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Law Center

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Community Garden Policy Reference Guide



Community Garden Policy Reference Guide

Local governments and community members across the country recognize the need to improve the health of communities by improving access to affordable and healthy foods and increasing physical activity. Community gardens are one means through which these goals can be achieved. Community gardens provide space for community members to grow healthy food and improve the nutrition of their communities, provide opportunities for physical activity, and improve the community through beautification and citizen engagement.

A “community garden” can be defined as: any piece of land, public or private, where plants are grown and maintained by a group of individuals in the community.* Community gardens may produce food for individual consumption or food for sale, may be designed for beautification of the community, and/or may be used for educational purposes.

This Policy Reference Guide provides an overview of legal and policy considerations for local governments and community members when implementing a community garden or a community garden policy. It approaches policy considerations through an understanding of a policy as any plan or course of action designed to influence and determine decisions. This document addresses policies impacting community gardens from the following angles:

- Local Government;
- Land Use Planning and Zoning;
- Community Garden Group Considerations; and
- Liability.

The information provided below, is meant as a general guide, recognizing that each community will need to evaluate how best to support community gardens based on the unique local and legal context of their community. There is a wide range of approaches individual communities can take to support and promote community gardens. Community members and policymakers should evaluate the policies discussed below, and determine what is appropriate for their specific local context. This document focuses on policy and legal considerations involved in establishing and maintaining community gardens and does not address issues related to the consumption of food grown in community gardens, such as issues regarding food safety. It is specific to community gardens and does not discuss other forms of urban agriculture, such as community supported agriculture, farmer’s markets, etc. However, many considerations impacting community gardens are also relevant to other forms of urban agriculture.

*This definition of “community garden” was adapted from information provided by Gardening Matters, <http://www.gardeningmatters.org>, and the American Community Gardening Association, <http://www.communitygarden.org/index.php>.

For related publications, visit www.publichealthlawcenter.org. Due to the evolving nature of this topic, this document may undergo updating at any time. For comments or to obtain the latest iteration, please contact Mary Marrow at mary.marrow@wmitchell.edu. The Public Health Law Center provides information and technical assistance on issues affecting public health. The Public Health Law Center does not provide legal representation or advice. This document should not be considered legal advice. For specific legal questions, consult with an attorney familiar with the laws of your jurisdiction. The Public Health Law Center thanks Kirsten Saylor, Executive Director, and Nadja Berneche, Program Director, with Gardening Matters and Research Assistants Brennan Furness and Joshua Arkulary, for their assistance in reviewing and providing feedback on this document.

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Local Government Considerations

Local governments can improve ease of access and functioning of community gardens through a number of measures including promoting community gardens publicly, providing technical and financial support, and developing programs that encourage and preserve community gardens on public and private land. How a local government responds to different considerations, listed below, depends on the specific needs and legal landscape of the impacted community.

Policy Considerations	Policy Approaches
<p>Sustainability/start-up – Thoughtful planning and a process that involves key stakeholders when starting a community garden is critical to ensure the long-term success and sustainability of the garden.</p>	<p><u>General</u></p> <ul style="list-style-type: none"> • Consult a community garden organization before starting the community garden project. Many local and national garden resources are available to provide technical assistance in the development and implementation of community gardens. • Learn from an organization dedicated to community gardening. <p><u>Resources</u></p> <ul style="list-style-type: none"> • American Community Gardening Association - http://www.communitygarden.org/ • Gardening Matters - http://www.gardeningmatters.org/
<p>Compost - A beneficial and sustainable means of disposing of community garden plant waste is by composting. Composting provides an organic source of nutrients for garden soil, and makes great use of leaf litter, grass clippings, plant debris and other decomposed organic matter.</p>	<p><u>General</u></p> <ul style="list-style-type: none"> • Encourage public and private solid waste management services to provide free compost to community gardens. • Use local compost sources including aquatic plants, wood chips, lawn clippings, etc. • Take precautions with compost that may contain chemical residue or other contaminants. • Provide technical assistance to community gardens regarding appropriate compost techniques and maintenance. <p><u>Policymakers</u></p> <ul style="list-style-type: none"> • Ensure local compost policies and ordinances do not conflict with state legal requirements governing the management of solid waste.¹ • Review existing laws, regulations and policies to determine if they impact the use of compost by community gardens, including requirements governing the size of compost facilities, number of compost bins, and movement of compost. • Provide compost for use in community gardens from municipal waste management services.

- Indicate the source of the organic matter in the compost and any potential chemicals or contaminants that may be part of the composted material.
- Regularly test municipal compost for contaminants or chemical residue and share information publicly.
- Locate compost piles in an area that limits potential nuisance to neighbors of property.²
- Encourage gardeners to compost garden debris on site.
- Provide compost bins at a reduced cost for community gardens.
- Provide collection services for removal of garden debris and other garden waste.

Soil Testing - Soil testing includes testing for the nutrient makeup of soil and for potential contamination of land.

Nutrient testing determines if the soil contains the nutrients necessary to grow healthy plants.

Contaminant testing determines if specific contaminants that could pose health problems, such as lead or other industrial products, are present in the soil.

General

- Nutrient testing:
 - ✓ Tests for the existing nutrients available in soil and determines what is needed to augment soil to promote the growth of healthy plants.³
- Contaminant testing:
 - ✓ Conduct an assessment of garden sites to determine the potential for contamination, including:
 - Phase 1 assessment:
 - Consider historical use of the site to determine the potential for contaminants related to prior use. A phase 1 assessment can include working with a trained environmental professional, interviewing neighbors and site owners, and visually inspecting the site and surrounding neighborhood.
 - Phase 2 assessment:
 - Conduct additional testing for contaminants on garden sites where Phase 1 assessment indicates potential contamination, such as a history of land use for a gas station or industrial activities, or if location of garden site is near industrial facilities, etc.

Policymakers

- Provide resources for Phase 1 and Phase 2 soil testing for all community gardens.
- Provide information to community garden members on the proper procedure and available resources for soil testing.
- Provide resources for remediation and removal of contaminated soil.

Gardeners

- Use raised beds if soil contaminants are a potential problem in your garden space.
- Remove contaminated soil and replace it with clean contaminant-free soil.⁴
- Use specific plants to extract, degrade, contain or immobilize contaminants in soil.

Note: Gardeners interested in using this process should consult with a trained environmental professional as this process may take many years, may not be effective for all contaminants, and generally requires special handling for the disposal of plants used.⁵

	<p>Resources</p> <ul style="list-style-type: none"> ENVIRONMENTAL PROTECTION AGENCY (EPA), REUSING POTENTIALLY CONTAMINATED LANDSCAPES: GROWING GARDENS IN URBAN SOILS (2011), <i>available at</i> http://www.epa.gov/region4/foia/readingroom/rcra_community/urban_gardening_fina_fact_sheet.pdf. Extension Services, U of MN, <i>available at</i> http://soiltest.cfans.umn.edu/index.htm.
<p>Water Access – Community gardens need to have access to water to ensure plants have adequate water during the growing season.</p>	<p>General</p> <ul style="list-style-type: none"> Include water usage in community garden lease terms. Provide food-grade barrels for passive watering systems during times when there is no access to water. Provide rain barrels or other water capture systems for community gardens. <p>Policymakers</p> <ul style="list-style-type: none"> Ensure community gardens have access to municipal or county water sources. Install meters to determine water usage and fair price for community garden water use.
<p>Technical Assistance - Technical assistance includes consultation with a experienced gardeners; provision of needed equipment; garden training sessions; and other measures to improve community gardening accessibility and skills.</p>	<p>General</p> <ul style="list-style-type: none"> Work with local and national garden resources to obtain technical assistance, such as local garden consultants, local nurseries, your local Master Gardeners, and local and national community garden organizations. These resources provide technical assistance and can teach horticulture techniques to members of your community garden. Emphasize technical assistance for the community’s youth, elderly, disabled, low-income, and other populations.⁶ Provide technical assistance and training to community gardeners on: <ul style="list-style-type: none"> ✓ Effective water management practices, including drip irrigation, mulching, and other water conservation techniques. ✓ Composting, soil care and low-cost improvement techniques. <p>Policymakers</p> <ul style="list-style-type: none"> Provide technical assistance to support community garden programs for youth, elderly, disabled, low-income, and other populations.⁷
<p>Funding – Starting and maintaining a community garden involves some expenses. Fortunately these expenses should not be excessive and community resources may be available to help defray some of these costs through small grants or donations of</p>	<p>Policymakers</p> <ul style="list-style-type: none"> Establish a grant program for establishing and supporting community gardens on public and private property. Set aside funds for the maintenance and promotion of community gardens in the budget of Parks and Recreation departments or other agencies. <p>Gardeners</p> <ul style="list-style-type: none"> Build relationships with local non-profit and business communities to secure free or inexpensive materials.

garden equipment. Resources for community gardens include local governments, local business, other gardeners or community gardens, neighbors and national grant programs.

- Charge minimal fees for garden plots to cover the general supplies and operating costs of the garden.
- Example:* Dakota County, MN obtained resources to provide small grants in 2010 and 2011 to fund garden infrastructure needs for new and expanding community gardens that make garden space or fresh produce available to low-income and underserved communities.⁸

Resources:

- Grants and Funding - Brownfields and Land Revitalization, U.S. Environmental Protection Agency, available at http://www.epa.gov/brownfields/grant_info/index.htm
- American Community Garden Association: Funding Opportunities, available at <http://www.communitygarden.org/learn/resources/funding-opportunities.php>.
- Rebel Tomato: Plotting Our Future One Garden at a Time, available at <http://www.communitygarden.org/rebeltomato/roots/fundraising.php>.

Accessibility - Community gardens can be enjoyed by all by incorporating universal design principles to make a garden that is accessible, safe and comfortable.

General

- Create accessible community gardens which include raised accessible garden beds and some pathway connections that are wide enough to accommodate wheelchairs.
- Create pathways that are firm, wide, flat, level, well drained and maneuverable. Avoid abrupt or extreme drop-offs and pavement edges.
- Install benches or chairs for gardeners and provide shade as needed.

Policymakers

- Ensure availability of some community garden plots on public property that are accessible for all people young, old and physically disabled.

Example: Madison, WI developed guidelines for making community gardens accessible to any gardener with the goal of providing accessible garden space to any individual interested in gardening. These standards recommend raised planters that are no wider than four feet for a two-sided planter and two feet for a one-sided planter. Length should be limited to 10-20 feet to prevent over exertion while circling the bed. It should be 28-30” high, which will allow for a sitting surface.⁹

Community Awareness and Promotion - Ensures community engagement by promoting community gardens and related activities to the public.

General

- Create or link to an existing community garden website to announce news, publish community garden maps, post pictures of gardens, and include information on how to implement or get involved with a garden.
- Promote community gardens through public announcements on local radio, television, newspapers, and free local publications.
- Hold public tours of the community gardens and encourage gardens to host open garden days.
- Provide garden education activities for all ages.

Resources

- Gardening Matters, available at <http://www.gardeningmatters.org/>.
- Dowling Community Garden, available at <http://www.dowlingcommunitygarden.org/#>.

¹ See MINN. R. 7035.2836 (2010).

² MINN. R. 7035.0300 (2011).

³ U.S. EPA Office of Superfund Remediation and Technology Innovation, *Reusing Potentially Contaminated Landscapes: Growing Gardens in Urban Soils* (2011), http://clu-in.org/download/techdrct/urban_gardening_fact_sheet.pdf.

⁴ *Id.*

⁵ *Id.*

⁶ Jane E. Schukoske, *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, 3 LEGISLATION AND PUBLIC POLICY 351 (2011), available at <http://communitygarden.org/docs/learn/schukoske.pdf>

⁷ *Id.*

⁸ Dakota County SHIP Gardens—Gardening Matters (2011), <http://www.gardeningmatters.org/dakota-county-ship-gardens>.

⁹ Madison's Inclusive Gardens, <http://cacsw.org/downloads/Universal%20Design%20for%20Community%20Gardens.pdf>.

Land Use Planning and Zoning

In general, towns, cities, and counties have the power to control and regulate the use of land within their borders.¹⁰ Land use planning and zoning are the means through which this power is enforced. Land use planning is used to manage the development of land including issues of housing, transportation, parks, and utilities for the future needs of the community. Local governments implement land use planning through creating resolutions, policies, and comprehensive plans. Zoning is the specific means through which local governments regulate the use of land. A local government typically regulates two issues through zoning (1) what can be built on the land: small homes, apartments, businesses, farms, factories, and airports, and (2) how something looks and is used: height, size, proximity to the street, parking lot location and design of buildings.¹¹

Land use planning and zoning can help to establish and protect community gardens. At the same time, zoning and land use planning have the potential to discourage community gardens if implemented without a careful assessment of their potential impact on community gardens. Policymakers can ensure that zoning and land use planning promote community gardens by: including gardeners in the review of local ordinances and policies; amending problematic language; including community gardens in comprehensive plans, policies and codes in a way that ensures government support; and limiting the specific regulations or requirements placed on community gardens.

Policy Considerations	Policy Approaches
<p>Zoning Code - A local government's zoning code establishes requirements for the use of property under the local government's jurisdiction. A zoning code may create barriers to the creation of community gardens or their implementation on public or private property.</p>	<p><u>Policymakers</u></p> <ul style="list-style-type: none"> • Review and revise local government's zoning codes to allow community gardens in all appropriate zoning districts. Appropriate zoning districts may include residential areas, office/residential districts, and commercial districts. Inappropriate districts may include downtown districts and industrial districts. • Recognize community gardens as “a valuable recreation activity that can contribute to community development, environmental awareness, positive social interaction and community education” in municipal ordinances and zoning codes.¹² • Designate established community gardens on public property as park zones/land to protect from commercial development. • If sited on public property (i.e. tax forfeit property), give first right of refusal to community garden group should the city need to sell property. Provide community garden group up to 90 days to notify government of interest in purchasing the property on their own or by a nonprofit that could purchase the land on behalf of the community garden group.

<p>Fences - Fencing around a community garden provides protection from animals, defines a garden's parameters, and minimizes vandalism and trespassing on community garden property.</p>	<p><u>Policymakers</u></p> <ul style="list-style-type: none"> • Amend ordinances to allow, but not require, community gardens to install a permanent fence. If fencing is required, coordinate with local community garden groups to ensure regulations are not unduly burdensome. • Provide resources, such as small grants, to community gardens for installation of permanent fences if fencing is required by local ordinances.
<p>Permanent Structures – Garden structures such as tool sheds, hoop houses and greenhouses can be necessary for community gardens.</p>	<p><u>Policymakers</u></p> <ul style="list-style-type: none"> • Review zoning code for regulations on semi-permanent structures and permanent structures. • Update the zoning code to allow for semi-permanent and permanent structures, including raised beds, tool sheds, fences, and other structures used in community gardens. • Consider impact permanent garden structures have on adjacent residences, businesses and park uses; and compatibility with existing architecture of the park or adjacent community.
<p>Sale/Use of Garden Products - Use of produce from a community garden can vary depending on local regulations and ordinances. Some communities are beginning to expand accepted use of community garden produce beyond the personal consumption of gardeners, to allow produce to be sold on-site as a “market garden”, donated to local food shelves, sold at farmer’s markets, or as part of a Community Supported Agriculture (“CSA”) initiative.</p>	<p><u>General</u></p> <ul style="list-style-type: none"> • Promote collaboration between farmers’ markets and community gardens to highlight the benefits of local food production, including the economic and health benefits experienced by individual gardeners producing fruits and vegetables for personal consumption. • Support programs facilitating donation of community garden produce to local food shelves. <p><u>Policymakers</u></p> <ul style="list-style-type: none"> • Review local regulations and eliminate any prohibitions against eating produce grown on public lands. Some municipalities have historically prohibited the consumption of food grown on public land. • Review ordinances for any restrictions on sale/donation of produce and allow for appropriate sale of produce from community gardens located on public and private property. • Allow for sale of produce from community gardens on site and in farmer’s markets, especially if located in an area that has limited access to farmer’s markets, grocery stores, or other healthy, affordable food. • Allow for the sale of "value-added products" like jams, pickles or pies where the primary ingredients are grown and produced on-site. <p><i>Example:</i> San Francisco: On April 12, 2011, the Board of Supervisors in San Francisco passed an ordinance allowing for the sale, pick-up and donation of fresh food and horticultural products grown on-site in all areas of the city except those zoned exclusively for residential uses.¹³</p> <p><u>Resource</u></p> <ul style="list-style-type: none"> • Plant a Row for the Hungry, available at http://www.gardenwriters.org.

<p>Set Backs - Regulate the distance a structure must be from the property's boarder. Set-backs may protect a community garden from the general public and limit nuisance concerns.</p>	<p><u>Policymakers</u></p> <ul style="list-style-type: none"> • Review ordinances and determine if any set-back requirements are part of local ordinances. • Consult with community garden groups to ensure set-back requirements are not overly burdensome for gardens in urban areas with small urban plots. • Amend county/city code to eliminate or standardize set-backs for public and private community garden property.
<p>Signage - Permanent signage is a great way to promote the special features of a community garden, identify the garden by name, and advance the garden's permanence.</p>	<p><u>General</u></p> <ul style="list-style-type: none"> • Include key community garden rules on signs to let visitors know what is permissible in the garden. • Create a sign that is creative, colorful, and legible out of sturdy materials to welcome gardeners and promote your garden's existence. <p><u>Policymakers</u></p> <ul style="list-style-type: none"> • Review county/city zoning code to ensure that signs are permitted, but not required, for community gardens. • Allow community garden signage to be placed at the front of the garden and be large enough to communicate the name of the community garden from the public street or sidewalk. • Ensure that set-back requirements for community garden signs are consistent with other set-back requirements and are not overly burdensome for gardens in urban areas.
<p>Comprehensive Plan – Comprehensive plans provide guidance to local policymakers regarding community priorities and preferred uses of land and resources. Recognizing the value of community gardens in a comprehensive plan provides government support of community gardens over time and prioritizes community gardens in land use decisions.</p>	<p><u>Policymakers</u></p> <ul style="list-style-type: none"> • Incorporate language into county/city comprehensive plan to encourage and preserve community gardens. • Include community gardens in land use planning as a preferred land use rather than as an interim land use. • Create a Community Garden Policy to promote urban agriculture, examine existing urban agriculture policies and facilities (farmers markets, community gardens, etc.), determine issues and opportunities, and present recommendations for your county/city to pursue. <p><i>Example:</i> Minneapolis, MN recently passed an Urban Agriculture Policy Plan which specifically promotes the use of community gardens to improve the growth, sales, distribution, and consumption of healthy, locally grown foods within the city.¹⁴</p>

<p>Land Use Considerations – A variety of land use issues can impact where community gardens are located and the cost of operating a community garden.</p>	<p><u>General</u></p> <ul style="list-style-type: none"> • Develop a community garden “Critical Needs Area” giving priority to properties as they become available for use as community gardens, especially in dense urban areas with little or no land available for community gardens. • Keep an up-to-date list of the county/city vacant lots to encourage the donation of lots to groups and raise awareness for those who want to start a community garden.¹⁵ <p><u>Policymakers</u></p> <ul style="list-style-type: none"> • Exempt known community gardens on private land from property taxation so long as the property continues to be used as a community garden and is not used for commercial purposes. • Waive or reduce property taxes for community gardens owned or operated by non-profit or community groups. <p><u>Gardeners</u></p> <ul style="list-style-type: none"> • Consider incorporating your garden as a non-profit and applying for 501(c)(3) tax-exempt status. Some local governments provide tax incentives to community gardens incorporated as a non-profit.¹⁶ <p><i>Example:</i></p> <ul style="list-style-type: none"> • Washington D.C. exempts certain established community gardens from property taxes as long as the space is used for community gardens.¹⁷
<p>Green/Open Space Density Standards - Open space zoning prohibits or limits the development of open space lands and may designate that a community garden is a sub-use or sub-category within an open space district to protect and preserve community gardens.</p>	<p><u>Policymakers</u></p> <ul style="list-style-type: none"> • Develop ordinances requiring specific density of open/green space in county/city subdivisions and specify that community gardens meet this requirement.¹⁸ • Include open space component in comprehensive plan. <p><i>Examples:</i></p> <ul style="list-style-type: none"> • Boston, MA created an Open Space District designation that includes a specific “community garden open space sub-district” which helps in the creation of community gardens and emphasizes their importance. Community gardens fitting under the open space designation must meet certain requirements as defined in Boston’s Municipal Code.¹⁹ • Seattle, WA included a goal of “[o]ne dedicated community garden for each 2,500 households in the Village, with at least one dedicated garden site” as part of its comprehensive plan.²⁰

<p>Community Land Trust - A community land trust is a private nonprofit organization that works to buy and hold land permanently for uses that benefit the community.</p>	<p>General</p> <ul style="list-style-type: none"> • Encourage the development of new or existing Community Land Trusts that include protection of land for community gardens. • Include land used for community gardens in community land trusts to protect established community gardens and create sustainable long-term community garden programs. Maintaining established community gardens long-term can be difficult due to a variety of factors, including limited lease terms and the development of the property for other purposes.
<p>Lot/Park Selection - Securing land for a new community garden is often the biggest hurdle to getting started. Considerations for community garden sites include accessibility to resources (ex. soil, sunlight, water, space); ease of access for the community; permanence of the garden site; and restrictions on use of land as garden.</p>	<p>General</p> <ul style="list-style-type: none"> • Work with local gardeners, community groups, and non-profits to inventory private and public property that is suitable for community gardens. • Create an application process to allow community members to establish a community garden on public property. • Create inventory of vacant public lots, vacant private lots, tax forfeit properties, and public parks which are available for community gardens. • Authorize county/city agencies to contract with private landowners for lease of vacant lots.²¹
<p>Bee and Farm Animal Ordinance – Local governments are increasingly allowing for the rearing of insects or small farm animals for personal use or sale of animal products, such as meat, eggs or honey, within an urban area.</p>	<p>Policymakers</p> <ul style="list-style-type: none"> • Amend zoning ordinances to allow community gardens to keep small farm animals and bees in a manner that prevents nuisances to occupants of nearby properties and prevents conditions that are unsanitary or unsafe.²² <p><i>Examples:</i></p> <ul style="list-style-type: none"> • Minneapolis, MN allows residents to keep bees and small animals if a permit is obtained from Minneapolis Animal Care and Control. In order to receive the permit the applicant must get written consent of at least eighty percent of their neighbors located within one hundred feet of their property (beekeepers must get signatures of those living immediately adjacent to their property).²³ • Seattle, WA amended their zoning code to allow “up to eight domestic fowl” to be kept on “any lot. . . . On lots greater than 10,000 square feet that include either a community garden or an urban farm, one additional fowl is permitted for every 1,000 square feet of lot area over 10,000 square feet in community garden or urban farm use.”²⁴ • Portland, OR – Allows residents to keep a total of three or fewer chickens, ducks, doves, pigeons, pygmy goats or rabbits without obtaining a permit. If owner allows animals to roam, or is not keeping animals in a clean and sanitary condition, then owner shall be required to obtain a permit to keep animals.²⁵

¹⁰ MINN. STAT. § 462 (2011); MINN. STAT. § 394 (2011); MINN. STAT. § 366 (2011).

¹¹ Public Health Law and Policy, *General Plans and Zoning: a toolkit for building healthy vibrant communities* (2007), <http://www.phlpnet.org/healthy-planning/products/general-plans-and-zoning>.

¹² Vancouver Board of Parks and Recreation, *Community Gardens Policy* (2005), <http://vancouver.ca/parks/parks/comgardnpolicy.htm>.

¹³ San Francisco Urban Agriculture Alliance, http://www.sfuua.org/uploads/4/8/9/3/4893022/sfuua_zoning_signing_press_release.pdf.

¹⁴ City of Minneapolis, *Urban Agriculture Policy Plan: A Land Use and Development Plan for a Healthy, Sustainable Local Food System, Minneapolis, MN* (April 15, 2011), http://www.ci.minneapolis.mn.us/cped/urban_ag_plan.asp.

¹⁵ D.C. CODE § 48-402 (2010).

¹⁶ Internal Revenue Service—Exemption Requirements, <http://www.irs.gov/charities/charitable/article/0,,id=96099,00.html>.

¹⁷ Neighborhood Farm Initiative, *Community Garden Census: A report on the state of community gardening in D.C.* (2010), <http://fieldtoforknetwork.org/wp-content/uploads/2011/02/DC-Garden-Guide-FINAL-with-cover.pdf>.

¹⁸ See MINN. STAT. § 394.25 (2011).

¹⁹ BOSTON, MA CODE, Article 33, § 33-8 (2009).

²⁰ Neighborhood Planning Element, Seattle's Comprehensive Plan, A Plan for Managing Growth 2004 – 2024, City of Seattle Department of Planning & Development, Comprehensive Plan January 2005, available at http://www.seattle.gov/DPD/cms/groups/pan/@pan/@plan/@proj/documents/web_informational/dpdp020401.pdf.

²¹ Jane E. Schukoske, *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, 3 LEGISLATION AND PUBLIC POLICY 351 (2011), available at <http://communitygarden.org/docs/learn/schukoske.pdf>.

²² Council of the City of Cleveland, *The City Record*, <http://www.dln.com/cr/index2009/February112009.pdf>.

²³ MINNEAPOLIS MUNICIPAL CODE OF ORDINANCES §§ 70.10, 74.80 (2010).

²⁴ SEATTLE MUNICIPAL CODE § 23.42 (2011).

²⁵ PORTLAND ORDINANCE § 13.05.015 E (2008).

Community Garden Group Considerations

When starting a community garden, gardening groups should be aware of a number of legal and practical considerations that ensure the protection and proper use of the garden and the well-being of gardeners. Each community garden is different so there is no prescribed set of rules or way to run a garden. Instead, work with gardeners, non-profits and other stakeholders to develop appropriate guidelines for your community garden. The following best practices are provided as examples designed to inspire and provide guidance through such a process.

Policy Considerations	Policy Approaches
<p>Local Land Use Planning, Zoning, and Government Considerations - Before establishing a community garden, gardening groups must ensure that the location and operation of the community garden does not conflict with any local land use, zoning or government requirements.</p>	<p>General:</p> <ul style="list-style-type: none"> Consult local zoning and land use requirements early in the process of developing and implementing a community garden. Local zoning and land use requirements can determine if a specific plot of land can be used as a community garden and if there are any restrictions on garden activity, the availability of local resources for community gardening efforts, and any limitations on permanent or semi-permanent structures in the garden. <p><i>See Land Use Planning and Zoning Considerations and Local Government Considerations discussed, above.</i></p>
<p>Garden Design and Landscaping – The design and landscaping of a community garden can lower the risk of water or wind erosion. Include each garden plot in considerations.</p>	<p>Gardeners</p> <ul style="list-style-type: none"> Develop garden plans and design prior to installing a community garden to ensure land, light and water use considerations are incorporated into garden design and implementation. Review garden design with local garden consultants, Master Gardeners or local and national community garden organizations to ensure sustainable and environmentally sound garden design. Encourage landscape designs that offer spaces for gardeners to congregate, offers shade, and maximizes available land for use as garden (vs. pathways).
<p>Gardener Rules – Garden rules define the parameters of acceptable and unacceptable behavior in a specific community garden. The extent of garden rules may vary depending on the type of community garden. Defining permitted and unpermitted behaviors through</p>	<p>General:</p> <ul style="list-style-type: none"> Create garden rules in consultation with gardeners, garden committees, and other key stakeholders such as the landowner and neighbors. Regularly review and revise these garden rules, such as at annual spring organizing meetings. Establish terms and conditions for the use of a plot by individual gardeners. Require all garden work to be performed during daylight hours, or between dawn and dusk. Ensure that garden hours of operation are consistent with public park hours for gardens operating on public property.

garden rules ensures that gardeners understand appropriate behavior in the garden. There are a variety of types of community gardens, with different structures and operation, requiring tailored rules to ensure success.

Some community gardens require gardeners to sign a “garden user agreement” governing the gardener’s use of a garden plot.

Gardeners:

- Post key rules at community garden site, including hours of operation.
- Require individual gardeners to review and sign agreement to follow garden rules as condition of gardening in community garden. Provide a copy of the rules for gardeners to take home and make available online.
- Consider including provisions in garden rules addressing following concerns:
 - 1) How individual garden plots/beds are assigned and/or renewed. Many gardens allow gardeners from previous years to continue gardening in the same plot.
 - 2) Hours of operation.
 - 3) Limitations on music or loud noise.
 - 4) Process for collecting fees and other garden funds.
 - 5) Limitations on use of fertilizers and pesticides.
 - 6) Gardener “code of conduct” including acceptable behavior between gardeners, consequences for rule violations, etc.
 - 7) Maintenance requirements for individual plots and community garden generally.
 - 8) Access to water and equipment.

Sample model rules:

- American Community Garden Association, available at <http://www.communitygarden.org/learn/starting-a-community-garden.php>
- Gardening Matters, available at <http://www.gardeningmatters.org>.

Lease Agreement - A Community Garden Lease Agreement is a binding contract between a local governing body or private land owner and a community group or non-profit that allows for property to be used as a community garden (ex. public park, vacant lot, non-developed land, or right of way).

General:

- Provide long-term leases of three to five years for community gardens.
- Allow for affordable, flat rate leases for community groups and non-profits.
- Include timely provision for access to water and cost for water access, if necessary.
- Provide financial assistance to low-income residents unable to afford cost of a garden plot.

Policymakers:

- Include language in comprehensive plans recognizing community gardens as semi-permanent or permanent land-use rather than temporary or interim land use.
- Provide longer leases (three to five year leases) for community gardens on public property.

<p>Equipment – Ensuring that gardeners have access to garden equipment is important for individual gardeners who cannot afford equipment or are unable to transport equipment to the garden site.</p>	<p>General</p> <ul style="list-style-type: none"> • Support tool share programs for community gardens. • Allow for toolsheds and other storage facilities on the community garden if allowed by local zoning code. <p>Policymakers</p> <ul style="list-style-type: none"> • Review local regulations to ensure that permanent sheds and other storage space is allowed on community garden sites. <p>Gardeners</p> <ul style="list-style-type: none"> • Provide secure location for storage of garden tools consistent with local regulations.
<p>Soil Conditions – Healthy plant growth is dependent on proper soil conditions, including a sufficient supply of plant nutrients, water, and organic matter.</p>	<p>General</p> <ul style="list-style-type: none"> • Improve soil condition by applying organic matter such as grass clippings, leaves, and compost. • Test soil for nutrients prior to applying fertilizers to identify needed nutrients. • Consult state and local legal requirements and restrictions on the use of fertilizers prior to application. Many states and local governments have legal restrictions on the use of certain fertilizers, especially those containing phosphorus. • Apply mulch around plants to limit weeds, conserve moisture in soil, moderate soil temperature, decrease soil compaction, and reduce the spread of some soil-born diseases.²⁶
<p>Native Plants - Native plants work well in perennial community gardens because they are best adapted to the local climate and insects, are part of a healthy ecosystem, and are beneficial to native butterflies and other pollinators.²⁷</p>	<p>General</p> <ul style="list-style-type: none"> • Encourage use of native plants for perennial community gardens, but do not restrict gardens to native plants as this may discourage community involvement. • Promote use of local seed sources for community gardens. • Give preference to plant materials produced from seed collected close to your location.
<p>Noxious and Invasive Weeds are plants or plant products, such as seeds, that can directly or indirectly injure or cause damage to crops, other agricultural interests or natural resources. Specific noxious and invasive weeds are identified by federal and state law.²⁸</p>	<p>General</p> <ul style="list-style-type: none"> • Require gardeners to comply with federal, state, and local prohibitions on growing noxious and invasive weeds. • Prohibit intentional introduction of identified noxious and invasive weeds into community gardens. • Provide information to gardeners on risks of introducing invasive weeds and plants and how to identify noxious and invasive weeds and plants.

<p>Raised Beds – Community gardens often install raised beds to make gardening more accessible to those with mobility difficulties and avoid contaminated soil. There are many types of raised beds, some of which may serve only to provide a more structured garden or prolong the growing season.</p>	<p>General</p> <ul style="list-style-type: none"> • Allow the use of raised beds and containers. • Identify garden needs and goals when installing raised beds to ensure that raised beds respond to the identified need and that the design and structure of the raised bed is appropriate for the specific need. Many different types of raised beds exist. Different types of raised beds respond to different needs. • Provide guidance to gardeners on the construction of raised beds, including the importance of using non-treated wood or other harmful materials for raised beds or containers. • Design your garden bed width for the maximum reach for an adult and a child. If your beds have access on both sides, design your bed to be twice the width of the maximum reach. • Consider including raised beds that are accessible to people with physical disabilities. • Include raised beds that are accessible to people with physical disabilities • Provide resources or other referrals for accessing or purchasing materials to build raised beds. <p>Policy makers</p> <ul style="list-style-type: none"> • Review local regulations to ensure there are no prohibitions against the use of raised beds and containers in community gardens. • Ensure that community gardens on public property include some plots that are accessible to individuals with disabilities. <p>Resource</p> <ul style="list-style-type: none"> • <i>Raised Bed Gardening</i>, Gardening Matters (2012), available at http://www.gardeningmatters.org/sites/default/files/G'M%20Raised%20Bed%20Factsheet,%20jan%202012.pdf (last visited March 8, 2012).
<p>Garden Fees – Community gardens often charge a fee for gardeners to cover the cost of garden operation and infrastructure needs of the garden.</p>	<p>General</p> <ul style="list-style-type: none"> • Ensure that fees charged for individual plots are not excessive and create financial barriers to low-income individuals. • Provide financial support, a sliding-scale fee structure or other resources for individuals unable to afford the cost of a garden plot. • Charge minimal fees for operating costs of garden, such as cost of water and property taxes.

Pest Control – A variety of pests can hurt your plants as they grow including insects, plant diseases, or weeds.

Policymakers

- Restrict chemical pesticide or herbicide use within community gardens or within 25 feet of the outside perimeter of community garden sites on public property.²⁹
- Provide technical assistance to gardeners on the use of natural pest control techniques.

Gardeners

- Avoid using any chemical fertilizers, weed, or pest control products on the garden for the safety of adults, children, pets, and other animals.
- Use alternative means for pest control, including the use of “good bugs” that consume garden pests; planting beneficial plants and flowers that either attract or repel garden pests.
- Plant native plants that are not as vulnerable to local pests.
- Include pest control guidelines in garden rules.

²⁶ Susan H. Barrott, *Mulching the Home Landscape - Yard and Garden Brief*, University of Minnesota Extension Service, available at <http://www.extension.umn.edu/projects/yardandgarden/ygbriefs/h139mulch.html> (last visited March 19, 2012).

²⁷ Minnesota Department of Natural Resources, *Benefits of Growing Native Plants* (2012), <http://www.dnr.state.mn.us/gardens/nativeplants/benefits.html>.

²⁸ 7 U.S.C. 7701 et seq.

²⁹ City of Eugene Community Gardens Program, *Community Gardens Handbook: Policies and Procedures* (Dec. 2011), http://www.eugene-or.gov/portal/server.pt/gateway/PTARGS_0_2_261937_0_0_18/CommGardensRules.pdf.

Liability Considerations

Liability issues and fears about liability risks and costs can prevent a community garden from getting started. However, there is little evidence of liability issues arising as a result of community garden activities.³⁰ Understanding and addressing liability issues is an important aspect of developing a community garden. Liability is a legal responsibility for injury, death or damages. Liability risks differ depending on what and who caused the harm.

Policy Considerations	Policy Approaches
<p>Waivers and Releases are written agreements not to sue if something goes wrong. Waivers have to be specifically drafted in order to increase the likelihood of enforcement by the courts.</p>	<p>General</p> <ul style="list-style-type: none"> • Require gardeners to sign waivers and/or releases of legal actions against landowners and/or community gardens for personal injury, property damage or wrongful death which may arise out of the participation as a gardener and/or guest.³¹ • Include language that will hold specified individuals harmless from liability associated with personal injury, property damage or other issues connected with participation in the community garden.
<p>Liability Insurance - Insurance can provide some protections to a community garden organization and landowners against liability for injuries or damages. However, obtaining liability insurance for community gardens may be difficult as insurance companies are often unfamiliar with these policies and there are few examples of liability issues associated with community gardens.</p>	<p>General</p> <ul style="list-style-type: none"> • Make liability insurance available to community gardens through the insurance policy of sponsoring organization or landowner by adding a rider to an existing insurance policy.³² • If needed, make liability insurance requirements no more than \$1 million in coverage as this is a standard amount of coverage offered to community gardens. Requiring liability insurance coverage in excess of \$1 million could be cost prohibitive for community garden groups and sponsoring organizations. <p> Policymakers</p> <ul style="list-style-type: none"> • Extend municipal liability protection to community gardens on public property. <p><i>Example:</i> New York City – New York City stopped requiring community gardens on public property to carry private liability insurance in 2006. Community gardens on public property are now covered under the general liability insurance of the New York City Department of Parks and Recreation.³³</p>

³⁰ City of New York Parks & Recreation, *City Drops Liability Insurance Requirements for Community Gardeners* (Mar. 23, 2006), http://www.nycgovparks.org/sub_newsroom/press_releases/press_releases.php?id=19761%20.

³¹ See Public Health Law Center, *Waivers & Releases Fact Sheet* (2011), <http://publichealthlawcenter.org/sites/default/files/resources/ship-fs-WaiversReleases-2011.pdf>.

³² Jack Hale, *Insurance for Community Gardens*, <http://communitygarden.org/docs/learn/articles/insuranceforcommunitygardens.pdf>.

³³ City of New York Parks & Recreation, *City Drops Liability Insurance Requirements for Community Gardeners* (Mar. 23, 2006), http://www.nycgovparks.org/sub_newsroom/press_releases/press_releases.php?id=19761%20.