



NEIGHBORHOOD DEVELOPMENT SERVICES DEPARTMENT

Planning Division

MEMO

Commercial Gardens and Community Gardens

To: Vice Mayor Linda Yates

Thru: Peter D. Lear, CPA, CGMA, City Manager

Thru: Scott Williams, Director, Neighborhood Development Services

Thru: Frank Miles, MPA, Planning Division Manager

From: Nicole Galehouse, Senior Planner

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Community Gardens

Community gardens allow for families and communities to grow food for personal consumption or donation where they possibly would not have the ability to do so on their own property due to space limitations or landlord regulations. They foster a sense of community within a neighborhood, have the potential to increase property values, and provide affordable access to food. They offer green space to help reduce the impact of pollutants and stormwater runoff.

Community gardens are generally recommended through standard zoning practice as permitted uses in residential and government use zoning districts. The following draft code language could be used to support community gardens within the City of North Port:

Chapter 53 – Zoning Regulations

Article II. – AG Agricultural District, Sec. 53-25. – Permitted principal uses and structures.

Article V. – GU Government Use District, Sec. 53-64. – Permitted principal uses and structures.

Article IX. – RSF Residential Single-Family District, Sec. 53-121. – Permitted principal uses and structures.

Article X. – RTF Residential Two-Family District, Sec. 53-134. – Permitted principal uses and structures.

Article XI. – RMF Residential Multifamily District, Sec. 53-147. – Permitted principal uses and structures.

Article XII. – RMH Residential Manufactured Home District, Sec. 53-160. – Permitted uses and structures.

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#¹. Community gardens in accordance with Sec. 53-240(H).

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Article XX. – Special Circumstance Regulations, Sec. 53-240. – Special Structures.

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H. Community gardens².

(1) General requirements.

- (a) All community gardens and their users must comply with all federal, state, and local laws and regulations relating to the operation, use and enjoyment of the garden premises. Site users may not introduce heavy metals or other harmful contaminants to garden or farm sites. Site users may use pesticides only to the extent permitted by law.
- (b) Site users must provide a Phase I Environmental Site Assessment (ESA)³. Any historical sources of contamination identified in the ESA must be tested to determine type and level of contamination; if necessary, appropriate remediation procedures must be undertaken to ensure that soil is suitable for gardening.
- (c) Site users must have an established set of operating rules addressing the governance structure of the garden, hours of operation, maintenance, and security requirements. They must have a garden coordinator to perform the role for the management of the community gardens and to liaise with the City. The name and telephone number of the garden coordinator and a copy of the operating rules shall be kept on file with the City Neighborhood Development Services Department.

(2) Site design.

- (a) Land used for community gardens shall be served by a water supply sufficient to support the cultivation practices used on the site.
- (b) The site shall be designed and maintained so that water and fertilizer will not drain onto adjacent property.

¹ Letter will vary by section. Draft language is provided with general location in ULDC. Numbering/lettering would need to be adjusted throughout and that would be provided in a full ordinance.

² It is important to note that community gardens under the current ULDC would be subject to a Major Site and Development (MAS) review. This may be cost-prohibitive for a project like this. Staff has identified a need for a minor site and development review that could be applicable to projects like this where a full staff development review may not be necessary and therefore costs could be reduced. This will be addressed during the ULDC rewrite.

³ A Phase I ESA is a historical search of the property to determine if there are any past uses that could have caused contamination to the soil. The City could conduct the assessment or require those wishing to establish a new garden to have an assessment conducted. Alternatively, the City could establish a soil testing protocol for new gardening sites. If conducted by the City as a service, it would need to be determined who would be conducting this service and an appropriate fee would need to be added to Appendix A of the Administrative Code - City Fee Structure.

- (c) All seed, fertilizer, and animal feed shall be stored in a sealed, rodent-proof container.
- (d) No buildings or structures shall be permitted on the site; however, sheds for storage of tools limited in size to ** square feet, benches, bike racks, raised/accessible planting beds, compost or waste bins, picnic tables, seasonal farm stands, fences, garden art, and rain barrel systems shall be permitted in accordance with Sec. 53-240(A).
- (e) Fences are permitted in accordance with Sec. 53-240(M).
- (3) Composting. Compost materials from the garden shall be stored with the setback requirements for the zoning district in which the garden is located. The materials shall be stored in a manner that is not visible from adjacent property, controls odor, prevents infestation, and minimizes runoff into waterways and onto adjacent properties.
- (4) Maintenance. The garden shall be properly maintained throughout the year with proper management of grass height per Sec. 42-22 of the Administrative Code and waste per Chapter 62 of the Administrative Code.
- (5) Hours of operation. No gardening activities may take place between the hours of 9:00 p.m. and 6:00 a.m.
- (6) Sales. There shall be no retail sales on site.

Chapter 61 – Definitions

Sec. 61-3. – Definitions and word usage.
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Community garden – Land managed and maintained by a public or nonprofit organization, or a group of individuals, for the cultivation of fruits, vegetables, plants, flowers, or herbs by multiple users and are not commercial operations. Community gardens may be divided into separate plots for cultivation by one or more individuals or may be farmed collectively by members of the group and may include common areas maintained or used by group members.

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The draft language provided is a basis for allowing the use. Additional items that may need to be researched on this topic include ADA accessibility/universal design, sustainable or organic growing requirements, use of gas-powered equipment/tools, parking, and minimum/maximum lot sizes. This use would also need to be vetted through public works to discuss access to the site, including but not limited to requirements for driveways (potentially unpaved) and culverts.

Commercial Garden/Agricultural Uses

Current Regulations

The ULDC currently addresses two garden-type uses in commercial zoning districts – Garden shops and Plant Nurseries. Garden shops (centers) are defined as “a place of business where retail and wholesale products and produce are sold to the consumer.” Plant nurseries are

defined as “an enterprise that conducts the cultivating, harvesting, and retail and/or wholesale of plants, bushes, trees, grown on the premises or established in the ground prior to sale, and for related accessory sales and uses.” Garden shops allow for the sale of products grown off-site to be sold within the commercial districts, while plant nurseries allow for the products to be grown on-site.

Garden shops are permitted in Activity Centers 1, 2, 4, & 5 and in Commercial General (CG) zoning districts. Because they are neither permitted nor prohibited in Activity Centers 3, 6, & 8 they would be eligible for a special exception in those areas. Activity Center 7 does not allow special exceptions, so they would not be permitted in those areas. In Activity Center 1, they are permitted with the caveat that large and customary garden supplies, equipment, and furniture must be stored and sold within a completely enclosed building. Plant nurseries are permitted in Commercial General (CG), Commercial General Special (CG-S), and Light Industrial and Warehousing (ILW) zoning districts. Since plant nurseries are neither permitted nor prohibited in Activity Centers, they would be eligible to apply for a special exception in all but Activity Center 7. Neither use is permitted in Neighborhood Commercial High/Low Intensity (NC-HI/NC-LI) zoning districts. These zoning districts only allow special exceptions for uses listed on the table in Sec. 53-179, so neither use would be eligible for a special exception in those zoning districts. Certain zoning districts have additional restrictions on the uses being in fully enclosed buildings or limitations on outside sales/storage.

Agricultural Uses in Commercial Zoning

Agricultural uses are defined in the ULDC as “the use of land for purposes including farming, dairying, pasturage agriculture, horticulture, floriculture, vitivulture, aquaculture, and animal and poultry husbandry, and the necessary accessory uses for storing the products. The term shall include incidental retail sales by the producer of products raised on the farm.” Agricultural uses are currently only permitted in the Agricultural (AG) zoning district. Since the use is neither permitted nor prohibited in other zoning districts, it theoretically could be eligible for a special exception. That being said, a special exception must ‘contribute to the intent of the zoning district as stated in the City’s Comprehensive Plan and this Unified Land Development Code.’ Commercial lands, as an example, are “designated to provide areas in which customary and traditional conduct of trade, retail services, commerce and residential uses may be carried on.” Activity centers are “designated to provide an area for coordinated development of industrial, commercial, professional office, residential, public and recreational uses.” In either case, both fall under Goal 1 of the Future Land Use Element which identifies the need to “maximize the potential for economic benefit...”

This is where the allowance of agricultural uses in commercial land use designations can be difficult. Per Florida Statutes Sec. 193.461, “lands that are used primarily for a bona fide agricultural purpose shall be classified as agricultural.” The “bona fide agricultural use” classification is fairly subjective and is determined by the local property appraiser’s office for each individual site. This classification entitles the property owner to what can be a significant reduction in property tax assessment. Throughout Sarasota County, the average assessment for lands with a “Cropland Soil Capability” classification is 28% of the just value, and the average assessment for lands with an “Ornamentals” classification is 30% of the just value. This

designation is able to be applied when the use is agricultural, regardless if the zoning is or not. Allowing for agricultural uses in commercial zoning designations would create the potential for commercially zoned land to be eligible for significant property tax reductions. This can have a significant effect on the fiscal impact of the use.

For example, on a 5-acre parcel with a commercial use, the net operating surplus/deficit is negative for the first 4 years, with a loss of \$7,102 over 5 years. However, this turns positive in year 5 and over 30 years is positive \$469,721. If this same site in turn has the assessment reduced to approximately 30% of its value based on the averages discussed above, the net operating surplus/deficit is negative \$142,204 over the first 5 years and a loss of \$703,514 over 30 years. It becomes difficult to financially support this type of use on land that is intended to support the overall City tax base. There is however, a middle ground which can be economically feasible. If the agricultural use is permitted as an accessory, for example 1 acre maximum of the 5 acre site, the net operating surplus/deficit is negative through year 11, with a loss of \$34,122. This turns around in year 12, and over a 30 year period has a surplus of \$235,074. While this is still less than the potential surplus for strictly commercial site, it is a positive impact in the end.

Recommendations/Options

It is important to maintain a balance with allowing commercial gardens and agricultural uses in commercially zoned districts. They can have many positive benefits, such as conversion of vacant or underutilized land, increased community interaction, and increased food availability. However, if allowed unrestricted, the potential impact on the City's tax base could be quite damaging. Potential options to allow for increased opportunities for these types of uses:

- Garden Shops.
 - Add garden shops as a permitted use in Activity Centers 3, 6, & 8⁴.
 - Add garden shops as a permitted use or special exception in the table for NC-HI/NC-LI zoning districts.
- Plant nurseries.
 - Allow as a permitted use in Activity Centers (all but AC7).
 - Make no changes and leave as special exception in Activity Centers.
 - Allow as a permitted use or special exception in the table for NC-HI/NC-LI zoning districts.
 - **Plant nurseries have the potential to qualify for an agricultural classification under F.S. 193.461. For this reason, staff recommends leaving this use as a special exception so that a fiscal impact analysis can be conducted on each individual proposal.
 - Allow as an accessory use with a maximum land area permitted. Per the fiscal impact analysis above, a 20% land area is economically feasible, although further analysis could be conducted to identify the ideal amount.
- Agricultural uses.
 - Make no changes and leave as a special exception possibility.

⁴ Activity Center 7 is Warm Mineral Springs, so at this time staff does not recommend any changes to permitted uses in this Activity Center. Any changes in use should be evaluated as to impact on the preservation of the springs.

- Add as an allowed use in some or all Activity Centers. If this use is desired in Activity Centers, the Comprehensive Plan would need to be amended to modify the tables for percentage of allowable land uses in each Activity Center. Agricultural would need to be added to the table as a use. The percentage should be based on a fiscal impact analysis of each Activity Center per the allowable uses.
 - Allow as an accessory use with a maximum land area permitted. Per the fiscal impact analysis above, a 20% land area is economically feasible, although further analysis could be conducted to identify the ideal amount.
- Fully enclosed structures/outside sales and storage.
 - To allow for simpler and more streamlined permitting and design for garden shops and plant nurseries, the requirements for uses being in a fully enclosed structure or limitations on outside sales and storage could be evaluated. Perhaps these specific uses could be exempt from these limitations provided they meet certain buffering or design criteria (when in Activity Centers). Loosening these regulations could make development of these uses simpler.

Concept for allowance of Commercial Gardens in select Zoning Districts

Definitions:

Community Garden: privately or publicly owned land used for the cultivation of fruits, vegetables, plants, flowers, or herbs by multiple users, for personal or group use, consumption or donation. Community gardens may be divided into separate plots for cultivation by one or more individuals or may be farmed collectively by members of the group and may include common areas maintained or used by group members.

Commercial Garden: privately owned land used for the cultivation of fruits, vegetables, plants, flowers, or herbs by an individual, organization, or business with the primary purpose of growing food for sale.

Zoning Districts: where Commercial Gardens are added as a Permitted Use

Commercial Gardens Permitted in Commercial General (CG), Commercial General Special (CG-S), Neighborhood Commercial (Hi & Low) and Light Industrial and Warehousing (ILW) zoning districts.

(1) General requirements.

- (a) Commercial Gardens may be a primary or accessorial use.
- (b) All Commercial gardens and must comply with all federal, state, and local laws and regulations relating to the operation, use and enjoyment of the garden premises. Site users may not introduce heavy metals or other harmful contaminants to garden sites. Owners may use pesticides only to the extent permitted by law.
- (c) The property owner must provide a Phase I Environmental Site Assessment (ESA)³. Any historical sources of contamination identified in the ESA must be tested to determine type and level of contamination; if necessary, appropriate remediation procedures must be undertaken to ensure that soil is suitable for gardening.

(2) Site design.

- (a) Land used for Commercial gardens shall be served by a water supply sufficient to support the cultivation practices used on the site.
- (b) The site shall be designed and maintained so that water and fertilizer will not drain onto adjacent property.
- (c) A building or primary structure is not required on land used primarily for a Commercial Garden; however, storage of tools, equipment, materials or other items kept on the premises must be contained in an enclosed structure. Benches, bike racks, raised/accessible planting beds, farm stand, compost or waste bins, picnic tables, seasonal farm stands, fences, garden art, and rain barrel systems shall be permitted in accordance with Sec. 53-240(A).
- (d) All seed and fertilizer shall be stored in a sealed, rodent-proof container.

- (e) Fences are permitted in accordance with Sec. 53-240(M).
- (f) Signs shall conform to the standards set forth Zoning District where garden is located.
- (g) Parking: 1 space for every 1 acre or portion thereof of outdoor production and 2 spaces for every 1, 000 sq. ft. or portion thereof of gross floor area of buildings used for the Commercial Garden (excluding sheds and other utility or accessorial structures used only to house equipment and/or supplies).
- (h) Notwithstanding the foregoing, all Commercial Gardens shall comply with the additional requirements of the applicable zoning district.
- (3) *Composting.* Compost materials from the garden shall be stored with the setback requirements for the zoning district in which the garden is located. The materials shall be stored in a manner that is not visible from adjacent property, controls odor, prevents infestation, and minimizes runoff into waterways and onto adjacent properties.
- (4) *Maintenance.* The garden shall be properly maintained throughout the year with proper management of grass height per Sec. 42-22 of the Administrative Code and waste per Chapter 62 of the Administrative Code.
- (5) *Hours of operation.* No gardening activities may take place between the hours of 9:00 p.m. and 6:00 a.m.