

# Regulations Related to Community Gardens<sup>1</sup>

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## What zoning laws pertain to urban gardens?

Under most zoning code, gardens are allowed within the city but only as additions to residential properties, or what planners call an “accessory use.” Properties used solely for gardens, like an empty lot, are considered “principal use” and are not allowed.

Typically, accessory uses and structures are permitted in all districts, if those uses and structures are of a nature customarily incidental and clearly subordinate to a permitted or permissible principal use or structure and, unless otherwise provided, these uses and structures are located on the same lot.

- Accessory uses and structures in a residential district shall include noncommercial greenhouses and plant nurseries, tool houses and garden sheds, garden work centers, provided that they do not exceed 50% of the primary structure's building footprint.
- Accessory uses or structures less than 15 feet in height may be located in a required rear of side yard, but not less than five feet from a lot line.
- Land clearing shall be accessory uses in all zoning districts.

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## How can I find out what my property is zoned?

Zoning and Land Use information can be found by using your government’s online mapping and information system. Most of these systems will have a 'Tutorial' that will help you to learn how to use the system. The most direct way to find information on a particular property is to search by the address of the property. Another option is to call your planning and zoning department directly.

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<sup>1</sup> Please understand that these were interpretations of the rules, laws, definitions and statutes as of June 15, 2012. These rules are subject to change at the discretion of USDA, FDACS, local municipalities and the Florida Legislature. This document was developed to help citizens understand the promulgated rules governing community gardens and direct marketing in Florida.

### **What if I want to seek a zoning exception or variance to allow a community garden?**

Zoning Exceptions (conditional use permits) and Variances (relief from the conditions of the Code) in most cases will require an application to a Planning and Zoning Department. Prior to filling out and submitting the applications forms it is recommended that you consult with Planning Department staff and schedule a pre-application meeting. In most cases, the application is VERY detailed and rigorous. I have attached an application for to use as a reference if this is the route you chose to take. [Attachment 1]

Once an Application has been turned in and all fees paid, your proposal will be scheduled to be heard before the Planning Commission at the next available meeting. During this time, the applicant will be required to post signs (typically supplied by the municipality) of the proposed change on the subject property and notifications will be mailed to owners of property within 350 feet of the subject property. Seeking a zoning exception or variance does cost the applicant!

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### **How could I go about changing land use ordinances and zoning?**

Be sure to understand the current land use codes and what would need to be changed. Become friends with the local planning and zoning department or become a thorn in their side if they are not being helpful. In most instances, the problem can be solved by simply adding a definition or slight change to the land use code. Some examples of what has been done in other communities include:

- Add a definition to the Land Use Code for “Community Garden” and allow outright in all zones as a principal and accessory use.
- Change Land Use Code regulations to allow people in residential zones to grow and sell unprocessed produce on their property.

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### **Another option would be for your municipality to write and adopt an entire community gardening ordinance. What language should be included in a community garden ordinance?**

The language will depend on your local situation, but some “best practices” in successful local programs are included below:

1. Assign the duty of inventorying vacant public lots and vacant private lots in neighborhoods and the duty to make that information readily accessible to the public.
2. Authorize contracting with private landowners for lease of vacant lots.
3. Authorize use of municipal land for minimum terms long enough to elicit commitment by gardeners, such as five years.
4. Provide for clearing of rubble and contamination where needed, and for regular trash collection.
5. Prepare land for gardening by tilling and building raised beds, configuring some gardens for access by disabled gardeners.
6. Provide for access to water without charge to gardeners.
7. Provide compost from the locality's recycling programs, if available.
8. Tap resources for training about gardening, including organic methods or pesticide use, and consulting about particular garden problems.
9. Provide for liability insurance against personal injury.
10. Provide favorable tax treatment for loan of private land.

Does all of this talk of land use, ordinances and government agencies have you confused? The best document I have found that explains these terms in detail and also gives sample language to include in land use, comprehensive plans, etc. is attached. This document entitled "Establishing Land Use Protections for Community Gardens" is by far the best publication I have found regarding land use and community gardens. [Attachment 2]

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### **The local elected body must adopt the proposed amendments to the Land Use Code.**

You will need to be prepared to advocate your position to elected officials. In most cases, these amendments will start in committees. If your municipality has a land use and zoning committee meet with the chairperson and/or full committee to help them understand the benefits of community gardens. Take letters of support [Attachment 3] and make sure you have done your research. A powerful piece of research that I have used in the past is cited below:

Been and Voicu (2007) found that community gardens have, on average, significant positive effects on surrounding property values, and that those effects are driven by the poorest of host neighborhoods (where a garden raises neighboring property values by as much as 9.4 percentage points within five years of the garden's opening). Those findings should help local governments make sounder decisions about whether to invest in urban gardens and other green spaces. Such investments have a sizeable payoff for the surrounding community, and ultimately for the city itself, as it realizes additional property tax revenues from the neighborhood (Been & Voicu, 2007).

For the full paper entitled, “The Effect of Community Gardens on Neighboring Property Values” follow this link: <http://tinyurl.com/valueofcommunitygarden>

Also, be prepared for people who are adamantly opposed to what you are trying to accomplish. I have attached some great advocacy tips developed by the American Gardening Association that should help you weather the storm. [Attachment 3]

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### **What If I want to use land owned by my local municipality to develop a community garden?**

There is plenty of land owned by local municipalities that would be great for community gardens. Typically, municipalities will want to protect themselves against liability and other issues that may arise. In most cases using government owned land will require an application/vetting process. I have attached a document that I helped develop in Jacksonville that allowed groups to utilize publicly-owned lands after they went through an application process. This document also includes some great supplemental material on planning gardens, budgets, equipments list, etc. This publication is entitled, “Community Garden Starter Kit for Publicly-Owned Lands.”

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### **Can I sell my fruits and veggies at a farm stand?**

Unless otherwise specifically permitted by the Zoning Code, no person shall sell or conduct the sale of household or personal property in a residential district for more than ten days during a calendar year.

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### **Selling Raw Fruits and Veggies: Do I need a permit?**

Producers selling directly to the end consumer, restaurants, or grocery stores, may sell most produce without product inspection or licenses. In Florida, the terms business license and occupational license have been used interchangeably. According to Florida Statute 200.212 individuals selling raw agricultural products i.e. fruits and veggies are exempt from a business license. For example, a grower that is washing, cleaning and trimming uncut fruits and vegetables would not require a license.

However, inspection and licensing requirements apply for selling specific products that are either 1) further processed or 2) tomatoes. Regulations for products that are further

processed will be discussed in a separate document. For tomatoes, if you are selling more 50 pounds per customer they must be packed and washed in a permitted facility.

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### **How do I sell my fruits and veggies?**

All fresh fruit and vegetables must be sold either by weight, by the bunch or by number. Produce sold by weight can be purchased either pre-packed or sold loose. Pre-packed produce must be sold by net weight only. Produce sold loose can be sold by either net weight or gross weight.

If you are selling produce by weight your scale must be a certain kind and it must be inspected and permitted (\$40 annually). For permit information follow this link: <http://tinyurl.com/689cy9s> Otherwise, sell by piece, bag, basket or handful.

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### **Why do some farmers markets require a grower permits?**

Some markets wish to verify that growers selling at the market are growing their produce rather than buying it at wholesale and reselling. Riverside Arts Market and the Beaches Green Market are two markets in town that require Grower Permits. These permits can be obtained from most county extension offices.

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### **What if I want to sell my products as organic?**

If you want to label your produce as “Organic”, it must be certified by an approved certifying agency. However, there is an exemption from organic certification if you grow or handle less than \$5,000 gross sales from organic produce annually. It is important to note that you must still be in full compliance with the National Organic Program’s (NOP) rules and regulations.

Florida Organic Growers (FOG) is the state’s approved certifying agency in Gainesville 352-377-6345. You will need to document that the land you’re growing on has met organic standards for the past three years. Certification fees are based on how many acres you have under organic production. Certification fees for a 0-20 acre plot are approximately \$425. Certification takes 60-90 days and includes an inspection.

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### **Can I sell ornamental plants and/or fruit and veggie transplants?**

If you’re selling plants in dirt (nursery plants); you need a Nursery License. Contact Division of Plant Industry in Gainesville 352-372-3505. They will send an inspector out

to see your plants and fill out an easy form. Entry level fee is \$25. As your nursery stock increases, so does the annual inspection fee. If you are selling ornamental plants you will need to have a business license and collect sales tax. However, if you are selling vegetable transplants a business license is not required and sales tax is not collected on these transplants.

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### **Can I sell further processed products from my garden?**

There are two options for selling processed agricultural products in Florida. Under current Food Safety regulations, which requires an individual to obtain a food protection manager certification, permit a facility that meets minimum construction standards set forth by the FDA and obtain an annual food permit from the Florida Department of Agriculture and Consumer Services – Division of Food Safety.

The second option allows entrepreneurial gardeners and cooks to manufacture and store certain types of “cottage food” products in an unlicensed home kitchen. Cottage food products include such items as fruits pies, candies, cookies, jams and preserves, dried fruit, dry herbs, seasonings and nuts qualify. The Cottage Food Law provides specific language as to where and how the products can be sold, caps annual gross sales and specifies specific language for the product label. For example: cottage foods may be sold directly to the consumer either from your home or at a farmer’s market, farm stand, roadside stand or similar venues.

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### **Helpful Resources**

Marketing Processed Agricultural Products in Florida: Steps to Take  
<http://edis.ifas.ufl.edu/pdf/files/FY/FY122500.pdf>

Florida Cottage Food Advisory  
<http://desoto.ifas.ufl.edu/pdf/CottageFoodAdvisory.pdf>

American Community Garden Association (ACGA)  
<http://www.communitygarden.org/>

EDIS – Online University of Florida publications on gardening; pest management; food preservation and safety; youth, etc.  
<http://edis.ifas.ufl.edu>

Florida Vegetable Gardening Guide  
<http://edis.ifas.ufl.edu/vh021>

Free Seeds – America the Beautiful Fund

[http://www.america-the-beautiful.org/free\\_seeds/index.php](http://www.america-the-beautiful.org/free_seeds/index.php)

Gardening Matters

<http://www.gardeningmatters.org/coordinating-resources>

National Gardening Association (NGA)

<http://www.garden.org/>

North Carolina State University Community Gardening Site

<http://nccommunitygarden.ncsu.edu/index.html>

University of Florida/IFAS County Extension Offices

<http://solutionsforyourlife.ufl.edu/map/>

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