

THE LATEST TRENDS IN URBAN AGRICULTURE

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I. INTRODUCTION

“Urban agriculture” is a movement which has been growing in popularity over approximately the last fifteen years. Cities all over the country have implemented urban agriculture programs in their zoning codes as a way of problem-solving and enhancing a myriad of factors which contribute to the health and welfare of their communities. Because much of the law impacting urban agriculture takes place at the municipal level, there is a massive amount of diversity in the contexts prompting interest in urban agriculture as well as legal plans to implement it. This Note will provide an overview of some of the leading cities implementing urban agriculture programs, review their place in the historical context of urban agriculture, and survey some of the newest code revisions dealing with urban agriculture. This Note will demonstrate the way municipal law can be tailored regarding urban agriculture to a community’s unique needs and challenges.

II. HISTORY OF THE URBAN AGRICULTURE MOVEMENT

Community activities involving food production, commerce, and domestic life have not always been as compartmentalized in American society as they are today.¹ In fact, before the Industrial Revolution and the technological advances which led to mass production and national shipping, transportation, food production, and commerce were often tightly integrated with home life.² Food produc-

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1. See JULIAN CONRAD JUERGENSMAYER & THOMAS E. ROBERTS, LAND USE PLANNING AND DEVELOPMENT REGULATION LAW 571 (West, 3d ed. 2013)

2. See *id.*

tion was often part of everyday life in the early days of the United States, before the Industrial Revolution.³ Technology and industrialization, coupled with the growing economic empowerment of the average American consumer, revamped agricultural practices, and Euclidean zoning moved agricultural practices away from the domestic environment.⁴

Euclidean zoning is one of the major causative factors driving the disappearance of farming near homes and in the urban living environment.⁵ The underlying motivation is easy to understand. Certain activities do not mix well when done in close proximity. Industrial projects which produce vast amounts of chemical waste, for example, tend to interfere with serene and scenic environments which one might like to inhabit in the comfort of one's home and neighborhood. Euclidean zoning has done a very effective job of identifying big picture conflicts in land use and has, in large part, kept conflicting activities comfortably segregated in their respective regions of the community.

Agriculture embodies one of these big picture activities which was viewed as being best confined to its own zoning region. Agriculture requires space, and often involves raising and maintenance of animals. The potential for conflict between these activities and the new suburban residential lifestyle were rife. While raising animals was generally not a public nuisance under common-law, the odors, by-products, and tendency to attract other pests could greatly interfere with the neighbors' enjoyment of their land.⁶

Another factor related to Euclidean zoning was the perception that agriculture was something of a temporary place holder activity to make productive use out of the land before the urban neighborhood absorbed it or some other, more productive use could be implemented.⁷ This trend is particularly revealing of the somewhat marginal value that agriculture as an activity tended to be perceived as in local communities. It indicates most municipalities' long-term plans were to maintain agriculture as a short-term use, until a more economically productive one could replace it, adding to the wealth of the community, and food could simply be moved in from elsewhere. This sense of limited value in regard to urban agriculture is one of the key perceptions challenged by the modern urban agricultural movement.

3. See Patricia E. Salkin, *Feeding the Locavores, One Chicken at a Time: Regulating Backyard Chickens*, 34 ZONING & PLAN. L. REP. 1, 1 (2011), available at <http://ssrn.com/abstract=1774023> [hereinafter *Locavores*].

4. JUERGENSMEYER & ROBERTS, *supra* note 1.

5. *Id.*

6. *Id.*

7. *Id.*

The other major driving factor separating agriculture from the urban environment is economic affluence.⁸ During periods of economic growth and prosperity, Americans have had money to buy their food from grocery stores, where food is mass produced and shipped from the agricultural zones to the residential zones under an economically feasible system.⁹ If the food supply and the economy can support such convenience, families had very little reason to go to the trouble of producing their own food for anything other than personal enjoyment. However, as the economic prosperity has ebbed and flowed over the decades, the country's interest in urban agriculture has mapped on to the peaks and valleys in the national economy.¹⁰

Relief Gardens and Welfare Gardens are examples of urban agriculture practiced during the most severe economic downturn in United States history.¹¹ These gardens were an effective strategy for putting food on the table for families that were severely marginalized economically. They were promoted by federal, state, and municipal governments.¹²

World War II placed a great strain on the national food supply and the government had to resort to rationing as a way of supporting the war effort.¹³ Once again, domestic gardening was adopted as an effective strategy for coping with the crisis. These efforts were, again, spearheaded by the federal government, but this time they were called Victory Gardens.¹⁴ These gardens were established in private homes and city parks.¹⁵ There was even one on the White House lawn.¹⁶ Statistics demonstrate the proven effective nature of this program. The USDA determined that 20 million gardens were established, producing 9-10 million tons of produce.¹⁷ Apparently, this degree of productivity was comparable to commercial production of produce at the time.¹⁸ Despite this impressive accomplishment from local, urban farming, Victory Gardens disappeared after the end

8. *Id.* at 533.

9. *Id.* at 571.

10. *Id.*

11. See *Depression Relief Gardens: 1929-1939*, SPROUTS IN THE SIDEWALK, <http://sidewalksprouts.wordpress.com/history/relief-garden/> (last visited Sept. 15, 2015).

12. JUERGENSMEYER & ROBERTS, *supra* note 1, at 570-71.

13. *Id.* at 571.

14. *Id.*

15. Patricia E. Salkin, *Trends In Urban agriculture*, 2011 ALI-CLE Land Use Inst. 621, 626.

16. Marian Burros, *Obamas to Plant Vegetable Garden at White House*, N.Y. TIMES (Mar. 20, 2009), available at <http://www.nytimes.com/2009/03/20/dining/20garden.html?ref=marianburros>.

17. JUERGENSMEYER & ROBERTS, *supra* note 1.

18. *Id.*

of the war, replaced with a prospering American economy and middle-class.¹⁹

The 1970's presented another challenging economic environment, and interest in urban agriculture flared up again.²⁰ However, an important difference distinguishes this movement from previous eras. While the Great Depression and World War II eras greatly stressed and were motivated by the practical stresses on the food supply or limitations of the economy, the 1970's started incorporating more concerns characteristic of the modern urban agricultural movement.²¹ It was at this time when the potential risks and dangers of chemicals used in fertilizers and pesticides became a growing concern to the public.²² This time, the push behind urban agriculture was expressed with more explicit concerns of community development, personal health, and city beautification.²³

The foregoing timeline demonstrates the social pressures, legal structure, and motivations which have shaped urban agricultural efforts over the years. It shows that trends in urban agriculture are often linked to economics.²⁴ Generally, in times of economic hardship, interest in urban agriculture flares up as an affordable way to supplement the food supply and possibly make a little extra money for the household.²⁵ When the economy is booming, interest tends to wane as people take advantage of the convenience of grocery stores.²⁶

The modern urban agriculture movement really became apparent in the last fifteen years.²⁷ Economics is still an important factor in the current urban agriculture movement. This is particularly evident in the Midwest cities of Detroit and Cleveland, which are grappling with particularly devastating implications of the recent economic crisis, and the toll which it has taken on their manufacturing industries and populations.²⁸ However, as concerns over environmentalism, obesity, and the socioeconomic dynamics which have resulted in large areas of urban neighborhoods having poor access to healthy fruits and vegetables, it seems like-

19. *Id.*

20. KATHERINE L. ADAM, NAT'L SUSTAINABLE AGRIC. INFO. SERV., COMMUNITY GARDENING 9 (Rich Meys, ed., 2011), available at <http://attra.ncat.org/attra-pub/summaries/summary.php?pub=351>.

21. *Id.*

22. J.E. Ikerd, *Current Status and Future Trends in American Agriculture: Farming with Grass*, available at <http://naldc.nal.usda.gov/download/44776/PDF>. (last visited Sept. 15, 2015).

23. Salkin, *supra* note 15.

24. *Id.*

25. *Id.*

26. *Id.*

27. *See id* at 627.

28. *Id.*

ly that urban agriculture will be driven by factors which are not so susceptible to the ebb and flow of the economy.

III. THE MODERN URBAN AGRICULTURE MOVEMENT

The modern urban agriculture movement encompasses a wide range of activities practiced with a variety of goals in mind. One of the important and fascinating aspects of urban agriculture, today, is its association with the rest of the sustainable growth movement. Urban agriculture is not just about coping with temporary supply or economic problems. It is part of a movement challenging the underlying structure which channels the growth and development of communities. Urban agriculture is a dynamic movement which grows and adapts through the creativity and problem-solving ingenuity of its proponents. Urban agriculture is also a growing movement as evidenced by a wide array of literature, including books which raise awareness and sparking appeal for the benefits which urban agriculture can provide, such as in MICHAEL POLLAN, *THE OMNIVORE'S DILEMMA*.²⁹ This interest has also been supported by the organizational efforts of urban agriculturalists to work collaboratively in agricultural enterprises and political activism.³⁰ A brief overview of the modern urban agriculture movement will help provide context for the legal issues facing its proponents.

Urban agriculture encompasses gardens on the smaller and more private end of the scale, up to commercial farms on the larger and more commercialized end.³¹ Farmers' markets are a common example of the commercialization of agriculture taking place in urban areas.³² It is particularly interesting to see how urban agriculturalists have adapted food production to the urban landscape by conforming agriculture to the design features of buildings and lots. Gardens are planted in back yards, vacant lots in abandoned districts can be revitalized, and even roof tops of city buildings can be transformed into a vast field of farm land.³³

In addition to growing fruits and vegetables, the movement has even branched out to animal and livestock production.³⁴ Chickens and bees make up the most common animal production in urban areas, but some municipalities have branched out to accommodate fish, goats,³⁵ and pigs.³⁶ The idea of keeping

29. JUERGENSMEYER & ROBERTS, *supra* note 1, at 570.

30. *Id.* at 570-71.

31. Salkin, *supra* note 15 at 623.

32. JUERGENSMEYER & ROBERTS, *supra* note 1, at 572.

33. *Id.* at 570.

34. *See generally*, Salkin, *supra* note 15.

35. Salkin, *supra* note 15, at 634.

livestock in city limits is one of the more dramatic departures from contemporary American stereotypes of urban landscapes. It also attracts some of the most controversy.³⁷

Bee keepers, or apiatrists, have enjoyed an enthusiastic following for some time now and address concerns related to the sustainability, specifically targeting certain values, like environmentalism in some unique ways.³⁸ Colony collapse disorder is a growing concern in the bee population and the roll bees play in agriculture, not to mention the entire ecosystem, is an important one.³⁹ Similarly to chickens, bee keeping is often associated with the desire to avoid the perceived risks which can come with large-scale industrial food production.⁴⁰ In 2010, the FDA seized sixty-four barrels of honey from China which had apparently contained a powerful antibiotic.⁴¹ For many urban agriculturalists, there is a great peace of mind to be acquired just by having the opportunity to have access to local food, produced under conditions which are either known or more accessible to investigation.⁴²

Bee keeping has already had an enthusiastic following for some time now and is actually legally practiced in many cities.⁴³ The main concern associated with bee keeping are risks to the neighbors of being stung, but there is not a great deal of evidence that an increased prevalence of bee stings are particularly likely from bee keeping and it seems to be accepted in many cities.⁴⁴ A recent study, published by The Daily Green, only identified ninety jurisdictions which actively prohibited bee keeping as of 2010.⁴⁵ Some of these jurisdictions have even gone on to repeal laws preventing the keeping of bees.⁴⁶ Even though New York City has only recently repealed bans on bees, bee keeping was practiced in the city and political efforts were supported by the local Bee Keepers Association.⁴⁷

36. JUERGENSMEYER & ROBERTS, *supra* note 1, at 570.

37. See *Locavores*, *supra* note 3; Patricia E. Salkin, *Honey, It's All the Buzz: Regulating Neighborhood Beehives*, 39 B.C. ENVTL. AFF. L. REV. 55, 55-57 (2012)[hereinafter *Honey*].

38. Aurora Paulsen & Keith Mosman, *Urban Chickens and Bees—Coming to a Yard Near You*, 15 NO. 3 A.B.A. AGRIC. MGMT. COMMITTEE NEWSL. 10 (2011).

39. *Id.*; See generally Ann N. Coenen-Davis, Note, *The Mystery of the Disappearing Honeybee: Will Government Funding and Regulation Save This Important Pollinator?*, 14 DRAKE J. AGRIC. L. 175 (2009).

40. Paulsen & Mosman, *supra* note 38, at 11.

41. *Id.*

42. *Id.* at 10.

43. *Id.*

44. *Id.*

45. *Id.* at 12.

46. *Id.* at 11-12.

47. *Id.* at 10.

Urban chicken rearing has been breeding its own culture of enthusiasts, similar to bee keeping. The trend is indicated by a growing presence of internet and blog communities, as well as a growing market for literature and magazines.⁴⁸ Raising chickens falls in line with the big values driving the urban agriculture movement: greener communities, local production, and healthier food.⁴⁹ In some cases, simply the peace of mind of producing one's own food under known conditions without having to decipher complex food labels is a major motivational factor.⁵⁰ The appeal of chicken raising can probably be explained in large measure due to its relative compatibility with the urban environment. Euclidean zoning structure and obstacles notwithstanding, the architectural design and average lot size in urban and suburban environments present some obvious difficulties for the budding urban agriculturalist. Large livestock, like cows, demand a large amount of space. Chickens, on the other hand, are inexpensive compared to most other livestock and given their small size, do not demand a great deal of space.⁵¹ Chickens are also relatively sociable and live among humans well, without too much conflict.⁵² Furthermore, chickens, quite handily, embody the spirit of being a single multi-faceted solution to a number of problems or offer enhancements to the urban living environment. Chicken raisers produce food in the form of eggs and meat.⁵³ They also have a versatile diet, making them effective methods of pest control and garbage disposal.⁵⁴ Chickens are also natural producers of fertilizer and contribute to weed control.⁵⁵ Finally, chickens have also become associated with the personal companionship offered by traditional house pets, like dogs and cats.⁵⁶ On the other hand, chickens can also create issues which can also provoke aggravation in the neighbors.

Several implications and consequences of raising chickens make it one of the more controversial aspects of the urban agricultural movement. Specifically, opponents worry that people will not want to move into neighborhoods populated with chickens.⁵⁷ This would lead to lower land values for property owners and would be detrimental to the cities' property tax income.⁵⁸ Many of these con-

48. *Locavores*, *supra* note 3, at 223.

49. *Id.* at 217.

50. Paulsen & Mosman, *supra* note 38, at 11.

51. *Locavores*, *supra* note 3, at 217.

52. Paulsen & Mosman, *supra* note 38, at 11.

53. *Locavores*, *supra* note 3, at 217.

54. *Id.*

55. *Id.* at 218.

56. *Id.*

57. *See id.* at 217.

58. *Locavores*, *supra* note 3 at 217.

cerns come from fears that chickens will produce odors, create noises, and attract pests like coyotes and foxes.⁵⁹ These fears have created much more political resistance for the urban agriculture movement.⁶⁰ As popular as urban agriculture seems to be as a general trend, chicken raising has actually seen increased resistance in its legal viability.⁶¹ In the last few years, laws which would enable chicken raising have been defeated in some cities and explicitly prohibited in others.⁶²

Urban agriculture is a versatile solution to many concerns in modern society. Sustainability, promoting local business, environmentalism, food safety, animal rights, food security, personal health, and urban revitalization have all been linked to urban agriculture in a positive way.⁶³ However, these goals and their implementation are often tailored to the local circumstances facing a municipality. On the West Coast, particularly in cities like Portland, Oregon, and San Francisco, California, sustainability and access to locally grown organic food is a major drive behind the movement.⁶⁴

In the Midwest, where cities like Detroit and Cleveland are experiencing population reductions, urban agriculture is a way of finding uses for the vacant properties which have few opportunities for investment.⁶⁵ This has led to a trend known as “smart shrinking.”⁶⁶ Smart shrinking is a city development strategy which recognizes that for many cities, the future trend is not going to be one of ever-expanding population growth.⁶⁷ Especially when cities suffer a loss to a major industrial sector, like the steel industry in Youngstown, Ohio, cities have to face the reality that those industries are not going to be easily or quickly replaced.⁶⁸ The key to smart-shrinking is that it is not just a plan to temporarily cope with a hiccup in the economy so that the city can get back to the traditional model of industrial and commercial growth coupled with ever-expanding populations.⁶⁹ While they have certainly been prompted by recent economic crises, they

59. *Id.*

60. *See id.* at 217-18.

61. *See id.*

62. *Id.* at 217.

63. *Id.*; JUERGENSMEYER & ROBERTS, *supra* note 1, at 570-71.

64. Salkin, *supra* note 15, at 624.

65. *Id.*

66. PATRICIA E. SALKIN, *NEW YORK ZONING LAW AND PRACTICE* § 32A:64 (4th ed. 2014).

67. *Id.*

68. *Id.*

69. *Id.*

are also part of a city's long-term strategy to prosper through shrinking.⁷⁰ Along with other "smart growth" strategies like renewable energy and green space, urban agriculture is a key strategy for implementing a smart shrinkage strategy.⁷¹

Large East Coast cities, like New York City and Boston, suffer from a phenomenon of food deserts.⁷² Food deserts are urban regions which lack convenient access to grocery stores where residents can purchase fruit and vegetables. Urban agriculture may not be a permanent solution to this problem, due to limitations on growing seasons, but it can be an important way of injecting fresh fruits and vegetables into these communities and bring many other benefits of urban agriculture to these communities.⁷³ Any municipality considering a serious urban agriculture plan must be able to see the wide array of implications and think about how to tailor it to their local problems.

IV. THE LEGAL FRAMEWORK OF URBAN AGRICULTURE

Historically, urban agriculture tends to intersect with the law in the context of zoning. The primary implications of zoning ordinances and urban agriculture are permitted uses and public nuisances. Recently, ways of encouraging urban agriculture and making it more economically viable have been important concerns as well. Law affecting urban agriculture is primarily municipal ordinances, but state law and even federal law play a role in accommodating or prohibiting urban agriculture.

Federal law affecting urban agriculture is primarily embodied in the Farm Security and Rural Investment Act of 2002.⁷⁴ The implications were minor but it demonstrated some concern on the federal level.⁷⁵ As of 2010, the Greening Food Deserts Act specifically targets a major problem addressed by urban agriculture.⁷⁶ This bill could lead to a Department of Urban Agriculture as well as establish an Urban Agricultural Outreach Program.⁷⁷

70. *Id.*

71. *Id.*

72. Salkin, *supra* note 15, at 625.

73. See CAITLIN LOFTUS, AN APPLE A DAY – IF YOU CAN FIND ONE – KEEPS THE DOCTOR AWAY: HOW FOOD DESERTS HURT AMERICA'S HEALTH AND HOW EFFECTIVE LAND USE REGULATION CAN ELIMINATE THEM, 35 NO. 3 ZONING AND PLANNING LAW REPORT 1 (Patricia Salkin & Lora Lucero eds., 2012).

74. See JUERGENSMEYER & ROBERTS, *supra* note 1, at 572. See generally 7 U.S.C. § 2034 (2012).

75. See JUERGENSMEYER & ROBERTS, *supra* note 1, at 571.

76. Greening Food Deserts Act, H.R. 4971, 111th Cong. § 2 (2010); JUERGENSMEYER & ROBERTS, *supra* note 1, at 572.

77. JUERGENSMEYER & ROBERTS, *supra* note 1, at 572.

On the state level, at least two states have taken relatively dramatic moves to promote urban agriculture. The Georgia Right to Grow Act, passed in 2010, protected urban agricultural activities by restricting the rights of local municipal authorities to limit a variety of urban agricultural practices.⁷⁸ The protected practices include crop production and the raising of chickens, rabbits, and goats.⁷⁹

Another major item of state level legislation was in California.⁸⁰ This law, the urban agriculture Incentive Zones Act, combined the strategies of two previous laws, the Williamson Act and the Mills Act, to help promote urban agriculture by making it more economically viable for property owners to lease their land to urban agriculturalist over the long term.⁸¹ Specifically, the Act grants property owners a substantial cut in their property taxes when they lease their land for agricultural purposes for a period of five years.⁸² Not only does this law help promote urban agriculture, but it encourages the long-term implementation of urban agriculture as land use within the city.⁸³

Municipal zoning ordinances come in a variety of shapes and sizes. They range from comprehensive plans meant to revolutionize a city's approach to urban agriculture to smaller step approaches.⁸⁴ Strategies may involve making community gardens a permitted use of lots in urban areas or they may offer conditional use permits.⁸⁵ Some cities create special urban agriculture districts. While small-scale and private gardening is usually legally viable, commercial gardens on larger scales can encounter more resistance.⁸⁶ Growing food to be sold to the public implicates many more safety issues and begins to blend residential, agricultural, and commercial practices in a way which Euclidean zoning simply was not designed to accommodate very easily.⁸⁷

Animal raising probably presents the most significant concerns for public nuisances.⁸⁸ Zoning for animal raising involves a delicate balance between the viability of taking care of the animals and protecting surrounding property own-

78. *Id.*

79. *Id.*

80. See Urban Agriculture Incentive Zones Act, CAL. GOV'T CODE § 51040 (West 2013).

81. See S. 2013-AB551, Third Reading, at 1-3 (Cal. 2013).

82. See Urban Agriculture Incentive Zones Act, at § 51042.

83. See CONCURRENCE IN SENATE AMENDMENTS, S. 2013-AB551, at 2 (Cal. 2013) (analysis prepared by Victor Francovich, Senior Consultant, Assembly Comm. On Agric.).

84. Salkin, *supra* note 15, at 625.

85. *Id.* at 633.

86. See *id.*

87. See *id.* at 629-30.

88. See *id.* at 634-35.

ers.⁸⁹ Common zoning strategies include limits on the number of animals allowed to be kept, soliciting the consent of neighbors, prohibitions on roosters, guidelines for feed storage, and the implementation of some kind of pest control.⁹⁰

V. OBSTACLES CONFRONTING URBAN AGRICULTURE

In order to understand and critique written law intended to enable and encourage urban agriculture, it is helpful to spend time examining the chief obstacles confronting the urban agriculture movement. A thorough understanding of the obstacles and conflicts which follow from the practice of urban agriculture will help identify the goals that municipal codes dealing with urban agriculture are pursuing (or ought to be pursuing) as well as spot gaps or weak points in the municipal code. While we discuss these obstacles, it is important to try not to overly emphasize the negative connotation attributed to “obstacles” or “conflicts” which interfere with achieving certain social outcomes. Sometimes urban agriculture is being held back by zoning codes and attitudes which are the product of obsolete perceptions, aspirations, and legal frameworks.⁹¹ Just as often, however, city administrators are trying to balance competing policies which may be impacted by introducing activities which have not been integrated into the urban environment since the dawn of Euclidean Zoning.⁹² Therefore, an effective and useful critique of emerging municipal codes must distinguish between the structural baggage from past generations which has produced rigidity in the legal establishment’s ability to allow its citizens and city planner’s efforts to adapt to changing circumstances and the need to carefully balance the complex framework of social interests which cities must take into account when drafting their municipal codes.

Euclidean zoning method of structuring community activity is the primary restraint which is indicative of an out-moded philosophy of city planning.⁹³ On a

89. *See id.* at 634.

90. *Id.* at 634-35.

91. JUERGENSMEYER & ROBERTS, *supra* note 1, at 533-534; *See* LOFTUS, *supra* note 73; *See* Kristin Choo, Feature, *Plowing Over: Can Urban Farming Save Detroit and Other Declining Cities? Will the Law Allow It?*, 97 A.B.A. J. 42, 45 (2011), available at http://www.abajournal.com/magazine/article/plowing_over_can_urban_farming_save_detroit_and_other_declining_cities_will/; Kate A. Voigt, Note, *Pigs in the Backyard or the Barnyard: Removing Zoning Impediments to Urban agriculture*, 38 B.C. ENVTL. AFF. L. REV. 537, 537 (2011).

92. Paulsen & Mosman, *supra* note 38; *see* Catherine J. LaCroix, Commentary, *Urban Green Uses: The New Renewal*, 63 PLAN. & ENVTL. L. NO. 5, at 3 (2011); *Honey*, *supra* note 37.

93. *See* LOFTUS, *supra* note 73; Corinne Calfee & Eve Weissman, Commentary, *Permis-*

basic level there is sound logic to the prospect that certain activities can be better carried out in the company of similar activities and in isolation of others. Most people do not want to live next to an industrial factory producing chemical waste, and few would blame them for this attitude. Traditional Euclidean zoning, however, clings to a sense of sprawling hyper segregated city planning scheme which is not only prohibitive of urban agriculture but is wasteful and inefficient.⁹⁴ Furthermore, this mode of thinking has encouraged and reinforced a perception of agriculture as a low value, temporary use of land.⁹⁵ Traditional city planning tended to use agriculture as a way of extracting some measure of productivity out of large swathes of land, but only until commercial and industrial development could catch up these areas of the urban fringe.⁹⁶ Consequently, urban agriculturalists must overcome a working assumption that agriculture is inherently a non-urban activity. A municipal code which successfully integrates urban agriculture must approach it as a permanent fixture on the urban landscape and not just a temporary place holder.⁹⁷

Quite simply, by rigidly isolating agriculture from residential, commercial, and industrial development and practice, a clear and definitive legal prohibition is put in place that prevents community members from implementing and developing urban agriculture programs which could be tailored to the needs of individual communities. In other words, the first obstacle that many urban agriculturalists encounter, is their planned activities are illegal in the spaces they wish to practice them and where the practice of them would produce the most good.⁹⁸

Even if agricultural practices are not explicitly banned, municipal codes regulate all sorts of aspects of building and maintaining structures on a person's property.⁹⁹ Most of these limitations, like height restrictions, aesthetics, and fencing, were promulgated with no thought given to the implications for agricultural activity and therefore become a practical impediment to adapting one's personal property to the project of urban agriculture.¹⁰⁰ In order to accommodate these

sion to Transition: Zoning and the Transition Movement, 64 PLAN. & ENVTL. L. NO. 5, at 3 (2012); Voigt, *supra* note 91, at 547.

94. See JUERGENSMEYER & ROBERTS, *supra* note 1, at 533.

95. KATHERINE H. BROWN, URBAN AGRICULTURE AND COMMUNITY FOOD SECURITY. IN THE U.S.: FARMING FROM THE CITY CENTER TO THE URBAN FRINGE 23 (Peter Mann, ed. 2002); see Nina Mukherji & Alfonso Morales, *Zoning for Urban Agriculture*, ZONING PRAC., Mar. 2010, at 3; See JUERGENSMEYER & ROBERTS, *supra* note 1, at 533.

96. JUERGENSMEYER & ROBERTS, *supra* note 1, at 533-34.

97. *Id.* at 534.

98. Choo, *supra* note 91, at 49.

99. Voigt, *supra* note 91, at 547.

100. *Id.* at 537.

implications, greenhouses, bee hives, and chicken coops should be taken into account as typical fixtures in the urban landscape.

This is also, quite fortunately, one of the easier obstacles to erase with a little bit of political activism and creative thinking; most municipal zoning codes can simply be rewritten to include urban agricultural activities in zones where they were otherwise excluded. Because the urban agriculture movement has required city planners to look at their communities with new eyes, it is important that municipal codes be revised with a focus on specificity and clarity.¹⁰¹ Even when codes have been revised, uncertainty persists when urban agriculture practitioners are unsure of rules and whether they are in fact staying inside the lines of what is acceptable.¹⁰² The consequence of, even inadvertently, straying outside the lines could be a nuisance suit.¹⁰³

Moreover, the deep historical presence of Euclidean zoning has had a tendency to engrain the current city design model into many citizen's heads and can lead to community resistance to implementing a grand design of urban agriculture in their own communities.¹⁰⁴

Some of this resistance may be attributable to an ideal, still familiar to most Americans, of the home in the suburbs, the office in the city, and farms out in the country. However, the realities of metropolitan shrinkage, the expenses of commuting, and growing concerns about the national food supply have done a lot to ameliorate many of the knee-jerk reactions which could occur in defense of the status quo.¹⁰⁵ Still, there are many legitimate concerns regarding allowing the farm to move to the city, and these often intersect with nuisance law.¹⁰⁶

Nuisance law is a separate, but related obstacle to urban agriculture. While prohibitions against certain activities are enforced through the zoning code because of their potential to cause nuisances to the local community, they can also occur even when municipal codes are being followed.¹⁰⁷ This is due to the fact that, in general, common law jurisdictions determine a nuisance not just in terms of whether they break a zoning code, but with how they interact with a neigh-

101. *Id.* at 538.

102. *See* JUERGENSMEYER & ROBERTS, *supra* note 1.

103. *Id.*

104. *See* LaCroix, *supra* note 92; *see generally*, JUERGENSMEYER & ROBERTS, *supra* note 1.

105. LaCroix, *supra* note 92; *See* Calfee & Weissman, *supra* note 93.

106. *See* Paulsen & Mosman, *supra* note 38; *Honey*, *supra* note 37; *Locavores*, *supra* note 3, at 217, 218;.

107. *Erwin v. Alvarez*, 752 So. 2d 1261, 1262 (Fla. Dist. Ct. App. 2000).

bor's enjoyment of their own property.¹⁰⁸ In other words, otherwise perfectly legal activities may come under the scrutiny of nuisance law if they cannot be contained to the urban agriculture practitioner's own property.

Activities like gardening are perhaps the least controversial. Of all the urban agricultural activities, gardening is the most widely practiced and has a history of being tolerated as a hobby for gardening enthusiasts, many of whom do not even necessarily identify with the urban agriculture movement.¹⁰⁹ The biggest concerns here are against poorly tended gardens in front yards or between the sidewalk and the street could become unsightly.¹¹⁰ A municipal code could alleviate these concerns with provisions about keeping gardens contained to their yards and enforcing practices which would control weeds and pests.¹¹¹

Of more significant and legitimate concern is the practice of raising livestock in urban areas.¹¹² Urban agriculturalists face very real risks regarding nuisance liability when they attempt to bring chickens and bees, the most popular livestock for the urban setting, into their neighborhoods.¹¹³

While chickens may be well suited for the urban environment in many regards, the production of odors, attraction of pests, and the capacity for noise may be difficult to keep them "contained" from their neighbors.¹¹⁴ Even many cities which are actively designing and implementing urban agriculture designs have outright bans on the practice of chicken rearing.

Bees', the other popular urban livestock, stable foothold in the urban environment is thanks to beekeeping enthusiasts, apiatrists.¹¹⁵ However, bees are easily attracted to water sources and plants in neighbors' yards.¹¹⁶ While most accounts seem to confirm the risks of bee stings are quite remote when the bees are not being agitated, many neighbors would find the idea of living next to a large

108. Paulsen & Mosman, *supra* note 38, at 11.

109. See Adam, *supra* note 20, at 7-8.

110. Calfee & Weissman, *supra* note 93.

111. *Id.*

112. See generally Paulsen & Mosman, *supra* note 38; Honey, *supra* note 37, at 64; Locavores, *supra* note 3, at 217-18.

113. See generally Paulsen & Mosman, *supra* note 38, at 11-2; Honey, *supra* note 37; Locavores, *supra* note 3, at 217-18.

114. Paulsen & Mosman, *supra* note 38, at 11; Locavores, *supra* note 3, at 217; see Singer v. James, 100 A. 642, 642-43 (Md. 1917).

115. See generally Honey, *supra* note 37, at 63.

116. See generally Honey, *supra* note 37, at 69 (apiaries are not always welcomed by neighbors).

swarm of bees somewhat disconcerting.¹¹⁷ Well written municipal codes should take into account and provide guidelines which could promote the coexistence of animal production and the residential lifestyle.

However, even for cities taking a very active interest in urban agriculture, the long history of urban over agriculture expansion has left many cities with a baked in problem to aggressively pursuing urban agriculture.¹¹⁸ Even though urban agriculture can be practiced on fairly small lots, these small gardens are most effective for personal use, with a very limited potential for a real urban agricultural economy. Cities could stoke the urban agriculture market if they were able to consolidate large tracts of land and combine them to create larger acreages of agricultural productivity. Many large cities have the space and lots to accomplish this, but legally converting them to usable space is complicated.¹¹⁹ When cities single mindedly pursue nothing but commercial and industrial growth in its urban sector, they are laying the seeds for a complicated process of reacquiring and repurposing its land later down the road, when an integrated urban agricultural industry could be implemented for its own health. When urban shrinkage begins to set in, properties end up abandoned due to tax foreclosures.¹²⁰ Not only is the foreclosure process long, but rights of redemption and the buying up of speculators make it difficult for a city to obtain the necessary control over these properties to repurpose them.¹²¹ While Land Banks have emerged as a useful solution to this problem, correcting this obstacle turns into a treacherous process beset on all sides by acquiring statutory authority, issues of liability, and regulatory takings concerns.¹²²

VI. ANALYSIS OF RECENT MUNICIPAL CODES

A causal survey regarding the most extensively analyzed municipal codes reveals that much of the scholarship tends to investigate urban agriculture in major metropolitan areas with populations in the millions.¹²³ This makes sense as

116 Paulsen & Mosman, *supra* note 38, at 11 (very little evidence that urban beekeeping increases the chance that city residents will be stung); *Honey*, *supra* note 37, at 69.

118. LaCroix, *supra* note 92.

119. *Id.*

120. *Id.*; Thomas J. Fitzpatrick IV, *Understanding Ohio's Land Bank Legislation*, 25 FED. RES. BANK OF CLEVELAND POL'Y DISCUSSION PAPERS (SPECIAL SERIES) 1 (2009), available at <http://www.ohioenvironmentallawblog.com/uploads/file/Policy%20Analysis%20of%20new%20land%20bank%20law.pdf>.

121. LaCroix, *supra* note 92; Fitzpatrick IV, *supra* note 120.

122. See generally LaCroix, *supra* note 92.

123. See LOFTUS, *supra* note 73; Calfee & Weissman, *supra* note 93; Salkin, *supra* note 15, at 626.

these are areas which have been heavily afflicted with population shrinkages, Food Deserts, and abandoned lots.¹²⁴ However, there is no reason that the benefits of sustainable agriculture could not be realized with smaller-scale communities. In fact, by addressing the issue of implementing an urban agriculture plan early in a city's growth, it would help integrate urban agriculture systematically into a city's expansion. This could help cities avoid the onset of problems of food deserts. By designating large tracts of land for urban agriculture, these cities could avoid the problems of trying to unify large tracts of separately owned lots which need to be acquired and combined before they can be put to use. What follows is a sample of some smaller cities with populations in the 100,000 – 200,000 range and the attempts they have made to codify an urban agriculture plan into their municipal codes.

A. Springfield, Missouri

Springfield, Missouri's Code expressly states its purpose is to enable community gardens while minimizing the adverse effects on surrounding properties.¹²⁵ The code has three main parts. First, this code sets up an application process for community gardeners to acquire a permit which allows them to set up their gardens.¹²⁶ The provisions of this municipal code then lay out a long list restrictions and requirements which set out the terms for running an community garden.¹²⁷ Finally, the code describes the review process for a practitioner who may be denied a permit or have one revoked.¹²⁸

What is immediately apparent in Springfield's ordinance is the narrowness of its scope.¹²⁹ It really only addresses community gardens, when urban agriculture has expanded in scope to embody a number of activities.¹³⁰ While city councils may desire to move one step at a time, and gradually test the waters of introducing urban agriculture into their communities, Springfield's approach appears to be decidedly minimalist without pushing the envelope. The advantage to such an approach might be that by moving a bit at a time, Springfield will be able to develop a personalized implementation of urban agriculture which meets their individualized needs. Also, considering common concerns that a more sweeping program would give rise to a large amount of nuisance causing activities, a minimalist approach may allow urban agriculture to endear itself to the residents of

124. See LaCroix, *supra* note 92.

125. SPRINGFIELD, MO., CODE OF ORDINANCES div. V, § 5-3001 (2014).

126. SPRINGFIELD, MO., CODE OF ORDINANCES div. V, § 5-3002.

127. *Id.*

128. SPRINGFIELD, MO., CODE OF ORDINANCES div. V, § 5-3003.

129. See generally SPRINGFIELD, MO., CODE OF ORDINANCES div. V, § 5-3001 .

130. SPRINGFIELD, MO., CODE OF ORDINANCES div. V, § 5-3002.

the community who are less committed to the movement, making it less controversial in the long run. On the other hand, when cities like Seattle have implemented extensive urban agriculture programs, cities like Springfield could use these codes as a guide towards developing more ambitious programs of their own.¹³¹

One common element of municipal codes regarding urban agriculture is the implementation of an application and review process to make sure that community gardening is practiced within the regulations.¹³² While clear guidelines for practicing urban agriculture are generally perceived as a good thing by providing guidance and helping practitioners stay out of trouble, complex and expensive permit systems can create a distinct obstacle to a dynamic agriculture community.¹³³

The Springfield process seems to provide the means for allowing an appropriate measure of community oversight without overburdening the urban agriculture community. First, the code explicitly states that any fees involved in the application must be none to minimal.¹³⁴ Consequently, the Director of Building Development should not be able to charge more than the bare costs of providing the application service. Fees should not be an impediment to urban agriculture flourishing in Springfield.

This code seems more oriented towards keeping urban agricultural practices contained and out of the way than embracing an extensive sustainable agriculture movement. While the ordinance may permit community gardens, many of the restrictions refer to other areas of the code and do not create standards specific for the practice of urban agriculture.¹³⁵ Building structures, odor standards, lighting standards, and noise standards are imposed from generalized sections of the code and do not seem to account for and create space for the unique characteristics and needs of urban agriculture.¹³⁶ To put it another way, the Springfield code does not seem to adapt itself to the urban agriculture movement; it instead requires urban agriculture to adapt to preexisting community standards. It does not seem like a particularly aggressive statute and does not make any special

131. See generally Leah Erickson et al., *Urban Agriculture in Seattle: Policy & Barriers*, SEATTLE DEP'T OF NEIGHBORHOODS, available at <http://community-wealth.org/content/urban-agriculture-seattle-policy-and-barriers>.

132. See SPRINGFIELD, MO., CODE OF ORDINANCES div. V, § 5-3003; see also WACO, TEX., CODE OF ORDINANCES ch. 13, art. XII (2013).

133. See Calfee & Weissman, *supra* note 93.

134. SPRINGFIELD, MO., CODE OF ORDINANCES div. V, § 5-3002.

135. *Id.*

136. *Id.*

provisions for livestock production.¹³⁷

B. Waco, Texas

The Waco, Texas statute goes into more detail and conveys a more positive attitude towards the implementation of urban agriculture in comparison with the Springfield statute. The Purpose statement in the Waco ordinance uses language which embraces many of the ideals of the urban agriculture movement. It refers to community gardens as assets of production, and cites food production as an important byproduct of community gardens.¹³⁸

Similar to the Springfield ordinance, Waco also includes an application and review process for obtaining permission to operate a community garden.¹³⁹ These permits have a duration for one year and must be reapplied for on a regular basis.¹⁴⁰ Generally, a short term permit system like this may be useful for keeping tabs on agricultural activities, but it is important not to undermine the long-term security of urban agriculturalists if the city wants to effectively encourage urban agriculture.¹⁴¹ Of particular concern is what appears to be a rather elaborate oversight process which seems to provide the oversight staff with a lot of discretion regarding “screening, lighting, waste management, and traffic control.”¹⁴² The advantage to this plan, however, is that it requires the submission of a detailed plan of how the community garden will be implemented.¹⁴³ Required details include property lines, set back requirements, fence location, sign location, new and existing structures, and existing and proposed site improvements such as landscaping.¹⁴⁴ Such a detailed list and discussion before the community garden is implemented can give city planners and gardeners a chance to discuss their plans, anticipate potential liability issues, and simply engage in a dialogue with city planners to voice their concerns and ideas.

Generally, urban agriculturalists prefer specific guidelines stated in the code, so they know how to approach the legal oversight process through their own judgment.¹⁴⁵ Waco also leaves the setting of fees up to the city counsel

137. *See generally* SPRINGFIELD, MO., CODE OF ORDINANCES div. V, § 5-3002 .

138. WACO, TEX., CODE OF ORDINANCES ch. 13, art. XII, § 13-453 (2013).

139. *See generally* WACO, TEX., CODE OF ORDINANCES ch. 13, art. XII (2013).

140. WACO, TEX., CODE OF ORDINANCES ch. 13, art. XII, § 13-457.

141. Calfee & Weissman, *supra* note 93.

142. WACO, TEX., CODE OF ORDINANCES ch. 13, art. XII, § 13-456.

143. *Id.*

144. *Id.*

145. Calfee & Weissman, *supra* note 93.

which has the potential of accommodating oppressive fees.¹⁴⁶

IX. CONCLUSION

By examining a few ordinances in smaller cities, the municipal codes seem to indicate that many of these cities are taking small steps towards incorporating urban agriculture into their communities.¹⁴⁷ Community gardens seem to be the favored starting point, coupled with an application process for gaining permission to practice community gardening.¹⁴⁸ The ordinances emphasize a desire for community gardens to take steps to stay well within the bounds of noise, odor, and pest control to avoid being a nuisance.¹⁴⁹ The overarching strategy here seems to be one of cautious steps towards allowing limited urban agriculture, and seeing how it goes. What is really lacking is a structural strategy—something which would guide the growth of these cities in ways which urban agriculture would be woven into the fabric of city planning. Doing this would allow cities to avoid issues associated with the ebb and flow of the economy and population fluctuations without a rigid legal structure which fights against farming in cities.

146. WACO, TEX., CODE OF ORDINANCES ch. 13, art. XII, § 13-458 (2013).

147. *See generally* SPRINGFIELD, MO., CODE OF ORDINANCES div. V, § 5-3002 (2014); WACO, TEX., CODE OF ORDINANCES ch. 13, art. XII, (2013).

148. *See generally* SPRINGFIELD, MO., CODE OF ORDINANCES div. V, § 5-3002 (2014); WACO, ch. 13, art. XII, (2013).

149. SPRINGFIELD, MO., CODE OF ORDINANCES div. V, § 5-3002 (2014); WACO, ch. 13, art. XII, (2013).