Urban Agriculture

Monday, November 14, 2016
Our Guests

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And Your Co-Hosts

• Prof. Daniel R. Mandelker, FAICP
  – Washington University School of Law

• Dwight Merriam, FAICP
  – Robinson & Cole LLP
What Is “Urban Agriculture”? 

- School gardens
- Rooftop greenhouses
- Community gardens
- Micro-livestock
- Vertical farming
- Commercial farming
Why Are the Principal Areas of Concern for Local Government Lawyers?

- Is urban ag allowed?
- Should it be allowed?
- Where should it be allowed?
- Do we need an Urban Ag Ordinance?
- What about the neighbors?
Types of Zoning Used?

• Types of Zones
  • Urban ag zones
  • Industrial zones for food processing
  • Greenbelt zones
  • Amending existing zoning ordinances to allow urban ag activities in certain zones
  • Overlay zones
Kinds of Urban Ag Uses/Districts?

- Types of Urban Ag Uses/Districts
  - Non-profit/Commercial
  - Growing
    - E.g., backyard garden, front yard garden, rooftop garden, hydroponics, vertical growing, commercial farms, window garden, orchards
    - Indoor v. outdoor growing
  - Livestock/poultry
  - Bees
  - Infrastructure
    - e.g., hoop houses, chicken coops, greenhouses, raised beds, composting, terracing
  - Marketing, distributing, selling
  - Composting
Overarching Considerations?

• Community’s goals

• Piecemeal approach v. comprehensive urban ag regulation

• Use considerations:
  – Scale and intensity of use – how large of an area can be used for the urban ag use
    • Types and purpose of the urban ag activities (and location)
    • Ancillary uses and structures including infrastructure
    • Define urban ag activities allowed. Definitions are very important and vary widely in urban ag ordinances.
More Considerations?

• Restrictions on/requirements for use
  – Hours of operation
  – Parking requirements
  – Noise, lighting restrictions
  – Fencing requirements
  – Setbacks
And Still More?

- Types of equipment and infrastructure allowed
- Signage requirements
- Maintenance requirements
- Livestock
  - Limit on types and number of each type
  - Setbacks
  - Infrastructure/housing requirements
  - Require a certain amount of space per animal
  - Standards for cleanliness/maintenance
  - Restrictions on male animals
  - Licensing
- Bans in certain zones or districts
What Are Some Instructive Examples?

• Examples of Urban Ag Regulations
  • Ft. Lauderdale
  • Boston
  • Hartford
Government Operated Urban Agriculture
Support and Education

GARDENERS

CONFERENCE
WORK SHOPS

- Soils and Improving Soil Quality
- Starting from Seeds
- Garden Planning
- Canning Your Own Vegetables
- How to Attract Butterflies
- Youth Gardening

MARCH 28, 2015
9:30 am-4:00 pm

James Weldon Johnson Community Center
Investment of Public Property

Chicago Rarities Orchard Project
Land Banks and Land Inventories

- Philadelphia
- Kansas City (Sec. 74-71. – Purpose)

(a) Purpose to be served. The land bank agency shall manage, sell, transfer and dispose of interests in real estate owned by such land bank agency in accordance with this chapter 74. The use of property conveyed by such land bank agency shall be for the purposes of creating: . . ., (vi) space for use as urban agriculture, community gardens, or other similar uses consistent with healthy eating by residents, including restoring ground through alternative vegetative cover to build-back the soil for future use for food production, . . . and otherwise returning land in a nonrevenue-generating, nontax-producing status, to beneficial uses through private (for-profit or non-profit), or public ownership, with such relative priority among these stated purposes as set forth in section 74-80(e), as further considered and applied by the board of commissioners governing such land bank agency.
Permitting Processes:

- Inspections
- Fees
- Exemptions
- Expedited/simplified permitting processes
- Density Bonuses
- TDRs
- Exactions
- Notification requirements
Other Regulatory Considerations

• Removal of Common Barriers in Zoning Regulations
  – Front yard or side yard gardening
  – Height restrictions on lawn vegetation
  – Prohibition on commercial urban ag
Other Regulatory Considerations

• Use of Non-Zoning Regulations that Affect Private Land – e.g., animal control and residential composting ordinances, nuisance ordinances.
Other Regulatory Considerations

• Land Use Policies that Promote Public Land to Be Used for Gardens/Farms
  – E.g., Hartford, CT keeps track of all vacant public lands to match gardeners to those lots.
  – Land disposition policies that permit surplus properties to be acquired for urban ag
<table>
<thead>
<tr>
<th>Zone Category</th>
<th>Allow by right</th>
<th>ZA Conditional Use Permit</th>
<th>Accessory Uses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Zones (RE, R-1, R-1A, R-1B, R-2, R-2A, R-2B, R-3, R-3A, R-4, R-4A, R-5, RMX, and RO)</td>
<td>Market garden and community garden, private up to 1 acre; Aquaculture</td>
<td>Market garden and community garden, private exceeding 1 acre</td>
<td>Private garden, urban beekeeping, aquaculture</td>
</tr>
<tr>
<td>Commercial Zones (C-1, C-2, C-3, C-4, OB, OB-2, OB-3, SC)</td>
<td>Market garden and community garden, private up to 3 acres; Aquaculture</td>
<td>Market garden and community garden, private exceeding 3 acres</td>
<td>Private garden and urban beekeeping</td>
</tr>
<tr>
<td>Industrial/Manufacturing (M-1, M-1(s), MIP, MIPD, H, SPX, HC)</td>
<td>Market garden and community garden, private have no upper size limit.</td>
<td>NA</td>
<td>Private garden and urban beekeeping</td>
</tr>
</tbody>
</table>

Sacramento, CA Urban Agriculture Ordinance (effective 4/23/15)
Other Regulatory Considerations

• Policies and Regulations that Strengthen Infrastructure for Urban Ag – e.g., abandoned property management programs, brownfield cleanup programs, local procurement policies.
Tax Incentives for Urban Ag

<table>
<thead>
<tr>
<th>Direct Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td>Levy Funds for Community Gardens &amp; P-Patches</td>
</tr>
<tr>
<td>Initial Allocation</td>
</tr>
<tr>
<td>$ 2,000,000</td>
</tr>
<tr>
<td>Reallocated Inflation Funds</td>
</tr>
<tr>
<td>$ 427,000</td>
</tr>
<tr>
<td>TOTAL</td>
</tr>
<tr>
<td>$ 2,427,000</td>
</tr>
</tbody>
</table>

Seattle Dep’t of Neighborhoods: P-Patch Community Gardening Program: Parkes & Green Spaces Levy Community Update (Final Report)
## Tax Incentives for Urban Ag

<table>
<thead>
<tr>
<th></th>
<th>UT</th>
<th>CA</th>
<th>MD</th>
<th>NJ</th>
<th>MO</th>
<th>DC</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Minimum population</strong></td>
<td>700,000</td>
<td>250,000</td>
<td>All counties + Baltimore</td>
<td>All cities</td>
<td>All municipalities</td>
<td>NA</td>
</tr>
<tr>
<td><strong>Parcel size</strong></td>
<td>2-5 acres</td>
<td>0.1-3 acres</td>
<td>½-5 acres</td>
<td>NA</td>
<td>NA</td>
<td>≥ 2,500 sf (urban farms)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>NA (gardens)</td>
</tr>
<tr>
<td><strong>Tax Basis or Credit</strong></td>
<td>Ag. value</td>
<td>Ave. ag. value</td>
<td>≤ 100%</td>
<td>100%</td>
<td>100%</td>
<td>90%</td>
</tr>
<tr>
<td><strong>Term</strong></td>
<td>NA</td>
<td>≥ 5 yrs.</td>
<td>5 yrs + 5-yr extension</td>
<td>NA</td>
<td>≤ 25 yrs</td>
<td>NA</td>
</tr>
<tr>
<td><strong>Clawback</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>
How Do Right-to-Farm Laws Fit In?
Q and A