

## DRAFT CODE RECOMMENDATIONS

*Draft 7/01/2013 (presented for STAFF REVIEW on 7/1/13)*

Per an action taken by the Planning Commission (PC) for the City of Austin on February 26, 2013 the Code and Metrics working group of the Sustainable Food Policy Board (SFPB) began a Context Sensitive Solutions and Public Involvement Approach in order to update the current Urban Farms use designation in the City's land use code. The Planning Commission voted to "initiate an ordinance to amend Chapter 25-2 of the City of Austin Land Development code to clarify, update, and revise regulations related to urban farms, livestock, size of farm, employees and dwelling." Furthermore, in their recommendation to the PC that requested the update, the SFPB resolved that they "will work with the Planning Commission and City staff to review zoning for additional opportunities to increase local food production."

With that said, the following document highlights the draft code recommendations the Sustainable Food Policy Board (SFPB) Code and Metrics working group has put together considering input from: public meetings, stakeholder groups, experts, precedents/case studies, and City of Austin staff. Related to this charge, the working group recommends the following changes to the Urban Farms use and the creation of two new use designations: Urban farms with Livestock use (conditional in all zones) and Market Gardens use (less than an acre, permitted in all zones).

The following document is divided into the following sections:

*A. Urban Farms code recommendations*

*B. Urban Farms with Livestock code recommendations*

*C. Market Gardens introduction and code recommendations*

### § 25-2-7 AGRICULTURAL USES DESCRIBED.

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

(B) Agricultural use classifications are described as follows:

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

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

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

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

(5) SUPPORT HOUSING use is the use of a site for living accommodations by agricultural employees or their families.

(6) URBAN FARM use is the use of an ~~urban~~ site that can consist of multiple contiguous parcels ~~for the production and sale of organic agricultural products~~ that is at least one acre in size cultivated primarily for the sustainable production of agricultural products to be sold for profit and may provide agricultural education activities and other special events, as permitted by section 25-2-863(3). Agricultural education activities include volunteer programs, farm tours, cooking classes, youth programs and farming classes.

(7) MARKET GARDEN use is the use of a site that is less than one acre in size cultivated primarily for the sustainable production of agricultural products to be sold for profit and may provide agricultural education activities, as permitted by section 25-2-836(3). Agricultural education activities include volunteer programs, farm tours, cooking classes, youth programs and farming classes.

## A. Urban Farms use code Recommendations

### § 25-2-863 URBAN FARMS.

(A) This section applies to an urban farm use.

~~(B) For a single family (SF) district:~~

~~(1) the use is a permitted use on a site that is located:~~

~~(a) in the desired development zone; and~~

~~(b) outside the 25 year floodplain; or~~

~~(2) the use is a conditional use on a site that is located:~~

~~(a) in the drinking water protection zone; or~~

~~(b) in a 25 year floodplain.~~

(B) Urban Farms are allowed within the Critical Water Quality Zone in accordance with 25-8-261 (Critical Water Quality Zone Development).

~~(B) Urban Farms are allowed within the Critical Water Quality Zone (as defined by 25-8-92)~~

~~(1) No less than 25 feet from the centerline of the creek as classified by 25-8-2 as an urban watershed;~~

~~(2) In watersheds other than urban, as classified by 25-8-2, no less than 50 feet from the centerline of a minor waterway, 100 feet from the centerline of an intermediate waterway, and 150 feet from the centerline of a major waterway, as defined by 25-8-91~~

~~(a) Within the buffers for each type of watershed, uses are limited to farm plots, fruit trees, and paths, with no storage facilities, animal pens, compost piles or other structures.~~

~~(4) Organic Sustainable practices must be utilized as established by an approved Integrated Pest Management Plan (see section F below)~~

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

~~(1) must be approved under an appropriate contracting method, as determined by the director; and~~

~~(2) must be located:~~

~~(a) outside the 25-year floodplain; and~~

~~(b) no less than 100 feet from a creek centerline.~~

(C) A site area of ~~not less than one acre~~ 1 acres or greater ~~and not more than five acres~~ is required.

~~(1) at least 50 feet from each adjacent lot and from each residential structure other than one associated with the use; and~~

~~(2) at least 20 feet from utility easements, utility lines, and on-site sewage facilities.~~

(D) ~~One dwelling is permitted. The maximum number of dwellings allowed will follow the base zoning of the lot(s). No minimum number of dwellings is required on an urban farm in a non-single-family zone. Animal raising in accordance with 25-2-863(G) is not allowed without a dwelling on site. Accessory structures are permitted without a dwelling.~~

~~(F) Raising livestock is prohibited notwithstanding Chapter 3-2 of the City Code.~~

(E) Raising and processing and composting of fowl, rabbits, and aquatic foods (using aquaponics systems) is permitted in accordance with Chapter 3-2 of the City Code. On farms at least 1 acre in size, 1 animal (either fowl or rabbit) may be processed per 1/10th of an acre per week. Composting or processing of animals must be at least 50 ft from the nearest residential structure other than the structure associated with the use. Processing animals must take place out of public view.

(F) The use of synthetic inputs is prohibited. An Integrated Pest Management Plan, developed in accordance with the Environmental Criteria Manual and approved by the Watershed Protection Department, must be followed.

(G) Agricultural and value-added agricultural products raised on the property by the farmer or produced within the state of Texas may be sold from the site or distributed off-site to buyers. Agricultural products and value-added agricultural products produced off-site by someone other than the farmer cannot exceed 10% of the retail space by area.

(H) Employees are permitted. The maximum number of full time employees is ~~one~~ two for each full acre, plus ~~one~~ two for the remaining portion of an acre, if any. This does not include property owner. Any full time employees above this limit would require the farm to provide 1 off-street parking space per additional employee.

(I) The residential character of the lot and dwelling must be maintained.

(J) For an urban farm use, non-electrified sign is permitted.

(K) Any event hosted on a farm with 50 or more attendees requires a Temporary Use Permit administered by Planning and Development Review. TUPs should be renewed every 6 months. A TUP application can include requests for multiple events within a flexible schedule in the 6-month period. Events that do not require off-site parking are exempt from the TUP process. Events of 50+ attendees that charge a fee and that take place during evening hours are limited to an average of 4 per month.

### § 3-2-12 ENCLOSURE FOR SMALL ANIMAL.

(A) An enclosure used to keep more than two but fewer than 10 small animals must be located at least 20 feet from an adjacent residence or business, excluding the residence or business of the owner or handler of the small animals.

(B) An enclosure used to keep ten or more small animals must be located at least ~~50~~ 40 feet from an adjacent residence or business, excluding the residence or business of the owner or handler of the small animals.

(C) This section does not apply to an animal shelter, veterinary clinic, pet store, or institutional or education research facility.

### § 3-2-16 ENCLOSURE FOR FOWL.

An enclosure used to keep ~~two or more~~ two to 10 fowl must be located at least ~~50~~ 20 feet from a residence or business, excluding the residence or business of the fowl's owner or handler. An enclosure used to keep more than 10 fowl must be located at least 50 40 feet from a residence or business, excluding the residence or business of the fowl's owner or handler.

### § 14-7-1 DEFINITIONS.

In this chapter:

(1) CITY-SUPPORTED COMMUNITY GARDEN means eligible city land controlled under a license agreement or non- city land controlled under a land control document which is issued a garden permit and located in the city corporate limits or extraterritorial jurisdiction by a non-profit organization that:

(a) is used by a group of four or more participating gardeners either on separate plots or farmed collectively by the group to grow, produce and harvest food crops for personal or group use, consumption or donation by the non-profit organization or cooperatively for the benefit of its members;

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

(c) may include common areas maintained and used by the group for non-food, ornamental crops;

(d) is platted as a legal lot or exempted under Section 25-4-3 (*Temporary Exemption from Platting Requirements*); and

(e) has a community garden zoning use classification.

(2) CITY LAND DEPARTMENT DIRECTOR means the department director or administrative head of the city department responsible for managing the city-owned land used as a city-supported community garden.

(3) DEPARTMENT means the department or office designated by the city manager to administer this chapter.

(4) DIRECTOR means the department director or administrative head of the department or the director's authorized designee.

(5) ELIGIBLE CITY LAND means city-owned land identified by the director as public land that is eligible for use as a city-supported community garden and the city land department director approves its use as a city-supported community garden.

(6) GARDEN PERMIT means a permit issued by the director for a city-supported community garden.

(7) LAND CONTROL DOCUMENT means a deed, written agreement (or an amendment to a previously executed land control document) or other documentation acceptable to the director evidencing the non-profit organization's control of the non- city land that allows the non-city land to be used as a city-supported community garden under this chapter.

(8) LICENSE AGREEMENT means a written agreement (or an amendment to a previously executed license agreement) between the city and a non-profit organization approved by the director that allows eligible city land to be used as a city-supported community garden under this chapter and in a form acceptable to the city attorney.

(9) NON-CITY LAND means a parcel of land not owned by the city that is eligible for use as a city-supported community garden.

(10) NON-PROFIT ORGANIZATION means a non-profit entity under the Texas Business Organizations Code whose purpose allows it to operate a city-supported community garden, is legally responsible for filing an application and documentation under this chapter, and is authorized to enter into a license agreement or land control document under this chapter. The director will approve each organization that is eligible under this chapter.

(11) PARTICIPATING GARDENER means each family or unrelated individual that participates in a city-supported community garden.

~~(12) URBAN FARM means a parcel of land between 1 and 5 acres that is agriculturally cultivated by a person solely for the production of organic produce to be sold for profit.~~

### § 10-3-1 DEFINITIONS.

(A) Except as provided in Subsection (B), a term defined by Texas Administrative Code Title 25, Part 1, Chapter 229, Subchapter K (*Texas Food Establishments*) has the same meaning in this chapter.

(B) In this chapter:

(1) BAKED GOODS means cookies, cakes, breads, Danishes, donuts, pastries, pies, and other items that are prepared by baking in an oven. A baked good does not include a potentially hazardous food item.

(2) CERTIFIED FARMERS MARKET means a farmers market that has been certified by the Texas Department of Agriculture pursuant to Subchapter D of Title 4 of the Texas Administrative Code.

(3) FARM PRODUCE means herbs and spices in their natural or dried state, vegetables, fruits, nuts, berries, grains, honey, watermelons and other melons, and cantaloupes in their natural state.

(4) FOOD ENTERPRISE includes:

- (a) a food establishment; and
- (b) a food processing plant.

(5) FOOD HANDLER means a food enterprise employee who works at any time with unpackaged food, food equipment or utensils, or food contact surfaces.

(6) MARKET MANAGER means a person who is designated as the person-in-charge of a certified farmers market.

(7) MOBILE FOOD ESTABLISHMENT means one of two types of mobile food units:

(a) A restricted unit that offers only prepackaged food in individual servings; beverages that are not potentially hazardous and are dispensed from covered urns or other protected vessels; and packaged frozen foods. Preparation, assembly or cooking of foods is not allowed;

(i) A foot peddler permit is a restricted unit, and except as set forth in subsection (ii), is limited to one portable ice chest, cooler, case or unit per permit, capable of being carried by one person;

(ii) A foot peddler at a Certified Farmers Market may use multiple portable ice chests, coolers, cases or units; or

(b) An unrestricted unit that may serve food as allowed in (a), and may cook, prepare and assemble a full menu of food items;

(i) Except as provided in subsection (ii) below, an unrestricted unit must be secured and completely enclosed; and

(ii) Foods such as hot dogs, coffee, or shaved ice, or food with prior approval from the health authority, may be served from vehicles with three sides and a cover.

(8) **PERSON IN CHARGE** means an employee who possesses a food manager certificate at a food enterprise, bed and breakfast limited or unrestricted mobile food establishment. If the person possessing a food manager certificate is not present, then if an employee appears to be a supervisor, that employee is the person in charge.

(9) **SAMPLING** means the demonstration or promotion of a food via offering a small serving of the food which cannot be sold and which may not consist of a whole meal, an individual portion or a whole sandwich.

(10) **TEMPORARY FOOD ESTABLISHMENT** shall mean a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single special event or celebration, and shall also include an establishment that is granted an exemption by the health authority.

(a) A person or organization is allowed four temporary events in a calendar year unless granted an exemption by the health director.

(b) Properties overseen by the City and multi-use facilities that are used for trade shows and conventions are exempt from this restriction.

(c) A temporary food establishment at a certified farmer's market may operate one day a week for 14 consecutive weeks as a single special event if the temporary food establishment is permitted as a food establishment, or is preparing its food at a permitted food establishment, and is in compliance with its permit issued by the health authority. The permit shall be issued to the vendor. The vendor shall meet requirements of the Texas Food Establishment Rules (TFER) and all other applicable laws. A temporary food establishment at a certified farmer's market is not exempt from the food handler requirements of this chapter.

(11) **UNSAFE FOOD** means:

(a) food that contains any chemical, poisonous or injurious substance which may be harmful to the health of a consumer;

(b) food that is not packaged in conformity with this chapter;

(c) food that contains a contaminated or putrid substance; or

(d) food that has been prepared, packed or held under unsanitary conditions whereby it may have become contaminated, or may have been rendered diseased, unwholesome, or harmful to health.

(12) **VIOLATION** means the failure to follow this Chapter 10-3 or an act prohibited by this Chapter. A violation may result in charges being filed in municipal court for:

(a) scoring below a 70 on a food enterprise inspection;

- (b) using an unapproved source;
- (c) home prepared foods; or
- (d) food out of temperature compliance.

(13) AGRICULTURAL PRODUCT means produce, meat, fish, honey, dairy, seeds, live plants intended for food production and compost products produced by a farmer.

(14) AQUAPONICS is the symbiotic cultivation of fish and plants in a recirculating system.

## § 25-2-921 TEMPORARY USES DESCRIBED.

(A) The following may be permitted by the building official as temporary uses under this division:

- (1) model homes or apartments and related real estate services, if the use is located within the residential development to which the use pertains;
- (2) a circus, carnival, rodeo, fair, or similar activity, if the use is located at least 200 feet from a dwelling and located in a CS or less restrictive zoning district;
- (3) an outdoor art or craft show or exhibit, if the use is located in an LR or less restrictive zoning district;
- (4) Christmas tree sales;
- (5) an on-site construction field office, if the use is located in a portable structure and conducted for not more than 6 months;
- (6) seasonal retail sale of agricultural or horticultural products, if the use is located at least 200 feet from a dwelling and located in an LR or less restrictive zoning district;
- (7) seasonal day care, if the use is conducted for not more than eight hours a day and not more than 30 days a year; and
- (8) temporary day care, if the use is conducted for not more than eight hours a day and not more than 12 hours a week.

(B) A sales office for a new subdivision may be permitted as a temporary use under this division if the sales office is located within the subdivision and at least 200 feet from existing dwellings outside the subdivision.

- (1) A sales office for a new subdivision may not be operated after:
  - (a) the expiration of four years from the date the first construction permit issued in the subdivision; or
  - (b) the date by which 95 percent of the lots are sold.
- (2) The board of adjustment may grant an extension of the deadlines described in this subsection.

(C) An outdoor public, religious, patriotic, or historic assembly or exhibit, including a festival, benefit, fund raising event, or similar use that typically attracts a mass audience may be permitted as a temporary use under this division if:

- (1) for a gathering of not more than 50 persons, the use is located in an SF-4 or less restrictive zoning district or has an urban farm or market garden use;

(2) for a gathering of more than 50 persons, the use is located in an LO or less restrictive zoning district or has an urban farm or neighborhood farm use; or

(3) for an exhibit, the use is located in a GR or less restrictive zoning district.

## **B. Urban Farms with Livestock Code Recommendations**

### § 25-2-XXX URBAN FARMS WITH LIVESTOCK.

(A) This section applies to an urban farm use with livestock. Livestock on urban farms means sheep, goats, and pigs.

(B) In all zones, the use is conditional.

(C) The use must be in accordance with 25-2-863. On-site processing of livestock is not permitted.

## **C. Market Gardens introduction and code recommendations**

The code recommendations for a “Market Gardens” use come from the marriage of existing codes that currently govern activities which are allowed in residential neighborhoods in Austin.

The working group recommends that Market Gardens be a specific designation as a valid home occupation-type business that can be operated on a scale that maintains the site’s primary residential use, but by its unique nature cannot be effectively operated under the parameters of any single area of code as defined below.

Under the “Cottage Food Production” law that will go into effect this year, defined products do not include fresh vegetables, but other food products like pickles and cakes can be sold from the home and internet and wholesale sales of such goods are expressly prohibited.

“Community Garden” use allows someone to cultivate private land for the production of organic produce, but defines Community Garden in a way that a single individual running the operation will not be eligible for the designation, and sales above and beyond what would reasonably go back into the farm to support its maintenance are prohibited. Community Gardens CAN have signs and on-site farm stands.

“Home Occupation” allows a whole host of home based businesses as long as they are in keeping with neighborhood character, do not cause a nuisance, and keep related vehicle trips to no more than three per day. Home based businesses are not allowed a sign, which an operation like a Market Garden would rely on for walk-up neighborhood sales (the home occupation use does not allow for advertising or publication of the address).

“Urban Farm Sign” gives a clear description of what a very small sign would look like for a farm operating from a residential setting but is specific to just Urban Farms. Farms operating from other zones can have signs per the requirements of those zones.

Market Gardens may need a specific designation due to the unique nature of this type of home business that necessitates keeping produce fresh. The extra hours and cost of preparing for off-site markets can be too much for someone growing at such a small scale. Requiring a fresh food producer to sell only off-site can be onerous, costly, and wasteful, requiring additional post harvest handling and bundling, washing and refrigeration of fresh produce using water at residential rates, and expensive equipment that a small grower may not be able to afford, and leads to food waste when the farmer cannot “restock” the unsold produce. These gardens can be considered a City and Neighborhood asset as part of a larger discussion that relates to sustainability and accessibility to food within walking distance of where people live.

#### § 25-2-XXX MARKET GARDENS.

- (A) This section applies to a market garden use.
- (B) Market Gardens are allowed within the Critical Water Quality Zone in accordance with 25-8-261 (Critical Water Quality Zone Development)
- (C) A site area of less than one acre is required.
- (D) The maximum number of dwellings allowed will follow the base zoning of the lot(s). No minimum number of dwellings is required on a market garden. Animal raising in accordance with 25-2-863(G) is not allowed without a dwelling on site. Accessory structures are permitted without a dwelling.
- (E) Raising of fowl, rabbits, and aquatic foods (using aquaponics systems) is permitted in accordance with Chapter 3-2 of the City Code. On-site processing or composting of animals is not permitted. A dwelling is required for the raising of animals.
- (F) The use of synthetic inputs is prohibited. An Integrated Pest Management Plan, developed in accordance with the Environmental Criteria Manual and approved by the Watershed Protection Department, must be followed.
- (G) Agricultural and value-added agricultural products raised by the farmer or produced within the state of Texas may be sold from the site or distributed off-site to buyers. On-site farm stands are not permitted. Sales must be conducted out of sight of the general public on the property, and no more than three customer-related trips per day are permitted in alignment with the Home Occupation Ordinance.
- (H) The residential character of the lot and dwelling must be maintained.
- (I) For an urban farm use, a sign is permitted that is not more than four square feet in size; has a sign face not more than four feet wide; and is not more than four feet above grade. The sign cannot be electrified.
- (J) Agricultural education activities, such as volunteer programs, tours, cooking classes, youth programs and farming classes, with 25 or fewer attendees are permitted an average of once per month. Temporary uses, such as special events with more than 25 attendees, or events with 25 or fewer attendees held more frequently than an average of once per month must be permitted by the Temporary Use Permit process administered by Planning and Development Review.