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HONORABLE PLANNING & ECONOMIC DEVELOPMENT STANDING COMMITTEE

RE: The proposal to amend Chapter 61 of the 1984 Detroit City Code, Zoning, with regard to provisions for Urban Agriculture (RECOMMEND APPROVAL)

On December 6, 2012, the City Planning Commission (CPC) voted to **recommend approval** of the proposal to amend Chapter 61 of the 1984 Detroit City Code, Zoning, with regard to provisions for Urban Agriculture.

OVERVIEW

It is well known that Detroit has a vigorous grassroots urban agriculture movement. Detroit is noted internationally for the community initiative in this regard and its response to the expanse of vacant land in the city. There are probably over 1,000 community, school and institutional gardens, and even more backyard gardens. The number of community gardens continues to grow with a few projects being closer to small scale farming than community gardening. There is also increased interest in using vacant land in the city for large-scale commercial farming. The largest proposal to-date is for a de facto tree farm of approximately 144 acres consisting of more than 1,500 city lots (Hantz Woodlands). Currently, the City Code neither defines nor sets standards for community gardening or commercial agriculture.

Detroit's community, school, family and church gardens range in size from backyard plots to about two acres or approximately 14 average city lots. The number of community gardens increases yearly. There are also at least six small farms, the largest being seven acres, that produce food specifically for sale through markets, direct sale to restaurants and others, through Community Supported Agriculture (CSA) shares and/or for soup kitchens and emergency food providers. In addition to agriculture activity taking place by methods of growing outdoors directly from the soil, there is growing interest in indoor growing systems, as well as fish farming.

Detroit growers are producing a variety of vegetables, fruits, and herbs. So much is being grown that small farmers' markets are being established throughout the city. Ten farmers' markets were operating once a week, throughout the 2012 growing season.

Thus, all of the current and proposed activity necessitated devising a comprehensive ordinance to deal with various types and aspects of urban agriculture. It should be noted that legalizing the keeping of chickens, rabbits, and bees was also discussed. However, it was decided to bring forth an ordinance focusing on plant cultivation (along with fish farming) first and give special attention to keeping animals as part of subsequent considerations and next steps.

BACKGROUND

The Urban Agriculture Workgroup (UAW)

In 2009, as a result of issues raised by CPC staff regarding the need for policy and codes to facilitate and regulate agriculture in Detroit, City Council charged the CPC with the responsibility of moving forward with devising that which was deemed necessary to allow agriculture to take place with certain provisions and protections. CPC staff began to research codes and policies from other cities, and in August of 2009, convened the Urban Agriculture Workgroup, to review and give input on proposed codes and policies for the City of Detroit.

The initial group of stakeholders for the workgroup included individuals from organizations and institutions having long-standing status in the community working to promote urban agriculture and food security in Detroit, as well as representatives from City departments. Members included representatives from the Detroit Black Community Food Security Network; the Greening of Detroit; Earthworks Urban Farm; Michigan State University; Wayne State University; and City departments including Planning and Development; Recreation; Health and Wellness Promotion; and, Buildings, Safety Engineering and Environmental.

The efforts of the workgroup were stalled for more than a year, when in early 2010, during our research, staff became aware of local authority issues that would arise as a result of the Michigan Right To Farm Act; and staff worked with a number of State agencies, organizations, the Law and Planning departments at WSU, as well as the City's Law Department to resolve our concerns and issues (to be discussed later in this report). However, anticipating our concerns to be resolved at some point, the workgroup was reconvened in October of 2011, with an expanded membership, to complete its review of, and give input on, all aspects of the ordinance that is now before the Commission.

The expanded Urban Agriculture Workgroup consists of representatives from the following organizations, agencies, City departments and private interests: Freedom Freedom Community Garden; Earthworks Urban Farm; Detroit Black Community Food Security Network; Greening of Detroit; Neighbors Building Brightmoor; Hantz Woodlands; Recovery Park; Genesis HOPE Community Development Corporation; Community Development Advocates of Detroit (CDAD); Lower Eastside Action Plan (LEAP); Detroiters Working for Environmental Justice (DWEJ); Green Door Initiative; Wayne State University (Law and Planning departments); Michigan State University

(Extension); Michigan Department of Agriculture and Rural Development (MDARD); as well as representatives from the City including: the Planning and Development Department; Buildings, Safety Engineering and Environmental Department; Law Department; Detroit Water and Sewerage Department; and, the Detroit City Council Research and Analysis Division.

We anticipate that the UAW will be an ongoing advisory group (with added members) as the City continues to devise regulations and policies for agriculture; as well as dealing with additional programmatic and other activities associated with helping agriculture in Detroit to succeed.

Issues Raised During the UAW Review

There were a few issues/concerns raised during the discussions on the proposed ordinance that could not be resolved through the ordinance; namely concerns about the use of pesticides, other chemicals and genetically modified seeds and plants; as well as requirements for soil testing. MDARD provided State expertise on both the topics of pesticides and soil testing.

State law prohibits any municipality from devising an ordinance that conflicts with the State law on pesticides (Act 451, Part 83). This means that municipalities cannot choose which pesticides to prohibit. State law is based on the research and recommendations of the Environmental Protection Agency. The community of growers in Detroit is a well-organized network and it is probably safe to assume that the vast majority of Detroit growers (community gardens and farms) employ methods of pest control and increasing soil productivity that would have the least amount of impact to people and the environment. Prohibition of GMO (genetically modified organisms) seeds and plants is not practicable at this time. Detection and enforcement is beyond the capability of the City.

With regard to soil testing, most existing community gardens and farms have access to soil testing through the Garden Resource Program and/or know how and where to send soil samples for testing. The City does not have the capability to interpret the results of soil tests; however, obtaining a soil test, with interpretation will be part of the site plan review process for all urban farms.

It is still our intent to continue to explore ways to address these concerns. In the short term, we will work with MSU, MDARD, and our local experts to develop a "best practices manual" for urban gardens and urban farms. The manual will address the issues and practices for which we are not able to develop specific standards. For the long term, we will continue to study these issues with the UAW and partner with other organizations to work towards better knowledge of impacts and possible need for legislative changes.

The keeping of animals, specifically chickens, rabbits and honey bees was also discussed at length. Presently, City Code prohibits owning, harboring, keeping, maintaining, selling or transferring farm or wild animals (Section 6-1-3 Animal Control, Regulation and

Care). Our original intent was to propose an amendment to the City Code to allow for certain farm animals under specific conditions. However, most community concern about urban agriculture is related to animals. Additionally, how animals should be regulated, which departments should hold what responsibilities, and other concerns brought us to the conclusion that farm animals and beekeeping would take more time and should be handled as an independent ordinance amendment. Thus, it was decided to bring only the cultivation (and fish farming) ordinance amendments forward at this time. Once this proposed ordinance is passed, we will revisit devising an ordinance regulating animals and honey bees.

Public Engagement/Community Outreach and Inter-departmental Review

In an effort to educate and get feedback from the general public on urban agriculture generally, and the provisions of the proposed ordinance specifically, CPC staff (partnering with the Detroit Food Policy Council) held three community meetings in September 2012. The meetings included a gallery of photos with explanations of the new uses, in which zoning districts they would be allowed, and whether or not a public hearing was required. A presentation was given that covered the history and current state of urban agriculture in Detroit, an overview of the ordinance, and the ordinance approval process. The presentation was followed by a question and answer session. Nearly 200 persons in total attended the meetings held at three different locations: St. Maron Social Hall on St. Jean at Kercheval, Tabernacle Missionary Baptist Church on W. Grand Boulevard at Grand River, and at Greater Grace Temple on West Seven Mile near Telegraph.

Concerns raised included: access to City water and the possibility of reduced rates; the use of pesticides and GMOs; soil quality and testing; large farming operations; and farm animals (some in support and some against).

Following the community outreach, staff also engaged City departments to give a final review of the proposed draft. The only substantive change made to the original draft was to eliminate the proposed Agriculture Review Committee (devised for the purpose of reviewing projects of a certain size and/or those seeking a rezoning to an Agriculture Planned Development). Instead, all urban farms and all agriculture uses specified as conditional uses would be subject to Site Plan Review. The proposed site plan review process will require submittal of information specific to agricultural uses (including information about soil testing) and will include CPC staff as part of the review body, with other departments and experts included as necessary.

SCOPE OF THE ORDINANCE

The proposed urban agriculture ordinance adds a number of new uses to the Zoning Ordinance's existing zoning districts. It also establishes specific use standards and procedures of approval for these new uses. Specifically, the proposed ordinance would add:

- Definitions of several terms—aquaculture, aquaponics, compost, farmers’ market, farm stand, greenhouse, hoop house or high tunnel, hydroponics, nursery, orchard, rainwater catchment system, tree farm, urban farm, and urban garden;
- Specification of the permissibility of urban agricultural land uses in the several zoning district classifications—whether permitted by-right or on a conditional basis;
- Requirement that urban farms and any conditional urban agricultural use be subject to site plan review; clarification as to appropriate site plan reviewers for urban agricultural uses; specification of submittal requirements for urban agricultural site plan review;
- Specific use standards for urban agricultural uses; and
- Specification of standards for accessory uses and accessory structures.

Addendum to the Ordinance

Upon further review of the proposed urban agriculture ordinance, staff discovered some minor, but important, changes that would improve the proposed ordinance and its integration into the existing Zoning Ordinance. Therefore, staff presented an addendum to the proposed ordinance during the CPC public hearing.

The City Planning Commission voted to accept the following additional changes to Chapter 61, Zoning, of the Detroit City Code:

- To address the existence of multiple versions of the use greenhouse/nursery:
 - Remove the use “Greenhouse or nursery with stock for retail sales.” (§§61-9-36(9), 61-9-62(13), 61-9-76(15), 61-9-116(17), 61-10-16(18), 61-10-36(18), 61-10-56(18), 61-10-76(18), 61-10-106(17), 61-12-50, 61-12-168, 61-14-48, 61-16-162, Appendix Div. 7.
 - Replace the use “Greenhouse or nursery, wholesale sales only, including landscape contractors” with “Contractor yard, landscape or construction;” newly specified use to be permitted in the same districts and on the same basis as wholesale greenhouses/nurseries heretofore (§§61-9-117(8), 61-10-17(3), 61-10-37(11), 61-10-57(14), 61-10-77(17), 61-10-97(17), 61-11-107(13), 61-12-61, 61-14-52, 61-16-112, Appendix Div. 7.
 - Create a definition for “Contractor yard, landscape or construction.” (§61-16-53—Contractor yard, landscape or construction) Note: “construction contractor yard was inadvertently omitted from the list of permitted uses when the land use term “Trade services, general” was written into the new Zoning Ordinance adopted in 2005.

- Exclude retail greenhouses (i.e., garden centers) from the definition of greenhouse; garden centers to be treated as a “store of a generally recognized retail nature for the sale of new merchandise.” (§§61-16-92, 61-16-175)
- Eliminate the proposed new definition, “nursery.” (§61-16-142)
- Add “or for transplant” to the definition of “Tree farm”:
 - “Tree farm: Any parcel of land used to raise or harvest trees for wood products, Christmas trees, *or for transplant*, where forest products are sold on-site or transported to market. A tree farm as a principal use is considered an urban farm. (§61-16-182)
- To address the role of City review and procedure in dealing with specific concerns about agricultural projects and their impact on surrounding land uses:
 - Add language to include the City Planning Commission, Department of Public Works, the Detroit Water and Sewerage Department, the Buildings, Safety Engineering and Environmental Department, the Planning and Development Department, and other departments and agencies as necessary, in site plan review of agricultural proposals. (§61-3-141, 61-3-142)
 - Expand the applicability of site plan review to include any “orchard” and any group of more than ten (10) trees grown as “Christmas trees” (§61-3-113-(11)).
- Clarify the definition of “orchard” by specifying that an orchard consists of more than ten (10) trees: “The establishment, care, and harvesting of more than ten (10) fruit or nut bearing trees....” (§61-16-143).
- Expand the setback provisions to specify a fifteen (15)-foot setback between any orchard or group of more than ten (10) trees grown as “Christmas trees” and any lot line of a lot developed with a residential, public/civic/institutional, retail/service/commercial, or manufacturing/industrial land use (§61-12-329).

These changes are reflected in the draft ordinance that is before Your Honorable Body for consideration.

Nonconforming Uses and the Right to Farm Act

In addition to the changes listed above, the proposed ordinance would also recognize certain existing urban agricultural operations as nonconforming uses that are subject to the nonconforming use regulations of Article XV of the Zoning Ordinance. The City is required to include this nonconforming use provision in the urban agriculture ordinance in order to fulfill the requirements of the administrative exemption that was granted to large municipalities by the Michigan Commission of Agriculture and Rural Development in December 2011. The Commission exempted large locales by declaring that each of

the eight existing Generally Accepted Agricultural Management Practices (GAAMPs) established under the Act did “not apply in municipalities with a population of 100,000 or more in which a zoning ordinance has been enacted to allow for agriculture *provided that the ordinance designates existing agricultural operations present prior to the ordinance’s adoption as legal non-conforming uses as identified by the Right to Farm Act for purposes of scale and type of agricultural use*” (emphasis added).

In order for Detroit’s urban agriculture ordinance to comply with the Commission’s terms of exemption, the non-conforming use provision must be included. The proposed ordinance language clarifies the meaning of “scale” and “type,” establishes the procedure for granting nonconforming use status to an existing agricultural use, states that any change in scale or type will cause an operation to lose its nonconforming use status, and confirms that agricultural uses that are prohibited elsewhere in the City Code will not be given nonconforming status (e.g., farm animals, which are prohibited in Section 6-1-3 of the City Code). Furthermore, any pre-existing agricultural use that happens to conform to zoning district use permissibility and to the proposed agricultural development standards will be considered *conforming* and will not be given nonconforming status.

DETROIT MASTER PLAN OF POLICIES

CPC staff is working with P&DD on the needed amendment to the City’s Master Plan to appropriately reference urban agriculture as an activity envisioned as desirable for the city. A public hearing on the Master Plan amendment will be convened at the CPC subsequent to the statutorily mandated 42-day notice and comment period afforded to interested parties including the 21 municipalities abutting Detroit.

CITY PLANNING COMMISSION PUBLIC HEARING

On December 6, 2012, the City Planning Commission held a public hearing on the proposed amendment. Twenty-four (24) members of the public spoke. Only two persons spoke in opposition. Two (2) letters of support were received.

CRITERIA FOR ZONING ORDINANCE TEXT AMENDMENTS

The Zoning Ordinance requires text amendments to meet three general criteria, as well as specific criteria related to new land uses, regulations, or standards. Staff finds that the proposed text amendment meets the stated general criteria, as listed below.

(1) Whether the proposed amendment is consistent with the stated purposes of this Zoning Ordinance;

The general purpose of the Zoning Ordinance is to promote and protect the public health, safety, and general welfare (Sec. 61-1-4). The proposed text amendment will accomplish this goal by allowing new agricultural uses that will permit people to produce their own healthy food and also to sell the food they produce, which provides

economic opportunity, thereby improving health and general welfare. At the same time, the ordinance would impose reasonable regulations in order to protect safety and the general welfare. The care with which these proposed regulations have been crafted and vetted through a transparent and public process addresses a specific purpose of the Zoning Ordinance (Sec. 61-1-5) by aiming to protect all parts of the city from the harmful encroachment by incompatible uses.

(2) Whether the proposed amendment will protect the health, safety, or general welfare of the public;

See (1), above.

(3) Whether the proposed amendment corrects an error or meets the challenge of some changing condition, trend or fact.

This proposed ordinance addresses a pressing need that has developed since the Zoning Ordinance was drafted years ago. Urban agriculture has been increasingly looked to as a way to address concerns about food security, health, economic opportunity, community building, and use of vacant land, among others. As a result, community gardens and both non- and for-profit farms have been established around the city. Many of these agricultural uses are not legal. Moreover, the City has received many requests to establish legal agricultural uses of various sizes. Often these requests involve the purchase of City-owned land. However, the City has a stated policy that it will not sell land for uses that are not permitted by the zoning ordinance. Therefore, this text amendment is needed in order to address a new strong demand for urban agriculture projects in Detroit.

The Zoning Ordinance also requires that the addition of specific land uses to the zoning districts be the most appropriate way to address the proposed land uses; that proposed regulations and standards be the most appropriate way to address any problems; and that the amendment be enforceable:

The CPC's staff considered different scenarios and options to address the need to allow urban agriculture in Detroit and determined that the present proposal to add additional uses to the lists of permissible uses in existing zoning district classifications is the most appropriate way to introduce agricultural uses to the zoning ordinance. Additionally, the proposed regulations and standards were crafted with the participation of a working group made up of diverse stakeholders. Given the extensive input received from agricultural experts, City departments, the Detroit urban agriculture community, and members of the public, the City Planning Commission finds that the proposed regulations are the most appropriate way to address urban agriculture in the city. Last, there were many aspects of urban agriculture that were considered for inclusion in the ordinance (e.g., soil testing, pesticides, genetically-modified organisms, etc.), but were excluded because of the necessity of drafting an enforceable ordinance. The proposed ordinance provides a balance between appropriate regulation and enforceability.

RECOMMENDATION

Based on the finding that the proposed text amendment meets the Zoning Ordinance criteria and the December 6, 2012 action of the CPC in support of the proposed amendment; the CPC recommends that Your Honorable Body adopt the proposed ordinance amendment to the Detroit Zoning Ordinance.

Respectfully submitted,

LESLEY C. CARR, CHAIRPERSON



Marcell R. Todd, Jr., Director
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Laura Buhl, Staff

Attachment

SUMMARY

This text amendment to the Detroit Zoning Ordinance, Chapter 61 of the 1984 Detroit City Code, for urban agriculture provides for the following:

- Definitions of several terms—aquaculture; aquaponics; compost; contractor yard, landscape or construction; farmers' market; farm stand; greenhouse; hoophouse or high tunnel; hydroponics; orchard; rainwater catchment system; tree farm; urban farm; and urban garden.
- Specification of the permissibility of urban agricultural land uses in the several zoning district classifications—whether permitted by right or on a conditional basis.
- Elimination of the use “greenhouse or nursery with stock for retail sales” and replacement of the use “greenhouse or nursery, wholesale sales only, including landscape contractors” with a new use “contractor yard, landscape or construction,” permitted in the same districts and on the same basis as the use it is replacing.
- Requirement that urban farms, orchards, any group of ten trees or more grown as Christmas trees, and any conditional urban agricultural use be subject to site plan review; clarification as to appropriate site plan reviewers for urban agricultural uses; specification of submittal requirements for urban agricultural site plan review.
- Specific use standards for urban agricultural uses.
- Specification of standards for accessory uses and accessory structures.
- Recognition of certain pre-existing agricultural operations as nonconforming uses and procedures for confirmation of legal, nonconforming use status.