible with residential activities.”¹⁷² Raising animals and owning plant nurseries are both activities commonly associated with urban agriculture. Because urban farming is so similar to these activities, which have been deemed “not incidental to or compatible with residential activities,” the regulation could be interpreted as prohibiting urban farming as a home occupation.¹⁷³ Moreover, the Code lists operating standards for all home businesses that are not compatible with agricultural activities; for example it requires that the home occupation not be visible from neighboring properties or the street and prohibits the outdoor storage of materials.¹⁷⁴

Second, the Culver City Zoning Code limits the sale of produce by excluding agriculture as a commercial activity allowed in other districts as a primary use.¹⁷⁵ Two residents encountered this problem when they decided to grow a variety of items on a long-neglected half-acre plot of land.¹⁷⁶ They wanted to grow tomatoes, fruit, sunflowers, and spices to use in their restaurant, the Bluebird Café, and then sell any unused produce.¹⁷⁷ The owner of the neighboring railroad spur gave them permission to use his land.¹⁷⁸ While the land is zoned as a transportation district and not as a residential district,¹⁷⁹ the regulations for a transportation district prohibit agricultural activity for profit.¹⁸⁰ The Code allows the “operation and maintenance of any transportation

¹⁶⁸ *Id.* § 17.400.055(B)(2).

¹⁶⁹ CULVER CITY, CAL., MUNICIPAL CODE § 17.400.055(B)(3).

¹⁷⁰ *Id.* § 17.400.055(B)(11).

¹⁷¹ *Id.* § 17.400.055(B)(12).

¹⁷² *Id.* § 17.400.055(B)(15).

¹⁷³ *See id.* § 17.400.055(A)(3).

¹⁷⁴ *See id.* § 17.400.055(B).

¹⁷⁵ *See* CULVER CITY, CAL., MUNICIPAL CODE § 17.400.055(C).

¹⁷⁶ *See* Groves, *supra* note 157.

¹⁷⁷ *Id.*

¹⁷⁸ Gleeson, *supra* note 123.

¹⁷⁹ Groves, *supra* note 157.

¹⁸⁰ *Id.*

¹⁸⁰ *See* CULVER CITY, CAL., MUNICIPAL CODE § 17.250.025 (2005).

business,” such as parking areas, railroads, bus lines, airports, etc.,¹⁸¹ but expressly prohibits the “[c]onstruction of any advertising sign or structure and any residential, commercial, industrial or freight storage structure, including above ground parking structures,” which arguably excludes the use of the land for commercial agricultural purposes.¹⁸² The larger area is actually a mix of different types of zoning districts, with both industrial and residential zones surrounding the property.¹⁸³ Nevertheless, residents of nearby neighborhoods seem to be happy about the new use of the land.¹⁸⁴ “They’re relieved that the once-neglected property now harbors tomatoes and figs rather than bottles and trash.”¹⁸⁵ City officials seem supportive, but acknowledge that the Zoning Code is prohibitive and outdated.¹⁸⁶

III. CURRENT MUNICIPAL EFFORTS AIMED AT FACILITATING URBAN AGRICULTURE

Pushed by both advocacy groups and individuals, municipalities are beginning to consider and enact a variety of legislative measures to facilitate urban farming.¹⁸⁷ Some are closing legal loopholes that have hindered the growing and selling of produce.¹⁸⁸ Others are rewriting parts of their zoning codes to prioritize community gardens or to allow residents to keep a limited number of farm animals.¹⁸⁹ Still others are looking to incorporate urban agriculture into their comprehensive plans.¹⁹⁰ Many of these efforts seem to be addressing a specific need voiced by the community.¹⁹¹

¹⁸¹ See *id.* § 17.250.025(A)(1).

¹⁸² See *id.* § 17.250.025(B).

¹⁸³ Groves, *supra* note 157.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ See *id.*

¹⁸⁷ See Mukherji & Morales, *supra* note 7, at 3.

¹⁸⁸ See *The Food & Flowers Freedom Act Needs Your Help*, URBAN FARMING ADVOCATES (Oct. 9, 2009, 11:17 AM), http://urbanfarmingadvocates.org/posted_by_ufa/the-food-flowers-freedom-act-needs-your-help/.

¹⁸⁹ See CLEVELAND, OHIO, CODIFIED ORDINANCES § 347.02 (2009); Ellen Kleinerman, *Cleveland Council Approves Urban Farming, Teardown of Foreclosed Homes*, PLAIN DEALER (Feb. 2, 2009, 10:15 PM), http://blog.cleveland.com/metro/2009/02/down_on_farm_in_cleveland.html.

¹⁹⁰ See Mukherji & Morales, *supra* note 7, at 4.

¹⁹¹ See *id.* at 3.

A. Los Angeles, California

For example, in Los Angeles, urban farmers found themselves constrained by a 1946 “Truck Gardening Ordinance,” which allowed the off-site sale of vegetables grown in residential areas.¹⁹² While ostensibly the ordinance should have been a boon to urban farmers, allowing them to sell produce at places like farmers’ markets, it could have been narrowly interpreted to prohibit residents from growing fruits, nuts, flowers, or seedlings to sell off-site because the ordinance specifies only vegetables.¹⁹³ The narrow interpretation resulted in situations like that of Tara Kolla, a Los Angeles resident who started a half-acre flower farm in her backyard for the purpose of selling the flowers at the Silver Lake Farmers’ Market.¹⁹⁴ Although she operated the farm for six years, growing and selling flowers without a problem, eventually the Building and Safety Inspector informed her that she had to stop selling the flowers because the ordinance only allowed the off-site sale of vegetables.¹⁹⁵

To remedy situations like Tara Kolla’s, local advocates formed Urban Farming Advocates, to further the mission of legalizing urban farming in Los Angeles.¹⁹⁶ They helped to persuade City Council President Eric Garcetti to introduce a motion on July 8, 2009,¹⁹⁷ that “would allow ‘the cultivation of flowers, fruits, nuts or vegetables defined as the product of any tree, vine or plant, and that these products be allowed for use on-site or sale off-site.’”¹⁹⁸ The Zoning Code at the time also limited home occupations to those conducted inside the residence and prohibited them from being visible from outside the residence, hindering residents from using urban agriculture as a source of income.¹⁹⁹ On May 21, 2010, the Los Angeles City Council passed an ordinance that amended the Los Angeles Municipal Code in response to advocates’ concerns.²⁰⁰ Ordinance 181,188 “clarif[ied] the truck gardening and

¹⁹² Katherine Spiers, *Urban Farms: Where “Vegetable” Is a Murky Term*, L.A. WEEKLY (Nov. 5, 2009), <http://www.laweekly.com/2009-11-05/columns/urban-farms-where-vegetable-is-a-murky-term/>.

¹⁹³ *See id.*

¹⁹⁴ *See Silver Lake Farms*, SILVER LAKE FARMS, <http://www.silverlakefarms.com> (last visited Apr. 15, 2011); Spiers, *supra* note 192.

¹⁹⁵ *Silver Lake Farms*, *supra* note 194; Spiers, *supra* note 192.

¹⁹⁶ *The Food & Flowers Freedom Act Needs Your Help*, *supra* note 188.

¹⁹⁷ *Id.*

¹⁹⁸ Spiers, *supra* note 192.

¹⁹⁹ *See* City of L.A. Dep’t of Planning, Presentation at the Silver Lake Neighborhood Council Meeting: Truck Gardening Clarification 4 (Mar. 10, 2010), available at <http://urbanfarmingadvocates.org/wp-content/uploads/2010/03/Silverlake-NC-Slideshow-03.10.10.pdf>.

²⁰⁰ *See* L.A., Cal., Ordinance 181,188 (May 21, 2010).

farming uses permitted in each zone, and create[d] consistency between home occupation conditions and standards and truck gardening operations.”²⁰¹

B. Cleveland, Ohio

In Cleveland, Ohio, city officials have enacted four different pieces of legislation to help residents participate in urban agricultural activities.²⁰² On February 2, 2009, Cleveland’s City Council approved a Zoning Code update that set out detailed regulations for keeping farm animals and bees within city limits in an effort to find “innovative uses for vacant land.”²⁰³ The new Code specifies that the “regulations . . . are established to permit the keeping of farm animals and bees in a manner that prevents nuisances to occupants of nearby properties and prevents conditions that are unsanitary or unsafe.”²⁰⁴

The regulations are detailed but clear. Under the new Code, the standard residential lot of 4800 square feet can house no more than six “chickens, ducks, rabbits and similar farm animals.”²⁰⁵ There are specific setback requirements for the structures housing these animals, including restricting cages or coops to the backyard, and mandating that the structures be located at least five feet from the side property lines and eighteen inches from the rear property lines.²⁰⁶ Non-residential areas have the same requirements, except the number of similar animals is limited to one per 400 square feet.²⁰⁷ Larger animals have stricter requirements.²⁰⁸ No goats, pigs, sheep, or similar animals are allowed on lots less than 24,000 square feet in residential areas.²⁰⁹ Even on lots with 24,000 square feet, only two such animals are allowed.²¹⁰ Housing structures such as stables or run-ins have to be forty

²⁰¹ *Id.*

²⁰² See CLEVELAND, OHIO, CODIFIED ORDINANCES § 347.02 (2009) (Restrictions on the Keeping of Farm Animals and Bees); *id.* § 336 (Urban Garden District); Cleveland, Ohio, Ordinance 814–10 (Oct. 6, 2010) (amending various ordinances related to urban agriculture, including facilitating the sale of produce, easing requirements for accessory structures in residential areas, and allowing composting on land used for agricultural purposes); Cleveland, Ohio, Ordinance 1202–10 (Sept. 29, 2010) (establishing an urban garden to provide employment to adults with developmental disabilities).

²⁰³ See Kleinerman, *supra* note 189.

²⁰⁴ CLEVELAND, OHIO, CODIFIED ORDINANCES § 347.02(a).

²⁰⁵ *Id.* § 347.02(b) (1??) (A).

²⁰⁶ *Id.* § 347.02(b) (1) (B).

²⁰⁷ *Id.* § 347.02(b) (2).

²⁰⁸ See *id.* § 347.02(c).

²⁰⁹ *Id.* § 347.02(c) (1).

²¹⁰ CLEVELAND, OHIO, CODIFIED ORDINANCES § 347.02() (1).

feet from any street and most property lines, as well as 100 feet from a house on an adjoining property.²¹¹ These restrictions are eased somewhat for non-residential districts.²¹² Regulations on keeping beehives have similar restrictions, in addition to requiring a “flyway barrier” around the entrance to the hive and a fresh supply of water to prevent bees from “congregating at neighboring swimming pools.”²¹³

The Code even includes additional protections against nuisance concerns.²¹⁴ Any resident who wants to keep farm animals or bees on any property within city limits is required to apply for approval with both the Department of Building and Housing, to determine if the application complies with regulations on structure construction and placement, such as that of “enclosures, fences, cages, coops, beehives, flyway barriers, stables and other structures,” and the Department of Public Health, to obtain a two-year license.²¹⁵ Neighbors are notified when a resident files an application, and are allowed to raise objections.²¹⁶ The Director of the Department of Building and Housing has the authority to inspect properties to determine compliance.²¹⁷ The Code even includes a six-month review of the effectiveness of the regulation that involves a report from the Department of Public Health and the Department of Building and Housing, as well as a “mobile tour of select locations throughout the City where farm animals and bees are being kept in connection with licenses obtained under ... [the] ordinance.”²¹⁸

Cleveland also passed an ordinance in 2007 that created an “Urban Garden District” zoning designation which allows an area to be rezoned as a community garden.²¹⁹ The stated purpose of the ordinance is to “ensure that urban garden areas are appropriately located and protected to meet needs for local food production, community health, community education, garden-related job training, environmental enhancement, preservation of green space, and community enjoyment on sites for which urban gardens represent the highest and best use for the

²¹¹ *Id.*

²¹² *Id.* § 347.02(c)(2).

²¹³ *Id.* § 347.02(d)(1)(A)–(C).

²¹⁴ See Kleinerman, *supra* note 189.

²¹⁵ CLEVELAND, OHIO, CODIFIED ORDINANCES § 347.02(i)–(j).

²¹⁶ Kleinerman, *supra* note 189.

²¹⁷ CLEVELAND, OHIO, CODIFIED ORDINANCES § 347.02(l).

²¹⁸ *Id.* § 347.02(o).

²¹⁹ Dustin Brady, *Councilman Introduces First Zoning Designation for Community Gardens*, PLAIN PRESS (Sept. 2007), <http://www.nhlink.net/plainpress/html/stories/2007-09/councilmanintroducesnewzoning.htm>.

community.”²²⁰ By creating a specific urban garden district, Cleveland made it more difficult to replace a community garden because its removal would be open to public debate through the rezoning process.²²¹ The ordinance was passed to respond to occurrences such as a thriving community garden that was removed to build a new Target store.²²²

C. Seattle, Washington and Madison, Wisconsin

Some cities look to incorporate urban agriculture into their comprehensive land use plans as a way to support urban agriculture.²²³ Seattle, Washington and Madison, Wisconsin have already included community gardens in their comprehensive plans.²²⁴ Seattle set a goal of providing one community garden for every 2500 households.²²⁵ Madison has a section in its plan devoted to agricultural resources that states the goal of “[m]aintain[ing] existing agricultural operations in the City and encourag[ing] new, smaller farming operations.”²²⁶ One of the objectives in implementing this goal is to maintain current community gardens and establish new gardens where feasible, with the ultimate goal of one community garden for every 2000 households.²²⁷

IV. COMPREHENSIVE REVISION OF MUNICIPAL LAND USE POLICIES AS A METHOD FOR ENCOURAGING URBAN AGRICULTURE

While municipal efforts to accommodate urban gardening have been useful, many are piecemeal provisions that fail to take a broader view towards addressing urban agriculture.²²⁸ Unfortunately, a piecemeal approach can serve to discourage urban farmers because it adds complexity and increases costs, thus deterring would-be farmers and

²²⁰ CLEVELAND, OHIO, CODIFIED ORDINANCES § 336.01.

²²¹ Brady, *supra* note 219.

²²² *Id.* (“Since gardeners there did not actually own the land, they had no recourse to protect their garden. Five other community gardens just like [that garden] . . . have been lost within the last five years alone.”)

²²³ Kaufman & Bailkey, *supra* note 156, at 77.

²²⁴ CITY OF MADISON, CITY OF MADISON COMPREHENSIVE PLAN: VOLUME II—THE PLAN: GOALS, OBJECTIVES, POLICIES & IMPLEMENTATION RECOMMENDATIONS 6–16 (2006), available at <http://www.cityofmadison.com/planning/comp/plan.html>; Kaufman & Bailkey, *supra* note 156, at 77.

²²⁵ Mukherji & Morales, *supra* note 7, at 4.

²²⁶ CITY OF MADISON, *supra* note 224, at 6–16.

²²⁷ *Id.*

²²⁸ See *supra* Part III; see also Kameshwari Pothukuchi & Jerome L. Kaufman, *The Food System: A Stranger to the Planning Field*, 66 J. AM. PLAN. ASS’N 113, 115 (2000) (lamenting the general lack of involvement in food systems issues by city planning agencies, including issues like community gardens and farmers’ markets).

entrepreneurs.²²⁹ To fully utilize urban agriculture as a tool for promoting the revitalization of a town or city, officials should consider a more comprehensive approach for incorporating urban agriculture into their zoning regulations.²³⁰ Such an approach would involve steps that clarify the city's support for urban farming, standardize the urban farming activities that are permitted, and facilitate the sale of goods produced from those permitted activities.²³¹

One model for addressing urban agriculture through a municipal zoning ordinance would be a comprehensive, three-step process to revising the zoning code. The first step would be to integrate support for urban agriculture into the city's comprehensive plan.²³² This would clarify urban agriculture and its health, environmental, and economic benefits as valid objectives on which to base zoning decisions.²³³ The second step would be to establish a clear definition of urban agriculture as a use category, and to amend the zoning code to allow urban agriculture as a primary and accessory use in a wide range of zoning districts.²³⁴ Consistent definitions and wide acceptance would ensure a conducive legal atmosphere for urban farmers by reducing the time, risks, and costs involved with starting an urban farm.²³⁵ The third step would be to amend the zoning code to allow urban agriculture to operate as a home occupation, and explicitly permit either the off- or on-site sale of goods produced by the farm and outside employees with reasonable restrictions.²³⁶

A. *Step One: Revise the Municipality's Comprehensive Plan*

Because a city's comprehensive plan is generally where a municipality identifies the goals and priorities it seeks to implement through its zoning code, it is an important starting point for a community that is

²²⁹ See Mukherji & Morales, *supra* note 7, at 2; Horsley, *supra* note 6; Shaw, *supra* note 30; Spiers, *supra* note 192.

²³⁰ See MOUGEOT, *supra* note 18, at 65; Mukherji & Morales, *supra* note 7, at 3; Kaufman & Bailkey, *supra* note 156, at 77.

²³¹ See Mukherji & Morales, *supra* note 7, at 3; Kaufman & Bailkey, *supra* note 156, at 77.

²³² See CITY OF MADISON, *supra* note 224, at 6–16; LAND USE PROTECTIONS FOR FARMERS' MARKETS, *supra* note 86, at 10; Mukherji & Morales, *supra* note 7, at 3; Kaufman & Bailkey, *supra* note 156, at 77.

²³³ See LAND USE PROTECTIONS FOR FARMERS' MARKETS, *supra* note 86, at 10; MOUGEOT, *supra* note 18, at 8–9; Kaufman & Bailkey, *supra* note 156, at 77.

²³⁴ See RHOADS ET AL., *supra* note 138, at 9; Mukherji & Morales, *supra* note 7, at 5; Kaufman & Bailkey, *supra* note 156, at 77.

²³⁵ See RHOADS ET AL., *supra* note 138, at 9; Mukherji & Morales, *supra* note 7, at 5; Horsley, *supra* note 6; Shaw, *supra* note 30; Kaufman & Bailkey, *supra* note 156, at 77.

²³⁶ See Mukherji & Morales, *supra* note 7, at 6; Horsley, *supra* note 6; Spiers, *supra* note 192.

committed to encouraging urban farming through land use controls.²³⁷ By revising its model ordinances to include support for urban agriculture, a municipality can establish urban agriculture as a priority in its communities and set the stage for the revision of its zoning regulations.²³⁸

When incorporating urban agriculture into its comprehensive plan, a municipality should include its goals and objectives for urban agriculture, and the policies and actions it will use to implement those goals and objectives.²³⁹ To do this, the municipality should identify the benefits it is hoping to gain from encouraging urban agriculture.²⁴⁰ These benefits may include health, environmental, or economic benefits; for example, access to fresh, local produce, “additional open areas, nutrition or job training for their children, community gathering spaces, . . . increased economic opportunities,” or promotion of “community gardening opportunities, nonprofit programs or small businesses.”²⁴¹

Below is model language a municipality could use as a starting place for incorporating urban agriculture into its comprehensive plan.²⁴² The language is based on guidance from the National Policy & Legal Analysis Network to Prevent Childhood Obesity at Public Health Law and Policy recommending how to incorporate community gardens and farmers’ markets into land use policies, as well as the City of Madison’s Comprehensive Plan.²⁴³ However, it is important to keep in mind that a municipality’s comprehensive plan should not only be tailored to the needs of the community, but also to the existing language structure in the comprehensive plan.²⁴⁴

²³⁷ See CITY OF MADISON, *supra* note 224, at 6–16; NAT’L POLICY & LEGAL ANALYSIS NETWORK TO PREVENT CHILDHOOD OBESITY, PUB. HEALTH LAW & POLICY, ESTABLISHING LAND USE PROTECTIONS FOR COMMUNITY GARDENS 2, 4 (2009) [hereinafter LAND USE PROTECTIONS FOR COMMUNITY GARDENS], available at http://www.nplanonline.org/sites/phlpnet.org/files/CommunityGardenPolicy_FINAL_Updated_100608.pdf; Mukherji & Morales, *supra* note 7, at 4; Kaufman & Bailkey, *supra* note 156, at 77.

²³⁸ See CITY OF MADISON, *supra* note 224, at 6–16; Mukherji & Morales, *supra* note 7, at 4; Kaufman & Bailkey, *supra* note 156, at 77.

²³⁹ See CITY OF MADISON, *supra* note 224, at 6–16; LAND USE PROTECTIONS FOR COMMUNITY GARDENS, *supra* note 237, at 24; Mukherji & Morales, *supra* note 7, at 4.

²⁴⁰ See CITY OF MADISON, *supra* note 224, at 6–16; RHOADS ET AL., *supra* note 138, at 23; Mukherji & Morales, *supra* note 7, at 4.

²⁴¹ See RHOADS ET AL., *supra* note 138, at 23.

²⁴² See LAND USE PROTECTIONS FOR COMMUNITY GARDENS, *supra* note 237, at 8.

²⁴³ See CITY OF MADISON, *supra* note 224, at 6–16; LAND USE PROTECTIONS FOR COMMUNITY GARDENS, *supra* note 237, at 8; LAND USE PROTECTIONS FOR FARMERS’ MARKETS, *supra* note 86, at 10.

²⁴⁴ See CITY OF MADISON, *supra* note 224, at 6–16; LAND USE PROTECTIONS FOR COMMUNITY GARDENS, *supra* note 237, at 8.

B. Model Comprehensive Plan Language to Protect and Expand Urban Agriculture

Background: Because the City of Compostville recognizes urban agriculture as a desirable activity that creates a more livable community, we state the following goals and objectives:

Goal: Encourage the use of urban agriculture in Compostville as a means of increasing access to healthy, local, and affordable foods, encouraging the productive use of vacant land, and opening up more agriculture-based business opportunities.

- Objective: Encourage appropriate agricultural uses of urban land.
- Policies/Actions:
 - Adopt zoning regulations that clearly define urban agriculture to include the cultivation of fruits, vegetables, flowers, nuts, and like products, as well as raising farm animals.
 - Adopt zoning regulations that discourage health and nuisance hazards sometimes associated with agricultural activities, which may include setback requirements, yard size requirements, complaint procedures, or permitting procedures.
 - Appoint a government employee in an appropriate agency who can serve as the point person on urban agricultural questions for residents.
- Objective: Promote more widespread use of urban agriculture.
- Policies/Actions:
 - Identify additional zoning districts that would be appropriate in which to allow urban agriculture.
 - Expand community gardening opportunities.
- Objective: Encourage residents to use urban agriculture as a tool for economic development.
- Policies/Actions:
 - Adopt zoning regulations that allow urban agriculture as a home occupation in appropriate districts.
 - Allow the on-site and off-site sale of products from urban agriculture where appropriate.

C. *Step Two: Create an Urban Agricultural Use Category and Allow as a Permitted Use in Zoning Districts as Widely as Possible*

Municipalities should also consider establishing urban agriculture as a clearly defined use category, and include it as a permitted primary and accessory use in a wide range of zoning districts.²⁴⁵ Doing so would promote widespread urban agriculture²⁴⁶ by creating a clear, commonly allowed set of uses for residents so that uncertainty and bureaucratic barriers to urban farming are reduced.²⁴⁷ Without clear definitions, the “type, function, profitability, and visibility of urban agriculture” is limited.²⁴⁸ In considering how to define urban agriculture as a use, it would be helpful for municipalities to consider the types of uses they want to encourage, as well as the potential impacts from these uses that they hope to minimize.²⁴⁹

To be effective, a zoning code’s description of urban agriculture should be broad enough to include at least the small-scale raising of animals and growing of fruits, vegetables, nuts, flowers, and like products.²⁵⁰ The definition of agriculture in the Portland Zoning Code provides a good starting point for municipalities looking to draft an “urban agriculture” use category.²⁵¹ It defines agriculture to include “activities that raise, produce or keep plants or animals.”²⁵² The Code goes on to list examples and exceptions that help readers flesh out the parameters of the definition.²⁵³ “Some accessory structures are permitted, although feed lots, food processing, livestock auctions, and retail plant nurseries are specifically mentioned under different use categories.”²⁵⁴ By allowing a broad range of activities to be included in an urban agri-

²⁴⁵ See RHOADS ET AL., *supra* note 138, at 9; Mukherji & Morales, *supra* note 7, at 5; Kaufman & Bailkey, *supra* note 156, at 77.

²⁴⁶ See RHOADS ET AL., *supra* note 138, at 9; Kaufman & Bailkey, *supra* note 156, at 77.

²⁴⁷ See RHOADS ET AL., *supra* note 138, at 9; Mukherji & Morales, *supra* note 7, at 5; Kaufman & Bailkey, *supra* note 156, at 77.

²⁴⁸ See RHOADS ET AL., *supra* note 138, at 9.

²⁴⁹ See CITY OF MADISON, *supra* note 224, at 6–16; RHOADS ET AL., *supra* note 138, at 23; Mukherji & Morales, *supra* note 7, at 7; Kaufman & Bailkey, *supra* note 156, at 77; Shaw, *supra* note 30.

²⁵⁰ See Mukherji & Morales, *supra* note 7, at 7; Horsley, *supra* note 6; Kleinerman, *supra* note 189; Shaw, *supra* note 30.

²⁵¹ See Mukherji & Morales, *supra* note 7, at 5.

²⁵² PORTLAND, OR., ZONING CODE § 33.920.500 (2009).

²⁵³ *Id.*

²⁵⁴ See MOUGEOT, *supra* note 18, at 5; Mukherji & Morales, *supra* note 7, at 5; Horsley, *supra* note 6; Kleinerman, *supra* note 189; Shaw, *supra* note 30; Spiers, *supra* note 192.

culture use category, a municipality helps remove the barriers hindering responsible urban farming.²⁵⁵

Beyond the basic definition, a use category should then be tailored to fit the aims and address the concerns of the community.²⁵⁶ Cleveland's regulation on keeping farm animals and bees is a great example of an effective balancing of competing interests.²⁵⁷ It creates a regulation that allows a wide range of activities while closely managing nuisance concerns.²⁵⁸ In it, chickens, ducks, rabbits, bees, goats, pigs, and sheep can all be kept in residential areas provided that certain requirements are met, including minimum yard size requirements appropriate to the animal.²⁵⁹ This same approach to balancing nuisance concerns could be applied to creating an urban agriculture use category—allowing a wide range of activities while maintaining reasonable requirements.²⁶⁰ When designing a use category that attempts such a balance, a municipality should consider whether to include any of the following requirements: yard size requirements, especially for raising animals; setback requirements, again this is especially relevant for raising animals; farming technique requirements—mechanical tools, hand tools, pesticide use; accessory structure design requirements—hoop houses, chicken coops, greenhouses; permit requirements; and complaint procedure requirements.²⁶¹ By defining urban agriculture as a distinctive use, a municipality can clearly communicate, in one zoning code location, the activities an urban farmer is allowed to engage in.²⁶²

Creating such an urban agricultural use category is only effective, however, if it is then specified as a permitted primary and accessory use in a number of zoning districts.²⁶³ “[T]he existence of an agricultural use category, which is permitted in existing districts, is . . . important for supporting widespread urban agriculture.”²⁶⁴ By allowing urban

²⁵⁵ See RHOADS ET AL., *supra* note 138, at 3.

²⁵⁶ See MOUGEOT, *supra* note 18, at 5; Mukherji & Morales, *supra* note 7, at 7; Horsley, *supra* note 6; Kleinerman, *supra* note 189; Shaw, *supra* note 30; Spiers, *supra* note 192.

²⁵⁷ See CLEVELAND, OHIO, CODIFIED ORDINANCES § 347.02 (2009).

²⁵⁸ See *id.*

²⁵⁹ See *id.*

²⁶⁰ See RHOADS ET AL., *supra* note 138, at 23; Mukherji & Morales, *supra* note 7, at 7; Kaufman & Bailkey, *supra* note 156, at 77; Shaw, *supra* note 30.

²⁶¹ See CLEVELAND, OHIO, CODIFIED ORDINANCES § 347.02(i)–(m); ENP & ASSOCS., *supra* note 10, at 2, 5; RHOADS ET AL., *supra* note 138, at 25–27; Mukherji & Morales, *supra* note 7, at 5.

²⁶² See CLEVELAND, OHIO, CODIFIED ORDINANCES § 347.02(i)–(m); Mukherji & Morales, *supra* note 7, at 5.

²⁶³ See Mukherji & Morales, *supra* note 7, at 6.

²⁶⁴ *Id.*

agriculture as a use in more zoning districts, a municipality can make its health, environmental, and economic benefits open to a greater number of residents.

D. Step Three: Specify Urban Agriculture as a Permitted Home Occupation

Lastly, to encourage urban agriculture as a tool for economic revitalization, a municipality should facilitate the sale of goods produced through urban farming by allowing urban agriculture as a home occupation.²⁶⁵ To do so, a municipality that had already defined urban agriculture as a use category in their zoning code should add it as an approved home occupation under the regulations pertaining to residential zoning districts.²⁶⁶ This would allow a person using the land primarily as a residence to sell what they produce.²⁶⁷

CONCLUSION

Urban agriculture offers health, environmental, and economic advantages that make it an appealing practice. For example, farming in cities provides increased access to healthy, cheap produce for urban residents, while lowering pollution impacts from transportation and waste products.²⁶⁸ Urban agriculture also has the potential to aid in the economic revitalization of cities through the utilization of vacant land and the potential to use urban agriculture for small business opportunities.²⁶⁹ Still, there are concerns typically associated with urban farming, including aesthetic preferences, worries over property value, and more traditional nuisances concerns such as smells.²⁷⁰ Zoning regulations are particularly well-suited to balance these concerns and benefits because they are designed to regulate competing land uses and thus should be a starting point for any municipality looking to facilitate urban farming.²⁷¹

The current steps most municipalities are taking to address the increase in urban agriculture are inadequate.²⁷² While most zoning law reforms are springing from the needs of the community, the solutions

²⁶⁵ See Mukherji & Morales, *supra* note 7, at 6; Horsley, *supra* note 6; Spiers, *supra* note 192.

²⁶⁶ See Mukherji & Morales, *supra* note 7, at 6; Horsley, *supra* note 6; Spiers, *supra* note 192.

²⁶⁷ See Mukherji & Morales, *supra* note 7, at 6; Horsley, *supra* note 6; Spiers, *supra* note 192.

²⁶⁸ See *supra* Part I.B.

²⁶⁹ See *supra* Part I.B.

²⁷⁰ See *supra* Part I.B.

²⁷¹ See *supra* Part I.A.

²⁷² See *supra* Part III.

tend to be piecemeal and can leave would-be urban farmers confused and discouraged.²⁷³ To effectively encourage urban agriculture within municipal limits, legislators should take a more comprehensive approach to reforming their zoning regulations.²⁷⁴ Such an approach would clarify the municipality's support for urban agriculture through revisions to its comprehensive plan, stating goals and objectives for urban agriculture.²⁷⁵ The municipality should then revise the zoning regulations to clearly define urban agriculture as a use category in a manner consistent with its goals, and allow urban agriculture as a primary and accessory use in as many zoning districts as is feasible.²⁷⁶ Lastly, a municipality should allow urban agriculture as a home occupation so residents are able to sell products from their urban farms.²⁷⁷ A municipality that takes this approach can fully leverage the benefits that urban agriculture has to offer while still accounting for nuisance concerns.

²⁷³ See *supra* Part III.

²⁷⁴ See *supra* Part IV.

²⁷⁵ See *supra* Part IV.

²⁷⁶ See *supra* Part IV.

²⁷⁷ See *supra* Part IV.