

## Staff Summary Report



Development Review Commission Date: 06/14/11

Agenda Item Number: \_\_\_\_

**SUBJECT:** Hold a public hearing for a Code Text Amendment for COMMUNITY GARDENS.

**DOCUMENT NAME:** DRCr\_CommunityGardens\_061411 **PLANNED DEVELOPMENT (0406)**

**COMMENTS:** Request for **COMMUNITY GARDENS (PL110176)** (Community Development Dept., applicant) consisting of Zoning and Development Code amendments for a new section on the use of community gardens within the commercial, industrial and residential districts, including an alternative fee for processing. The request includes the following:

**ZOA11001 (ORDINANCE NO. 2011.20)** – Code Text Amendment for Sections 3-102, 3-202, 7-104 a new Section 3-427 for Community Gardens, and an amendment within the City Code, Appendix A, Zoning Fee Schedule.

**PREPARED BY:** Ryan Levesque, Senior Planner (480-858-2393)

**REVIEWED BY:** Lisa Collins, Community Development Deputy Director (480-350-8989) 

**LEGAL REVIEW BY:** N/A

**DEPARTMENT REVIEW BY:** N/A

**FISCAL NOTE:** Processing fees for community gardens will generate an estimated \$200 in the first year.

**RECOMMENDATION:** **Staff – Approval**

**ADDITIONAL INFO:** This request would allow “Community Gardens”, subject to approval of a use permit, in the residential, commercial, mixed-use and industrial districts in the City of Tempe.

**PAGES:**

1. List of Attachments
2. Comments
3. History & Facts / Zoning & Development Code Reference

**ATTACHMENTS:**

- 1-4. Ordinance No. 2011.20
- 5-7. May 4, 2011 Neighborhood Advisory Commission minutes

## COMMENTS:

This is a request for a Code Text Amendment to allow "Community Gardens", subject to approval of a use permit, in the residential, commercial, mixed-use and industrial districts in the City of Tempe.

There has been increasing interest in developing community gardens within the City. Staff has conducted research on how community gardens are established, whether there should be formal processes used, how they are managed and potential issues related to community gardens in general.

A community garden stakeholders meeting was held on April 5, 2011, to review a draft ordinance proposal that would require a Use Permit to allow community gardens in the City of Tempe. Prior to the meeting, staff sent the draft to the stakeholders that attended a previous meeting hosted by staff. We received feedback from five of the original stakeholders group which consisted of eleven people. The feedback ranged from being satisfied with the draft to suggestions for changes to both specific points and to the review and approval process recommended in the draft. Two people attended the meeting on April 5<sup>th</sup> to provide further input on the draft proposal.

One suggestion was to modify the approval process to allow community gardens as a permitted use with conditions or to allow them as a permitted use with conditions if minimum distances from other uses were satisfied. There was concern initially over the requirement of a Use Permit and the associated fees ranging from \$397.00 to \$1,137.00 depending on the zoning district where the community garden would be introduced. The Use Permit fee now proposed for Community Gardens is \$50.00, an amendment to the fee schedule, which would cover noticing costs. A Use Permit process provides greater assistance and flexibility to individuals who wish to create community gardens. By conditionally allowing this through a Use Permit in all zoning classifications, we have the flexibility to address the various types and sizes of gardens and surrounding land uses based on the individual situation without developing conditions that could be unnecessary for some gardens.

Other suggestions that resulted in changes to the draft proposed ordinance were to allow vehicular operated equipment for the establishment and for on-going seasonal garden activities, the addition of sign regulations and specifically allowing other fencing materials. Additional changes in the language were also made for clarification.

This draft was presented and reviewed at the Technology, Economic and Community Development Council Committee on April 15, 2011

Through guidance and direction provided at the Technology, Economic & Community Development Council Committee on April 15, 2011, staff is bringing forward a proposed ordinance that would consider the following:

- Allowing Community Gardens in all residential, commercial and industrial districts through a use permit process (public hearing); (Community Gardens are currently permitted in the AG, Agricultural District.)
- Allowing temporary uses on the site, such as, small structures, temporary fencing, and limited retailing related to the sale of products grown on site.
- Proposed alternate processing fees for the use permit application.

Staff also provided the Neighborhood Advisory Commission (NAC) a copy of draft regulations pertaining to Community Gardens on May 4, 2011. The Commission recommended support of the draft regulations recognizing that they support the Code as a whole, with a unanimous vote. NAC members asked to be kept updated on the issue.

The following points were raised by the NAC members:

- Clarification on requirements/allowances for accessory buildings
- Viability and potential size of community gardens
- Obligations of the use permit process
- Smaller signs in residential areas
- Noise, hours of operation, traffic/parking, on-going maintenance and responsibility for the site

\*See Attachments 5-7, for a copy of the meeting minutes.

Staff provided the same summary of draft regulation to the Development Review Commission study session on May 10, 2011, for initial review and feedback.

## **HISTORY & FACTS:**

|                    |  |
|--------------------|--|
| 2010               | Initial discussion with the Technology, Economic and Community Development Committee, a Council subcommittee, regarding the idea of allowing community gardens on City-owned land. |
| January 19, 2011   | Update provided to the Technology, Economic and Community Development Committee, a Council subcommittee.   |
| March 18, 2011     | Proposed draft regulations presented to the Technology, Economic and Community Development Committee.  |
| April 5, 2011      | Community Stakeholders input meeting (5:30 pm) was held to review a draft ordinance and provide feedback on the proposal of regulations for Community Gardens.                     |
| April 15, 2011     | 2 <sup>nd</sup> presentation provided to the Technology, Economic and Community Development Committee. <i>(Direction provided to move forward with a draft ordinance)</i>          |
| May 4, 2011        | Neighborhood Advisory Commission reviewed the initial draft outline of proposed regulations for Community Gardens.   |
| May 10, 2011       | Development Review Commission held a Study Session review on the initial draft outline of proposed regulations for Community Gardens.  |
| June 14, 2011      | Scheduled Development Review Commission public hearing for a Code Text Amendment for COMMUNITY GARDENS (Ordinance No. 2011.20).  |
| July 7, 2011       | Proposed introduction and first public hearing – City Council  |
| August 18, 2011    | Proposed 2 <sup>nd</sup> public hearing – City Council   |
| September 17, 2011 | If adopted, Community Garden Ordinance effective date  |

## **ZONING AND DEVELOPMENT CODE REFERENCE:**

Section 6-304, Zoning Map Amendments and Code Text Amendments

## ORDINANCE NO. 2011.20

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING THE ZONING AND DEVELOPMENT CODE, PART 3 – LAND USE, SECTIONS 3-102, 3-202, AND ADDING SECTION 3-427; PART 7 – DEFINITIONS, SECTION 7-104; AND AMENDING TEMPE CITY CODE APPENDIX A, ZONING FEE SCHEDULE.

\*\*\*\*\*

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

**SECTION 1.** That a portion of Table 3-102A of Section 3-102 of the Zoning and Development Code, pertaining to community gardens, is hereby amended to read as follows:

| Table 3-102 – Permitted Land Uses (AG, SFR, MF, MH, RMH, TP) |                           |      |      |           |
|--|---------------------------|------|------|-----------|
| Uses   | Status of Use in District |      |      |           |
|  | AG                        | SFR  | MF   | MH/RMH/TP |
| COMMUNITY GARDENS [SECTION 3-427]                            | S                         | U(S) | U(S) | U(S)      |

**SECTION 2.** That a portion of Table 3-202A and Table 3-202B of Section 3-202 of the Zoning and Development Code, pertaining to community gardens, is hereby amended to read as follows:

| Table 3-202A – Permitted Land Uses (R/O, CSS, CC, PCC, RCC) |                        |             |             |             |             |             |
|---|------------------------|-------------|-------------|-------------|-------------|-------------|
| Uses  | Status of Use District |             |             |             |             |             |
|   | R/O                    | CSS         | CC          | PCC-1       | PCC-2       | RCC         |
| COMMUNITY GARDENS [SECTION 3-427]                           | <u>U(S)</u>            | <u>U(S)</u> | <u>U(S)</u> | <u>U(S)</u> | <u>U(S)</u> | <u>U(S)</u> |

| Table 3-202B – Permitted Land Uses (MU-1, MU-2, MU-3, MU-4 and MU-Ed) |             |             |             |             |             |
|---|-------------|-------------|-------------|-------------|-------------|
| Uses  | Districts   |             |             |             |             |
|   | MU-1        | MU-2        | MU-3        | MU-4        | MU-Ed       |
| COMMUNITY GARDENS [SECTION 3-427]                                     | <u>U(S)</u> | <u>U(S)</u> | <u>U(S)</u> | <u>U(S)</u> | <u>U(S)</u> |

**SECTION 3.** That Part 4, Land Use, Chapter 4 – Special Use Standards, within the Zoning and Development Code, is hereby amended by adding the following:

**SECTION 3-427 COMMUNITY GARDENS.**

- A. PURPOSE.** THE PURPOSE OF THIS SECTION IS TO FOSTER AND SUPPORT SUSTAINABLE PRACTICES THROUGH INTERIM USE AND/OR THE ADAPTIVE RE-USE OF OPEN SPACE AND VACANT LANDS WITH *COMMUNITY GARDENS*.
- B. APPLICABILITY.** A *COMMUNITY GARDEN* IS PERMITTED IN THE AG, AGRICULTURAL DISTRICT. A *COMMUNITY GARDEN* IS ALSO PERMITTED, SUBJECT TO APPROVAL OF A *USE PERMIT*, IN ALL OTHER RESIDENTIAL DISTRICTS AND IN ALL COMMERCIAL, MIXED-USE AND INDUSTRIAL DISTRICTS. SEE PROCEDURES IDENTIFIED IN SECTION 6-308, *USE PERMIT*.
- C. OPERATION REQUIREMENTS.** A *COMMUNITY GARDEN* MAY BE LOCATED ON A VACANT LOT, WITHIN AN ENCLOSED BUILDING, OR ON A LOT WITH OTHER BUILDINGS AND USES.
1. BUILDINGS OR STRUCTURES, A MAXIMUM OF TWO HUNDRED (200) SQUARE FEET IN AREA AND EQUAL TO OR LESS THAN EIGHT (8) FEET IN HEIGHT, MAY BE LOCATED IN THE REQUIRED SIDE OR REAR YARD SETBACKS, SUBJECT TO APPLICABLE BUILDING CODES. DEVELOPMENT PLAN REVIEW IS NOT REQUIRED.
  2. ANY BUILDING OR STRUCTURE, IN EXCESS OF TWO HUNDRED (200) SQUARE FEET IN BUILDING AREA OR OVER EIGHT (8) FEET IN HEIGHT MUST COMPLY WITH BUILDING SETBACKS AND RECEIVE APPROVAL OF A DEVELOPMENT PLAN REVIEW, PURSUANT TO SECTION 6-306, INCLUDING SITES IN ALL RESIDENTIAL DISTRICTS.
  3. ANY EXISTING ON-SITE RETENTION SHALL BE MAINTAINED OR RECONFIGURED IN ACCORDANCE WITH CITY CODE REQUIREMENTS.
  4. ALL EQUIPMENT OR MATERIALS, NOT IN USE, SHALL BE STORED WITHIN AN ENCLOSED STRUCTURE OR SCREENED FROM STREET VIEW.
  5. USE OF VEHICULAR OPERATED EQUIPMENT, SUCH AS GARDEN TILLERS OR TRACTORS, FOR INITIAL ESTABLISHMENT OF THE *COMMUNITY GARDEN* IS PERMISSABLE AND MAY ONLY BE USED FOR ON-GOING MAINTENANCE IF APPROVED THROUGH THE *USE PERMIT* PROCESS. THE USE OF MOTORIZED HAND-OPERATED EQUIPMENT IS PERMITTED.
  6. THE *COMMUNITY GARDEN* MAY DISPLAY A MAXIMUM OF ONE (1) *SIGN*. THE *SIGN* SHALL BE A MAXIMUM OF EIGHT (8) FEET IN HEIGHT AND A MAXIMUM OF THIRTY-TWO (32) SQUARE FEET IN AREA, WITH NO MORE THAN SIXTEEN (16) SQUARE FEET OF INFORMATION USED FOR SPONSOR ADVERTISING. *SIGN PERMIT* IS NOT REQUIRED.
  7. CHAIN LINK FENCE AND OTHER FENCING MATERIALS, WITHOUT BARBED OR RAZOR WIRE, ARE PERMISSIBLE FOR THE *COMMUNITY GARDEN*. NO LIGHTING IS REQUIRED FOR THE GATE ENTRANCE.

8. OUTDOOR RETAILING OF PRODUCTS PRODUCED ON THE SITE IS PERMITTED AS A PART OF THE *USE PERMIT*. OTHER RESALE PRODUCTS MAY BE SOLD UPON DETERMINATION OF PERMITTED USES ALLOWED WITHIN THE ZONING DISTRICT OR IF ALLOWED PURSUANT TO SECTION 3-417, OUTDOOR RETAILING.
9. PROPOSED IMPROVEMENTS ON THE SITE RELATING TO OTHER LAND USE *DEVELOPMENT* INCLUDING ADDING BUILDINGS, PARKING, LIGHTING AND DRIVEWAYS, SHALL CONFORM TO THE STANDARDS IN THIS CODE, UNLESS OTHERWISE PERMITTED BY THIS SECTION.

**D. DISCONTINUANCE OF USE.** IF A *COMMUNITY GARDEN* IS NO LONGER IN OPERATION OR LEFT FALLOW, THE SITE SHALL BE RETURNED TO ITS ORIGINAL FORM. IF PREVIOUSLY VACANT, THE SITE SHALL PROVIDE PROPER DUST CONTROL MITIGATION. ANY RE-ESTABLISHMENT OF A COMMUNITY GARDEN SHALL REQUIRE PROCESSING AND APPROVAL OF A NEW *USE PERMIT*.

**SECTION 4.** That Section 7-104, within the Zoning and Development Code, relating to adding a definition for community garden, is hereby amended to read as follows:

*COMMUNITY GARDEN* MEANS LAND GARDENED COLLECTIVELY BY A GROUP OF PEOPLE. GARDENING MAY INCLUDE, BUT IS NOT LIMITED TO, ALL TYPES OF HORTICULTURE SUCH AS FLOWER, VEGETABLE OR FIELD CROPS, AND ORCHARDS CONTAINING BERRY, BUSH OR TREE CROPS.



**SECTION 5.** That Zoning Fee Schedule subsection (d.) within Tempe City Code Appendix A, Schedule of Fees and Charges, is hereby amended to read as follows:

|    |                              |                                       |
|----|------------------------------|---------------------------------------|
| d. | Use Permits:                 |                                       |
|    | <u>COMMUNITY GARDEN</u>      | <u>\$50.00 EACH</u>                   |
|    | Single Family Dwelling Units | \$396.00 per lot, including variances |
|    | All Other Uses               | \$1,133.00 each                       |
|    | Use Permit Transfer          | See Administrative Applications       |
|    | Unauthorized Activity        | Twice the normal fees                 |

**SECTION 6.** Pursuant to City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

## **Minutes Neighborhood Advisory Commission May 4, 2011**

**Minutes of the Neighborhood Advisory Commission (NAC) held on May 4, 2011, 5:50–7:05 p.m., at City Hall, 31 E. 5<sup>th</sup> Street, 3rd Floor Conference Room, Tempe, Arizona.**

**(MEMBERS) Present:** Karen Adams, Nancy Buell, Pete DeMott, Britney Scott Kaufmann, Ira King, Angela Lopez, Robert Miller, Leonard Montenegro, John Sanborn, Scott Smas, Michael Wasko

**(MEMBERS) Excused Absences:** Maureen Decindis, Joochul Kim, Josephine McNamara, Lisa Roach

**(MEMBERS) Unexcused Absences:** Michael Pickett, Joe Pospicil, Bill Wagner

**Guests Present:**

None.

**City Staff Present:** Shauna Warner, Neighborhood Services Manager; Elizabeth Thomas, Neighborhood Services Specialist

**Agenda Item 1 – Call to Order**

Chair Wasko called the meeting to order at 5:50 p.m.

**Agenda Item 2 – Public Comment**

None.

**Agenda Item 3 – Consideration of Minutes: April 6, 2011**

Commissioner King moved that the April 6, 2011 minutes be approved as written. Commissioner Miller seconded the motion. The motion passed unanimously.

**Agenda Item 4 – Community Garden Zoning Ordinance Amendment**

Shauna provided an overview of the preliminary draft regulations applicable only to community gardens on private property. These provisions were drafted in response to the growing interest in developing community gardens and at the direction of the Technology, Economic and Community Development Council Committee. Community gardens are already permitted in any areas zoned for agriculture.

The Escalante Community Garden is different in that the city is leasing the land to Tempe Community Action Agency (TCAA), a non-profit, who is then assuming the liability and raising the funds needed to get the garden going. This garden will be evaluated by city staff for at least a year, in effect serving as a pilot learning project to allow for a process to be created in the future for community gardens on public property. There are many variables involved in community gardens

situated on city or park property that will need to be identified and addressed before a process can be established.

The following comments or areas of concern were noted:

- Regarding the buildings or structures bullet, the first bullet under the Operation Requirements section, the language was deemed not specific enough. There was concern that a shed of that size could be used for other purposes including living quarters. The question was also posed – what causes a shed item to kick up to a larger review process versus staff approval only?
- Is there any way to know if land being offered up for a community garden is viable? What if there are toxic wastes on the home or industrial site?
- Any limits to be imposed on the garden size? If sizes over an acre are offered, doesn't it then become a farm?
- Please clarify what is defined as hand operated equipment. For example you don't ride a rototiller, they can be pushed by hand or you can ride a tractor with one attached.
- Who is actually getting the special use permit and paying the fees? Is that the property owner exclusively? The documents aren't clear.
- Regarding signage, is there any way to devise an equation based on size of site or size of garden? Maximums are large for a residential area.
- Is any special consideration being given to the noise factor? Hours people can be out working on the garden (i.e. time restrictions?)
- Farmer's markets noted as causing yard sale like concerns in terms of neighborhood traffic, and parking issues. How frequently can they be held?
- What about out of state owners, who will maintain property if someone goes bankrupt or abandons the property? Abatement can take a long time should it become necessary.

The next step will be for the Community Garden Zoning Ordinance Amendment to go before the Development Review Commission at their study session on May 10. Commissioner Miller made a motion to support the draft regulations recognizing that they support the Zoning Code as a whole, Commissioner Scott Kaufman seconded the motion. The motion passed unanimously. NAC members asked to be kept updated on the issue.

#### **Agenda Item 5 – 2011 Neighborhood Workshop and Awards Event Review**

Approximately 75 attendees participated in this year's awards event. Many stayed for the workshops, all of which were very well received. Handouts were distributed with workshop survey results from those who completed them. The light rail mobile workshop and the Community Gardens session at the Tempe Urban Garden site were both much appreciated new offerings.

Kudos were provided to Chair Wasko for his day of event assistance including set up and take down activities, to Commissioner McNamara for ensuring both golden shovel residential beautification award winners indeed received golden shovels and for Commissioner Scott Kaufman whose event sponsorship efforts secured \$800 worth of gift cards from Mellow Mushroom, Centerpoint on Mill and DMB Associates.

#### **Agenda Item 6 – Selection of Annual Retreat Date and Topics**

Saturday, June 11 was chosen as the Commission retreat date that worked for the majority of those present. The Tempe History Museum room was selected as the retreat location. Likely hours will be from 8:30-Noon with breakfast refreshments provided. There will be no regular meeting of the commission in June or July.

Agreed upon Retreat agenda topics will include: Neighbor of the Year application and process revisions, identification and prioritization of commission goals, Standing Committees review and

discussion and Zip Teams. Chair Wasko will work with Neighborhood Service staff to finalize the agenda and note any documents needed for the retreat.

Solid Waste Code revision and graffiti were discussed as possible retreat items but were not chosen. Instead, both will be noted as August Commission meeting agenda items. Inviting City Manager Charlie Meyer to the September meeting to provide a budget overview and update was also suggested. Commission members were reminded of the ability to watch budget hearings live or use video on demand online to watch only those portions of the budget meetings or the City Council meetings of interest to them.

**Agenda Item 7 – The Center for the Future of Arizona – 5 Communities Project**

Commissioner Scott Kaufman wanted to ensure Commission members were aware of this initiative and the current grant opportunities. The city is considering applying for a grant building on an existing program or process rather than trying to create a new one that there is neither staff nor resources for. Staff will keep commission members updated as there may be opportunities to enhance civic engagement.

**Agenda Item 8 – Zip Teams discussion**

A color coded handout was distributed grouping each commission member by zip code and providing all contact information for the purpose of identifying zip code teams. There was a master copy circulated for commission members to note information changes on. Staff will update the databases and provide updated hand-outs at the retreat.

**Agenda Item 9 – Committee Reports and Committee Membership**

- A. **Budget/Finance Committee** – No meeting was held.
- B. **Outreach Committee** – No meeting was held.
- C. **Quality of Life/Neighborhood Enhancement/Codes Committee** – No meeting was held.

Staff reminded commission members of the need to provide some time when requesting a committee meeting to allow for agenda preparation, posting and advance notice for all commission members. It was agreed that no committee meetings will be held until after the retreat when all standing committees will be reviewed.

**Agenda Item 10 – Adjournment**

Meeting was adjourned at 7:05 p.m.

Prepared by: Elizabeth Thomas, Neighborhood Services Specialist  
Reviewed by: Shauna Warner, Neighborhood Services Manager