



Jesse Arreguín  
City Councilmember, District 4

## **REVISED AGENDA MATERIAL**

**Meeting Date:** July 12, 2016

**Item Number:** 40

**Item Description:** Urban Agriculture Package

**Submitted by:** Councilmember Jesse Arreguin

Removed references to expanding urban agriculture to manufacturing zones.  
Explicitly mention to sale of food and crops excludes cannabis. Minor changes and clean up throughout the report.



Jesse Arreguín  
City Councilmember, District 4

ACTION CALENDAR  
July 12, 2016

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguín

Subject: Urban Agriculture Package

RECOMMENDATIONS

Refer to the Planning Commission the development of an Urban Agriculture package that includes the following amendments to the Zoning Ordinance:

1. Designate “urban agriculture” as a primary and incidental use category and define as, “the production of food or horticultural crops for harvest, sale, and/or donation, not including cannabis”.
2. Add urban agriculture as an Outdoor Use in all Commercial zones ~~as well as the MU-LI and MU-R zones~~. Permit urban agriculture in these zones on lots less than 40,000 sq. ft. as a “by-right” use. Urban agriculture on Lots ~~lots~~ greater than 40,000 sq. ft. will require an Administrative Use Permit (AUP).
3. Permit urban agriculture on unoccupied lots in residential zones as a “by-right” use.
4. Define rooftop gardens and develop requirements that comply with existing building codes.
5. Permit accessory uses, including sheds, greenhouses, trellises, pergolas and fences, as a “by-right” use on occupied and vacant lots used for urban agriculture as long as they ~~that~~ satisfy requirements ~~cited~~ in Sections 23D.08.005 and 23E.04.040.
6. Permit group class instruction, community gatherings, and sales as a “by-right” accessory use in commercial and residential ~~all~~ zones and establish conditions for these uses in residential zones based on the requirements in similar to Residential ~~(Section 23C.20.010(B), Sales of Non-Processed Edibles. )~~. ~~Specifically in the M and MM zones, update Sections 23E.72.060 and 23E.72.060, which state that sales are only permitted on 10% of the floor area, to allow goods manufactured on site to be sold as an exempt accessory use requiring only a zoning certificate.~~

7. Permit sales of “value-added” products or processed food products to be sold on site during the sales of non-processed edibles or plants, that in compliance with the State of California Homemade Food Act.

## BACKGROUND

The popularity of urban agriculture has grown rapidly in recent years. To meet this renewed interest, cities across the country have developed policies to support and encourage a variety of uses. From residential and community gardens, to urban farms, urban agriculture is not only providing healthy food to communities, but it is also developing into a mature business sector that helps local economies thrive. In 2014, U.S. local food sales totaled at least \$12 billion, up from \$5 billion in 2008, with experts anticipating that value hitting \$20 billion by 2019. The expansion of urban agriculture is also driving the growth of green jobs and increasing entrepreneurship.

Urban agriculture also improves the environment by reducing the distance food must travel to our plates, which in turn reduces green house gas (GHG) emissions, something the people of Berkeley care about deeply. In 2006, Berkeley voters overwhelmingly endorsed Measure G, making it a goal for our City to reach an 80% reduction in GHG emissions by 2050. In 2009, the Climate Action Plan (CAP) reiterated this sentiment in its Vision for 2050 and asserted that an important way to meet this goal would be to locally produce the majority of food consumed in Berkeley. The CAP states that, “In response to crises like climate change, Peak Oil, health disparities, a shaky economy, and the loss of greenfields and farmland due to suburban sprawl, the City and its partners must do more to build a resilient and sustainable local food system”. Policy C of Goal 2 in the Sustainable Transportation and Land Use section recommends “supporting efforts to build a more complete and local food production and distribution systems”.

In July of 2012, the Berkeley City Council amended the Zoning Ordinance to exempt the limited sales of “non-processed edibles” (i.e. fresh produce, eggs) in residential districts. The amendment created guidelines for the sale of produce and homegrown goods, and made urban agriculture and limited sales on occupied lots an exempt zoning use. ~~“by right” use requiring only a zoning certificate.~~ It also enabled small-scale Community Supported Agriculture (CSA) in residential areas. While this legislation was an important first step, it did not cover Berkeley’s commercial ~~and manufacturing~~ districts, nor did it permit urban agriculture in unoccupied residential lots. Currently, urban agriculture is only allowed in three zoning districts, Residential, Manufacturing (M), and Mixed Manufacturing (MM) Districts, and is prohibited in all other areas.

The lack of definitions or permitted uses for either “urban agriculture” or “community garden” has made existing urban farms and community gardens in most zones technically illegal. On May 10, 2016, the City Council passed an item on consent referring to the Planning commission to: 1) define community gardens in the Zoning Ordinance, and 2) permit group class instruction, gatherings, and sales as exempt accessory uses. However, a definition of urban agriculture and uses, and permit guidelines by zone are still needed.

Urban agriculture is a valuable asset for our City because it helps strengthen the health and social fabric of communities while creating economic opportunities for farmers and neighborhoods. To increase these opportunities and improve the environment by meeting our GHG emission reduction goals, we must update our Zoning Ordinance to include the following on urban agriculture:

### **Use Designation and Definition**

Designating urban agriculture as a primary and incidental use category in every zone is an important foundational step to support a diversity of uses, food security, and our local economy. Similar to San Francisco, Sacramento, and Oakland, we should designate urban agriculture a use category defined as, “*the production of food or horticultural crops for harvest, sale, and/or donation, not including cannabis*”.

### **Urban Agriculture in Commercial and Manufacturing Zones**

By expanding uses to Commercial, ~~Mixed-Use Residential (M-UR), and Mixed-Use Light Industrial (MU-LI)~~, we can maximize urban agriculture opportunities in Berkeley, getting closer to Policy C, Goal 2 of the Climate Action Plan – a more complete and local food production and distribution system.

The ~~z~~Zoning Uses Permitted tables distinguish between three square footage sizes in the Commercial, ~~Mixed-Use, and Manufacturing~~ zones – less than 20,000, 20-40,000 and more than 40,000. We are proposing that Urban-urban agriculture uses below 40,000 sq.ft. (less than 1 acre) would be a by-right use and permitted in all commercial and residential districts zones throughout the City with a zoning certificate. Uses that exceed 40,000 sq.ft. would require an Administrative Use Permit (AUP). These thresholds are based on ordinances adopted in other cities. San Francisco for example allows urban agriculture “by-right” on lots of less than 40,000 square feet.

While there are no set standards for urban agriculture soils at either the Federal or State levels, the Federal Environmental Protection Agency has set a lead level of 400ppm that is widely accepted for soils. Agencies like the California Department of Health and the Berkeley Unified School District adhere to this standard as well. While testing is

commonly not required, it is recommended, as is following the Starting Your Own Urban Garden guidelines set forth by the Community Environmental Advisory Commission in March, 2015.

### **Urban Agriculture on Unoccupied Lots in Residential Zones**

Urban agriculture and limited sales on occupied lots in residential zones is currently a an exempt zoning use. ~~“by-right” use requiring only a zoning certificate.~~ However, this exemption does not apply to unoccupied residential lots ~~are not permitted~~. Making urban agriculture a “by-right” use on residential unoccupied lots will remove existing barriers and make it easier for non-profit organizations, schools, or community groups to more easily start a garden.

### **Rooftop Gardens**

Rooftop gardens are an excellent way to increase urban agriculture in a city while reducing building energy usage and improving habitat corridors. Cities across the country like New York, Portland, and San Francisco have embraced this use. In addition, the Climate Action Plan explicitly points out that we should, “encourage and provide guidelines consistent with the building code for buildings to incorporate rooftop gardens that can be used for food production.” There are two types of rooftop gardens:

- **Extensive Green Roof:** Plants are grown directly on the roof in four to six feet of substrate, covering most, if not all, of the surface. Water retention and insulation are the main goals of this type of rooftop garden. Since these typically involve minimal traffic and maintenance, they are considered “unoccupied” and are often treated as Alternative Roofing Surfaces for the purposes of most regulations.
- **Intensive Green Roof:** Larger plants are grown as ornamentals or edibles. Because these gardens require more substantial planting depths, as well as regular maintenance, the rooftops on which they are sited are considered “occupied” and will be subject to more stringent regulations. Since there is little precedent and no specific mention of roof gardens in the planning and building codes, these setups will mostly be treated as Roof Decks.

### **Expansion of Exempt Accessory Uses**

Although the City Council passed an item on May 10, 2016 that permitted group class instruction, gatherings, and sales as exempt accessory uses, this only applies to community gardens. By expanding these “by-right” accessory uses to all urban agriculture and including accessory structures like sheds, trellises and greenhouses, which all currently require additional permits, we can continue to support local food production by reducing permitting cost and time barriers.

Section 23D.08.005 currently permits the use of accessory structures “by right” as long as they meet the following set back and height requirements (Ord. 6478-NS § 4, 1999):

- May not exceed 10 feet in average height when any portion of structure is within four feet of a lot line.
- May not exceed 12 feet in average height when any portion of structure is within four and ten feet of a lot line.
- May not exceed 24 feet in average height unless a Variance is obtained

This includes “detached structures, other than an Accessory Building, in which non-habitable uses or activities other than the principal use of the property are conducted”.

Additionally, Section 23D.08.060 permits the use of fences in Residential zones and Section 23E.04.040 permits the use of fences in all zones. While the former lays out some aesthetic regulations, overall the latter requires that, “no fence or un-enclosed accessory structure located on a property line or within the required yard area for a main building, shall exceed six (6) feet in height at any point, unless an Administrative Use Permit is obtained.”

With these ordinances and accompanying requirements already in place for the regulation of accessory structures and fences, if a lot is being used for urban agriculture, any accessory structure such as a shed, greenhouse, or fence should also be “by right” as long as it meets these standards.

### **Sales ~~for in~~ Every Commercial Zone and Value-Added Products**

~~Although urban agriculture is allowed in the M and MM zones, Section 23E.72.060 states that sales are only permitted on 10% of the floor area. To promote and support urban agriculture as well as our local economy, we will need to update this outdated rule.~~ Similar to what was put forth in Section 23C.20.010(B) (Sale of Non-Processed Edibles in Residential Districts), if a lot is being used for urban agriculture, incidental sales of goods manufactured on site should be an exempt accessory use requiring only a zoning certificate.

In 2013, Assembly Bill 1616, the California Homemade Food Act was signed into law. The bill allows individuals to prepare and/or package certain non-potentially hazardous foods in private-home kitchens, referred to as “cottage food operations” (CFOs). As part of the act, a two-tier operator registration and permitting system was created. Class A CFOs are those that sell prepared foods directly to the public on-site or at a community event. This tier must submit a registration application and self-certification checklist for

approval. Class B CFOs are those that sell prepared foods either indirectly through restaurants and stores or both directly to the public as well as indirectly. This tier must submit a permit application and be inspected prior to being approved. All CFOs must be registered or permitted by their local or county environmental health agency before they can begin business.

If an individual or organization is in compliance with the Homemade Food Act, a registered or permitted CFO, and is meeting all the requirements within the BMC regarding hours and visitors for on-site sales in their zone, they should be able to sell value-added or prepared products along with unprocessed foods, such as produce or plants.

#### FINANCIAL IMPLICATIONS

Staff time.

#### ENVIRONMENTAL SUSTAINABILITY

Increasing the opportunities for urban agriculture will create more green space, increase access to fresh produce, bolster the local economy, and potentially reduce greenhouse gas emissions from food transport, which would help us meet Vision 2050 and Climate Action Plan goals.

#### CONTACT PERSON

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