

Urban Agriculture and Community Gardens in the City of Raleigh



April 5, 2011



The City of Raleigh

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Office of Sustainability
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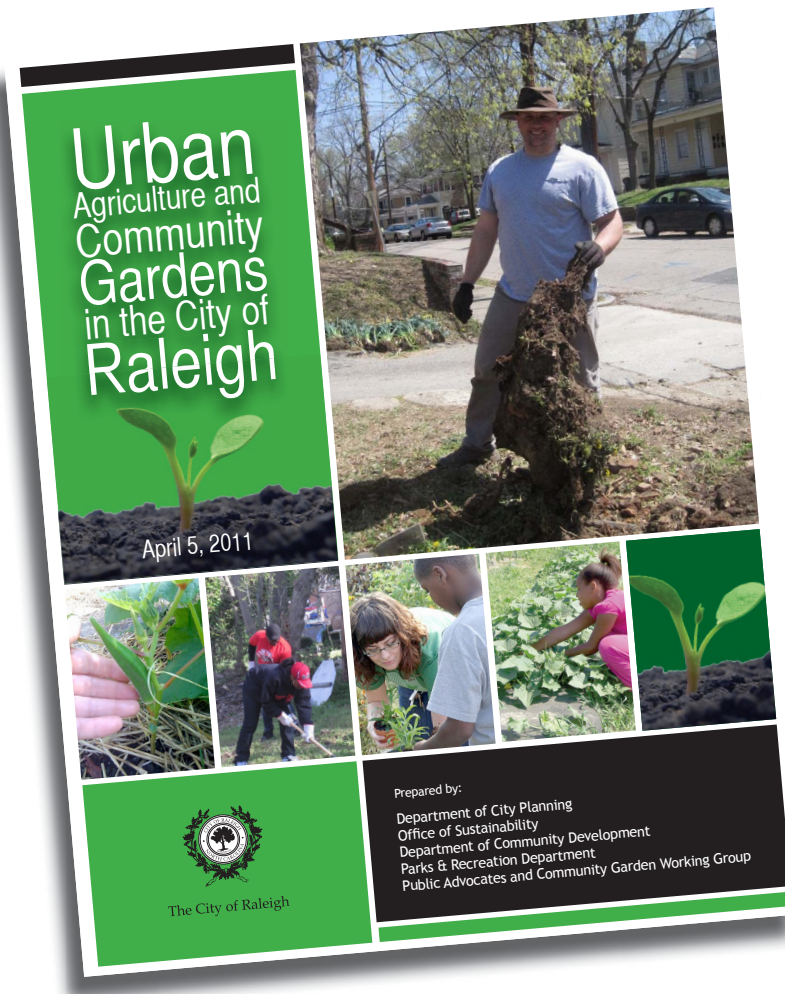


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Overview

A major 21st century challenge confronting municipalities is the ability to encourage economic growth and vibrant residential neighborhoods while remaining responsible stewards of the environment. Adopting a community-oriented food policy demonstrates such stewardship. A forward-looking food policy provides many benefits including encouraging healthy food consumption, improving community access to fresh fruits and vegetables, supporting local entrepreneurial initiative, and reducing the community's carbon footprint. Food policies touch on several aspects of urban life with which City government takes an active interest, including zoning and land use, water use, economic development, public health, education, quality of life, and community building. Food policies encompass programs and initiatives large and small, public and private, from community gardens to urban farms.

Urban agriculture, which includes community gardening, is growing across the country as cities seek ways to promote health, support the local economy, improve the environment, and address the "food desert" issue (communities without access to healthy foods). Urban agriculture increases the amount of healthy food available to people living in cities by allowing fresh vegetables and fruits to be made available to urban consumers. Urban Agriculture is defined as the growing, processing, and distribution of food and other agricultural products through intensive plant cultivation and animal husbandry in and around cities.



Urban agriculture is sometimes divided into four categories based on two dimensions (the extent or dispersal of agricultural practices and the intensity of urban agricultural activities):

- 1) Extensive/intensive: rural and periurban (i.e., urban-adjointing) farming and associated agricultural activities.
- 2) Less extensive/intensive: urban farms, farmers markets and composting operations.
- 3) Extensive/less intensive: backyard and community gardens, limited livestock and farmyards.
- 4) Less extensive/less intensive: backyard and community gardens.

Source:
American Planning Association, *Zoning Practice*, Number 3, March 2010.

Community gardens are areas of land managed and maintained by a group of individuals to grow and harvest food crops and/or non-food ornamental crops, such as flowers, for personal or group use, consumption, or donation. They 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 and used by group members. Community gardens improve participants' quality of life; preserve green space; stimulate social interaction; provide opportunities for intergenerational and cross-cultural connections; produce nutritious foods; and beautify neighborhoods.

During the 2030 Comprehensive Planning process, staff recognized the importance of the urban agriculture movement as a national trend, and flagged the issue for further study. A long-term action item regarding community gardening was adopted in the 2030 Comprehensive Plan, and can be found in the Environmental Protection chapter under Section C.9 Environmental Education Awareness and Coordination.

(see Appendix C)



Zoning Issues Raised by Staff (excerpt from May 28, 2010 memo)

As understood by the City's internal working group, community gardens are likely to be most desirable in residential areas in close proximity to the homes of garden participants.

Following are zoning issues raised by staff as outlined in the May 28, 2010, memo:

"A "garden" (as listed in Raleigh City Code § 10-2071) is permitted as an accessory use in all districts except CM, I-1 and I-2. The Code does not define the term "garden" or provide the allowable size on a lot. However, Agriculture - restricted use is defined as "the raising and harvesting of tree crops, vine crops and horticultural specialties not requiring intense cultivation, but gardens as an accessory use are permitted." Therefore, a community garden (as a "garden") is permitted on private property in most zoning districts as an accessory use.

"The Agriculture - restricted use category could be interpreted to include community gardening as the principal use on a lot. However, such an interpretation would represent an expansion of the current interpretation of the Agriculture - restricted use category. The City may be better served by specifically defining "urban agriculture" or "community gardening" as a specifically defined use in order to eliminate confusion. Further, Agriculture - restricted use is limited to the RR, CM, AP, SC, NB, BUS,

TD, I-1 and I-2 zoning districts. Thus, even if community gardening as the principal use on a lot was interpreted as falling within the Agriculture - restricted use category, it would not be currently permitted within most residential zoning districts.

"Even where allowed under the City's zoning regulations, community gardens which are used to produce items for sale, give rise to additional zoning considerations. While products may be grown in residential districts for personal consumption or given away, commercial use is not permitted within residential districts. Thus, the routine sale of products grown in community gardens would be prohibited in residential districts. However, cultivation of products for sporadic sale during temporary events could be allowed pursuant to Raleigh City Code § 10-2072.

"If "community gardening" or "urban agriculture" is to be defined and established as a principal use, efforts should be made to anticipate issues which may arise due to the differing methods which individual gardeners may employ and the varying interpretations individuals may impose upon these broad concepts. For example, to the extent that community gardens may be permitted as a principal use, structures such as fences, sheds, and trellises which are commonly necessary to support gardening, should be specifically defined as accessory structures to the gardens. Currently, these structures would not comply with regulations governing accessory structures. Further, any structure exceeding 12 feet by 12 feet would

require the issuance of a building permit. Also, some may contemplate that gardening or agricultural uses would logically include the production of animal products (eggs, honey, etc.). However, while raising chickens or maintaining bee hives may be appropriate as an accessory use where regular and frequent monitoring will occur, such uses may be wholly inappropriate as a principal use. Thus, additional guidance may be required in the Code to address these other issues.”

The Planning Department has asked Code Studio, the consultants working on the Unified Development Ordinance (UDO), Raleigh’s new development code, to review actions in the 2030 Comprehensive Plan for implementation. In the Diagnostic and Approach Report, Code Studio stated that Raleigh’s current regulations do not expressly permit community gardens. At the very least the UDO will remove any existing barriers to community gardens in Raleigh’s development regulations.

Work Group Charge

In 2010, City administration formed a Work Group comprised of City staff and community advocates. The Work Group’s goal was to look at ways to remove obstacles to city-wide community gardening efforts on private property and examine opportunities for community gardening on public lands. The Work Group was directed to develop recommendations that addressed the following three items relating to community gardening in Raleigh:

1) Develop a unified City of Raleigh response to residents and organizations requesting the use of City- owned land for temporary use for community gardening.

2) Understand what is involved in community gardening in general by researching what other jurisdictions are doing.

3) Consider how community gardening could work in Raleigh.

Work Group Response

1) Develop a unified City of Raleigh response to residents and organizations requesting the use of City- owned land for temporary use for community gardening.

The City recognizes the economic, environmental, and social value of urban agriculture and community gardens. Currently, the City is writing the UDO, which will regulate urban agriculture and community gardening throughout the city. Staff recommends that the City Council allow the use of undevelopable surplus city-owned property for temporary or permanent use as community gardens. Develop a program to make surplus public land available for community gardening is subject to policies, procedure, and legal considerations.

2) Understand what is involved in community gardening in general by researching what other jurisdictions are doing.

The Work Group found that municipal involvement in community gardening programs varies from city to city, but successful community gardening programs in the cities researched had policies and practices addressing legal considerations, zoning code, organizational structure, collaboration and communication, siting, and management. Considerations vary depending on whether property is private or public.

3) Consider how community gardening could work in Raleigh.

The City of Raleigh should approach community gardening in two phases. Phase I: Change the zoning code to allow community gardens as a principal use in non-residential districts and as conditional use in medium to high-density residential districts. Phase II: Address the temporary use of City-owned property for community gardens.

Phase I: Zoning Changes

Under the current code gardens are designated an ‘accessory use.’ In the UDO a proposed new designation ‘community gardens’ is anticipated to be a principal use in non-residential districts and a general use in medium- to high-density residential districts. Staff recommends that community gardens be permitted as a principal use in CM (Conservation Management), AP (Agriculture Productive), SC (Shopping Center), NB (Neighborhood Business), BUS (Business) and TD (Thoroughfare District), I-1 (Industrial-1) and I-2 (Industrial-2) districts and general use in R-10 through R-30 districts. Community gardens would be allowed as a conditional use in R-1, R-2, R-4, and R-6 districts.

Staff further recommends the text change for Agriculture - Restricted, Agriculture - General, urban farms, and community gardens be brought forward as part of the UDO process. Staff is working with the UDO consultants to confirm definitions for these uses and appropriate zone designations. Staff further recommends a text change to address multiple definitions under consideration including:

Agriculture - General. The raising and harvesting of trees (excluding forestry), vines, seeds, plants and crops, as well as the keeping, grazing or feeding of animals (including fish) for animal products, animal propagation, or value increase.

Urban Farms. It is a farm located in an urban area and is owned by an individual, group, or organization.

Community Gardens. Community gardens are areas of land managed and maintained by a group of individuals to grow and harvest food crops and/or non-food ornamental crops, such as flowers, for personal or group use, consumption, or donation. They 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 and used by group.

Staff proposes the removal of Agriculture - Restricted as part of the UDO update process since

Urban Farm and Community Garden are a subset of Agriculture - General.

A public UDO draft will be released in April 2011. The release of the UDO draft will be followed by a public comment period and a public hearing, after which City Council will consider and make a ruling on adoption.

Phase II: Use of Public Land

Work with legal department to develop a program, policies, application, agreement or contracts for community groups to administer community gardens on City-owned property.

The Work Group would be an active participant in resolving the legal issues, developing a community gardens program and evaluating the inventory of City-owned land to be used for community gardens.

Next Steps:

- Circulate the draft among department heads for review and comment.
- Obtain feedback on the draft from the Working Group.
- Work with the Code consultants to resolve zoning issues described above and then incorporate in the UDO.
- Submit a final report to City Council for its consideration.
- The Working Group should review the inventory of city-owned undevelopable land (200 pages) to better understand the potential community garden sites.
- Update related policies and action items in the 2030 Comprehensive Plan, if needed.

Municipal Considerations

Municipal involvement in community gardening programs varies from city to city. Successful programs have policies and practices that address the following key matters:

Legal Considerations (publicly-owned land)

- Legal protection for the City is established.
- Public property lease agreement established, with \$1M liability insurance. Individual gardens working with the lead nonprofit corporations also sign an indemnification agreement.

Zoning Code

- Zoning that accommodates community gardening is codified.

Organizational Structure

- Strategic plans for permitting and/or operating community gardens are developed.
- City may directly administer and operate community gardens; however, most often that task falls to community and non-profit organizations, with programs in several cities led by a single non-profit group.
- Community gardens are included in City open space planning.
- City department-based network developed to support related initiatives and tasks, including compost program, open space inventory and management, marketing, water delivery, permitting, code enforcement, and accounting.

Collaboration and Communication

- The relationship between community gardens, urban agriculture, and over-arching food policies is recognized, in both policy and practice.
- Locally-based food resources/systems are promoted and supported.

- The City nurtures relationships and communication with major gardening Organization(s), but with clear delineation between the roles and responsibilities of the City and organization(s).
- City facilitates communication and cooperation among organizations and individual gardeners.
- City facilitates educational opportunities for the community garden community.

Siting

- City develops an open space inventory to enable routing land and funding strategically and equitably.
- Equitable distribution of available land and resources sought.
- Design guidelines may be developed.
- Land preservation and conservation (open space, green space) policies established.

Management (publicly-owned land)

- Policies established governing land ownership and use/tenure, including development of governing by-laws as appropriate.
- Program costs and sources of revenue to cover those costs are identified.
- Department and staff administering program are identified, including roles and responsibilities.



Work Group Recommendations

Zoning

Gardens, as an accessory use, are currently permitted in most zoning districts in Raleigh except CM (Conservation Management), O&I-3 (Office & Institution-3), and I-1 and I-2 (Industrial-1 and Industrial-2).

The Work Group recommends the Raleigh Code of Ordinances be amended to permit 'community gardening' as a principal permitted use (under specified conditions), in certain zoning districts (see 10-2071 and 10-2072). Such amendments could be made part of the UDO. See Appendix F—Schedule of Permitted Land Uses in Zoning Districts.

Following are potential standards for allowing community gardens as a principal permitted land use in medium- to high-density residential districts (R10 through R30). Community gardens would be allowed as a conditional use in R-1, R-2, R-4, and R-6 districts.

- A community garden shall be primarily used for growing and harvesting food crops and ornamental crops, such as flowers, for consumption or donation or for sale off-site, provided the location of the latter is within a district zoned for retail uses.
- Seasonal on-site sales at community gardens may be permitted upon approval of a Special Use Permit, following the procedures set forth in Sec. 11.2.10. Sales shall be restricted to crops grown and harvested on the site. No sales of animals or animal products shall be permitted.
- Raising of animals at community gardens shall be permitted only upon those properties on which the garden is an accessory use, and shall be subject to the following conditions:
 - i. The community garden must be in active use for the growing and harvesting of crops.

- ii. Hoofed animals are prohibited.
 - iii. Chickens shall be permitted. Roosters are prohibited.
 - iv. A maximum of two (2) bee hives shall be permitted.
 - v. Any coop, hutch, hive, or other structure for housing animals shall be located at minimum 25 feet from any property line and, gardening activities.
- Detached accessory structures such as storage or utility buildings, gazebos, trellises, or accessory greenhouse structures shall be permitted*, subject to compliance with the requirements of the zoning district.
 - If security fencing is installed, such fencing shall be of an open design.
 - If lighting is installed, only motion-detecting fixtures shall be permitted. All-night lighting is prohibited.
 - Community gardens shall be managed and maintained in compliance with all applicable standards of this Code, including but not limited to those pertaining to: nuisance abatement, stormwater, site accessibility, signage, and any required tree conservation and landscaping.



Public Land

Property that the City holds is reviewed by staff to determine whether it has a City use or not. If the property is found to have no use to the City, it is sent to the Budget and Economic Development Committee (BED) and then to City Council for designation as surplus property. The City Council then declares surplus property available for sale and subject to the upset bid process. The project web page provides additional information:

Go to www.raleighnc.gov and type the keyword "Property for Sale" in the search tab

The City Real Estate division maintains a real property inventory list of all the fee-owned real properties the City of Raleigh owns. Interested parties can contact the City of Raleigh Real Estate Office for the inventory of all properties specified as surplus.

It is recommended that the City of Raleigh legal department work with staff to develop agreements and contracts for community groups to administer community gardens on City-owned surplus property. Agreements and contracts for community groups would include fees and administrative costs.

Once agreements and contracts are available, community gardeners would research surplus property online and review the inventory. A community gardener would make a request to City Real Estate Division, or their designee. After review and approval is granted, the community garden group would obtain a no-cost zoning permit. The permit would allow the City to track land use and make funding and other opportunities available to community gardeners throughout the city.



Appendix A—Best Practices in Other Jurisdictions

Jurisdictions:

- Boston
- San Francisco
- Charlotte
- Seattle
- Philadelphia
- Chicago
- Madison
- Milwaukee
- Denver

What are top best management practices?

- Seattle: Non-profit centered. City's role is to provide vacant land. Only securable for one year at a time
- Philadelphia: Water hookup/non-profit rate
- Boston and others: Communication
- Chicago: Strict application process

What are the top challenges?

- Philadelphia: (City) staff capacity to manage gardens. There are approx 500 CG and many non-profits involved

What is the zoning?

- Seattle: A new ordinance allows principal use for CGs on all private and public lands
- Philadelphia: Permitted in low-density population areas only
- Boston: Open space zoning throughout the city, However, residents would like to change to accommodate raising livestock and bees

What are the public and legal/liability issues?

- Many cities do not require liability insurance, but some may be changing that requirement
- All: Need to meet ADA regulations for accessibility

How and where are community gardens sited?

- Per citizen and nonprofit gardening organization requests and based, sometimes, on strategic plans

What are public issues related to gardens?

- Public needs to be informed of activities. Good idea to have regular communication/events/tours



Appendix B—Glossary

The following terms do not currently appear in the Raleigh Code of Ordinances. Toward establishing a broader accommodation of practices affiliated with urban agriculture, the Working Group recommends adding them to the Code's Definitions section:

Aquaculture. A use in which food fish, shellfish or other marine foods, aquatic plants, or aquatic animals are cultured or grown in fresh or salt waters in order to sell them or the products they produce. Examples are fish farms and shellfish beds.

Coldframe. An unheated outdoor structure consisting of a wooden or concrete frame and a top of glass or clear plastic, used for protecting seedlings and plants from the cold.

Community Garden. Community gardens are areas of land managed and maintained by a group of individuals to grow and harvest food crops and/or non-food ornamental crops, such as flowers, for personal or group use, consumption, or donation. They 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 and used by group members. Community gardens improve participants' quality of life; preserve green space; stimulate social interaction; provide opportunities for intergenerational and cross-cultural connections; produce nutritious foods; and beautify neighborhoods.

Community Supported Agriculture. A model of food production, sales, and distribution in which there is direct distribution between a farm and local community members who consume the goods from the farm.

Composting. The purposeful biodegradation of organic matter, such as yard and food waste.

Edible Landscaping. A landscape planted with vegetables, fruit, or herbs.

Farmers' Markets. Markets, usually held in outdoor public spaces, where farmers can sell their agricultural products directly to the public.

Food Desert. An area where there are few or no consumer food choices available, and residents have limited access to healthy and affordable food.

Greenhouse. A building, the exterior surfaces of which primarily consist of glass, plastic, or fiberglass glazing, in which plants are cultivated.

Hoophouse. A structure made of PVC piping or other material covered with translucent plastic, constructed in a "half-round" or "hoop" shape.

Urban Agriculture. The growing, processing, and distribution of food and other agricultural products through intensive plant cultivation and animal husbandry in and around cities.

Urban Farm. It is a farm located in an urban area and is owned by an individual, group, or organization. Typically, urban farms are more like oversized gardens than true farms, differing in scale and intensity. Typically, an urban farm is a commercial operation. Additionally, unlike gardens they can be used to produce a wide variety of fresh food, including produce, eggs, and milk.

Urban Homestead. An urban household that produces a significant part of the food, including produce and livestock, consumed by its residents.

Vermicomposting. The process of composting using various species of worms to create a heterogeneous mixture of decomposing vegetable or food waste, bedding materials, and worm castings.



Appendix C—Memorandum to City Council, May 28, 2010

Miscellaneous Issues - While not strictly legal, other issues merit consideration before permitting community gardening activity on City-owned property. Many of these issues are logistical in nature. The availability of a City-owned property for interim or passive uses such as gardening may arise largely due to the property's isolation from infrastructure or unsuitability for other productive uses. As such, providing water service to such properties may present a practical and financial challenge. In addition, consideration must be given to the manner and extent to which access may be limited to community garden sites, the necessity and availability of adequate parking, and whether garden participants will have access to refuse and/or yard waste collection services. Finally, City participation in community gardening is likely to involve more than simple property leases. City staff will inevitably be called upon to (1) resolve disputes between garden participants, (2) enforce garden "policies", (3) investigate "thefts" or other harms suffered by garden participants, and (4) provide resources to correct or repair deficiencies caused by neglectful gardeners. These issues, and numerous others which may be unforeseeable, will likely impact, to some degree or another, the City's allocation of fiscal resources and personnel. Further, while there may be little direct legal impact arising from these issues, matters which lead to dissatisfaction with City services or programs frequently necessitate the involvement of legal counsel, and can escalate into legal claims.

For the reasons set forth herein, community gardening on City-owned property involves public policy, legal, and practical considerations which require careful evaluation and thoughtful planning. Therefore, action related to privately-owned properties provides the most immediate and effective opportunity to advance community gardening through City action.

Recommendation

- Encourage the use of private land for community gardening in the near term
- Encourage the Urban Garden Community to work with City staff to develop long term solutions
- Consider text changes to be implemented as part of the UDO process

The petitioner has urged Council to authorize a text change to allow community gardens on City-owned land. However, the petitioner's request gives rise to complex public policy, operational, and legal issues. City staff and the City Council, as per the adoption of the 2030 Comprehensive Plan, support access to healthy foods and the promotion of local produce and urban agriculture. However, there are several zoning options as stated above that should be explored before a text change is authorized. In addition, using City-owned land for community gardening requires that legal and liability issues be resolved first.

Until the City's Internal Working Group completes its study of other jurisdictions, community gardening on appropriately zoned private land offers the best near term opportunity for this program. Further, **City staff has learned that many cities with community gardening programs took at least a year to develop them. Therefore, City staff recommends that the Internal Working Group work with the Urban Garden Community to develop a public policy, a thoughtful community garden program, and proposed text changes for adoption along with the UDO.**

What is Community Gardening?

A community garden is any piece of land gardened and maintained by a group of people. Community gardens can be found in various neighborhoods, schools, parks, places of worship, and on private or public property. Community gardens may vary in size and may be developed to meet the needs of those who tend them. Community Gardens may be used to cultivate fruits, vegetables, flowers, or herbs, and may also serve as a source of education, improved nutrition, money saving, exercise, and/or community building. The three necessary ingredients for the establishment of a community garden are space, funding, and interest.

Public Policy Issues

- There is no adopted City policy to allow community gardens on City-owned land.
- A 2030 Comprehensive Plan action item suggests that staff explore community gardening.
- Developing a policy for Community Gardens was listed as a long-term action item.

During the 2030 Comprehensive Planning process, staff recognized the importance of healthy cities and the urban agriculture movement as the next big trend, and flagged the issue for further study. Urban agriculture, which includes urban or community gardening, is growing across the country as cities seek ways to promote health, support the local economy and improve the urban environment. In addition, some cities are using urban gardening to address the “food dessert” issue (communities that lack access to healthy foods) or find productive use for large tracts of vacant land. The City of Raleigh does not have a policy with regard to community gardens on City-owned land. However, an action item regarding community gardening was adopted in the 2030 Comprehensive Plan, and can be found in the Environmental Protection chapter under Section C.9 Environmental Education Awareness and Coordination (see attached). Section C.9 includes several policies addressing environmental stewardship, education, and the promotion of local produce and farmer’s markets. While there is no policy promoting community gardens, the following long-term action item guides staff to explore the issue in greater detail:

Action EP.9.4 Community Gardening: *Explore opportunities to develop and expand community garden programs that provide opportunities for residents to grow their own produce as well as learn and use organic gardening techniques. The City should identify publicly-owned sites that may be suitable for community gardens, work with advocacy groups to make these sites available, and manage them. Coordinate with yard waste collection and community composting.*

Based upon the adoption of this action item, City Staff has been tasked with exploring opportunities to develop community programs and identifying City-owned sites that may be suitable for this purpose. Although this was a long term action item, an Internal Working Group of City departments was formed six months ago to discuss the implementation of a community gardening program. Those departments include Administrative Services (Sustainability Office), Community Development, Community Services, Inspections, Parks and Recreation, Planning, and Public Utilities. The City Attorney’s Office has also been consulted.

The purpose of the working group has been as follows: to develop a unified City of Raleigh response to residents requesting the temporary use of City-owned land for community gardening; to develop understanding of the issues involved in community gardening in general by researching the practice in other jurisdictions; and to consider how community gardening could work in Raleigh.

Community gardening and healthy community advocates have been active in Raleigh and Wake County for several years, and include the Interfaith Food Shuttle, hospitals, churches, schools and businesses. Interest has skyrocketed in the past few months. On April 17, 2010 the Advocates for Health and Action sponsored a community gardening summit/forum called the “DigIn” which was held at Marbles Kids Museum. Also, several emerg-

ing leaders in the Chamber of Commerce's 2010 Leadership Class selected community gardens as their special project. Following the April 17th "DigIn," the momentum and enthusiasm for community gardening has intensified as evidenced by the two recent Citizen's Petitions.

Zoning Issues

- Gardens, as an accessory use, are currently permitted in most zoning districts.
- Gardens, as a principal use, are not permitted within most residential zoning districts.
- The requirements of gardening and the end use of cultivated products may give rise to additional zoning considerations.
- The New Development Code may remove barriers to gardens as a principal use.
- There are many zoning options for coding urban agriculture from use, to district to hybrid.

As understood by the City's internal working group, community gardens are likely to be most desirable in residential areas in close proximity to the homes of garden participants.

A "garden" (as listed in Raleigh City Code § 10-2071) is permitted as an accessory use in all districts except CM, I-1 and I-2. The Code does not define the term "garden" or provide the allowable size on a lot. However, Agriculture – restricted use is defined as "the raising and harvesting of tree crops, vine crops and horticultural specialties not requiring intense cultivation, but gardens as an accessory use are permitted." Therefore, a community garden (as a "garden") is permitted on private property in most zoning districts as an accessory use.

The Agriculture – restricted use category could be interpreted to include community gardening as the principal use on a lot. However, such an interpretation would represent an expansion of the current interpretation of the Agriculture – restricted use category. The City may be better served by specifically defining "urban agriculture" or "community gardening" as a specifically defined use in order to eliminate confusion. Further, Agriculture – restricted use is limited to the RR, CM, AP, SC, NB, BUS, TD, I-1 and I-2 zoning districts. Thus, even if community gardening as the principal use on a lot was interpreted as falling within the Agriculture – restricted use category, it would not be currently permitted within most residential zoning districts.

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The Planning Department has asked the consultants for the New Development Code to review actions in the



2030 Comprehensive Plan for implementation. In the Diagnostic and Approach Report, Code Studio stated that “Raleigh’s current regulations do not expressly permit community gardens. At the very least the UDO will remove any existing barriers to community gardens in Raleigh’s development regulations.”

The Internal Working Group will continue to study urban agriculture as the UDO process unfolds. Urban agriculture is sometimes divided into four categories based on two dimensions (the extent or dispersal of agriculture practices and the intensity of urban agricultural activities) :

1. Extensive/intensive: rural and periurban (i.e., urban-adjointing) farming and associated agricultural activities
2. Less extensive/intensive: urban farms, farmers markets and composting operations.
3. Extensive/less intensive: backyard and community gardens, limited livestock and farmyards
4. Less extensive/less intensive: backyard and community gardens

Consequently, there are a variety of options to pursue should the City Council want to proceed with a text change. These options include community gardens as a principal use, Urban Agricultural Districts, Urban Garden Districts, or hybrids.

Public Use of Land for Community Gardens

- City-owned properties which may be considered for community gardening include vacant City-owned land and park land.
- Despite the ability to set expectations through the use of interim use agreements, controversy may nonetheless arise once the interim use contracts expire.
- The expectation of access to water and City resources is a hidden cost that should be considered.

There are two categories of City-owned land that could be considered for community gardens: vacant City-owned properties and park land.

Vacant City-owned property is typically land banked for specific purposes. These properties range from land to be redeveloped by the private sector through Requests for Proposals (RFP) and specific development programs (i.e., Site 4: Charter Square) or land banked for housing or mixed-use development consistent with the City’s Consolidated Plan and Redevelopment Plan administered by the Community Development Department. Other City-owned property may be land banked for future capital improvements or municipal functions such as a transportation facilities, public utility uses, and fire or police stations.

Using community gardens as an interim use can be tricky. In New York City, interim contracts were secured with community groups on future housing sites. Later, when the city prepared to develop these sites for housing, community gardens caretakers and advocates protested and refused to leave citing years of sweat equity and the loss of a community amenity. In some cases, residents asserted ownership of community gardens as their personal open space and installed fences and locks to prevent intruders from gaining access.

Any community garden established on vacant “land banked” City-owned property would be an interim use. Possible short term leases on this land may be an option in the mid term or second phase after all legal and administrative issues have been addressed. Some cities donate or lease vacant land to land trusts that organize community gardens. Other cities use city resources to address barriers to urban agriculture such as access to land, soil and water as well as funding for the development and administrative infrastructure.

The other type of City-owned property which may be suitable for gardening purposes would be park land. Some cities, though the number is unclear, permit gardening on park land for educational or recreational purposes. For example, Boston and Chicago sponsor programs that allow residents to use city parks for gardening. Staff will work closely with the Parks and Recreation Department and City Attorney’s Office to determine if community

gardening is an appropriate use in the City's parks as a recreational and/or educational function. Staff will also investigate the legal and liability issues, the operating impacts, the feasibility and appropriateness of offering access to infrastructure, and the operating costs (staff resources, materials and maintenance) associated with use of park land.

In whatever way the matter is approached, the City must be prepared to respond to varying citizen expectations regarding the City's level of support and participation. Some may assume that the City's contribution of land for community gardens includes a commitment to supply water, soil amendment material (compost, topsoil, etc.), and the use of gardening equipment (manual and powered) at no cost. Others may expect that City-owned garden sites will be fully prepared for cultivation and protected by City staff. While varying levels of support are possible and can be communicated in advance, care should be taken to minimize the likelihood that unreasonable or unpredictable citizen expectations may lead to controversy.

Legal and Liability Issues

- The City likely possesses legal authority to provide City-owned property for community gardening.
- If allowed, the City should require community gardening participants to enter leases which provide the City with effective means of control and protection from liability.
- While many issues impact community gardens whether they are established on public or private land, certain legal and liability challenges are unique to the City-owned property context.
- Other issues, not strictly legal in nature, may create challenges and must be carefully evaluated to minimize the potential for controversy.

Many of the issues which arise from community gardening on privately-owned property are also present when community gardens are established on City-owned property. However, permitting community gardening on City-owned property also leads to legal and liability issues which are unique and potentially challenging. While not insurmountable, many of these legal issues may ultimately deprive the City and potential community gardeners of many of the benefits commonly associated with community gardening.

Authority - The North Carolina General Statutes provide significant latitude to municipalities wishing to lease property which is not currently needed for city use. Therefore, it is unlikely that concerns regarding authority or public purpose would create a permanent impediment to leasing City owned property for use in community gardening. However, in formulating policies and procedures for leasing limited City property for use in community gardening, care should be taken to anticipate and address equal protection, due process, and exclusive emolument concerns.

Contracts and/or Leases - In order to provide the City with adequate control over private activities conducted on City-owned property, some form of contractual arrangement between the City and the private party is recommended. Typically, contractual agreements governing the temporary use of real property take the form of leases. To be effective, leases for City-owned community garden sites should provide the City with clarity with respect to the identity and obligations of the tenant gardeners, efficient means for the City to enforce lease terms and other regulations, and accountability on the part of tenant gardeners. For these reasons, the City may wish to limit those eligible to lease City-owned community garden sites to legal entities which can serve in a responsible and administrative capacity. These entities, whether organized for profit or not for profit, could then develop procedures for making garden plots available to individuals, and provide routine oversight over individual garden plots, participants, and activities.

Liability Issues - Leasing of City property is a proprietary function, and governmental immunity does not bar suit or liability arising from City leases. Liability arising from community gardens may come in numerous and unexpected forms. Principally the City may be exposed to liability from community garden participants injured or harmed while engaged in gardening. While the claims of gardening participants may be mitigated through con-

tractual releases and indemnity agreements, claims may also arise from consumption of produce grown on community garden sites by third parties. In addition, the activities of community gardening participants may expose the City to liability to third parties through safety issues on the garden sites themselves or off-site impacts such as water diversion or sedimentation. Third party claims arising from community gardening on City owned property are unpredictable and largely unpreventable. These liability issues give rise to serious concerns regarding the City's duty to adequately investigate properties before making them available as garden sites. In addition, consideration must be given to any affirmative continuing duties the City may have to supervise or inspect the activities of community garden participants, or to remediate deficiencies on community garden sites.

As previously mentioned, indemnity agreements may provide the City with some measure of protection from liability exposure. However, indemnity agreements with individuals or under-capitalized legal entities may ultimately be unenforceable from a practical standpoint. The City may wish to mitigate its potential liability exposure by requiring community garden tenants, licensees, or permit holders to obtain insurance providing coverage to the City as an additional insured. However, whether such insurance is available is unknown. Further, the cost of such insurance may seriously erode the practical value of community gardening.

Environmental Issues - Gardening necessarily involves some degree of land disturbing activity and irrigation. It may also involve the use and application of chemical herbicides and pesticides. Therefore, community gardening may give rise to violations of the City's illicit discharge regulations.

An illicit discharge is the unlawful disposal, spillage, leakage, or other discharge of any non-stormwater substance such that the substance is likely to reach a stormwater conveyance or the waters of the State. Enforcement action for an illicit discharge violation may be taken upon any person (including any designer, engineer, contractor, or agent) who allows, participates, or assists in the creation of a violation. Absent a designated responsible party, enforcement actions for illicit discharge violations must be directed against all persons using the community garden and upon the owner of the property.

According to a representative of the North Carolina Department of Environment and Natural Resources, land disturbing permits and erosion control plans are not required by those engaged in non-commercial gardening. The City's interpretation would likely follow that of DENR. However, while land disturbing permits and erosion control plans may not be required to establish a community garden, if gardening activity gives rise to a sedimentation violation, enforcement action or remediation may be required. Otherwise, the City may face sanction from the State of North Carolina.

Public Health and Quality of Life Issues – All community gardens, regardless of whether they are established on City-owned or private property, will be subject to Code provisions intended to maintain public health and quality of life. Currently, gardens are typically established on private property as accessories to residences. As such, these gardens are generally well monitored and maintained by the resident property owners, and present few issues for the City's Code enforcement staff. However, community gardens as principal uses on public property might suffer greater neglect due to decreased monitoring and accountability. Nuisance violations which could arise from inadequately tended community gardens include the following:

- conditions which create or provide a breeding ground or harbor for rodents, harmful insects, or other pests
- places of dense or encroaching growth of weeds, grasses, vines, shrubs, or other undesirable vegetation
- collection or ponding of stagnant water with conditions causing, or likely to cause, mosquitoes or other harmful insects to breed
- with the exception of properly maintained compost, concentrations of garbage, yard waste, rotten or putrescible matter of any kind
- conditions arising from improper drainage

If conditions constituting Code violations should occur, current procedures would direct enforcement efforts against the property owners, not the tenant gardeners.

Miscellaneous Issues - While not strictly legal, other issues merit consideration before permitting community gardening activity on City-owned property. Many of these issues are logistical in nature. The availability of a City-owned property for interim or passive uses such as gardening may arise largely due to the property's isolation from infrastructure or unsuitability for other productive uses. As such, providing water service to such properties may present a practical and financial challenge. In addition, consideration must be given to the manner and extent to which access may be limited to community garden sites, the necessity and availability of adequate parking, and whether garden participants will have access to refuse and/or yard waste collection services. Finally, City participation in community gardening is likely to involve more than simple property leases. City staff will inevitably be called upon to (1) resolve disputes between garden participants, (2) enforce garden "policies", (3) investigate "thefts" or other harms suffered by garden participants, and (4) provide resources to correct or repair deficiencies caused by neglectful gardeners. These issues, and numerous others which may be unforeseeable, will likely impact, to some degree or another, the City's allocation of fiscal resources and personnel. Further, while there may be little direct legal impact arising from these issues, matters which lead to dissatisfaction with City services or programs frequently necessitate the involvement of legal counsel, and can escalate into legal claims.

For the reasons set forth herein, community gardening on City-owned property involves public policy, legal, and practical considerations which require careful evaluation and thoughtful planning. Therefore, action related to privately-owned properties provides the most immediate and effective opportunity to advance community gardening through City action.

Recommendation

- Encourage the use of private land for community gardening in the near term
- Encourage the Urban Garden Community to work with City staff to develop long term solutions
- Consider text changes to be implemented as part of the UDO process

The petitioner has urged Council to authorize a text change to allow community gardens on City-owned land. However, the petitioner's request gives rise to complex public policy, operational, and legal issues. City staff and the City Council, as per the adoption of the 2030 Comprehensive Plan, support access to healthy foods and the promotion of local produce and urban agriculture. However, there are several zoning options as stated above that should be explored before a text change is authorized. In addition, using City-owned land for community gardening requires that legal and liability issues be resolved first.

Until the City's Internal Working Group completes its study of other jurisdictions, community gardening on appropriately zoned private land offers the best near term opportunity for this program. Further, **City staff has learned that many cities with community gardening programs took at least a year to develop them. Therefore, City staff recommends that the Internal Working Group work with the Urban Garden Community to develop a public policy, a thoughtful community garden program, and proposed text changes for adoption along with the UDO.**

Appendix D— Policies/Action Items in 2030 Comprehensive Plan

Currently (December 2010) the primary reference to community gardens in the Comprehensive Plan is located in the Environmental Protection chapter:

Action EP.9.4 Community Gardening: Explore opportunities to develop and expand community garden programs that provide opportunities for residents to grow their own produce as well as learn and use organic gardening techniques. The City should identify publically-owned sites that may be suitable for community gardens, work with advocacy groups to make these sites available, and manage them. Coordinate with yard waste collection and community composting.

Section C.9 includes several policies addressing environmental stewardship, education, and the promotion of local produce and farmer's markets.

The Plan also contains several policies and action items related to uses or activities associated with community gardens:

Environmental Protection

Policy EP 7.8 -- Food Waste Composting

Investigate and pursue appropriate opportunities for food waste composting, ranging from individual household composting to regional organic waste composting.

Policy EP 9.2 -- Environmental Justice Education

Educate local decision-makers on the principles of environmental justice to promote equitable distributions of environmental burdens (pollution, industrial facilities, waste disposal, truck traffic, noise, etc.) and access to environmental goods (nutritious food, clean air and water, parks, recreation, health care, education, transportation, safe jobs, etc.).

Policy EP 9.5 -- Promoting Local Products

Promote the public health and environmental benefits of supporting locally-produced foods, goods, and services.

Policy EP 9.6 -- Local Produce and Farmers Markets

Encourage the creation and maintenance of produce markets throughout Raleigh to provide outlets for healthful and locally-grown produce for residents.

Economic Development

Action ED 2.5 -- Neighborhood Grants for Community Benefits

Consider a small neighborhood grant program to fund small community-identified priority projects (e.g., play lot, community gardens, culture and arts initiatives) where the residents take responsibility for on-going operation and maintenance. Some grant funding is available through the Parks and Recreation and Community Services departments.

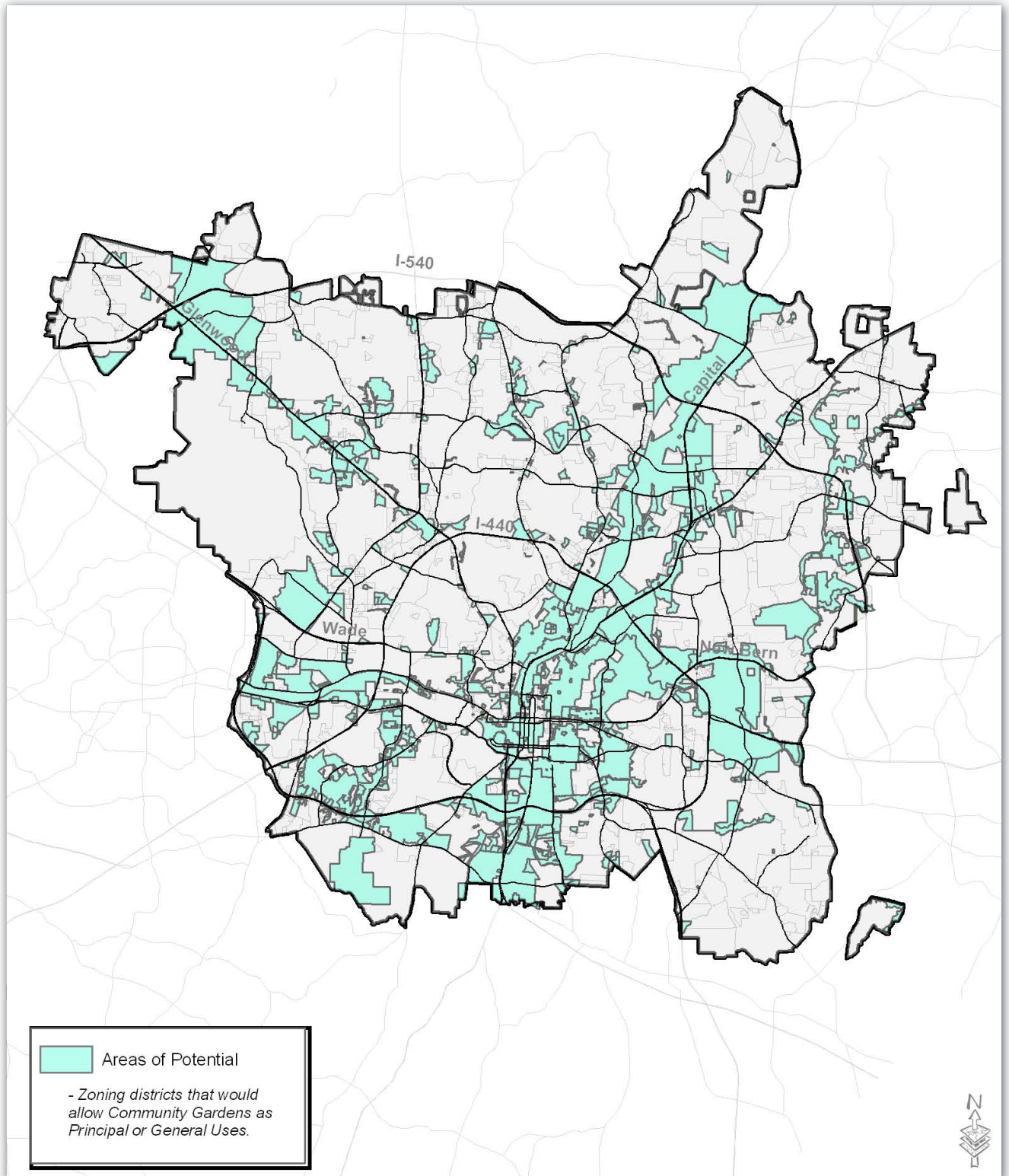
Downtown Raleigh

Policy DT 5.1 -- Green Roofs as Open Space

Encourage the use of roof gardens, green roofs, and other environmentally sustainable options for use as private open space in new downtown developments.

Looking ahead, the City may wish to include additional policies and actions in the Comprehensive Plan to address broader urban agriculture and food issues as a matter of Land Use, as well as their implications for Regional and Inter-jurisdictional Coordination. Specific measures and language would be subject to further research and recommendation, however, beyond the scope of this report.

Appendix E— Potential Zoning for Community Gardens



Appendix F— Schedule of Permitted Land Uses in Zoning Districts

Urban Agriculture and Community Gardens in the City of Raleigh

Section 10-2071. SCHEDULE OF PERMITTED LAND USES IN ZONING DISTRICTS	
<p>Principal uses and activities for buildings, structure and land permitted by the Zoning Code within the following schedule. All uses listed are principal uses of land, unless accessory uses are specifically identified. See Article H to determine the method of approval, either by the City staff or City Council. In addition, specific uses may require approval by the Board of Adjustment. The symbols on the schedule indicate categories of approval and certain approval procedures which are not contained in Article H:</p> <p>* GENERAL USE.....approved upon meeting applicable standards. ■ CONDITIONAL USE.....approved upon meeting applicable standards and additional conditions in 10-2072. ● SPECIAL USE (CITY COUNCIL).....requires a public hearing and approval of a special use permit by City Council (10-2145). ◊ SPECIAL USE (BOARD OF ADJUSTMENT).....requires a public hearing and approval of a special use permit by Board of Adjustment (10-2144). ■ SITE PLAN APPROVAL (CITY COUNCIL).....proposed use requires preliminary site plan approval from City Council (10-2132.2) See Article H. ■ SITE PLAN APPROVAL (PLANNING COMMISSION OR CITY COUNCIL).....proposed use may require preliminary site plan approval from the Planning Commission or City Council depending on the location, size and level of intensity (10-2132.2) See Article H.</p> <p>Notes: LAND USE TERMS appearing in the italic are defined in 10-2002 (e.g. Forestry, eating establishment). A BLANK SPACE, regardless of shading, indicates that the use is not permitted in that zoning district, except as may be modified by applicable overlay district (TC -19-92, Section 26). In addition to this schedule, regulations and procedures can also apply which restrict use, design, construction and intensity. Additional requirements include overlay zoning districts, conditional use zoning districts, other zoning district regulations, the Comprehensive Plan, or other regulations. If a use encompasses more than one listing, such as group housing and unit-ownership (condominium) development, the symbol for each listing is applicable. Conversions of uses to other permitted uses, unless otherwise provided in the schedule, are allowed in accordance with applicable regulations relating to the new use. A use not listed in prohibited. Any permitted use may be approved as a unit ownership (condominium) development in accordance with 10-2108 and 10-2122.</p>	
Symbols	Zoning Districts
	Rural Residential (R-1)
* General Use	
■ Conditional Use	
● Special Use (City Council)	
◊ Special Use (Board of Adjustment)	
■ Site Plan Approval (City Council)	
■ Preliminary Site Plan Approval (Planning Comm. Or City Council) may be required	
LAND USE AGRICULTURE	
Accessory Structure (fence, wall storage building)	
Agriculture-General	
Urban Farms	
Community Gardens	
Fish hatchery and fish farm	
Minor tree removal activity	
Research Farm	
Temporary Event	
Tree distributing activity except minor tree removal activity	
Wildlife sanctuary	
Agricultural-Restricted	
	Rural Residential (R-1)
	Residential-2
	Residential-4
	Special Residential-6
	Residential-6
	Manufactured Home
	Residential-10
	Residential-15
	Residential-20
	Special Residential-30
	Residential-30
	Conservation Management
	Agricultural Productive
	Residential Business
	Office & Institution-1
	Office & Institution-2
	Office & Institution-3
	Buffer Commercial
	Shopping Center
	Neighborhood Business
	Business
	Thoroughfare District
	Industrial-1
	Industrial-2





The City of Raleigh

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