

# Ordinance Permitting Urban Plant Agriculture

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## I. Introduction

The coronavirus (COVID-19) has been a historic crisis, which has impacted many people and interrupted several industries.<sup>1</sup> Many of its effects are still widely visible. During the pandemic unemployment soared, and supply chains were entirely disrupted.<sup>2</sup> One of the hardest felt disruptions was the food supply chain.<sup>3</sup> At the beginning of the pandemic, our food system experienced serious disruptions, which only exasperated food insecurity, particularly in urban areas, where food insecurity is already an issue.<sup>4</sup> Today, demand for food aid has gone up and estimated 45% in the region of Allentown, PA.<sup>5</sup> It has also been reported that Dauphin County, Pennsylvania will experience a 40% increase in food insecurity as a result of the effects of COVID-19 on the nation.<sup>6</sup>

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<sup>1</sup> Geographic impact of COVID-19 in BLS surveys by industry : Monthly Labor Review, U.S. BUREAU OF LABOR STATISTICS (2020), <https://www.bls.gov/opub/mlr/2020/article/geographic-impact-of-covid-19-in-bls-surveys-by-industry.htm> (last visited Nov 28, 2020); Alana Semuels, WHY THE COVID-19 FINANCIAL CRISIS IS LIKE NO OTHER TIME (Mar. 18, 2020, 11:43 AM), <https://time.com/5805526/coronavirus-economy-layoffs/> (last visited Nov 09, 2020).

<sup>2</sup> *Id.*

<sup>3</sup> Chris J Macias, Is the Food Supply Strong Enough to Weather the COVID-19 Pandemic? UC DAVIS (June 25<sup>th</sup>, 2020), <https://www.ucdavis.edu/food/news/is-food-supply-strong-enough-to-weather-covid-19-pandemic/> (last visited Nov 10, 2020).

<sup>4</sup> Christianna Silva, Food Insecurity In The U.S. By The Numbers, NPR (September 27<sup>th</sup>, 2020, 4:30PM), <https://www.npr.org/2020/09/27/912486921/food-insecurity-in-the-u-s-by-the-numbers> (last visited Nov 10, 2020)

<sup>5</sup> *Id.*; The Impact of the Coronavirus on Food Insecurity, FEEDING AMERICA ACTION (October 30<sup>th</sup>, 2020), <https://www.feedingamericaaction.org/the-impact-of-coronavirus-on-food-insecurity/> (last visited Nov 10, 2020); Kate Giammarise, COVID-19 Pandemic Driving Increased Food Insecurity In Southwestern Pennsylvania 90.5 WESA Pittsburgh's NPR News Station (November 2<sup>nd</sup>, 2020), <https://www.wesa.fm/post/covid-19-pandemic-driving-increased-food-insecurity-southwestern-pennsylvania> (last visited Nov 10, 2020).

<sup>6</sup> The Impact of the Coronavirus on Food Insecurity, FEEDING AMERICA ACTION (2020), <https://www.feedingamericaaction.org/the-impact-of-coronavirus-on-food-insecurity/> (last visited Nov 10, 2020).

Consequently, the pandemic has left many questioning the resiliency of our food system and how we access food. As municipalities across the country continue to enter stages of recovery, many have turned to sustainable principles to coordinate those efforts and build more resilient long-term solutions.<sup>7</sup> Urban agriculture (UA) can help the food system recover and contribute to long-term sustainability in four unique ways: 1) aid in reducing food insecurity, 2) reduce energy costs, 3) improve neighborhood aesthetics and 4) provide an economic benefit to gardeners who wish to sell what they produce to area residents.<sup>8</sup> UA minimizes food insecurity by increasing local food production.<sup>9</sup> It provides residents with more places in which to access fresh, nutritious produce. The recent pandemic has only exasperated the issue of food insecurity and urban agriculture can be a long-term component in building resiliency to future threats. By “diversifying where and how we grow our food, [we] help spread the risk of disruption to [the] food suppl[y]” chain.<sup>10</sup>

In addition, UA reduces energy costs.<sup>11</sup> By producing more locally grown foods, municipalities can receive a boost in their local food supply and reduce “transportation related greenhouse gas emissions.”<sup>12</sup> The emissions benefit “may be biggest for produce that gets shipped by air, like berries.<sup>13</sup> In addition, urban agriculture can help reduce urban heat island effect.<sup>14</sup> Urban heat island effect is where an urban area is hotter than its surrounding, more rural

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<sup>7</sup> Giuseppe Sala, COVID-19: The Cities Leading a Greener and Fairer Recovery, World Economic Forum (September 11<sup>th</sup>, 2020), <https://www.weforum.org/agenda/2020/09/recipe-for-green-just-recovery-covid-19-pandemic/> (last visited Nov 10, 2020).

<sup>8</sup> Plants and Policies: How Urban Farming is Transforming Cities, AU Online (2019), <https://online.aurora.edu/plants-policies-urban-farming/> (last visited Nov 10, 2020).

<sup>9</sup> *Id.*

<sup>10</sup> Daniel Evans & Jess Davies, 4 Reasons Why the World Needs More Urban Farming Post-Pandemic, World Economic Forum (2020), <https://www.weforum.org/agenda/2020/09/urban-farming-flourish-post-pandemic/> (last visited Nov 10, 2020).

<sup>11</sup> *Id.*

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

<sup>13</sup> Brad Plumer, The Real Value of Urban Farming. (Hint: It’s Not Always the Food.) VOX (October 12, 2016, 10:44AM), <https://www.vox.com/2016/5/15/11660304/urban-farming-benefits> (last visited Nov 28, 2020).

<sup>14</sup> Heat Island Effect, EPA (2020), <https://www.epa.gov/heatislands> (last visited Nov 11, 2020).

areas due to increased paved roads and human activity.<sup>15</sup> So, in replacing more paved roads with fruit trees, for example, the trees not only provide fruit for consumption, but also provide coverage which “can aid in reducing cooling needs.”<sup>16</sup> Furthermore, UA can give blighted neighborhoods an added boost in aesthetics. Vacant and underutilized spaces can be converted into flourishing productive gardens, that also serve as welcoming spaces for neighbors to gather, connect and build relationships.<sup>17</sup> Lastly, the economic benefit to UA is the ability for gardeners to earn income by selling the produce they grow.

Like many municipalities across the country, Susquehanna Township, PA (Township) is on the road to recovery. And history indicates that the Township will make sustainability a priority in generating long-term resiliency for its community. The Township is a first-class township located within the metropolitan area of Harrisburg, in Dauphin County, PA.<sup>18</sup> The Township covers approximately thirteen square miles and comprises an estimate of 25,000 residents<sup>19</sup> and the Township has always been a pillar for sustainability within its region. In 2018, the Township became gold certified through the Sustainable Pennsylvania Community Certification program.<sup>20</sup> The Township was selected for certification due to its” high-level performance which tracks 131 policies and practices that define a sustainable community.”<sup>21</sup> Consequently, a new UA ordinance would be in alignment with the Township’s commitment to

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<sup>15</sup> *Id.*

<sup>16</sup> See *supra* note 8.

<sup>17</sup> See *supra* note 8.

<sup>18</sup> Susquehanna Township, Susquehanna Township recognized as certified sustainable municipality (2018), [https://www.susquehannatwp.com/sites/g/files/vyhlif3896/f/uploads/sustainable\\_pa\\_community\\_certification\\_program\\_press\\_release.pdf](https://www.susquehannatwp.com/sites/g/files/vyhlif3896/f/uploads/sustainable_pa_community_certification_program_press_release.pdf) (last visited Nov 10, 2020).

<sup>19</sup> U.S. Census Bureau QuickFacts: Susquehanna township, Dauphin County, Pennsylvania, CENSUS BUREAU QUICKFACTS, <https://www.census.gov/quickfacts/susquehannatownshipdauphincountypennsylvania> (last visited Nov 11, 2020).

<sup>20</sup> See *supra* note 18; Sustainability A Certified Gold Sustainable Pennsylvania Community, Susquehanna Township, Pennsylvania, <https://www.susquehannatwp.com/community-development/pages/sustainability> (last visited Nov 10, 2020).

<sup>21</sup> See *supra* note 15.

sustainability. A new ordinance would support the Township’s Sustainable Susquehanna 2030 Comprehensive Plan<sup>22</sup> by sustaining residents’ enthusiasm for growing food locally, and contributing to the reduction of food insecurity, particularly in those areas heavily impacted by food deserts. A new ordinance would give Township residents the ability to address their fruit and vegetable needs within their own community.

However, in order to fully realize the benefits of UA, municipalities like the Township, must be prepared to tackle common barriers to UA. Common barriers include limited green space, lack of incentives and nuisances. Municipalities across the country have implemented varying innovative strategies for improving the success of UA in their respective regions. In addressing the lack of green space, some municipalities have used Vacant Property Registration Ordinances (VPRO)<sup>23</sup> and mapping tools to help identify vacant spaces for UA. Additionally, municipalities have endorsed the development of innovative gardening methods, like the front or side yard gardens.<sup>24</sup> The economic incentives for UA varies among municipalities, but most are grounded in reducing “property tax or [providing] tax rebates.”<sup>25</sup> Lastly, executing better guidelines and regulation for minimizing agricultural nuisances, like the use of pesticides, have helped municipalities advance their UA initiatives.<sup>26</sup>

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<sup>22</sup> Susquehanna Township, Dauphin County, Pennsylvania, Sustainable Susquehanna 2030 Comprehensive Plan (2019)  
[https://www.susquehannatwp.com/sites/g/files/vyhlf3896/f/uploads/comprehensive\\_plan\\_adopted\\_may\\_2019.pdf](https://www.susquehannatwp.com/sites/g/files/vyhlf3896/f/uploads/comprehensive_plan_adopted_may_2019.pdf)

<sup>23</sup> Laura Brachman & Marianne Eppig, REDEVELOPING COMMERCIAL VACANT PROPERTIES IN LEGACY CITIES: A GUIDEBOOK TO LINKING PROPERTY REUSE AND ECONOMIC REVITALIZATION (2014).  
[https://www.mml.org/resources/sample\\_docs/ordinances/blight/toolkits-and-reports/redeveloping%20commercial%20vacant%20prop-may14.pdf](https://www.mml.org/resources/sample_docs/ordinances/blight/toolkits-and-reports/redeveloping%20commercial%20vacant%20prop-may14.pdf)

<sup>24</sup> Kennedy v. Zoning Bd., No. 863 C.D. 2009, 2010 WL 9519314 (Pa. Commw. Ct Jan. 8, 2010).

<sup>25</sup> Nicole Cook, Property Tax Incentives for Urban Agriculture, University of Maryland Extension (December 9<sup>th</sup>, 2019), <https://extension.umd.edu/learn/property-tax-incentives-urban-agriculture> (last visited Nov 12, 2020).

<sup>26</sup> PORTLAND, ME., CODE § 34-5 (2018)

In this narrative, we will further explore these barriers to UA and examine how the Township is currently addressing these issues. We will also examine how other municipalities have tackled the issues, looking closely at the use of community gardens, front and side-yard home gardens to address the lack of green space, as well as economic incentives, garden maintenance and pesticide regulations to further encourage resident participation in UA. Our goal in examining these solutions, is to find practical and cost-effective strategies in which the Township could reasonably implement UA initiatives within its district. Finally, we will address policy recommendations for the Township in executing this UA ordinance.

## **II. Overcoming common barriers to cultivate urban agriculture**

### **A. Creating space for urban agriculture in areas where green space is limited.**

A central issue for UA is limited green space. Land is needed in order to plant crops and urban areas tend to have an abundance of impervious surfaces, which are not suitable for agriculture. The ability to identify land that is suitable for growing food is critical to the success of urban agriculture. However, land is highly competitive in urban areas.<sup>27</sup> The availability of land quickly diminishes with expanding development and urbanization, which tends to take priority over agricultural interests.<sup>28</sup> Furthermore, the shortage of green space persists in being a strain on other challenges, such as urban food deserts, which continue to contribute to urban food insecurity.<sup>29</sup>

### **B. Sustain enthusiasm for urban agriculture with incentives**

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<sup>27</sup> Allison Houlihan Turner, ESTABLISHING URBAN AGRICULTURE IN YOUR COMMUNITY: WHAT YOU NEED TO KNOW BEFORE YOU GET YOUR HANDS DIRTY (2010). <https://louisville.edu/cepm/pdf-files/pg-27>

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

<sup>29</sup> Access to Affordable and Nutritious Food: Measuring and Understanding Food Deserts and Their Consequences, United States Department of Agriculture (June 2009) [https://www.ers.usda.gov/webdocs/publications/42711/12716\\_ap036\\_1\\_.pdf](https://www.ers.usda.gov/webdocs/publications/42711/12716_ap036_1_.pdf) (last visited Nov 14, 2020).

The success of UA is only as good as the planning, management and participation that goes into it. The goal is to have sustainable practices felt on a larger scale within the community by increasing public participation. Incentives would provide the motivation residents need to fully engage in UA.<sup>30</sup> To expand UA, residents need access to green space and economic incentives to help sustain enthusiasm.<sup>31</sup> Providing residents with incentives would increase the yield of produce and also expand the conversion of vacant land for more productive use.

### **C. Maintain individual property rights and prevent nuisances between neighbors**

Lastly, and probably the least appealing issue of UA are agricultural nuisances. It is well understood that nuisance laws are meant to protect residents from noise, odors and other annoyances that could emerge from their neighbors' residence.<sup>32</sup> Thus, the fear of an impending nuisance is usually what compels some neighbors to oppose agricultural practices in their neighborhood.

#### **1. Pests**

Insects in particular are a considerable annoyance and are very common to agricultural practices.<sup>33</sup> Insects are a significant nuisance because they can easily find their way into neighboring buildings and homes, in swarms.<sup>34</sup> Stink bugs for example, are quite common to the mid-Atlantic region and "cause major damage to fruit, vegetables and field crops."<sup>35</sup> Consequently, gardeners use pesticides to control the level of pests invading their gardens;

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<sup>30</sup> Esther Ngumbi, Growing Urban Agriculture (SSIR) Stanford Social Innovation Review: Informing and Inspiring Leaders of Social Change (October 23<sup>rd</sup>, 2017), [https://ssir.org/articles/entry/growing\\_urban\\_agriculture](https://ssir.org/articles/entry/growing_urban_agriculture) (last visited Nov 14, 2020).

<sup>31</sup> *Id.*

<sup>32</sup> D BARLOW BURKE, THE LAW OF ZONING AND LAND USE CONTROLS, 143 (2013).

<sup>33</sup> Brown Marmorated Stink Bug, EPA (2020), <https://www.epa.gov/safepestcontrol/brown-marmorated-stink-bug> (last visited Nov 14, 2020).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

however, the use of pesticides can also prove to be a nuisance.<sup>36</sup> We presume that “urban [gardeners] tend to use pesticides less efficiently than say commercial farmers,”<sup>37</sup> because most urban gardeners are common consumers who may not have extensive knowledge on the use of pesticides.<sup>38</sup> This presents a problem when trying to control the level of risk or damage to property from the use of pesticides.

## **2. Overgrown weeds and rotting produce**

And if insects are not enough, there is still the looming issue of overgrown weeds and rotting produce from unkempt gardens. An urban garden should be properly managed to prevent any weeds or pests from invading a neighbor’s yard and to sustain the attractive aesthetics of a neighborhood.<sup>39</sup> A garden which is poorly kept, resulting in overgrown weeds and rotting crops, can attract pests and can simply be very unsightly.

## **III. Why a new ordinance is necessary**

Currently, the Township’s existing ordinance(s) are presently silent on matters that relate to urban agriculture.<sup>40</sup> Where the Township does address agriculture, it is in relation to its more rural or low density areas.<sup>41</sup> However, this places sharp agricultural restrictions on residents living in more urban areas,<sup>42</sup> which results in their exclusion from the economic, social and environmental benefits of UA. In addressing the need for green space, the Township does not

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<sup>36</sup> The Supreme Court of Minnesota held that pesticide drift from one property to another is governed by nuisance law and not trespass law even though it constitutes a physical invasion of particles. Johnson v. Paynesville Farmers Union Co-op. Oil Co., 817 N.W.2d 693 (Minn. 2012). The court held that trespass law protects only the interest in possession while nuisance law protects use and enjoyment.

<sup>37</sup> See *supra* note 13.

<sup>38</sup> *Id.*

<sup>39</sup> Isabel Branstrom, Integrated Pest Management in Vegetable Gardens, Gardening in Michigan (January 16th, 2020), [https://www.canr.msu.edu/news/ipm\\_smart\\_pest\\_management\\_for\\_the\\_vegetable\\_garden](https://www.canr.msu.edu/news/ipm_smart_pest_management_for_the_vegetable_garden) (last visited Nov 14, 2020).

<sup>40</sup> Susquehanna Township, Dauphin County, PA chapter 27 Zoning §§ 27-102, 502, 602, 702, 902, and § 27-1001)

<sup>41</sup> SUSQUEHANNA TOWNSHIP, PA., CODE § 27-2001 (2003)

<sup>42</sup> Sara Dewey, The Power of Urban Agriculture in Transforming a Community, Conservation Law Foundation (2020), <https://www.clf.org/blog/the-power-of-urban-agriculture-in-transforming-a-community/> (last visited Sep 17, 2020).

provide for alternate uses of land for gardening.<sup>43</sup> Currently, the Township is home to one community garden, which is currently managed by Dauphin County, PA Parks and Recreation. This community garden is soon to undergo redevelopment and so the garden will need to relocate, but at present, the garden has not found a new home.<sup>44</sup> Without any new community gardens, the benefits of UA is lost on the community.

We also found the Township to be silent on other strategies of UA, in particular the regulation of growing fruit and vegetables in front and side-yard.<sup>45</sup> Front-yard gardening is a form of home gardening. It is where residents plant gardens closer to the right-of-way or the curb line, which is adjacent to residential property.<sup>46</sup> Compared to traditional gardening, where gardens are usually planted out of sight, front or side-yard gardens are very visible from the public street. Likewise, front and side-yard gardens come with the same nuisances as any other traditional garden would and the accompanying nuisances would infringe not only upon neighbors, but on others using the public walkway in which these gardens would border. Therefore, front or side-yard gardens could raise strong contention between neighbors.<sup>47</sup>

At present, the Township does not have written standards for front or side-yard gardens.<sup>48</sup> The Township's current landscape standards only address the planting of Evergreen and

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<sup>43</sup> See *supra* note 40.

<sup>44</sup> Elizabeth (Betsy) Logan. "RE: Follow-Up Introduction." Message to Alexis Nash and Jennifer Larson Thompson. 21 September 2020. E-mail; Future Is Uncertain for Dauphin County Community Garden, LOCAL 21 NEWS (2019), <https://local21news.com/news/local/future-is-uncertain-for-dauphin-county-community-garden> (last visited Sep 17, 2020).

<sup>45</sup> SUSQUEHANNA TOWNSHIP, PA., CODE § 27-2001 (2003); SUSQUEHANNA TOWNSHIP, PA., CODE § 22-1009 (2009).

<sup>46</sup> Amy Leibrock, Why You Should Plant A Front Yard Veggie Garden, Sustainable America (2018), <https://sustainableamerica.org/blog/why-you-should-plant-a-front-yard-veggie-garden/> (last visited Oct 2, 2020).

<sup>47</sup> Steven Kurutz, The Battlefront in the Front Yard, The New York Times (December 19th, 2012), <https://www.nytimes.com/2012/12/20/garden/gardeners-fight-with-neighbors-and-city-hall-over-their-lawns.html?auth=login-google> (last visited Oct 7, 2020).

<sup>48</sup> Elizabeth (Betsy) Logan. "RE: Follow-Up Introduction." Message to Alexis Nash and Jennifer Larson Thompson. 21 September 2020. E-mail; SUSQUEHANNA TOWNSHIP, PA., CODE § 27-2106 (2008).

ornamental trees, shrubs, and requirements for placement of fencing.<sup>49</sup> Furthermore, while the Township does provide for rodent and pest control regulation as part of its housing code;<sup>50</sup> the Township has yet to expressly address issues related to agricultural nuisances, such as the use of pesticides, or composting to manage overgrown weeds, rubbish, and rotting produce. Lastly, the Township currently does not provide incentives for UA.

#### **IV. How other municipalities have addressed common barriers to urban agriculture**

##### **A. Increase green space by occupying underutilized spaces**

The most practical solution to overcoming limited green space in urban areas is to identify underutilized spaces and convert them into flourishing gardens.

##### **1. Front and Side Yard Gardens**

Home gardening will always be the leading activity for UA because residents are already in possession of land and so gardens are a permitted use by right, without the need for a permit or variance, normally.<sup>51</sup> Yet, planting a garden in the front or side yard of a residence is not a common practice, so municipalities may feel some sense of hesitation in allowing these spaces for gardening. But, if the activity does not violate any nuisance provisions of an ordinance,<sup>52</sup> it should be acceptable. Relatedly, in 2010, the Zoning Hearing Board of Middletown Township, Buck County, PA granted a dimensional variance from an ordinance related to the construction and maintenance of a front- yard garden.<sup>53</sup> Mr. Harr a resident of Middletown Township constructed a sixteen by sixteen-foot fence, which enclosed an organic vegetable garden in his

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<sup>49</sup> SUSQUEHANNA TOWNSHIP, PA., CODE § 22-1009 (2009).

<sup>50</sup> SUSQUEHANNA TOWNSHIP, PA., CODE § 5-286 (1961).

<sup>51</sup> Heather Wooten & Amy Ackerman, Seeding the City: Land Use Policies to Promote Urban Agriculture, 24, (October 2011).

[https://changelabsolutions.org/sites/default/files/Urban\\_Ag\\_SeedingTheCity\\_FINAL\\_%28CLS\\_20120530%29\\_20111021\\_0.pdf](https://changelabsolutions.org/sites/default/files/Urban_Ag_SeedingTheCity_FINAL_%28CLS_20120530%29_20111021_0.pdf) (last visited November 14<sup>th</sup>, 2020)

<sup>52</sup> *Id* at 7.

<sup>53</sup> *Kennedy v. Zoning Bd.*, No. 863 C.D. 2009, 2010 WL 9519314 (Pa. Commw. Ct Jan. 8, 2010).

front yard. As a result of a complaint from a neighbor, a Middletown zoning officer issued Mr. Harr a cease and desist order. Harr then applied for a variance from the “applicable ordinance provision that required a minimum thirty-foot setback for a structure constructed in the front yard.”<sup>54</sup> The ZHB granted Harr the variance because the “request[ ] represented the least modification of the applicable regulations, [ ] there would be no negative impact on the surrounding properties and uses by its grant, and that the "garden structure" had a positive aesthetic and environmental value.”<sup>55</sup>

Home gardens, regardless of whether they are planted in the front, side or back-yard all endure the same usual agricultural nuisances. But, unlike gardens planted in the back-yard, which experience more privacy, front and side-yard gardens can be visibly observed by the public and are in closer proximity to the public right-of way; these attributes makes front and side yard gardens fall under more scrutiny from neighbors and passersby. Consequently, municipalities have placed certain restrictions on front and side-yard gardens.<sup>56</sup> Generally, what municipalities have done is simply expand their landscaping standards to accommodate the use of food crops as suitable ground covering for the front and side-yards.<sup>57</sup> Moreover, to ensure that front and side-yard gardens do not infringe upon the property rights of others, cities like Kansas City, MO have limited the type of crops that can be grown in the front yard<sup>58</sup> and enacted specific fencing and setback requirements.<sup>59</sup>

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<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> KAN. CITY, MO., CODE §88-312-02-A (2015)

<sup>57</sup> Orlando, Fla., Code §60.223(j) (2017); Mark Schlueb, Gardeners Prevail in Orlando Turf War: Veggies OK in Front Yard, Too OrlandoSentinel.com (November 25<sup>th</sup>, 2013), <https://www.orlandosentinel.com/news/os-xpm-2013-11-25-os-orlando-garden-landscape-rules-20131125-story.html> (last visited Oct 7, 2020).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

## 2. Community Gardens

For residents wishing to expand their gardening space, community gardens offer a reasonable solution. In addition, community gardens provide the additional benefit of socializing with neighbors engaged in similar activity. Municipalities often allow vacant lots to be converted for use as community gardens.<sup>60</sup> In a city or township that has many vacant or abandoned lots, having an inventory list makes it easier for residents to clearly identify adequate green space for community gardens, making the process for engaging in UA less enigmatic. Consequently, municipalities like Philadelphia, PA and Chicago, IL have expounded upon the concept of VPROs, which are often used as a strategy to resolve the occurrence of vacant properties within a district.<sup>61</sup>

Philadelphia and Chicago have used the collection of vacant lot data to create centralized databases of vacant spaces for growing UA activities.<sup>62</sup> The use of a VPRO or some version of it, helps municipalities not only establish standards of responsibility for property owners, but they can also provide clear identification of land ownership for granting permission in use of the land for UA. Even land that is acquired by deed for the purpose of UA can be recorded as part of the inventory. Some municipalities may choose to implement a community garden by resolution or by permit<sup>63</sup>; yet regardless of the choice, the ordinance(s) governing the internal operations of a community garden is key to ensure continued success. The Borough of Carlisle, PA has a detailed ordinance for the regulation of community gardens. In its ordinance the Borough

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<sup>60</sup> Community Gardens, Centers for Disease Control and Prevention (2010), <https://www.cdc.gov/healthyplaces/healthtopics/healthyfood/community.htm> (last visited Nov 10, 2020).

<sup>61</sup> See *supra* note 23.

<sup>62</sup> *Id.*

<sup>63</sup> BOROUGH OF CARLISLE, PA., CODE § 255-199A(53) (2013)

addresses composting regulations, setback requirements, parking, hours of operation, and signage to summarize.<sup>64</sup>

### **B. Use of financial incentives to encourage participation**

Considering the growing enthusiasm for UA, municipalities across the country have implemented varying incentives to sustain residents' interest in UA. Incentives come in the form of reductions in property taxes or tax rebates.<sup>65</sup> The city of Baltimore, Maryland uses property tax incentives for urban agriculture.<sup>66</sup> The City of Baltimore gives community gardens 90% off of their property taxes, as long as the parcel is used for urban agriculture and used for that purpose for a minimum of five years.<sup>67</sup> Property tax reductions are good incentives, but so are tax rebates.<sup>68</sup> For example, providing residents who engage in UA a rebate on a water bill is a convenient means to create an incentive program. Likewise, produce sales are also a good incentive for UA.

Municipalities like the City of Cincinnati allow residents the right to sale fresh produce from their gardens to their neighbors.<sup>69</sup> The idea is that by allowing residents to earn income from their gardens, they would then be naturally inclined to continue to engage in UA. The City of Cincinnati permits sales of fresh produce in residential districts, with limitations;<sup>70</sup> Cincinnati restricts sales to only “30 days per year, between the hours of 7am-7pm, and farm stands or other sales structures are prohibited.”<sup>71</sup> Selling fresh produce to your neighbors is a modern way to

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<sup>64</sup> *Id.*

<sup>65</sup> See *supra* note 25.

<sup>66</sup> BALT. ME., CITY CODE ART. 28, § 10-19 (2015)

<sup>67</sup> *Id.*

<sup>68</sup> Elizabeth (Betsy) Logan. “RE: Follow-Up Introduction.” Message to Alexis Nash and Jennifer Larson Thompson. 11 September 2020. E-mail.

<sup>69</sup> CINCINNATI, OHIO., CODE § 1422-09 (2019)

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

increase neighborhood access to fresh produce, foster community relationships, increase economic benefits and promote better sustainable practices, collectively.

### **C. Managing nuisances and protecting individual property rights**

With proper controls in place, UA can thrive in neighborhoods despite nuisances. Pests are always a formidable nuisance in the field of agriculture. In order to control the invasion of pests, gardeners often employ the use of pesticides. Local municipalities are limited in their ability to regulate the use of federally registered pesticides, which are usually synthetic, because they pose a danger to humans and the environment and so require special handling.<sup>72</sup> Therefore, most urban communities are prevented from imposing standards on the use of these pesticides;<sup>73</sup> but, there still a need to control the invasion of pests. As a result, municipalities like Portland, ME have restricted the use of synthetic pesticides on public and private property but encouraged residents to use organic pesticides for their gardens.<sup>74</sup> The City of Portland, ME has enacted a Pesticide Use Ordinance, which restricts the use of synthetic pesticides, except in limited circumstances.<sup>75</sup> The City of Portland established organic methods as the primary means to care for and maintain property in Portland, “including lawns, gardens, athletic fields, parks and playgrounds.”<sup>76</sup>

Additionally, poorly managed gardens can also pose as a nuisance due to the overgrown weeds, rubbish or rotting produce. Mismanaged gardens are not only be aesthetically

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<sup>72</sup> Heather Wooten & Amy Ackerman, Seeding the City: Land Use Policies to Promote Urban Agriculture, 12, (October 2011), [https://changelabsolutions.org/sites/default/files/Urban\\_Ag\\_SeedingTheCity\\_FINAL\\_%28CLS\\_20120530%29\\_2011021\\_0.pdf](https://changelabsolutions.org/sites/default/files/Urban_Ag_SeedingTheCity_FINAL_%28CLS_20120530%29_2011021_0.pdf) (last visited November 14<sup>th</sup>, 2020).

<sup>73</sup> *Id.*

<sup>74</sup> PORTLAND, ME., CODE § 34-5 (2018)

<sup>75</sup> See *supra* note 93.

<sup>76</sup> *Id.*

unappealing but can also lead to the further incursion of pests. As an element of maintenance standards, a few municipalities have enacted laws addressing garden compost.

The City of Cincinnati places limits on the type of waste allowed in compost and it considers “composting activities on less than 500 square feet of land are considered accessory to a residential or agricultural use.”<sup>77</sup> Generally, Cincinnati removes compost waste as part of its waste disposal scheme, but the city also allows residents to maintain “household compost piles” on the premises as long as the household compost is “setback a practical distance from the house or occupied structure, is ten feet from the public right of way” and only consists of only yard waste, like grass clippings, wood chips, “and other plant derived materials.”<sup>78</sup> Additionally, when it comes to food waste some municipalities, like San Francisco, CA require residents “to separate out their garden and food waste for curbside removal.”<sup>79</sup>

## **V. Suitable Residential Zoning Districts**

In determining locations most suitable for UA, it was decided that the ordinance should focus on areas most negatively impacted by the limited amount of greenspace and areas that would grant ample space for community gardens. In general, home gardens should be a permitted use in all residential districts including multifamily and public housing. One of the key benefits to UA providing residents with convenient access to fresh produce, and with more people staying indoors lately, planting gardens close to home would be ideal. Therefore, all residential districts in the Township from medium to high density should be encouraged to plant front and side-yard gardens, within reasonable limitations. The intended purpose of UA in these areas to take advantage of open spaces that often go underutilized to a purpose more practical and beneficial.

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<sup>77</sup> CINCINNATI, OHIO., CODE § 1422-07(d) (2019)

<sup>78</sup> CINCINNATI, OHIO., CODE § 00053-7(F) (2011)

<sup>79</sup> S.F. CAL., ENVIRONMENT CODE § 1903 (2009)

Residential districts would include the medium density residential district (R-2), the high density single-family residential district (R-3), the residential urban district (R-4), the business-office residential district (BOR) and both mixed use districts (MU-1) and (MU-2).

Susquehanna’s High Density Single Family Residential District (R-3) would gain the most benefit from having a community garden in its district because residences in “this district are developed on smaller lots and at higher densities than other single-family residential developments in the Township.”<sup>80</sup> The minimum lot size in the R-3 district is 4,000 square feet and the minimum lot width is 40 feet.<sup>81</sup> A community garden would provide additional space to increase farming activities which would lead to more food product. Likewise, community gardens should be large enough to accommodate multiple plots. Thus, community gardens should be permitted in the following districts where there is ample space and where vacant lots are likely to be discovered. Community gardens should be permitted in all residential districts, but also including industrial general districts, and conservation district (C).

## **VI. Recommendations**

With a better understanding of some of the common barriers and solutions to UA, we will now discuss key elements of the ordinance the Township should adopt in establishing UA within its district. These recommendations are unique to the Township’s character and existing policies relative to landscaping, use of vacant space or land, and managing nuisance complaints. In this section we will address a financial incentive plan to promote home and community gardening, how to establish new community gardens, financing and enforcement of the ordinance, and lastly probable sanctions for any violations.

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<sup>80</sup> SUSQUEHANNA TOWNSHIP, PA., CODE § 27-801 (2003).

<sup>81</sup> SUSQUEHANNA TOWNSHIP, PA., CODE § 27-804 (2003).

To encourage residents to plant gardens in their front and side yards, we recommend a new ordinance that broadens the existing landscaping ordinance for residential property. Under a new ordinance, residential front and side yards will be permitted to plant certain fruits and vegetables, within a certain fraction of a residential landscape. Thus, the ordinance makes it unequivocally clear that residents are free to plant certain fruits and vegetables in those areas of their residence, compelling front and side yard gardens to be more socially acceptable.

Moreover, in a continued effort to promote UA, it is recommended that the Township establish a utility rebate plan for residents who engage in UA and allow residents to sell their fresh produce. Under the rebate plan, residents who are engaged in local UA will receive a biannual, ten-dollar credit on their water and sewer bill. Other financial incentives allow residents to sell their fresh produce to their neighbors. The sale of fresh produce should be treated as an accessory use of property that is engaged in UA. Residents should be free to sell fresh, raw produce from small farm stands, which can be set up on private property or as an accessory to community gardens. Since, residents will be selling only fresh, raw produce, no license for food sale is required. Also, sales will be limited to only the second and fourth Wednesday and Saturday of each month, because home gardens and community gardens are meant to be non-commercial.

Compared to home gardens, identifying land for community gardening takes more effort. Currently, the Township has a register of vacant property; it is recommended that the Township expand this register to include vacant lots suitable for community gardening. It is understood that the Township may expand this register of UA property by acquiring land from private owners through land control documents, such as deeds. Land use for a community garden will be granted by resolution to guarantee public support and to streamline the procedure for establishing the

community garden. Furthermore, community gardens can be financed by collecting fees. Residents may acquire individual plots for cultivation, by application and subsequent application fee. The application fee should be nominal.

Lastly, enforcement of the ordinance and sanctions for any possible violations will coincide with the Township's current ordinance provisions on nuisance complaints. The Township's Zoning Officer will conduct occasional drive-by to assess that all community gardens, front and side yard gardens to ensure compliance with ordinance standards. Violators will be assessed different penalties depending on the type of gardener. Home gardens do not require a permit so there is no fear of losing a permit, unlike a community garden, which has certain privileges that may be revoked.

Residents found in violation of this ordinance, for either a home garden or a community garden will initially receive a written or oral warning, for either a home garden or a community garden. Subsequent violations will result in a small fine for either the community garden or the home garden. And if there are continuing violations, then the community garden could lose its permit and receive an increased fine, while the home gardener may simply receive an increased fine. Residents have a right to appeal any sanctions granted under this ordinance. Residents should file an appeal with the Board of Commissioners, in writing, stating the reason for the appeal.

## **VII. Conclusion**

Since the pandemic people have been forced to make many adjustments and naturally consumer behavior has shifted. With more people staying at home, it has truly disrupted the way people currently engage with food. Less eating out and more attention has been given to food

access and nutrition. Consequently, the concept of UA is getting a revival in some areas and expansion in others. By taking advantage of idle spaces like front yards and vacant lots, residents gain more opportunities to engage in UA and consequently, its benefits. With enactment of a UA ordinance, the Township is amplifying its present sustainable goals and strengthening the resiliency of its community, post-pandemic.

However, UA is not without its challenges, but a new ordinance would balance interests between neighbors and public authorities, with clear guidance and regulation. First, front and side-yard gardens do not require as much regulation, as they may require education and promotion by the Township. Additionally, community gardens are a great way to involve an entire neighborhood in the practice of UA. And lastly, incentives are likely to sustain enthusiasm for UA, fostering its continual growth and benefits. In close, residents engaged in UA will help the Township reach its sustainable goals, while also building a greater sense of community and access to healthy food options.<sup>82</sup>

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<sup>82</sup> See *supra* note 30.

Urban Agriculture Ordinance for Susquehanna Township

ORDINANCE NO. \_\_\_\_\_

An ordinance of the Township of Susquehanna, Dauphin County, Pennsylvania, providing for Front Yard Gardening and Community Gardens.

§27-1701. Short Title. "Susquehanna Township Zoning Ordinance" further providing for scope of definitions, zoning restrictions and water sewer benefits within chapter.

§27-1702. Authority. This Chapter is enacted and ordained under the grant of powers by the General Assembly of the Commonwealth of Pennsylvania, Act 247 Pennsylvania Municipalities Planning Code, Act of 1968, P.L. 805, No. 247, Sect. 209.1 as reenacted and amended.

The Township of Susquehanna, Dauphin County hereby enacts as follows:

Section 1. Legislative findings and declarations.

It is the intent of this Township of Susquehanna to provide the ability to convert unused land in this Township to grow and sell food. As part of this ordinance, the Township will be able to implement

incentives to promote household participation in urban agriculture. Converting private land to grow fruits and vegetables will encourage community morale and improve the overall health of underserved residents.

§27-1703. Definitions.

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

"Accessory use." A use conducted on the same lot as a principal use. The term includes a use which is clearly incidental to and customarily found in connection with, a principal use.

"Accessory structure." A building or structure erected on the site of a community garden.

"Community garden." Land managed and maintained by a person, including land that is divided into separate plots or determined to be the principal or accessory use of a land site, to grow and harvest food crops or ornamental plants for use and consumption by a person. The term includes land used to grow and harvest food crops or ornamental plants for donation purposes.<sup>83</sup>

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<sup>83</sup> Borough of Carlisle, Cumberland County, PA chapter 255 Zoning § 255-12.

“Community garden operator.” Any non-profit or other organization that has obtained permit approval under this ordinance.<sup>84</sup>

“Composting.” An organic material that can be added to soil to help plants grow. Food scraps and yard waste together with water are commonly used.<sup>85</sup>

“Farm stand.” An accessory structure on-site agricultural operation that is used for the display and sale of food crops and ornamental plants grown on the property, for a temporary period upon which the structure is located.<sup>86</sup>

“Food crops.” The term includes products grown for human consumption including, harvested tree crops, row crops and field crops. This term does not include wheat, corn or rice.<sup>87</sup>

“Foods sales.” A vendor that sells only fresh raw fruits and vegetables that have been harvested but not processed in any way is exempt from licensing.<sup>88</sup>

“Front yard.” A yard extending the full width of a lot between the front lot line and front setback line. <sup>89</sup>

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<sup>84</sup> Shoemaker & Schramm, Community Gardens Ordinance  
<https://widenerenvironment.files.wordpress.com/2015/12/commuity-gardens.pdf>

<sup>85</sup> Composting at Home, U.S. Env'tl. Prot. Agency (2020).

<sup>86</sup> Contra Costa County, Cal., chapter 88 Special Land Uses § 88-20.204.

<sup>87</sup> Id. and City of Austin, Tex., chapter 25-2 Zoning § 25-2-7(B)(4).

<sup>88</sup> Farm Market and Farm Stands Guidelines 3 Pa. C.S.A. §5703(b)(2)(ii) (Pa. Dep't of Agric. 2015)

<sup>89</sup> City of Austin, Tex. chapter 25 Land Development § 25-1-21(44).

“Front yard garden.” Food crops and ornamental plants grown and cultivated in a front yard.

“Greenhouse.” A structure generally made of glass or other transparent material for which the primary purpose is the cultivation or the protection of food crops and ornamental plants.<sup>90</sup>

“Land control document.” A deed, written agreement an amendment to a previously executed land control document or other documentation acceptable to Susquehanna Township<sup>91</sup> evidencing the person’s control of the non-township land that allows the non-township land to be used as a township-supported community garden under this ordinance.

“License agreement.” A written agreement or an amendment to a previously executed license agreement between Susquehanna Township<sup>92</sup> or a person approved by the governing authority<sup>93</sup> of the township that controls land use under this ordinance.<sup>94</sup>

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<sup>90</sup> Borough of Carlisle, Pa., Municipal Code § 255.

<sup>91</sup> See supra note 2.

<sup>92</sup> Id.

<sup>93</sup> Id.

<sup>94</sup> City of Austin, Tex., chapter 14-7 Sustainable Urban Agriculture § 14-7-1 (8).

“Non-township land.” A parcel of land not owned by the township that is eligible for use as a township-supported community garden.<sup>95</sup>

“Ornamental plants.” Plants of horticultural or floral cultural specialties, including flowers, shrubs and trees intended for ornamental or landscaping purposes.<sup>96</sup>

“Person.” Any natural person, association, partnership, firm, organization or corporation.<sup>97</sup>

“Principal use.” Use of a property solely for a single purpose.

“Pesticide.” Use of any substance or mixture of substances not regulated by EPA including insecticides, fungicides and rodenticides.<sup>98</sup>

“Resident.” A person who owns real property and has a bona fide occupancy at owned real estate.<sup>99</sup>

“Township.” The Township of Susquehanna, Dauphin County, Pennsylvania.<sup>100</sup>

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<sup>95</sup> City of Austin, Tex., chapter 14-7 Sustainable Urban Agriculture § 14-7-1 (9).

<sup>96</sup> City of Austin, Tex., Municipal Code § 25.

<sup>97</sup> Township of Susquehanna, Dauphin County, PA, Conduct § 6-1001(1).

<sup>98</sup> Township of Susquehanna, Dauphin County, PA, Flood Plains § 8-504(1).

<sup>99</sup> Township of Susquehanna, Dauphin County, PA, Residential Permit Parking § 15-409(2).

<sup>100</sup> Township of Susquehanna, Dauphin County, PA <https://www.susquehannatwp.com>

“Township land.” Land identified as public land in this township that is eligible for use as a city-supported community garden and the township land department director or equivalent individual approves the use of the land as a supported community garden.<sup>101</sup>

“Township supported community garden.” Any eligible municipal land controlled by the township or non-township land controlled under a land control document which is issued by resolution a garden permit and located within the township limits or extraterritorial jurisdiction that:

(1) is used by a person to grow, produce and harvest food crops and ornamental plants for consumption by a person or donation;

(2) is operated in a manner that includes water conservation, and composting, non-polluting and integrated pest management practices that promote a garden and is cultivated solely for the production of organic produce; and

(3) has a community garden zoning use classification.<sup>102</sup>

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<sup>101</sup> City of Austin, Travis County, TX, chapter 14-7 Sustainable Urban Agriculture § 14-7-1(5).

<sup>102</sup> City of Austin, Tex., chapter 14-7 Sustainable Urban Agriculture § 14-7-1.

“Urban agriculture.” Gardening in medium to high density residential areas in the form of residential yard, roof-top and balcony gardening or community gardening in vacant lots and parks.<sup>103</sup>

§27-1704. Permitted uses for front or side yard gardening.

(a) Uses generally. Residents of the township shall comply with the following:

(1) The sole owner of property shall provide the township with documented proof of ownership of the parcel subject to the provisions of this ordinance.

(2) The front yard garden must be constrained to all existing structures and buildings.

(3) The front yard garden shall follow the township guidelines on location and height of structures including sheds, containers, landscaping and fencing.

(4) Meet all zoning distance requirements and shall not interfere or obstruct neighboring properties.

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<sup>103</sup> U.S Department of Agriculture, <https://www.nal.usda.gov/afsic/urban-agriculture>

(5) Resident and guests shall not block driveways, access drives or sidewalk areas.

Section 1. Urban agriculture.

(a) General rule. Urban agriculture which does not include the housing of chickens, ducks, goats or honeybees shall be subject to the following standards:

(1) The sale of agricultural and farm products that are grown, used, produced on-site shall be permitted only in residential urban districts and shall comply with the standards R-4 Residential Urban Districts;

(2) All seed and fertilizer shall be stored in a secured, rodent-proof container and housed within an enclosed structure;

(3) Front yard gardening shall include only the following:

(i) Fruits: Strawberry, Blackberries, Blueberries, Tomatoes, Raspberries.

(ii) Vegetables: Cabbage, Cucumbers, Zucchini, Squash, Carrots, Potatoes.

(iii) Herbs: garlic, thyme, rosemary,  
cilantro, basil, oregano, mint, parsley.

(4) Signage may be permitted<sup>104</sup>

(b) Trash collection and removal. The following shall  
apply:

(1) The person shall have a trash collection service  
for the resident-owned property.<sup>105</sup>

(2) The person shall collect the trash from the lot  
and the adjoining sidewalk and place it in designated  
trash collection barrels for pick-up.<sup>106</sup>

(3) The person may compost materials in the yard by  
meeting the following requirements:

(i) Minimum of 10 feet from rear and side  
lot lines and minimum of 50 feet from any  
private water supply system.<sup>107</sup>

(ii) Compost may only consist of plant  
derived materials.

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<sup>104</sup> Township of Susquehanna, Dauphin County, PA, Zoning § 27-2407.

<sup>105</sup> Shoemaker, see Supra note 84.

<sup>106</sup> Id.

<sup>107</sup> Id.

(iii) Person shall use township composting removal partner<sup>108</sup> and may not compost in a way that creates a nuisance.

(c) Nuisance. A front or side garden shall be conducted in such a way as to not have substantial traffic congestion, noise, glare, odor, smoke, vibration, fire hazards, safety hazards or electromagnetic interference shall be noticeable at or beyond the property line.<sup>109</sup>

(d) Equipment. The following apply:

(1) Agricultural machinery, equipment or vehicles used in tending a front or side garden shall be limited to 40 horsepower or a fully equipped weight of 50 pounds for any garden.<sup>110</sup>

(e) Fences. Fences shall:

(1) not exceed 6 feet in height;

(2) be at least 50% open if they are taller than 6 feet;

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<sup>108</sup> Township of Susquehanna, Dauphin County, PA, <https://www.susquehannatwp.com/trash-recycling/pages/yard-waste-collection-options>

<sup>109</sup> Borough of Carlisle, Pa., Municipal Code § 255.

<sup>110</sup> City of Royal Oak, Mich., Municipal Code §770-56.

(3) be constructed of the following material:

(i) wood;

(ii) chain link; or

(iii) ornamental metal.

(4) Be required for any garden that is 4,000 square feet in area or greater and is in a location.

(f) Fresh produce sales<sup>111</sup>

(A) Permitted uses:

(1) Raw, uncut fresh fruits, vegetables, and herbs, excluding marijuana, that were grown in an accessory garden are sold; and <sup>112</sup>

(2) Food sales shall not include any food products made with marijuana.

(g) Incentives.

(1) A resident may inform Susquehanna Township of front or side yard gardening. Upon notification, Susquehanna Township shall provide a biannual \$10 water or sewer bill credit to a resident with a currently active and in good standing account.

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<sup>111</sup> City of Denver, Colo., Specific Home Occupation Use Types and Definitions § 11.12.8.2(9).

<sup>112</sup> Id.

A Resident may notify neighbors in the community of front or side yard gardening options with the availability of a credit under section (g).

A resident referred by a neighbor may inform the township of participation under this ordinance and neighbor who referred to incentive. Upon notification, Susquehanna Township shall provide a \$5 water or sewer bill credit to the referred resident's account.

(h) Safety. The following shall apply:

(1) Public sidewalks shall be clear of debris, roots, spoiled fruits, herbs and vegetables.

(2) Susquehanna Township shall not be responsible for any injuries associated with resident's negligence.

(3) The township reserves the right to penalize the resident participating under this ordinance for noncompliance with the provisions of the ordinance or for repeated safety offenses, neighbor complaints or injuries reported as a result of front yard or side yard gardening.

§27-1705. Permitted uses for community garden.

(a) General Rule. Community gardens shall be permitted in all zoning districts subject to the following conditions:

(1) Community gardens shall be limited to the cultivation of fruits, vegetables, herbs, plants and flowers.

(2) A Community garden shall be run by a person, nonprofit entity, community group, or neighborhood group acting as garden coordinator. The garden shall be served by a water supply sufficient to support the cultivation practices on site.

(3) A small storage shed, 100 square feet or less, shall be permitted, if the shed meets the front setback for the township and shall be at least four feet from a side or rear lot line and shall not be greater than 15 feet in height.

(3) Greenhouses associated with a community garden and those structures shall follow the dimensional standards of the zoning district.

(4) A community garden may provide shade pavilions, barns, rest-room facilities, composting and planting

preparation houses in conformance with this ordinance;<sup>113</sup>

(5) A community garden shall provide off-street parking and walkways, in conformance with this ordinance.<sup>114</sup>

(b) Hours of operation. The following shall apply:

(1) Community gardening shall be permitted between dawn to dusk every day of the week.<sup>115</sup>

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

(c) Nuisance. A community garden will not unreasonable interference to be noticeable at or beyond the property line.<sup>116</sup>

(d) Trash collection and removal. The township shall provide trash collection services on the municipal-owned property and shall assess an annual trash fee.<sup>117</sup>

A community garden operator shall collect the trash

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<sup>113</sup> Shoemaker, see Supra note 84.

<sup>114</sup> Id.

<sup>115</sup> Id.

<sup>116</sup> Borough of Carlisle, Pa., Municipal Code § 255.

<sup>117</sup> Shoemaker, see Supra note 84.

from the lot and the adjoining sidewalk and place it in designated trash collection barrels for pick-up.<sup>118</sup>

(e) Equipment. Agricultural machinery, equipment or vehicles used in tending a community garden shall be limited to 25 horsepower or a fully equipped weight of 50 pounds for any community garden.<sup>119</sup>

(f) Fences. Fences shall:

(1) not exceed 6 feet in height;

(2) be at least 50% open if they are taller than 6 feet; and

(3) be constructed of the following material:

(i) wood;

(ii) chain link; or

(iii) ornamental metal.

(4) Be required for any community garden that is 15,000 square feet in area or greater and is in a location.<sup>120</sup>

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<sup>118</sup> Id.

<sup>119</sup> City of Royal Oak, Mich., Municipal Code §770-56.

<sup>120</sup> City of Cleveland, Oh., Municipal Code §336.

(g) Safety. The following shall apply:

(1) The township will forward to the Police Department a list of all registered community gardens with contact information for community garden operators every spring, so the department knows who to contact in case of emergency.<sup>121</sup>

(2) The Township's Department of Parks and Recreation will take notice of garden sites when they drive by.<sup>122</sup>

(3) Public sidewalks shall be clear of debris, roots, spoiled fruits, herbs and vegetables.

(4) Susquehanna Township shall not be responsible for any injuries associated with community garden operator's negligence.

(5) The township reserves the right to fine the participating group under this ordinance for noncompliance with the provisions of the ordinance or for repeated safety offenses, neighbor complaints.<sup>123</sup>

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<sup>121</sup> Shoemaker, see Supra note 84.

<sup>122</sup> Id.

<sup>123</sup> Township of Susquehanna, Dauphin County, PA, Causes of Action. § 27-2622.

Section 1. Community garden procedure and requirements

A community gardens site user must submit a maintenance plan to the township addressing the governance structure of the garden, hours of operation, maintenance and security requirements and responsibilities. The name and telephone number of a community garden coordinator to be held responsible must be included in the plan under this section. The following shall apply:

- (1) The site of the community garden shall be designed and maintained so that water and fertilizer may not drain onto adjacent property.
- (2) There shall be produce sales only the second and forth Wednesday and Saturday per month.
- (3) No building or structures shall be permitted on the site, with the exception of minor greenhouses or sheds as an accessory use, raised planting beds, fences and compost or waste bins. The combined area of all buildings or structures shall not exceed 20% of the garden site lot area.
- (4) Fences shall comply with the requirements of the pertinent zoning district.

(5) Signage may be permitted (reference §27-2407).

(6) Agricultural use of the community garden shall be limited to the cultivation of fruits, vegetables and other plants, not to include the keeping of insects or animals.<sup>124</sup>

## Section 2. Procedure.

### (a) Application process.

An application in a form acceptable to the Susquehanna township zoning board for a permit filed under this ordinance must be submitted to the township by a person in accordance with the requirements of this section.<sup>125</sup> An application for a permit filed under this ordinance must be accompanied by:

(1) a \$25 fee;<sup>126</sup> and

(2) in the case of a township-supported community garden on non-township land, a copy of the executed land control document.<sup>127</sup>

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<sup>124</sup> Id.

<sup>125</sup> Township of Susquehanna, Dauphin County, PA, *Zoning Permit Application (2020)* [https://www.susquehannatwp.com/sites/g/files/vyhlif3896/f/uploads/zoning\\_permit\\_fillable.pdf](https://www.susquehannatwp.com/sites/g/files/vyhlif3896/f/uploads/zoning_permit_fillable.pdf)

<sup>126</sup> Township of Susquehanna, Dauphin County, PA, Fees. § 27-2604.

<sup>127</sup> City of Austin, Tex., chapter 14-7 Sustainable Urban Practice, § 14-7-11.

(b) Zoning permit. Applicants proposing a community garden must submit a zoning permit application identifying the following:

- (1) Location map and property address.
- (2) Name and contact information of person or organization
- (3) All existing and proposed structures and buildings.
- (4) Location and height of proposed structures and buildings including sheds, containers, compost facilities, landscaping and fencing.
- (5) Description of the proposed operation and activities; and retail sales.
- (6) Distance between structures or activities and neighboring properties.
- (7) Driveways, access drives, parking areas, and loading areas.
- (8) Location and adequacy of sewage facilities (if required).

(9) Stormwater plan.<sup>128</sup>

(10) Proposed operating dates and times.

(11) Estimated number of separate plots to be cultivated by a person.

(12) Certify compliance with all applicable Federal, State, and local regulations and permits.

(c) Identification and security of municipal-owned land.

Requests for community garden lots shall be accepted either by the Township or community garden operator between the months of January and May. The Township will also identify available lots on their website based on the following criteria:

(1) Whether or not a lot is unlikely to be developed in the foreseeable future;<sup>129</sup>

(2) Whether or not there is a water line on or near the property, or the buildings on the property have non-toxic roofs for the use of rainwater from the roof.<sup>130</sup>

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<sup>128</sup> Township of Susquehanna, Dauphin County, PA, Storm Water Management § 19-301.

<sup>129</sup> City of Austin, Tex., Municipal Code §14.

<sup>130</sup> Id.

(3) Whether or not the lot receives adequate sunlight between April and October; and<sup>131</sup>

(4) Whether or not street lighting is available nearby.<sup>132</sup>

(d) Approval by resolution for an entity and corporations.

The township shall adopt by resolution approval for community garden by entity or corporation in accordance with the laws of this Commonwealth. Resolutions may be adopted for any purpose, including, but not limited to, the following:

(1) Approval of formal agreements of the township, except for agreements arising under an established purchasing system of the township.<sup>133</sup>

(2) Approval of administrative rules, regulations and bylaws arising under State statutes or township ordinances.<sup>134</sup>

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<sup>131</sup> Id.

<sup>132</sup> Id.

<sup>133</sup> 8 Pa. Cons. Stat. §3301.1 (2019).

<sup>134</sup> Id.

(3) Applicants proposing a community garden must submit a completed zoning permit application prior to approval by resolution.

(e) Approval process for individual or community group. The following apply:

(1) An individual or community group desiring to operate a community garden within the township must file a zoning permit application along with the supported documentation laid out in (b).

(2) The township may approve application by resolution, if so desired by zoning hearing board.

(3) The township may approve an application by individual or community group for the private use of eligible land for a township-supported community garden, unless:<sup>135</sup>

(i) The township determines the proposed license agreement interferes with the public use of the eligible municipal land;<sup>136</sup>

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<sup>135</sup> City of Austin, Tx., Municipal Code §14.

<sup>136</sup> Shoemaker, see Supra note 84.

(ii) The township is not provided with the zoning permit application and all additional documentation needed for approval; or

(iii) The community garden zoning permit is not issued.

(f) Individual plots within community garden. The following shall apply:

(1) Entity or corporation responsible for the community garden must maintain:

(i) All applications for individual plots and \$25 application fee.<sup>137</sup>

(ii) All community gardener operators contact information and provide quarterly to the township.

(iii) All individual plots owners contact information and provide quarterly to the township

(2) Individual or community group responsible for community garden must:

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<sup>137</sup> Township of Susquehanna, Dauphin County, PA, Fees. § 27-2604.

- (i) All applications for individual plots and the \$25 application fee go to the township.<sup>138</sup>
  - (ii) All community gardener operators contact information and provide quarterly to the township.
- (3) Approval or denial of individual plot applications. Approval will be granted unless:
- (i) Determined by the person, entity, nonprofit, corporation or township has a reasonable statement for denial.

(g) Denial and appeals. Where an application has been denied under this section.

- (1) the applicant may appeal the decision in writing to the township within fifteen business days of receipt of notice.<sup>139</sup>

§27-1706. Enforcement.

The person or organization shall enforce the internal operation of the community garden, including any disputes among

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<sup>138</sup> Id.

<sup>139</sup> Township of Susquehanna, Dauphin County, PA, Appeals § 27-2707.

gardeners, maintenance of plots, and the overall site in accordance with the community garden operator's established rules and guidelines.<sup>140</sup>

### Section 3. Severability.

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

### Section 4. Repeal

All ordinances and parts of ordinance are repealed as they are inconsistent with this ordinance.

### Section 5. Effective date.

This ordinance shall take effect in 60 days.

ORDAINED AND ENACTED as an Ordinance this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_.

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<sup>140</sup> City of New Port Richey, Fla., Municipal Code §21.