

**DRAFT TEXT FOR COMMUNITY GARDENS, FARMERS MARKETS,
GARDENING AS AN ACCESSORY USE AND RELATED CHANGES ZONING
ORDINANCE AMENDMENT**

Amend Article 20, Ordinance Structure, Interpretations and Definitions, Part 3, Definitions, by adding new definitions for COMMUNITY GARDENS and FARMERS MARKETS and revising the current definition of OPEN SPACE to read as follows:

COMMUNITY GARDEN: Land or rooftop area used for the cultivation of herbs, fruits, flowers, vegetables, or ornamental plants by more than one person, household, or a nonprofit organization for personal or group use, consumption, or donation and not for the bona fide production of crops, animals or fowl. Community gardens may be divided into separate plots for cultivation by one or more individuals or may be cultivated collectively by members of the group and may include common areas and accessory structures maintained and used by group members. A community garden does not include a private garden on a lot that contains a single family detached dwelling. Except when located as an accessory use on a lot that is principally used for agriculture, community gardens are not deemed to be an agricultural use.

FARMERS MARKET: A regularly occurring market that sells farm products or value-added farm products directly to the general public.

OPEN SPACE: That area within the boundaries of a lot that is intended to provide light and air, and is designed for either scenic or recreational purposes. Open space ~~shall~~ must, in general, be available for entry and use by the residents or occupants of the development, but may include a limited proportion of space so located and treated as to enhance the amenity of the development by providing landscaping features, screening for the benefit of the occupants or those in neighboring areas, or a general appearance of openness.

Open space may include, but need not be limited to lawns, decorative planting, walkways, active and passive recreation areas, children's playgrounds, fountains, swimming pools, undisturbed natural areas, ~~agriculture, community gardens,~~ wooded areas, water bodies and those areas where landscaping and screening are required by the provisions of Article 13; provided, however, that the area required for interior parking lot landscaping ~~shall~~ must not comprise more than twenty-five (25) percent of the total required open space. Open space ~~shall~~ does not include driveways, parking lots, or other vehicular surfaces, any area occupied by a building, nor areas so located or so small as to have no substantial value for the purposes stated in this definition. Within a residential subdivision, open space ~~shall be~~ is composed of only those areas not contained in individually owned lots. For the purpose of this Ordinance, open space ~~shall include and be qualifieds~~ as LANDSCAPED OPEN SPACE, COMMON OPEN SPACE, DEDICATED OPEN SPACE, and USABLE OPEN SPACE, all as defined herein.

Amend Article 2, General Regulations, Part 7, Common Open Space and Common Improvement Regulations as follows:

- **Amend Sect. 2-702, General Requirements by revising the lead-in paragraph and Par. 5 as follows:**

All lands and improvements set forth in Par. 1, 2, and 3 of Sect. 701 above shall must be established and maintained in accordance with the following requirements:

5. No lands in common open space may be denuded, defaced or otherwise disturbed in any manner at any time without the approval of the Director. However, routine maintenance of common open space limited to the removal of dead, diseased, dying or hazardous trees or shrubbery; removal and replacement of dead landscaping and screening materials; installation of supplemental plantings or a community garden; removal of noxious vegetation such as poison ivy or greenbrier; lawn care and maintenance; or repair and replacement of picnic and play equipment; or similar routine maintenance will be permitted without approval of the Director; provided such maintenance is allowed under any applicable proffered conditions, applicable conditions of special permits or special exceptions or other applicable laws and ordinances and further provided that such common open space does not contain areas used to comply with Best Management Practices such as floodplains and conservation easements.

Amend Article 3, Residential Districts, as follows:

- **Amend Sect. 3-A03 Special Permit Uses, in the R-A District by amending Par. 3, Group 8 – Temporary Uses to add a new Par. C and D, as follows:**

3. Group 8, Temporary Uses, limited to:

C. Community gardens

D. Farmers markets

- **Amend Sect. 3-P03 Special Permit Uses, in the R-P District by amending Par. 5, Group 8 – Temporary Uses to add a new Par. G and H, as follows:**

5. Group 8, Temporary Uses, limited to:

G. Community gardens

H. Farmers markets

- **Amend Sect. 3-C03, Special Permit Uses, in the R-C District by amending Par. 5, Group 8 – Temporary Uses to revise Par. F and add a new Par. H, as follows:**

5. Group 8, Temporary Uses, limited to:

F. Temporary fFarmers² markets

H. Community gardens

- **Amend Sections 3-E03 and 3-103, Special Permit Uses, in the R-E and R-1 Districts by amending Par. 7, Group 8 – Temporary Uses to revise Par. F and add a new Par. H, as follows:**

7. Group 8, Temporary Uses, limited to:

F. ~~Temporary f~~Farmers' markets

H. Community gardens

- **Amend Sections 3-203, 3-303, 3-403, Special Permit Uses, in the R-2, R-3 and R-4 Districts by amending Par. 6, Group 8 – Temporary Uses to revise Par. F and add a new Par. H, as follows:**

6. Group 8, Temporary Uses, limited to:

F. ~~Temporary f~~Farmers' markets

H. Community gardens

- **Amend Sections 3-503, 3-803, 3-1203, 3-1603, 3-2003, 3-3003, and 3-M03 Special Permit Uses, in the R-5, R-8, R-12, R-16, R-20, R-30, R-MHP Districts by amending Par. 4, Group 8 – Temporary Uses to revise Par. F and add a new Par. H, as follows:**

4. Group 8, Temporary Uses, limited to:

F. ~~Temporary f~~Farmers' markets

H. Community gardens

Amend Article 6, Planned Development District Regulations, Part 3, PRC Planned Residential Community District by revising Par. 1A of Sect. 6-302, as follows:

Sect. 6-302 Permitted Uses

Subject to the use limitations set forth in Sect. 305 below and the exceptions permitted by Sections 303 and 304 below, the following and similar uses as may be approved shall be permitted only in those locations respectively designated Residential, Neighborhood Convenience Center, Village Center, Town Center and Convention/Conference Center on an approved development plan and PRC plan, if applicable, prepared in accordance with the provisions of Article 16.

A. The following uses are permitted in those areas approved for Residential Uses:

- (1) Accessory uses, accessory service uses and home occupations as permitted by Article 10 to include ~~garden plots~~ community gardens which are not connected with, incidental to, or on the same lot with a principal use.

Amend Article 8, Special Permits, Part 8, Group 8 Temporary Uses as follows:

- **Amend Sect. 8-801, Group 8 Special Permit Uses to revise Par. 7 and add new Par. 10, as follows:**

7. ~~Temporary f~~Farmers' markets.

10. Community gardens.

- **Amend Sect. 8-802, Districts in Which Group 8 Uses May be Located**

Group 8 uses may be allowed by special permit in the following districts:

R-A District: Limited to uses 1, 7, 8, and 9 and 10

R-P District: Limited to uses 1, 2, 3, 5, 6, 7, 8, and 9 and 10

All other R Districts: Limited to uses 1, 2, 3, 5, 6, 7, 8, and 9 and 10

All P Districts: Limited to uses 1, 2, 3, 4, 5, 6, 7, 8, and 9 (when located in a residential portion of a P district), and 10

All C Districts: Limited to uses 1, 2, 3, 4, 5, 6, 7, and 8 and 10

All I Districts except I-I: Limited to uses 1, 2, 3, 4, 5, 6, 7, and 8 and 10

- **Amend Sect. 8-810, Standards and Time Limits for Temporary Farmers' Markets, as follows:**

8-810 Standards and Time Limits for ~~Temporary~~ Farmers' Markets

~~Temporary farmers markets shall be deemed temporary retail sales establishments and shall be allowed in all districts where retail sales establishments are permitted uses, notwithstanding the use limitations concerning outdoor storage and display of goods set forth in the district regulations. In all other districts, notwithstanding the provisions of Sect. 2-510 or the use limitations concerning retail sales set forth in the district regulations, temporary farmers markets may be permitted subject to the following conditions:—~~ A farmers market may be permitted subject to the following conditions:

1. ~~Such temporary use may be permitted only during the months of April through November.~~
2. 1. No temporary special permit shall be issued unless a Adequate provision is made for off street parking and safe ingress and egress to the adjacent street must be provided.

3. ~~Such use shall be located on a lot having frontage on or safe and convenient access to a principal or minor arterial street as set forth in Appendix 8.~~

4. ~~2.~~ No storage of vehicles, canopies, display items or produce ~~shall be~~ is permitted when the market is not in operation. Additionally, no permanent structures ~~shall be~~ are allowed; ~~provided,~~ however, ~~that~~ canopy tents, fabric canopies primarily attached to vehicles, temporary portable shelving, portable tables, bins, hanging racks and similar display items ~~shall not be~~ are not deemed structures.

5. ~~3.~~ Sales ~~shall be~~ are limited to ~~seasonal or perishable produce, including flowers and plants~~ agricultural products and items made from farm products, including vendor-produced food, beverage, and other value-added items.

6. ~~4.~~ The hours of operation are limited to daylight hours.

7. ~~One (1) temporary sign may be permitted in accordance with the provisions of Sect. 12-103~~

5. To establish a farmers market, an application must be filed with the Zoning Administrator on forms furnished by the County, accompanied by the required fees in accordance with Sect. 18-106. Permits are valid for a period of two years and may be renewed on a biannual basis with approval of the Zoning Administrator. Any subsequent expansion or change of permit holder or renewal of a farmers market permit may require submission of a new application as determined by the Zoning Administrator. (Advertised to allow the Board to consider any fee of between \$0 and \$500 and a period of permit validity of up to five years)

6. Farmers markets may also be permitted on County owned and controlled property, including the Park Authority or Fairfax County Public Schools, provided that such farmers markets have the property owner's permission and comply with all other applicable regulations.

- **Add a new Sect. 8-813, Standards and Time Limits for Community Gardens, as follows:**

8-813 Standards and Time Limits for Community Gardens

Community gardens may be permitted as either a principal use or an accessory use subject to any associated proffers or development conditions and to the following:

1. A community garden may be permitted as a principal use in any district, subject to the following:

A. The land area for the community garden cannot exceed two acres in size, except that a community garden of more than two acres and less than five acres may be approved by the BZA, in accordance with Sect. 8-009. An application for approval by the BZA

must be filed a minimum of ninety (90) days prior to the date on which the permit is to take effect. (Advertised to allow the Board to consider any permitted size of less than five acres)

- B. The cumulative area of all structures associated with the community garden is limited to 250 square feet, except as may be approved by the BZA in accordance with Par. 1. All accessory structures must comply with the location regulations, as specified in Sect. 10-104. (Advertised to allow the Board to consider up to 750 square feet)
- C. A community garden may not be located closer than 15 feet to the front lot line and 25 feet from all other lot lines. (Advertised to allow the Board to consider any setback in any yard of up to 100 feet)
- D. Designated composting areas may not be located in the minimum required front yard, must be screened from adjoining residential property with either a fence or other adequate screening material, and must be maintained in a manner that protects adjacent properties from nuisance odors, runoff and pests.
- E. Adequate parking and safe ingress and egress to the adjacent street must be provided.
- F. Only practices and equipment commonly used in residential gardening may be used. No lighting is permitted and all activities are subject to compliance with the noise standards set forth in Chapter 108.1 of The Code.
- G. The hours of operation are limited from 7:00 A.M. to dusk. (Advertised to allow the Board to consider unlimited hours of operation)
- H. Community gardens and the area surrounding community gardens must be maintained in good condition. In the event that the operation of the community garden ceases, the land or area must be restored, and all structures associated with the community garden must be removed from the property.
- I. The operation of a community garden cannot create an erosive condition, as identified in Chapter 104 of The Code. A Conservation Plan approved by the Northern Virginia Soil and Water Conservation District is recommended for gardens of not more than 5,000 square feet in area and is required for gardens greater than 5,000 square feet in area. All activity in and around the garden must adhere to the recommendations of the Plan to preclude the development of erosive conditions. (Advertised to allow the Board to make a Conservation Plan optional or mandatory for all community garden sizes)
- J. To establish a community garden, an application must be filed with the Zoning Administrator on forms furnished by the County, accompanied by the required fees in accordance with Sect. 18-106. Permits are valid for a period of two years and may be renewed on a biannual basis with approval of the Zoning Administrator. Any subsequent expansion or change of permit holder may require submission of a new

application as determined by the Zoning Administrator. (Advertised to allow the Board to consider any fee of between \$0 and \$500 and a period of permit validity of up to five years)

2. Community gardens may be permitted as an accessory use, for the exclusive use and enjoyment of members of a homeowner association, condominium association, or non-residential development, without approval of a temporary special permit, provided the operation conforms to provisions A through I of Par. 1 above.
3. Community gardens may also be permitted on County owned and controlled property, including the Park Authority or Fairfax County Public Schools, provided that such community gardens have the property owner's permission and comply with all other applicable regulations.

Amend Article 8, Special Permits, Part 9, Uses Requiring Special Regulation, as follows:

- **Amend Sect. 8-901, Group 9 Special Permit Uses to remove the Open-air produce stands use from Par. 8, as follows:**
 8. ~~Open-air produce stands.~~
- **Amend Sect. 8-902, Districts in Which Group 9 Uses May be Located, to remove Use Number 8 from Paragraphs 1 and 2.**
- **Amend Sect. 8-909, Additional Standards for Open-Air Produce Stands to delete the lead-in paragraph and provisions.**

Amend Article 10, Accessory Uses, Accessory Service Uses and Home Occupations, Part 1, Accessory Uses and Structures, of as follows:

- **Amend Par. 10 of Sect. 10-102, Permitted Accessory Uses, as follows:**

10-102 Permitted Accessory Uses

Accessory uses and structures may include, but are not limited to, the following uses and structures; any such use or structure must be in accordance with the definition of Accessory Use contained in Article 20.

10. Gardening primarily for the growth of herbs, fruits, vegetables, flowers and ornamental plantings but not including landscaping as defined in Article 20, and composting.

- **Amend Par. 12 of Sect. 10-104, Location Regulations, as follows:**

10-104 Location Regulations

12. The following regulations shall apply to the location of all freestanding structures or uses

except those specifically set forth in other paragraphs of this Section:

- C. No accessory structure or use, except a statue, basketball standard, or flagpole, or gardening in an area of not more than 100 square feet shall may be located (a) in any minimum required front yard on any lot or (b) in any front yard on any lot containing 36,000 square feet or less. When located in a front yard, basketball standards and gardening shall may not be closer than fifteen (15) feet to a front lot line. Composting is not permitted in any front yard. Additionally, basketball standards may not be closer than and twelve (12) feet to a side lot line, and shall may not be used between the hours of 8:00 PM and 8:00 AM. *(Advertised to allow the Board to consider all of the following: unlimited area; no setback; and limited to only single family detached dwellings)*

Amend Article 18, Administration, Amendments, Violations and Penalties, by amending Part 1, Administration, Sect. 106, Application and Zoning Compliance Letter Fees, to modify the Group 8 special permit fees in Par. 1 to add farmers markets and community gardens and modify the Group 9 special permit fees to remove Open air produce stand, as follows:

1. Application for a variance, appeal, special permit or special exception:

Group 8 special permit

- Temporary portable storage containers approved by the Zoning Administrator \$0
- All other uses approved by the Zoning Administrator \$205
Advertised to allow the Board to consider a fee from \$0 to \$500 and permit validity of up to five years for farmers markets and community gardens only.
- Temporary portable storage containers approved by the BZA \$0
- Community gardens approved by the BZA \$435
Advertised to allow the Board to consider a fee from \$0 to \$910
- Farmers markets and community gardens biannual renewal \$50
Advertised to allow the Board to consider a fee from \$0 to \$500 and permit validity of up to five years.
- All other uses approved by the BZA \$16,375

Group 9 special permit

- ~~Open air produce stand~~ \$1810