Urban Agriculture Policy in Detroit

History and Prospects

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Detroit’s history of urban agriculture is an illustrious one, with Mayor Hazen Pingree’s eponymous potato patches counting among the first examples of city leadership to facilitate subsistence for residents who were impoverished by the economic crisis of 1893-1897. Similarly, Liberty Gardens and Victory Gardens supported the war effort during World Wars I and II, respectively. It is in post-War Detroit, however, that the seeds of urban agriculture, as it is understood today, were sown. Established in 1975, Mayor Coleman Young’s Farm-A-Lot program provided tilling assistance, seeds, and leases to residents to start gardens in vacant lots in their neighborhoods. These vacant lots were caused by the increasing exodus of mostly white families over the previous decades. Farm-A-Lot lasted nearly a quarter century. In the end, budget cuts eroded its capacity to serve the demand it created and it faded away in the years leading up to the new century.

However, a federal program called Community Food Projects Competitive Grants Program infused funds to support urban agriculture starting in 1996. With this support coupled with nonprofit and corporate funds, urban agriculture initiatives took off in the early and mid-2000s. Gardening organizations developed complex connections to the food system, linked to diverse community sectors, and developed a citywide network. Today, Detroit is widely recognized as a hotbed of urban agriculture. The growth in magnitude and complexity of activities and related networks that occurred over the last few years was in a context of practically non-existent support from the city in the form of policy frameworks or financial subsidy. Indeed, the story of the rise of Detroit’s agriculture is intricately linked to the city’s depopulation and economic decline—which created an abundance of vacant land within neighborhoods—and the erosion of the city’s capacity to adequately meet the growing needs of residents.


2 By the end of 1942, Detroit reported 1,000 Victory Gardens; statewide, plots under cultivation steadily increased in the war years to 800,000. N. J. Shattuck, During WW II, victory gardens were practical as well as patriotic. www.sfgate.com/homeandgarden/article/During-WWII-Victory-Gardens-were-practical-as-2653952.php (accessed November 25, 2013). Chapter 2 of this book includes a general description of the history of urban agriculture in the United States.

In 2013, following a four-year process of organizing (and waiting for the state to respond to a request for a waiver of the Michigan Right to Farm Act⁴), Detroit adopted an urban agriculture ordinance.⁵ Among other things, the ordinance:

-- offers a practical definition of agricultural activities;
-- identifies specific acceptable and unacceptable activities and allowable land use categories for particular activities; and
-- specifies the content and procedures of applications for permits.

The ordinance development process included diverse stakeholders such as longtime gardeners, academics, county cooperative extension specialists, and city and state agency representatives. It obtained significant support from the urban agriculture community, whose members expressed enthusiasm in public forums organized to get input.⁶ Gardeners acknowledged the value created by the ordinance’s formal recognition and legalization of urban agriculture and the security it offers to related investments and planning. However, the implications of the ordinance for the expansion of neighborhood-based and small scale agriculture, which has burgeoned over the last decade without any supportive policy, are unclear. The ordinance has also raised questions about the type of agricultural proposals it may generate, and their potential benefits and liabilities to neighborhoods. It has created concerns about large scale transfers of tax-reverted land to elite and corporate interests, potentially facilitated by proposals for large-scale agriculture, as has happened in one case discussed later in this chapter.

This chapter offers both a brief history of post-war developments in urban agriculture in Detroit and a description of more recent efforts. It then traces the development of the urban agriculture ordinance and discusses its potential advantages and limitations for neighborhood-based urban agriculture. What follows is a brief history of the post-war de-industrialization and depopulation that sets the stage for these developments.

Post-War Detroit: A Brief History

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⁵ Amendment to the Detroit Zoning Ordinance, Chapter 61 of the 1984 Detroit City Code, for urban agriculture.

The past six decades in Detroit are characterized by significant de-industrialization, economic disinvestment, loss of population—particularly of whites but recently of African-Americans as well—increased regional polarization along racial and economic lines, and a shrinking tax base. The result is a predominantly African-American central city with high rates of poverty and unemployment, and, increasingly, without human and social services to meet basic needs. Between 1950 and 2010, Detroit’s population shrank from 1,849,568 to 713,777, a loss of more than three out of five residents over six decades. Forty percent of the city’s residents are officially unemployed and nearly as many (36 percent) live in poverty. In six decades, the city’s total property value shrank from $37 billion to $9.4 billion in 2012 dollars. Despite increases in taxes and other measures, the city’s actions fell far short of the magnitude of response needed to avoid indebtedness. To compound these concerns, from 1998 to 2012, the state also withheld $172 million—the city’s share of the state’s revenue. In 2013, an emergency financial manager was appointed by the state’s governor to oversee the city’s finances and settle its debts. In December, U.S. Bankruptcy Judge Steven Rhodes ruled that Detroit was eligible for Chapter 9 bankruptcy protection.

The Detroit metro area is among the most racially segregated in the country. More than four out of five city residents were African-American in 2010; statewide, African-Americans made up only 14 percent of the population.

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10 See Bomey & Gallagher, supra note 7.

11 In a 1998 agreement between then Michigan Governor John Engler and Detroit Mayor Dennis Archer, the state of Michigan agreed to give Detroit $333.9 million annually for nine years in revenue sharing funds — if the city would ratchet down its highest-in-the-state city income tax rates. All was going well, until the economy tanked in 2008, dragging the state’s tax collections and budget down with it. Detroit wound up getting far less than it was promised. By one calculation, the city could have gained $700 million in additional funds in the period. For details, see D. Ashenfelter, Handshake Deal with State Haunts Detroit, BRIDGE, bridgemi.com/2013/03/handshake-deal-with-state-haunts-detroit/ (accessed September 25, 2014).

12 See DETROIT QUICK FACTS, supra note 8.
flooded to Detroit to work in auto plants during World War II, but experienced discrimination in all aspects of life, including as they moved into previously white areas.13 Beginning in the 1950s, the city demolished such vibrant neighborhoods as Black Bottom and Paradise Valley to build highways and urban renewal projects, displacing hundreds of thousands of African-Americans. Black community frustration over police tactics, unemployment, housing and employment discrimination, and general disenfranchisement, erupted in violence in cities nationwide; Detroit was not immune. Detroit’s July 1967 civil disturbance left 43 dead, 1,189 injured, and 2,000 buildings destroyed.14

Nearly 40 years later, the 2008 recession led to further losses for black families due to persistent unemployment and housing foreclosures; that year, some 4,000 homes per month, the most in the nation, went into foreclosure.15 As a result of tax reversion over six decades, an estimated 50,000 parcels in Detroit are publicly owned, with nearly four out of five of these owned by the city.16 Others put the number of city-owned parcels at more than 60,000.17

A 2009 survey documented 91,488 vacant lots in Detroit.18 The city has enough publicly owned vacant land to grow a significant portion of the fresh produce needed by the city. A study by Michigan State University calculated that Detroit growers could supply between 31 and 76 percent of vegetables and 17 and 42 percent of fruits currently consumed by city residents, depending on the methods of production and storage used.19 Indeed, because of the paucity of prospects for development, agriculture is becoming widely appreciated as a productive use of vacant land in the city.20 It is recognized as an effective means of subsistence and food security; a

13 See DARDEN et al, supra note 7; SUGRUE, supra note 7

14 See Kurth et al, supra note 9

15 See Kurth et al, supra note 9.

16 Id.


19 K. Colasanti & M. W. Hamm, The Local Food Supply Capacity of Detroit, MI, 1 JOURNAL OF AGRICULTURE, FOOD SYSTEMS & COMMUNITY DEVELOPMENT, 1 (2010).

20 See Ronald Markoe, supra note 17. See also: CITY PLANNING COMMISSION URBAN AGRICULTURE DRAFT POLICY, submitted as attachment in letter to City of Detroit City Council by Marcell R. Todd, Jr, Director, and Kathryn Underwood, Staff, of City of Detroit City Planning Commission, March 18, 2010; N. Finley,
mechanism to stabilize deteriorating neighborhoods and create social capital; a path to community goals related to public health, education, income-generation and entrepreneurship; and a strategy for increasing grassroots organizational capacity.\textsuperscript{21}

**Mayor Coleman Young’s Farm-A-Lot Program**

Soon after taking office, Coleman Young (1974-93), the city’s first African-American mayor, instituted the Farm-A-Lot program. Young encouraged residents to take advantage of the increasing numbers of vacant lots that were becoming available in neighborhoods due to the exodus of whites. Described as the “mayor’s hip-pocket project,”\textsuperscript{22} Farm-A-Lot was integral to Young’s narrative of survival and self-reliance for the city’s increasingly African American population during a time of growing price-inflation and unemployment in the mid-1970s.

In 1974, 34 lots were leased;\textsuperscript{23} in 1975, the number grew to 525. In 1976, Farm-A-Lot’s target was to till 1,000 plots.\textsuperscript{24} The average garden was worked by approximately 6 individuals who collectively put in about 14 hours a week to produce seasonal harvests worth an average of $139.\textsuperscript{25} In newsletters available at neighborhood city halls, residents were instructed in how to determine city-ownership of vacant lots in their neighborhood and how to obtain a gardening permit from the city. Several gardeners were able to purchase the lots they farmed; five even won blue ribbons for their produce at the Michigan State Fair.\textsuperscript{26} Seeds and fertilizers were to be collected from these neighborhood city halls; pressure canners also could be borrowed there for 48 hours at a time. Serial budget cuts, however, crippled Farm-A-Lot, since it was not a...
formally recognized program of the Recreation Department where it was housed, it faded away in the early 2000s.  

Contemporary Urban Agriculture Efforts

In 1994, a new national coalition of environmental, community development and food system activists lobbied aggressively and successfully for funding under the aegis of community food security. The 1996 Farm Bill provided federal funds through the Community Food Projects Competitive Grant Program (CFPCGP) for growing and marketing food in cities, nutrition education, and different forms of linkages between urban and peri-urban growers and low-income families. Subsequent Farm Bill and Child Nutrition reauthorizations offered both funding increases and programmatic expansions for initiatives supporting urban agriculture, school gardens, farm-to-school, and farmers markets and fresh food retail.

Several Detroit initiatives received funds from CFPCGP, including the Detroit Agriculture Network, or DAN (1997), the Garden Resource Program (2004), and GROW—Growing and Retailing Opportunities in Wayne County (2006). These projects provided different kinds of resources and educational assistance to gardeners, created networks of mutual assistance, and linked agricultural activities to education, economic development, health, and environmental sustainability. Each project, in its own way, helped build organizational infrastructure and community capacity in urban agriculture. For example, to facilitate broad awareness of urban agriculture and mutual learning, DAN initiated an annual citywide garden tour, an expanded version of which continues to be offered today by a separate nonprofit of the same name. Several larger gardens were featured on the tour, including Earthworks Urban Farm started by Capuchin monk Rick Samyn in 1996, and the Catherine Ferguson Academy farm for pregnant and parenting teens founded by biology teacher Paul Weertz at about the same time.


28 Federal Agriculture Improvement and Reform Act of 1996 (P.L. 104-127)

29 See Community Food Projects, supra note.


33 www.cskdetroit.org/EWG (accessed January 2, 2014)
These and other operations showcased urban agriculture’s contribution to food security, nutrition, youth development, K-12 education, and neighborhood improvement.

In 2013, the Garden Resource Program network consisted of 1,244 gardens, including 748 family, 55 school, and 76 market gardens. Many market gardeners sell as part of the Grown in Detroit Cooperative at Eastern Market and the Wayne State University Farmers Market. The WSU Farmers Market is a program of SEED Wayne, which I direct. As a result, I am personally acquainted with several Grown in Detroit vendors who earn significant portions, if not all, of their income from sales at markets and to restaurants.

The Detroit Black Community Food Security Network’s (DBCFSN) D-Town Farm was founded in 2006 as a garden on a vacant neighborhood lot. Since 2008, the DBCFSN was able to secure, in increments, a long-term lease to seven acres for the farm on Rouge Park, a city park. D-Town Farm is the largest operating farm in the city today. DBCFSN also operates the Ujamaa Co-operative, a collective buying club for members, youth-development activities through nutrition education in several schools and agricultural internships on the farm, and convenes anti-racism dialogues with the Uprooting Racism, Planting Justice program. The organization also drafted the Detroit Food Security Policy, adopted by City Council in 2008, which paved the way to the formation of the Detroit Food Policy Council in 2009.

The gardens and organizations described previously are either citywide organizations or among the larger agricultural operations in the city. Over the years, several neighborhood gardens have expanded into place-based networks of their own, connecting with other neighborhood resources and concerns. These include Feedom

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34 As a member of Detroit Public Schools, Catherine Ferguson Academy was scheduled to be closed in June 2011 as part of a system-wide deficit reduction plan. Following protests and national media attention, the school’s operations were transferred to Blanche Kelso Bruce Academy, a for-profit charter operator with local ties. However, since then, enrollments plummeted and in June 2014, the former model school was shut down. For more information, see america.aljazeera.com/watch/shows/america-tonight/articles/2014/9/22/catherine-ferguson-teen-moms-discrimination.html (accessed September 25, 2014).

35 In 2013, the Garden Resource Program set out as a nonprofit with a new name, Keep Growing Detroit, detroitagriculture.net/ (accessed November 25, 2013).


39 www.detroitblackfoodsecurity.org/ (accessed January 2, 2014). The organization’s mission is to build self-reliance, food security and justice in Detroit’s Black community by influencing public policy, engaging in urban agriculture, promoting healthy eating, encouraging cooperative buying and directing youth towards careers in food-related fields.
Freedom Growers,40 Georgia Street Community Garden,41 Brightmoor Community Garden,42 Growtown Farm,43 and SEED Wayne’s gardens on Wayne State University’s campus.44 Lafayette Greens downtown is underwritten by Compuware, a software corporation.45 More recently, Detroit Public Schools kicked off an initiative to develop gardens in 45 schools, paid by a grant authorized by the federal child nutrition law, the Healthy, Hunger-Free Kids Act of 2010.46 Proposals for large scale commercial agriculture have also started to take shape. These include the Hantz Woodlands (originally Hantz Farms), which is planting hardwood trees on several hundred lots on the city’s eastside on land secured from the city in 2013.47 The same year, Recovery Park, a proposal to employ residents recovering from substance addictions, obtained access to 30 acres of city-owned land also on the eastside.48

To conclude this section, the city displays considerable vitality in urban agriculture in terms of the number, geographic distribution, and variety of operations and the diversity of their sponsors. It also displays themes of continuity with previous decades as well as novelty and innovation. Always valued for its contribution to subsistence, neighborhood stability and sociability, and as a symbol of self-determination, more recently, agriculture has embraced other goals. Inspired by the growing national movement, urban agriculture is framed by local advocates in terms of access to healthy food in neighborhoods that are otherwise underserved by retail grocery, local circulation of wealth, cultivation of local leadership and community capacity, social justice, environmental stewardship, and food system sustainability and sovereignty.49

43 growtown.org/ (accessed December 31, 2013).
In the 1970s, when the mayor endorsed agriculture in an act of solidarity with the city’s African-American residents in the face of white exodus, it was scarcely considered a long term, let alone permanent, condition. Today, despite the growth and vitality of urban agriculture in the city, many politicians continue to respond with ambivalence to the concept for fear of deterring potential bricks and mortar development. Now, as before, most of the city’s urban agriculture is supported primarily by neighborhood sweat equity, private philanthropy, or federal support, rather than local government.

The Urban Agriculture Ordinance: A Background

Prior to the adoption of the urban agriculture ordinance in 2013, Detroit’s Zoning Ordinance did not include any provisions that explicitly addressed or regulated agriculture, with the exception of nurseries. However, gardening as a primary use on vacant lots was implicitly recognized through short-term leases that gardeners signed with the city to grow food on city-owned vacant lots. These leases were and are managed by the City’s Planning and Development Department. Moreover, the city’s agreement with the Detroit Black Community Food Security Network allows the latter to operate the D-Town Farm on Rouge Park, a city park on the westside. These two formal links to the city bureaucracy notwithstanding, much if not most of the city’s agricultural development occurred under the radar of land use policy-making and administration. Starting in 2009, proposals for larger farms for commercial production in the city—such as Hantz Farms and Recovery Park Farm—underscored the urgent need for a policy framework to legitimize existing operations and regulate larger, purely commercial ones being proposed.

In 2009, financial services magnate John Hantz proposed a large-scale commercial farm in Detroit. His proposal to the Detroit Economic Growth Corporation rested on acquiring, for free, tax-delinquent land from the city, and a zoning adjustment that would create a new, lower tax rate for agriculture. He imagined hundreds of acres of farms organized as pods around which development would happen, with farm production involving orchards, hydroponics and aeroponics (growing plants in air). To

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50 This was best articulated by Rev. Jesse Jackson in 2010, in a speech to Detroit’s City Council. Calling for more industrial development and jobs with higher wages, he rejected farming as “cute but foolish.” He said creating large city farms might drive out even more residents. Source: M. Winter, In Detroit, Jesse Jackson calls urban farming ‘cute but foolish’ USA TODAY (2010 Sept. 7).

51 J. E. Mogk, S. Kwiatowski, & M. J. Weindorf, Promoting urban agriculture as an alternative land use for vacant properties in the City of Detroit: Benefits, problems and proposals for a regulatory framework for successful land integration. 56 WAYNE LAW REVIEW, 1521, 1564 (2012).

start off, he suggested a pilot farm of about 50 acres on the city’s eastside: "Out of the gates," he noted, "it'll be the largest urban farm in the world." These ideas for urban food production are not in and of themselves problematic. Indeed, Detroit’s abundant vacant land sitting without near-term prospects for development can productively sustain diverse proposals for urban food production. However, the Hantz Farms proposal raised concerns in many corners for a variety of reasons.

One, Hantz’s proposals for urban agriculture sprang not from past experience of urban food production nor a desire to help resolve the real food security problems experienced by the city’s residents. Although that rationale emerged as opposition to his proposal grew, his initially stated desire was to create scarcity of land in order to increase the city’s attractiveness for development. A CNN-Money article notes this about Hantz’s thinking:

"We need scarcity," he thought to himself as he drove past block after unoccupied block. "We can't create opportunities, but we can create scarcity." . . . "And that," he says one afternoon in his living room between puffs on an expensive cigar, "is how I got onto this idea of the farm".

Two, Hantz’s proposals for large-scale urban agriculture conjured scenes, in many gardeners’ minds, of the chemical-intensive conventional agriculture of the kind practiced in rural, agricultural areas. Gardeners expressed a fear that, unlike the neighborhood-friendly gardens and farms that were established in the previous decade, large-scale commercial farms such as Hantz Farms would create hostile environments with increased noise, and air and water pollution.

Three, Hantz’s proposal also drew outrage due to his demand for vast quantities of city-owned land and his seeming ability to cut backroom deals. The political connections that gave Hantz access to land were unavailable to ordinary gardeners, who had already established a track record for leading successful operations, yet struggled to acquire neighborhood lots on which to expand their gardens. A Listening Session organized by the Detroit Food Policy Council following the Hantz land sale announcement, for example, featured many gardeners who recounted how their attempts to purchase vacant lots owned by the city were frustrated, repeatedly in some cases. In the end, the city sold 1,500 city-owned lots (about 140 acres) to Hantz.

53 Id.

54 Id.

Woodlands in 2013 for $520,000. 

With this and other proposals for large-scale urban farms being discussed in the media, city staff realized the urgent need for a policy for urban agriculture. Led by City Planning Commission staff member Kathryn Underwood, herself a gardener and supporter of the Garden Resource Program, the Urban Agriculture Work Group convened to discuss the needs, issues, and concerns of gardeners and other stakeholders. The Work Group consisted of gardeners, academics, city and state agency representatives, county cooperative extension officials, and others. The group assembled agriculture policies from other cities and started to outline substantive categories. This effort was substantially informed by Wayne State University Law Professor John Mogk and his students, M. J. Weindorf and Sarah Kwiatkowski.

Based on input from the Work Group, City Planning Commission staff developed a draft policy and a draft code for urban agriculture. In a letter to City Council, City Planning Commission staff offered this status report in 2010 on the urban agriculture policy for the City of Detroit:

The policy is designed to present an overall rationale and vision for what urban agriculture can and should accomplish in the City. The Policy will serve as the guiding principles for proposed code amendments, as well as land use and development policies and strategies.

The draft policy describes the current state of urban agriculture in the city, identifies possible goals for agriculture gleaned from other cities’ policies, offers a broad vision for agriculture in Detroit, and makes recommendations for particular elements. Specifically, the draft policy envisions that the model of urban agriculture developed for Detroit should:

1. Provide access for community residents to fresh, chemical-free food for all income levels.
2. Create opportunities for community ownership of land and creation of entrepreneurial opportunities.

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58 CITY PLANNING COMMISSION URBAN AGRICULTURE DRAFT POLICY, submitted as attachment to letter to City Council, Id.

59 Id., 5-6.
3. Develop the local economy and promote opportunities for ownership by community residents in all aspects of a local food system (production, processing, and distribution).
4. Create jobs for community residents in cultivation, processing and distribution of food.
5. Provide economic opportunities for community residents in the cultivation and distribution of non-food crops.
6. Become a source of fresh food to emergency food providers.
7. Provide for an eco-tourism industry.
8. Stabilize neighborhoods and enhance community cohesion.
9. Provide recreational and therapeutic opportunities.
10. Engage neighbors and foster a vibrant intergenerational social network.
12. Reduce Detroit’s carbon footprint through creation of a local food economy.
13. Lower the heat-island effect.
15. Curb illegal dumping and other criminal activity.
16. Create and enhance an urban habitat.
17. Promote stewardship of the land and the neighborhood.
18. Provide an opportunity for a variety of sizes and models of urban agriculture.
19. Provide the catalyst and opportunity for young people to pursue careers in agriculture.
20. Make Detroit the world leader in developing models for sustainable urban agriculture.

Finally, the draft policy makes specific recommendations for zoning and land use policy, including reduced purchase prices and taxes for city-owned parcels by smaller scale operations; stipulation for reversion to city-ownership if land purchased for agriculture is not used for that purpose; the creation of an advisory urban agriculture review committee to review specific proposals for their impacts arising from their size, intensity of production, and location; the future creation of ordinances allowing for chickens and beekeeping under specific conditions; lower permit fees for community gardens and small farms that require hearings and other land use review permits; and the creation of an agricultural district category in which the primary uses are agricultural.\textsuperscript{60} Although there is no evidence, as this chapter is being revised, of a final Urban Agriculture Policy being presented to City Council, let alone its formal adoption, the draft represents the collective sentiment of the Urban Agriculture Work Group. It is anticipated that the language related to urban agriculture policy will be incorporated into the city’s Master Plan as it is revised.

\textbf{The Challenge from the Michigan Right to Farm Act}

\textsuperscript{60} Id., 6-7
The development of the urban agriculture ordinance was thrown into disarray in 2010 when the state’s Right to Farm Act (RTFA)\textsuperscript{61} came to the attention of the Work Group, and RTFA’s implications for a city agriculture policy became clearer.\textsuperscript{62} RTFA’s broadly preemptive and pro-farmer provisions tied the city’s hands in the development of an urban agriculture ordinance that balances multiple interests and responds to the city’s urban context, interests, and needs.\textsuperscript{63} According to the statute, a farm\textsuperscript{64} cannot be considered a public or private nuisance if:

- a) It conforms to generally accepted agricultural and management practices (GAAMPs) that are determined and annually reviewed by the Michigan commission of agriculture; or,
- b) It existed before a change in the land use or occupancy of land within 1 mile of the boundaries of the farm, and if before that change in land use or occupancy, the farm would not have been a nuisance.

Additionally, a farm that is in conformance with GAAMPs cannot be found a nuisance as a result of a change in ownership or size, temporary cessation or interruption of farming, enrollment in governmental programs, adoption of new technology, or a change in type of farm product being produced.\textsuperscript{66} GAAMPs are established by the Michigan Commission of Agriculture and Rural Development (MCARD). Underscoring the primacy of farming interests over those of neighbors, the statute makes it expensive to bring forward complaints if the complaint is not ultimately verified by state inspectors.\textsuperscript{67}

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\textsuperscript{62} For a more detailed discussion of urban agriculture and state right to farm acts, see chapter 4.

\textsuperscript{63} P. Norris, G. Taylor, & M. Wyckoff, \textit{When urban agriculture meets Michigan’s Right to Farm Act: The pig’s in the parlor}. \textit{MICHIGAN STATE LAW REVIEW} 365 (2011). See also, Mogk et al, supra note 50.

\textsuperscript{64} RTFA, Sec. 286.472 (a) and (b). The statute defines a farm as the land and any physical and natural resources and activities used in the commercial production of farm products. ‘Commercial’ is left undefined but clarified in later court opinions as anything produced for sale with no minimum amount specified. The statute defines ‘farm operation’ as inclusive of activities that relate to marketing produce; the generation of noise, odors, dust, fumes and associated conditions; the operation of farming equipment and machinery; field preparation and ground and aerial seeding and spraying; the application of chemical fertilizers or pesticides and use of alternative pest management methods; employment and use of labor; and conversion from one type of farm operation to another.

\textsuperscript{65} RTFA, Sec. 286.473, Sec 3.

\textsuperscript{66} RTFA, Sec. 286.473, Sec 3 (3).

\textsuperscript{67} RTFA, Sec. 286.473b and 286.474. The latter section stipulates that in any nuisance action brought against a farm in which the defendant prevails, the defendant may recover from the plaintiff court costs and expenses and attorney fees. No reciprocal remedy is offered the plaintiff should the reverse occur. There are costs associated with bringing repeated complaints as well. Anyone who brings more than three unverified complaints within three years may be required to pay to the MDARD the full costs of
development of local urban farming policy relates to the preemption of local policies to modify in any way the provisions of RTFA or GAAMPs:

Beginning June 1, 2000, except as otherwise provided in this section, it is the express legislative intent that this act preempt any local ordinance, regulation, or resolution that purports to extend or revise in any manner the provisions of this act or generally accepted agricultural and management practices developed under this act.68

No other state with agriculture constituting a significant portion of its economy has such a sweepingly preemptive right-to-farm law as does Michigan.69

The statute provides for local units of government to submit for MDARD’s review proposed ordinances prescribing standards different from the current GAAMPs if they are able to show adverse effects on the environment or public health if current GAAMPs are followed.70 However, adverse effects on human or environmental health are only two of the many rationales for a city to adopt specific provisions and standards within zoning and land use policies. Cities routinely consider such public welfare rationales as property values, aesthetics of building and site design, and traffic impacts, in their design of zoning ordinances. RTFA therefore constrains cities from using zoning and other tools to accommodate the interests of farming as a new activity, and to balance the interests of farmers and other users of the land in urban neighborhoods.71

Between 2010 and 2012, city administrators made several attempts to reach out to state legislators and agency officials to explore possible remedies to the Right-to-Farm Act’s constraints on urban agriculture policy development in Detroit. The act, after all, was not intended to protect new farms locating within established urban neighborhoods. The impasse meanwhile stymied progress on Hantz’s and Recovery Park Farm’s proposals for large scale commercial agriculture in Detroit, leading some investigation of a fourth or subsequent unverified complaint against the same farm. An unverified complaint means a complaint in response to which the director determines that the farm is using GAAMPs.

68 RTFA, Sec. 286.474, Sec 4 (6).

69 Memo from M. J. Weindorf, Wayne State University Law School student, to the Urban Agriculture Work Group, November 26, 2010 (on file with author). The memo outlines findings from her analysis of RTFA-like laws in Ohio, Indiana, Wisconsin, Washington, and Iowa.

70 RTFA, Sec. 286.474, Sec 4 (7). Adverse effects are defined as “any unreasonable risk to human beings or the environment, based on scientific evidence and taking into account the economic, social, and environmental costs and benefits and specific populations whose health may be adversely affected.”

71 See Mogk et al, supra note 50 1535, 1560.
commentators incorrectly to accuse the city of bureaucratic delays. In 2012, the city successfully obtained an administrative exemption to the applicability of GAAMPS, from MDARD and the MCARD. In fact, the exemption applies to all Michigan cities with a population of 100,000 or more. This exemption is noted in the preface to each and every set of GAAMPS developed by the Commission. This step paved the way, finally, to the adoption of the urban agriculture ordinance on April 16, 2013.

The Urban Agriculture Ordinance

The Urban Agriculture Ordinance amends the city’s zoning ordinance to, among other things, allow a variety of urban agricultural operations, specify related standards and requirements, and recognize certain pre-existing but non-conforming operations as legal. It defines several terms commonly used in urban agriculture (such as urban garden, farm, farm stand, and farmers market); specifies land use districts in which particular operations are allowed by-right, conditionally, or not at all; describes application requirements for urban farms and other conditional urban agricultural use for site plan review; clarifies appropriate site plan reviewers for agricultural uses; specifies use standards for agricultural uses and for accessory uses and accessory structures; and specifies procedures for confirmation of legal non-conforming status for certain pre-existing agricultural operations. These elements are discussed below.

Starting with the definitions of such basic agricultural activities or uses as urban garden, urban farm, farm stand, greenhouse, hoop house or high tunnel, and compost, among many other terms, the ordinance establishes the distinctions between key categories that are the source of much confusion in local discussions about urban agriculture. For example, an urban garden is defined as “up to one acre of land, used to

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grow and harvest food or non-food crops for personal or group use. The products of an urban garden may or may not be for commercial purposes.77 An urban farm is “over one acre” but otherwise similar to an urban garden.78 An urban farm may also be divided into plots for cultivation by one or more individuals and/or groups or may be cultivated by individuals and/or groups collectively.79 An orchard or tree farm that is a principal use is considered an urban farm.80

The ordinance specifies land use categories where particular agricultural uses are permitted by right, conditionally, or not permitted at all. For example, an urban garden is permitted by right in all residential categories, R1 through R681—while an urban farm is a conditionally permitted use in R1 through R3, and by right in R4 through R6. Additionally, both, urban gardens and urban farms are permitted by right in all business related land use categories except B5 (Major Business District), where they are conditionally permitted, and permitted only conditionally in all industrial land use categories.82 Both urban gardens and urban farms are conditionally permitted in special and overlay districts, TM (Transitional-Industrial), SD1 (Special Development district, Residential/Commercial), and SD2 (Special Development, Commercial/Residential). Only urban farms, but not urban gardens, are conditionally permitted in SD3 (Special Development, Technology/Research) land use category. Both hoop houses and greenhouses are permitted in all the districts as urban farms, except that they are permitted only conditionally in R1-R3 and B5 districts, and by right in all industrial districts. Aquaculture, aquaponics, and hydroponics are permitted by right in all industrial categories and in the B6 (General Services) district, and only conditionally in B4 (General Business) and B5 districts.83 All agricultural activities are subject to legislative approval in the Special PD (Planned Development) district.84

77 Detroit Zoning Ordinance, Article XVI, Div. 2, Subdiv. R, Sec. 61-16-191, Words and terms (Ua-Us).
78 Id.
79 Id.
80 Detroit Zoning Ordinance, Article XVI, Div. 2, Subdiv. M, Sec. 61-16-143, Words and terms (Oa-Os).
81 See City of Detroit Master Plan of Policies, Article 403, Zoning Definitions. R1 signifies a single-family residential district; R2, two-family residential; R3, low density residential; R4, thoroughfare residential; R5, Medium density residential; and R6, High density residential.
83 Id.
84 Id. This is identified by “L” in the PD column in the Use Table.
Sale of farm products produced at an urban garden or farm is allowed as an accessory use at a farm stand located on the property of the garden or farm from which the product is produced, but only in land use categories R1 through R6, B1 (Restricted Business), P1 (Open Parking) and PR (Parks and Recreation). Similarly, sale of such products is also allowed at a farmers market, which is designated as a by-right use in districts B2-B4 and B6, all industrial districts, TM, SD1 and SD2 districts and conditionally permitted in PC (Public Center), PCA (Restricted Central Business District) and SD4 (Special Development, Near-East Riverfront) districts. Farmers markets are permitted as an accessory use where located on the same zoning lot as religious institutions, schools, outdoor recreation facilities, and non-profit neighborhood centers.

The ordinance also specifies review and approval procedures, including those applicable for expedited review, submittal requirements for conditional use permits, and the agencies with authority to review and approve site plans. For example, besides basic location information, submittal requirements for urban farms include a site plan that depicts crop areas, structures, fencing or walls and entryways, and location of compost piles, trash containers, and storage structures including items to be stored. Additionally, submittals need to include a narrative that describes, among other things, the use and storage of chemicals such as pesticides and fertilizers, the type of machinery and equipment to be used and their possible impacts on neighboring properties, environmental impacts of the proposed operation, types of vehicles that will be used by the operation and their possible impacts on nearby properties or streets, waste-handling and disposal procedures, and soil assessment findings. Standards against which specific elements in permit applications will be assessed are defined in Article XII, Division 3 (Specific Use Standards), Subdivision H, Section 61-12-326 through Section 61-12-339, discussed in subsequent paragraphs below.

Urban farms and all other agricultural uses specified as conditional uses are subject to a review process, including site plan review. They may be expedited by review limited to the Planning and Development Department (PDD); the Buildings, Safety Engineering and Environmental Department; and the City Planning Commission. Additionally, the PDD may involve other departments as deemed necessary, including, but not limited to, the Department of Public Works (DPW), and the Detroit Water and Sewerage Department (DWSD). In the case of agricultural operations of three acres or larger in the PD and SD4 districts, the City Council also has

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85 Id.
86 Detroit Zoning Ordinance, Article XII, Division 3, Subdivision C, Sec. 61-12-411.
87 Detroit Zoning Ordinance, Article III, Division 5, Subdivision B, Sec. 61-3-128
88 Detroit Zoning Ordinance Article III, Division 5, Subdivision A, Sec. 61-3-113
89 Detroit Zoning Ordinance, Article III, Division 5, Subdivision B, Sec. 61-3-121.
90 Detroit Zoning Ordinance, Article III, Division 5, Subdivision C, Sec. 61-3-141.
the authority to review and approve site plans, after recommendation from the City Planning Commission, which may involve other departments such as those named above.\footnote{Detroit Zoning Ordinance, Article III, Division 5, Subdivision C, Sec. 61-3-142.} Review in these cases also includes PDD, DPW, DWSD and other departments as necessary.\footnote{Id.}

The ordinance also specifies particular, associated use standards related to agricultural activities.\footnote{Detroit Zoning Ordinance, Article XII, Division 3, Subdivision H, Sec. 61-12-326 through Sec. 61-12-339.} These include, as mentioned previously, the sale of farm or garden products at a farm stand on the property where the farm or garden is located (permitted). Uses that are prohibited\footnote{Detroit Zoning Ordinance, Article XII, Division 3, Subdivision H, Sec. 61-12-326.} include the keeping of farm animals such as bees, chickens, and goats; prohibited tree species,\footnote{These include Silver maple, Boxelder, Honey locust, Ginko, Mulberry, among others. They are listed in Detroit Zoning Ordinance, Article XIV, Division 2, Subdivision B, Sec. 61-14-204} and plants that are prohibited or otherwise deemed injurious or invasive by the Forestry Division of the General Services Department; and the production of grain crops such as oats, wheat, and rye (in order to prevent rodents), except when used as a winter cover crop. It specifies standards for trash storage, lighting, signage, notice to abutting property owners and/or residents (at least 30 days before starting any agricultural development or site preparation), property maintenance, drainage, compost, restroom facilities, and the use of motorized and other equipment including storage, noise, and hours of operation. Related to the use of motorized and other equipment, the ordinance requires that tools, supplies, and machinery be stored in an enclosed structure or removed from the property daily; and that all chemicals and fuels be stored off the ground, in an enclosed, locked structure when the site is unattended. It also restricts the use of motorized equipment to between 8:00 A.M. and 8:00 P.M., exempting fans necessary for the operation of greenhouses from this requirement. Setback and height requirements for agricultural accessory uses and structures are also specified.\footnote{Detroit Zoning Ordinance, Article XII, Division 3, Subdivision H, Sec 61-12-329.} For example, crop areas must be set back at least five feet from all property lines and orchards and tree farms, at least 15 feet from the lot line. Buildings and structures related to agricultural use also must comply with accessory structure and height requirements set out in the zoning code.

In addition, the ordinance specifies accessory uses and permitted structures and related standards. Farm stands and farmers markets as an accessory use were noted previously. The following accessory uses and structures are the only ones permitted on an urban garden, with accessory structures requiring a building permit where applicable: greenhouses, farm stands, hoop houses, signs, tool sheds, garages, and benches, bike
racks, planting beds, compost bins, picnic tables, garden art, and rainwater catchment systems. All uses and structures permitted on an urban garden are also permitted on an urban farm. Additionally, aquaculture, aquaponics, hydroponics, barns and other storage buildings, and structures for cold storage and processing are allowed on urban farms.

In a final element, the ordinance specifies legal nonconforming agricultural uses, procedures for confirmation of such status, and conditions in which the use no longer may be legal. Agricultural operations that pre-date the ordinance and do not conform to the development standards defined in it are considered to be legal, nonconforming uses for the purposes of scale and type of agricultural use. Requests for non-conforming status are subject to review and confirmation by the City Planning Commission in terms of the location, scale, and type of agricultural operation. Any change in scale (measured by the total square footage of the agricultural operation and associated structures) or type (defined by the variety of crops produced) will cause the non-conforming operation to lose its legal status. This seemingly stringent provision is consistent with city policy that nonconforming uses be eliminated over time. Agricultural uses that are expressly prohibited elsewhere in the Detroit City Code will not be given legal non-conforming status.

**Prospects for Urban Agriculture in Detroit**

Although the development of the urban agriculture ordinance was prompted by the need to respond to proposals for large scale agricultural operations, and it received widespread community input and support, the future impact of the ordinance on the expansion of urban agriculture within the city’s neighborhoods is unclear. To what extent will it encourage new agricultural operations and how will these differ from the gardens and farms that operated before the ordinance was adopted? Will it create burdens for existing, grassroots operations led by residents and neighborhood organizations? Can it help magnify the scale of urban agriculture as a land use in Detroit? While it is impossible to answer these questions with any degree of certainty or completeness, following are some speculations about near-term impacts.

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97 Detroit Zoning Ordinance, Article XII, Division 5, Division 5, Subdivision C, Sec 61-12-412, (1) through (7).

98 Detroit Zoning Ordinance, Article XII, Division 5, Subdivision C, Sec. 61-12-413, (1)-(6).

99 Detroit Zoning Ordinance, Article XV, Division 2, Sec. 61-15-24.

100 *Id.* (3)

101 *Id.* (5)

102 Detroit Zoning Ordinance, Article XV, Divison 1, Sec. 61-15-2.
First, let us review what the ordinance does accomplish. It recognizes urban agriculture as a legal, primary use across many land use categories and legitimizes operations that conform to the standards laid out. It specifies standards under which a pre-existing operation can be considered legal and conforming or legal and nonconforming, as well as conditions under which it is no longer legal. It offers definitions for many agricultural activities and uses, thereby lending clarity and consistency to related discussions in the community. Especially important from a neighborhood food access perspective, it allows the sale of agricultural products close to the location of their production. Finally, the ordinance seeks to balance the interests and needs of gardeners and other agricultural operators with those of their neighbors and other stakeholders through the specification of standards. Attention to the interests and perspectives of neighbors is especially crucial in the case of proposals for larger, commercial, or capital-intensive agricultural operations, which may require larger upfront investments and also create larger and more widespread impacts. The ordinance thus reduces uncertainty and allows gardeners and farmers to plan, make related investments, and take other actions to start and expand operations, secure in the knowledge that they will be protected so long as their operations conform to the ordinance.

The urban agriculture ordinance’s provisions embody such public concerns as health, safety, welfare, congestion, and aesthetics, which are typical to zoning ordinances and reasonable. The ordinance also signifies a permissive, rather than restrictive, approach to the location of agricultural activities, reflecting both the widespread availability of vacant land as well as the presence of current operations on vacant land characterized by a variety of pre-existing zoning categories. Specific use standards are also likely to be generally acceptable to most gardeners—with the possible exception of the prohibition of bees, which are crucial elements in horticulture—and neighbors of gardening operations.

However, given the context of neighborhood abandonment and the relative freedom in which gardens burgeoned over the last decade, as detailed earlier in the chapter, it is an open question if current gardeners will modify their operations so as to comply with the ordinance’s standards, be motivated to seek legal status for their non-conforming operations, or seek conditional use permits for new operations in land use districts where such permits may be required. What capacity the city has or will have to enforce the provisions of the ordinance is another question. Finally, given the history of close relationships between wealthy sponsors of larger scale projects and the city’s political leaders, yet another concern is that well-connected farmers may be able to successfully negotiate tailored amendments to or waivers of the requirements.

Gardeners may perceive few advantages in applying for a legal nonconformance or conditional use permit as required by the ordinance. One, besides assembling the application paperwork which can be onerous, there is also a one-time application fee (of about $150-$200),\textsuperscript{103} which effort and cost gardeners may ill-afford. Two, the motivation

\textsuperscript{103} Minutes, DETROIT FOOD POLICY COUNCIL meeting, May 14, 2013.
to obtain legal status for a pre-existing operation or a conditional use permit for a new one may be low if the garden is located in an area where the risk of complaints from neighbors is small. Gardeners may also resist exposing their operations to outside scrutiny, especially in light of the freedom with which they operated in past years or if they perceive a specific use standard to be unreasonable. To illustrate, fences are commonly integrated into gardens as trellises for creeping plants that supply flowers and or vegetables, such as peas, cucumbers, and berries. A five foot setback from the property line for all production areas as required by the ordinance, regardless of the type of production, location of the fence, or location of the garden in the neighborhood, would necessitate significant changes in garden layout and may seem unreasonable to some gardeners.

It is unknown exactly how many gardeners will fall into a category in which they are required by the ordinance to apply for legal status for nonconforming operations. Smaller gardens, especially those without accompanying hoop houses or green houses, will be able to operate more freely both because of their permissibility in a majority of residential and business districts, as well as their smaller scale. They are also less likely to be non-conforming for scale or type as defined by the ordinance. Gardens located on lots in R1-R3 residential neighborhoods with accompanying hoop houses, such as those operated by many market gardeners in the city, will be affected. By virtue of being larger than one acre, urban farms, are also likely to receive more scrutiny for their conformance with the ordinance’s provisions and standards. Such scrutiny is not unreasonable, given the possibility of their greater impacts on neighbors, whether due to noise, traffic, or dust or chemical drift. However, past experience also suggests that better resourced parties, who may propose operations at a much larger scale, have greater access to decision-makers and are able to get their needs and interests met more expeditiously than ordinary residents dealing with the city. The challenges ordinary gardeners face in interacting with the city was showcased in the 2012 Listening Session mentioned previously. Garden advocates also fear large scale transfers of city-owned land under the guise of urban agriculture proposals.

Finally, as is the case with such laws, the ordinance does little to actively enable and foster urban agriculture besides legitimizing its existence. Local gardeners know that secure, long-term access to land is a key factor in the future growth of urban agriculture, especially of the kind that has marked the city’s recent history described in a previous section—agriculture that is grassroots-led, spatially distributed, small-scale, participatory and collaborative, networked, multi-functional, and system-building.¹⁰⁴ The last decade’s experience shows that gardeners and their organizations have a tough time gaining access to land, while elite and well-financed actors are able to secure large numbers of lots with relative ease.

Prior to cutbacks introduced by the Emergency Financial Manager and general elections in 2013, a process for the streamlined disposition of publicly held land was under development by a work group convened by the Planning and Development Department.105 A framework for prioritizing the sale of tax-reverted vacant land for the purpose of urban agriculture was also being considered by the work group.106 The framework identifies factors that may be given priority in land allocation, including: 1) neighborhood residents and organizations with a record of creating excellent projects, 2) projects that link intentionally to K-12 education, health, and community and economic development activities within neighborhoods, and 3) neighborhoods in which specific conditions of vacancy and occupancy offer a match with particular types and mixes of agricultural operations. More recently, Mayor Mike Duggan convened a meeting with urban agriculture leaders to explore the possibility of longer term leases for urban agriculture.107 Decisions are awaited as this chapter receives final touches. Up to 45,000 parcels of city-owned land are also slated to be transferred to the Detroit Land Bank Authority to enable their sale and lease for urban agriculture and other purposes.108

Although land availability is a key factor in the expansion of urban agriculture, it is only one among many that need to come together to facilitate the expansion of urban agriculture of the grassroots kind described earlier. Costs associated with starting and maintaining operations, the availability of affordable water supply, soil issues, labor, and agricultural expertise are others. Detroit’s agriculture to date is the outcome of massive amounts of sweat equity, neighborhood organizations pooling resources and coordinating functions, and a patchwork of informal and formal methods of obtaining land and other resources. While large-scale commercial agriculture indeed can be accommodated in the city, it is crucial that neighborhood residents and groups are supported to start and expand operations.

Postscript

All indications are that Detroit’s agriculture has a bright future. The abundance of vacant land in the city and urban agriculture’s history, the growth in community and

105 Minutes, DETROIT FOOD POLICY COUNCIL meeting, May 14, 2013.


organizational capacity, sophistication of current operations, involvement of newer actors, availability of corporate and nonprofit sources of funding, the urban agriculture ordinance, and inclusion of urban agriculture in master plan revisions\textsuperscript{109} and future planning frameworks\textsuperscript{110} all point to this conclusion. City staff members responsible for the development of the urban agriculture ordinance have expressed a commitment to incorporate lessons derived from its administration. They are also exploring possible additions to permissible uses and standards, including beekeeping, chickens and other concepts.\textsuperscript{111} This approach to create a living document that is responsive to needs on the ground is encouraging to advocates of Detroit’s agriculture. However, it is vital that they also remain vigilant so that agriculture remains accessible to ordinary residents, continues to offer multiple benefits to neighborhoods and connections to diverse community sectors, increases access to healthy food in the city, and builds wealth and income for ordinary Detroiter.

\textsuperscript{109} According to the report from the City Planning Commission to the City Council’s Planning and Economic Development Standing Committee (Feb 11, 2013; 7), efforts are under way to “appropriately reference urban agriculture as an activity envisioned as desirable for the city” in the Master Plan. www.detroitmi.gov/Portals/0/docs/legislative/cpc/pdf/Report_11Feb13.pdf (accessed April 10, 2014).


\textsuperscript{111} See, for example, Kathryn Lynch Underwood’s presentation to the MCARD, June 12, 2013, p. 5, michigan.gov/documents/mdard/June_12_2013_MINUTES-Approved_427666_7.pdf (accessed December 30, 2013).