

Community Gardens Code Amendment Proposal

Overview

- Proposed ordinances in support of resolution #20091119-065
- Repeals the current Qualified Community Gardens Code Chpt. 8-4 (Parks)
- Replaces repealed Chpt. 14-7 with new Sustainable Urban Agriculture Chapter
 - Defines City Supported Community Gardens
 - Establishes Garden Permit requirements
- Amends and modifies Title 25 & 30 and Chapter 14-11
 - Adds Community Gardens to Agriculture uses as a permitted use in all zoning districts
 - Establishes the process for water tap fee waivers
 - Establishes Community Garden license agreement process

City Supported Community Gardens

- Located on eligible city land with or without a water tap
- Located on private land and granted a temporary water tap fee waiver

Non City Supported Community Gardens

- Located on private land and not requesting a water tap fee waiver (no reviews or permits required)

Requirements for City Supported Community Gardens

- Must be supported by a non-profit organization
- Is used by a group of four or more gardeners on separate plots
- Incorporates water conservation, composting, and integrated pest management practices
- Receives a garden permit
- Receives a license agreement
 - City can terminate with 30 calendar days
 - Standard insurance is required
 - Sealed survey is waived for boundary sketch
 - City attorney may add special requirements (based on existing uses of property)
 - Annual renewal report is required for sign off

Urban Farms

- Urban Farms are added as a permitted use in P zoning districts as a concession



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MEMORANDUM

TO: PC Codes and Ordinances Committee
Planning Commission Board

FROM: Margaret Russell
Parks and Recreation Department

DATE: September 21, 2010

SUBJECT: Proposed Code Changes in response to Community Gardens Resolution

Changes have been made to code in response to the City Council's resolution # 20091119-065, Community Gardens and Urban Farms, which requested a system for creating community gardens on city property to be streamlined.

Chapter 8-4 for Qualified Community Gardens is repealed. This Chapter was for community gardens that fit a very specific description for location. It is no longer supported by specific grants.

Chapter 14-7 is added for Sustainable Urban Agriculture, including in particular the following sections:

- 14-7-2,3 Garden permit is required to operate a city supported community garden (to receive water tap waivers) and must go through the land dept. director
- 14-7-11 Garden permit application must come from a non profit
- 14-7-21 License application for city supported community gardens must come from a non profit and is required
- 14-7-32 Land Department director approves an annual renewal of license.

Chapter 11.1 is amended to process community garden license agreement separately from other city land license agreements.

Currently, there is no zoning that permits community gardens except for Qualified Community Gardens. Changes to Chapter 25 will allow community gardens as a described agricultural use permitted in all districts, and urban farms as allowable in Public districts. The waivers that were in place for Qualified Community Gardens, for site plans, water tap permits and platting, will be allowed for all community gardens. Additionally, the ordinance eliminates impact fees on community gardens placed on city land.

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RESOLUTION NO. 20091119-065

WHEREAS, the Sustainable Food Policy Board (SFPB) exists to advise City policy makers on ways to enhance local production of quality food and its accessibility to residents in Austin; and

WHEREAS, the SFPB was charged to:

- (1) explore new means for the city to improve the local food economy, including availability, sustainability, accessibility, and quality of food and our environment; and
- (2) assist city departments in the coordination of their efforts; and
- (3) review availability and recommend measures to promote the preservation of agricultural land in the City of Austin; and
- (4) recommend to the city adoption of measures that will improve existing local food production by adding new programs, incentives projects, regulations, or services; and

WHEREAS, urban farms and community gardens provide access to nutritious foods produced with less carbon resources than those shipped in from other regions, supporting the City's Climate Protection and Zero Waste initiatives; and

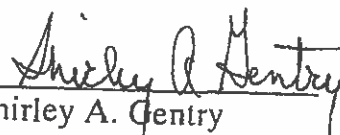
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(3) Direct appropriate Watershed Protection Department staff to discuss with the SFPB their recommendations for riparian buffers, integrated pest management and fertilizer use on public land.

4) Present the plan for sustainable urban agriculture and community gardens to the SFPB at their February 22, 2010, meeting for recommendations prior to presenting to Council on March 11, 2010.

ADOPTED: November 19, 2009

ATTEST:


Shirley A. Gentry
City Clerk

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ORDINANCE NO.

AN ORDINANCE REPEALING CHAPTER 8-4; REPLACING CHAPTER 14-7; AND AMENDING CHAPTER 14-11 TO THE CITY CODE RELATING TO SUSTAINABLE URBAN AGRICULTURE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The Council finds that urban farms and city-supported community gardens:

- (A) provide access to nutritious foods produced with fewer carbon resources than those shipped to the community from other regions;
- (B) promote sustainability by reducing fuel consumption and air pollution with reduced transportation requirements for distributing food;
- (C) reduce the need for energy required for cooling through increasing plants in the environment;
- (D) increase storm water collection;
- (E) support the City's Climate Protection and Zero Waste initiatives;
- (F) contribute to food security for the City;
- (G) support the local economy;
- (H) provide educational opportunities for urban residents; and
- (I) when located on eligible city land, eliminate the need for City resources necessary to mow and maintain land owned by the City.

PART 2. Section 14-11-1(A) of the City Code is amended to read:

§ 14-11-1 APPLICATION REQUIRED.

- (A) Except as provided in Chapter 14-7 (Sustainable Urban Agriculture) and 14-11-2 (Exceptions For Certain Uses Of Public Property), a person must submit an application to the director of the Public Works Department to obtain a release of a public easement, license for the non-city use of public property, or vacation of a public right-of-way.

PART 3. City Code Chapter 8-4 (*Qualified Community Garden*) is repealed and a new Chapter 14-7 is added to read as follows:

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1 CHAPTER 14-7. SUSTAINABLE URBAN AGRICULTURE.

2 ARTICLE 1. GENERAL PROVISIONS.

3 § 14-7-1 DEFINITIONS.

4 In this chapter:

- 5 (1) CITY-SUPPORTED COMMUNITY GARDEN means eligible city land
6 controlled under a license agreement or non-city land controlled under a land
7 control document which is located in the city corporate limits or
8 extraterritorial jurisdiction by a non-profit organization that:
- 9 (a) is used by a group of four or more participating gardeners either on
10 separate plots or farmed collectively by the group to grow, produce
11 and harvest food crops for personal or group use, consumption or
12 donation by the non-profit organization or cooperatively for the
13 benefit of its members;
 - 14 (b) is operated in a manner that includes water conservation, and in the
15 case of eligible city land includes composting, non-polluting, and
16 integrated pest management practices that promote a sustainable
17 garden, and is cultivated solely for the production of organic produce;
 - 18 (c) may include common areas maintained and used by the group or non-
19 food, ornamental crops;
 - 20 (d) is platted as a legal lot or exempted under Section 25-4-3 (*Temporary*
21 *Exemption from Platting Requirements*); and
 - 22 (e) has a community garden zoning use classification.
- 23 (2) CITY LAND DEPARTMENT DIRECTOR means the department director
24 or administrative head of the city department responsible for managing the
25 city-owned land used as a city-supported community garden.
- 26 (3) DEPARTMENT means the department or office designated by the city
27 manager to administer this chapter.
- 28 (4) DIRECTOR means the department director or administrative head of the
29 department or the director's authorized designee.
- 30 (5) ELIGIBLE CITY LAND means city-owned land identified by the director
31 as public land that is eligible for use as a city-supported community garden
32 and the city land department director approves its use as a city-supported
33 community garden.

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- 1 (6) GARDEN PERMIT means a permit issued by the director for a city-
2 supported community garden on eligible city land or non-city land.
- 3 (7) LAND CONTROL DOCUMENT means a deed, written agreement (or an
4 amendment to a previously executed land control document) or other
5 documentation acceptable to the director evidencing the non-profit
6 organization's control of the non-city land that allows the non-city land to be
7 used as a city-supported community garden under this chapter.
- 8 (8) LICENSE AGREEMENT means a written agreement (or an amendment to a
9 previously executed license agreement) between the city and a non-profit
10 organization approved by the director that allows eligible city land to be
11 used as a city-supported community garden under this chapter and in a form
12 acceptable to the city attorney.
- 13 (9) NON-CITY LAND means a parcel of land not owned by the city that is
14 eligible for use as a city-supported community garden.
- 15 (10) NON-PROFIT ORGANIZATION means a non-profit entity under the Texas
16 Business Organizations Code whose purpose allows it to operate a city-
17 supported community garden, is legally responsible for filing an application
18 and documentation under this chapter, and is authorized to enter into a
19 license agreement or land control document under this chapter. The director
20 will approve each organization that is eligible under this chapter.
- 21 (11) PARTICIPATING GARDENER means each family or unrelated individual
22 that participates in a city-supported community garden.
- 23 (12) URBAN FARM means a parcel of land between 1 and 5 acres that is
24 agriculturally cultivated by a person solely for the production of organic
25 produce to be sold for profit.

26 **§ 14-7-2 GARDEN PERMIT REQUIRED; WAIVER OF DEADLINES.**

27 A person may not operate a city-supported community garden under this chapter
28 unless the person obtains and possesses a garden permit and any other permit required by
29 this chapter or the city, and pays any required fees.

30 **§ 14-7-3 RESTRICTIONS ON ISSUANCE OF GARDEN PERMIT.**

31 The director may not issue a garden permit on eligible city land unless the city land
32 department director consents in writing to its use as a city-supported community garden.

33 ***ARTICLE 2. GARDEN PERMIT PROCESSING REQUIREMENTS.***

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1 § 14-7-11 DOCUMENTATION REQUIREMENTS FOR GARDEN PERMIT
2 APPLICATIONS.

3 (A) An application in a form acceptable to the director for a garden permit filed
4 under this chapter must be submitted to the director by a non-profit
5 organization that has not been issued a notice under section 14-7-33 (*Notices*
6 *Of Termination Of Use And Qualification*).

7 (B) An application for a garden permit filed under this section must be
8 accompanied by:

9 (1) any required fees; and

10 (2) in the case of a city-supported community garden on non-city land, a
11 copy of the executed land control document.

12 § 14-7-12 DETERMINATION ON GARDEN PERMIT APPLICATION;
13 APPROVAL AND ISSUANCE OF GARDEN PERMIT.

14 (A) The director shall review an application submitted by a non-profit
15 organization for a garden permit for completeness and the acceptability of
16 the application.

17 (B) The director may approve or deny a garden permit after the director receives
18 a complete and acceptable application. The director shall issue a permit to
19 the non-profit organization if the director determines that the application for
20 a garden permit complies with this chapter and any rules with respect to this
21 chapter.

22 **ARTICLE 3. LICENSE AGREEMENT APPLICATION AND**
23 **APPROVAL PROCEDURES.**

24 § 14-7-21 APPLICATION REQUIREMENTS FOR LICENSE AGREEMENT
25 APPROVAL; LICENSE AGREEMENT APPROVAL.

26 (A) A non-profit organization desiring to operate a city-supported community
27 garden on eligible city land must file a supplemental application for a license
28 agreement in a form acceptable to the director with the application for a
29 garden permit.

30 (B) The director may approve a supplemental application by a non-profit
31 organization for a license agreement for the private use of eligible city land
32 for a city-supported community garden, unless:

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- (1) the director or the city land department director determines that the proposed license agreement interferes with the public use of the eligible city land; or
 - (2) the city land department director:
 - (a) is not provided a copy of the application required by section 14-7-11 (*Documentation Requirements For License Agreement Applications*); or
 - (b) is provided a copy of the application required by section 14-7-11 (*Documentation Requirements For License Agreement Applications*) by the director and the city land department director objects to approval of the application; or
 - (3) a garden permit is not issued.
- (C) The director may approve execution of a license agreement if the director determines that the application complies with this chapter and any rules with respect to this chapter.

§ 14-7-22 CONTENTS OF LICENSE AGREEMENT; DESIGNATING AREA; EXECUTION.

- (A) A license agreement approved under this chapter must contain:
- (1) a provision allowing the city to terminate the license agreement without cost to the city, and not earlier than 30 calendar days after issuing a written notice of the termination to the non-profit organization;
 - (2) a provision describing insurance requirements;
 - (3) a sketch including boundary points of the city-supported community garden;
 - (4) any special provisions required by the city land department director concerning limitations on the use of the eligible city land; and
 - (5) other provisions that the city attorney determines are necessary.
- (B) A license agreement may not be executed until the non-profit organization has paid any fees required under this chapter.

ARTICLE 4. ADMINISTRATION.

§ 14-7-31 FEES.

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The fees required under this chapter shall be established by separate ordinance.

§ 14-7-32 ANNUAL LICENSE AGREEMENT RENEWAL.

(A) Each license agreement will be automatically renewed annually under the terms of the agreement, provided:

(1) a termination or suspension notice has not been issued under section 14-7-33 (*Notices Of Termination Of Use And Qualification*) or section 14-7-34 (*Suspension or Termination Of Garden Permit*);

(2) the city land department director responsible for managing the land that is the subject of the license agreement consents to its continued use as a city-supported community garden.

§ 14-7-33 NOTICES OF TERMINATION OF USE AND QUALIFICATION.

(A) A non-profit organization operating a city-supported community garden must notify the director and each person or garden committee responsible for managing each of the organization's city-supported community gardens not later than 90 calendar days before the organization terminates a garden permit.

(B) If a non-profit organization operating a city-supported community garden ceases to qualify under this chapter, the director must notify the non-profit organization and each person or garden committee responsible for managing each of the organization's city-supported community gardens that the organization is no longer designated as a non-profit organization. The license agreement must be assigned to another eligible non-profit organization within 90 calendar days after the date the non-profit organization ceases to qualify under this chapter or the garden permit and the license agreement will be terminated by the director.

§ 14-7-34 SUSPENSION OR TERMINATION OF GARDEN PERMIT.

If the director determines that a non-profit organization or a participating gardener has violated or failed to comply with the terms of a garden permit or license agreement issued under this chapter, the director may immediately halt all city-supported community garden activities under the garden permit and suspend or terminate the garden permit.

§ 14-7-35 APPEAL.

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ORDINANCE NO. _____

1 AN ORDINANCE AMENDING TITLE 25 AND TITLE 30 OF THE CITY CODE
2 RELATED TO **COMMUNITY GARDENS.**

3 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

4 PART 1. Section 25-2-7 (*Agricultural Uses Described*) of the City Code is amended to
5 read:

6 § 25-2-7 AGRICULTURAL USES DESCRIBED.

7 (A) Agricultural uses include the on-site production of plant and animal products
8 by agricultural methods.

9 (B) Agricultural use classifications are described as follows:

10 (1) ANIMAL PRODUCTION use is the use of a site for the raising of
11 animals or production of animal products including eggs and dairy
12 products, on an agricultural or commercial basis. This use includes
13 grazing, ranching, dairy farming, and poultry farming.

14 (2) COMMUNITY GARDEN use is the use of a site for growing or
15 harvesting food crops or ornamental crops on an agricultural basis, by
16 a group of individuals for personal or group use, consumption or
17 donation.

18 [~~2~~](3) CROP PRODUCTION use is the use of a site for the raising and
19 harvesting of tree crops, row crops, or field crops on an agricultural or
20 commercial basis, including packing and processing.

21 [~~3~~](4) HORTICULTURE use is the use of a site for the growing of
22 horticultural or flora cultural specialties, including flowers, shrubs,
23 and trees intended for ornamental or landscaping purposes, but
24 excluding retail sales. This use includes wholesale plant nurseries and
25 greenhouses.

26 [~~4~~](5) SUPPORT HOUSING use is the use of a site for living
27 accommodations by agricultural employees or their families.

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~~(5)~~(6) URBAN FARM use is the use of an urban site for the production and sale of organic agricultural products.

PART 2. The table in Section 25-2-491(C) of the City Code is amended to add "Community Garden" use under Agricultural Uses and to indicate that "Community Garden" use is permitted in all districts.

PART 3. The table in Section 25-2-491(C) of the City Code is amended to indicate that an "Urban Farm" use under Agricultural Uses is changed to indicate that "Urban Farm" use is a permitted use in all districts.

PART 4. Section 25-2-863 (*Urban Farms*) is amended to add a new Subsection (C) to read as follows and to re-letter the remaining subsections accordingly:

§ 25-2-863 URBAN FARMS.

(C) For a Public (P) district the use:

- (1) must be approved as a concession by the director; and
- (2) must be located:
 - (a) outside the 25-year flood plain; and
 - (b) no less than 100 feet from a creek centerline.

PART 5. Section 25-4-3 (*Temporary Exemption from Platting Requirements*) of the City Code is amended to read:

§ 25-4-3 TEMPORARY EXEMPTION FROM PLATTING REQUIREMENTS.

- (A) The director may temporarily exempt a parcel of land from the requirement to plat if the director determines that the sole use of the parcel is as a [qualified] community garden [~~described in Chapter 8-4 (Qualified Community Gardens)~~]. An applicant shall provide the director with the information and documentation necessary to establish the exemption.
- (B) If the sole use of an exempted parcel changes from a [qualified] community garden, an exemption under this section expires.
- (C) A parcel temporarily exempted under this section must be platted before it may be used for a purpose other than as a [qualified] community garden

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1 **PART 6.** Section 25-5-2 (*Site Plan Exemptions*) of the City Code is amended to add a
2 new Subsection (K) to read as follows:

3 (K) A site plan is not required for development of a site solely for a community
4 garden use if the director determines that the overall plan does not exceed
5 the exceptions described in subsections (B), (C) or (D).

6 **PART 7.** Section 25-6, Appendix A (*Tables of Off-Street Parking and Loading*
7 *Requirements, Part 1 – Motor Vehicles*) of the City Code is amended to add “Community
8 Garden” as a new use classification in the first column under “Agricultural Uses” and to
9 add “Schedule B” as the corresponding minimum off-street parking requirement in the
10 second column and “None” as the off-street loading requirement in the third column.

11 **PART 8.** Section 25-9-99 (*Temporary Tap Permits for a Community Garden*) of the
12 City Code is amended to read:

13 **§25-9-99 TEMPORARY TAP PERMITS FOR A CITY-SUPPORTED**
14 **COMMUNITY GARDEN.**

15 (A) In this section, city-supported ~~[qualified]~~ community garden and garden
16 permit have ~~[has]~~ the meanings assigned by Section 14-7-1 (*Definitions*) [~~8-~~
17 ~~4-1~~ (*Designation*)].

18 (B) A tap permit issued for a city-supported ~~[qualified]~~ community garden is a
19 temporary permit. A tap permit issued for a city-supported community
20 garden remains valid only while the ~~[community-]~~ garden permit is valid ~~[is a~~
21 ~~qualified community garden]~~.

22 (C) If ~~the~~ ~~[a community-]~~ garden permit terminates ~~[ceases to be a qualified~~
23 ~~community garden]~~ and the parcel of land ~~[lot]~~ is no longer exempt under
24 Section 25-4-3 (*Temporary Exemption From Platting Requirements*), the
25 Water and Wastewater Utility shall remove the tap from ~~[for]~~ the city-
26 supported community garden.

27 (D) If ~~the~~ ~~[a community-]~~ garden permit terminates ~~[ceases to be a qualified~~
28 ~~community garden]~~ and the parcel of land ~~[lot]~~ is a legal lot, the Water and
29 Wastewater Utility shall remove the tap from ~~[for]~~ the city-supported
30 community garden unless:

31 (1) the owner or the user of the legal lot submits an application for a tap;
32 and

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(2) the director of the Water and Wastewater Utility approves a tap permit.

(E) An applicant under Subsection (D) must pay the fees for each tap for which an application is submitted, including any impact [a capital recovery] fee.

PART 9. Subsection (B) of City Code Section 25-9-312 (*Definitions*) is amended to read:

§ 25-9-312 DEFINITIONS.

(A) Except as provided in this section, words and phrases in this article that are defined in Chapter 395 of the Local Government Code have the same meaning in this article that they have in Chapter 395.

(B) In this article:

(1) CITY-SUPPORTED COMMUNITY GARDEN has the meaning assigned by Section 14-7-1 (*Definitions*).

~~(2)~~ ~~NEW DEVELOPMENT~~ means the subdivision of land; the construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure; or any use or extension of the use of land; any of which increases the number of service units for water or wastewater service, and includes the sale of water or wastewater taps resulting from the conversion of an individual well, or of an individual waste disposal system, to the City's water or wastewater utility.

~~(2)~~ ~~QUALIFIED COMMUNITY GARDEN~~ means a parcel of land used as a cooperative garden under Chapter 8-4 (*Qualified Community Garden*).

(3) TAP PERMIT means a permit for a connection to the City's water or wastewater system under Article 1, Division 3 (Tap Permits).

(4) WASTEWATER IMPACT FEE means an impact fee for wastewater service.

(5) WATER AND WASTEWATER IMPACT FEE SERVICE AREA means the water and wastewater impact fee service area designated by separate ordinance.

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- (6) WATER IMPACT FEE means an impact fee for water supply service.
- (7) WHOLESale CUSTOMER means a customer of the City's water and wastewater utility who purchases service for resale to a retail customer.

PART 10. Section 25-9-346 (*Exemption for Qualified Community Gardens*) of the City Code is amended to read:

§ 25-9-346 EXEMPTION FOR CITY-SUPPORTED [QUALIFIED] COMMUNITY GARDENS.

(A) In this section, city-supported community garden and garden permit have the meanings assigned by Section 14-7-1 (Definitions) of the City Code.

~~(B)~~ [(A)] An [A] impact fee may not be assessed on a city-supported [qualified] community garden.

~~(C)~~ [(B)] The director of the [Parks and Recreation D] department designated under Section 14-7-1 (Definitions) shall determine if the parcel of land is issued a [community] garden permit [is-qualified under Section 8-4-1 (Designation)].

~~[(C)]~~ An exemption under this section applies to a single 5/8 inch simple meter for one service unit if no other plumbing other than irrigation is installed.

(D) If the garden permit on a parcel of land terminates, [a property loses its status as a qualified community garden under Chapter 8-4 (Qualified Community Garden)], the director of the department [Parks and Recreation Department] designated under Section 14-7-1 (Definitions) shall notify the director of the Water and Wastewater Utility and the director of the [Watershed Protection] Planning and Development Review Department of the change in [loss of the property's] status.

(E) After a garden permit terminates on a parcel of land and if the tap is not removed in accordance with Section 25-9-99 (Temporary Tap Permit for a City-supported Community Garden) [property loses its status as a qualified community garden]:

(1) a user of the parcel of land [property] shall pay any impact fees on the parcel of land within 30 calendar days [property]; and

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(2) if the impact fee is not paid as required under Paragraph (1), the director of the Water and Wastewater Utility must [may] notify the user that:

(a) if the parcel of land [lot] had a temporary exemption from the platting requirements before the garden permit was terminated, the user must plat the parcel of land [lot] before the W[water] and W[w]astewater U[utility] can continue service;

(b) the delinquent impact fee on the parcel of land must be paid within 15 calendar days [is due]; and

(c) the [user's] failure to secure legal lot status or to pay the impact fee is grounds for terminating water service; and[-]

(3) if, following the notice under Paragraph (2), legal lot status is not obtained or the impact fee is not paid as required under Paragraph (2), the water service may be disconnected.

PART 11. Section 30-2-3 of the City Code is amended to read:

§ 30-2-3 TEMPORARY EXEMPTION FROM CITY PLATTING REQUIREMENTS.

- (A) The director may temporarily exempt a parcel of land from the city's requirement to plat if the director determines that the sole use of the parcel is as a [qualified] community garden [~~described in City Code Chapter 8-4 (Qualified Community Gardens)~~]. An applicant shall provide the director with the information and documentation necessary to establish the exemption.
- (B) If the sole use of an exempted parcel changes from a [qualified] community garden, an exemption under this section expires.
- (C) A parcel temporarily exempted under this section must be platted before it may be used for a purpose other than as a [qualified] community garden.

