



Urban Agriculture as Principal and Accessory Use as a Matter of Right

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Overview

Urban agriculture is a powerful community building tool that not only expands the capacity and diversity of agricultural production, but also promotes and advances community engagement and economic development opportunities. Over the last two decades, cities around the country have begun using urban agriculture as a strategy for achieving a wide range of municipal goals. In 2022 the Resilient Wilmington report followed suit, calling for an evaluation of how the current zoning and building codes limit urban agriculture in order to increase local food options and thereby enhance the resiliency of the food system, part of the City's larger public health and safety vision.¹

Updating these zoning codes to reduce restrictions on agricultural uses and provide guidance for residents to grow their own food or encourage small growers to produce food in areas where food insecurity is prevalent has been shown to increase access to healthy food.² Furthermore by ensuring that food production is properly regulated and managed, local governments can create a mixed-use land pattern that incentivizes healthy food production in all zones while ensuring community concerns and quality of life issues are addressed.³

What is Urban Agriculture?

According to the Healthy Food Policy Project's "Healthy Food Policies Common Terms & Definitions," urban agriculture is "the growing, processing, distribution, sale, and reuse of plant and animal products - by and for the local community - in an urban environment."⁴ Production methods and scale of urban agriculture can vary from subsistence growing (for personal or family consumption) to community gardening on a small scale to large-scale commercial activities. Activities also happen in a variety of locations, including vacant public land, on land adjacent to schools, nonprofits or churches, on rooftops, and indoor closed-loop hydro/aquaponics systems.⁵

DID YOU KNOW?

Cleaning and greening interventions reduce violent crime by

30%

and reduce people's fear of going outside due to safety by 58%.¹⁰



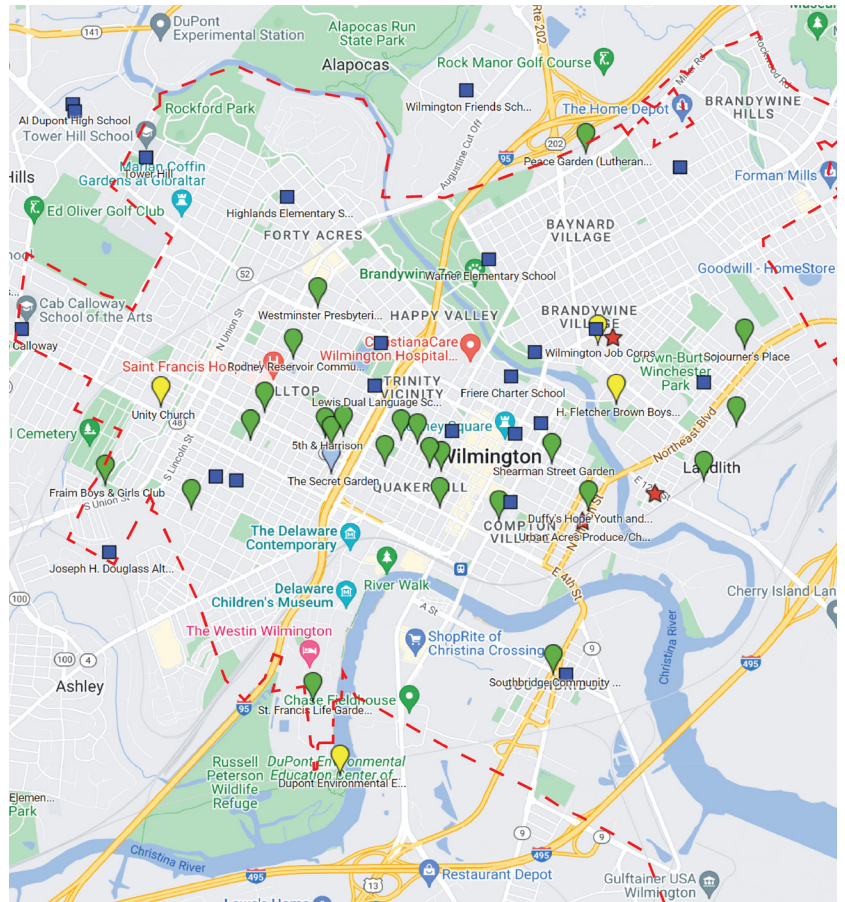
Issues at a Glance

1) Many residents of Wilmington are facing challenges related to food insecurity, crime, and limited access to green, open spaces. These become even more daunting when combined with the current and future effects of our changing climate.

2) The interest in participating in urban agriculture and the need for resiliency in the food system is growing, yet fewer urban farms and garden projects are starting each year in Wilmington.

3) Wilmington's zoning code is only indirectly supportive of urban agriculture activities and does little to promote or protect these projects. This results in confusion for current and potential urban growers and missed resiliency opportunities for the City of Wilmington.

Figure 1: Map showing urban agriculture project locations within the City of Wilmington.



However, even with variety in structure and location, one thing that all successful urban agriculture projects have is a shared commitment to the community at large. This commitment starts at the very beginning with community input and is interwoven into every benefit these projects provide, be it increasing access to fresh food, environmental benefits such as reducing storm water runoff and urban heat island effects, reducing crime, relationship building, and /or raising property values.⁶

Zoning as a Limitation

As a regulatory tool, zoning helps local governments to define what is allowed on an area of land within a municipality, county, or state.⁷ Common land use zones include residential (with density sub-zones), commercial (with sub-zones based on type and location), manufacturing or industrial, and special use zones (such as waterfront zones). Within each zone there are different categories for the types of activities allowed. A **primary use** refers to the main use of the property as is allowed without obtaining approval through a variance or a special permit, also known as **as-of-right**. An **accessory use** or structure is something that is incidental or additional to the primary use.⁸ In urban agriculture, an accessory structure may include greenhouses, hoop houses or other season extension infrastructure.

Separating land use into zones aids in regulation, prevents nuisances, and creates clear guidelines for residents to follow.³ As they are currently written, many local zoning codes frequently restrict or prohibit agricultural activities (production and/or sales), especially in residentially zoned areas.⁹ This can limit those interested in urban agriculture from pursuing such activities thus preventing the numerous benefits from reaching those communities.

In some cases, agriculture practices are only mentioned abstractly or are omitted in the zoning code all together. Poorly defined agricultural terms, ambiguous language, and unclear regulations the zoning code can make it difficult for urban agriculturalists to discern what is and isn't allowed. This imposes unnecessary limitations which discourage food production and other associated community oriented activities.

It is the purpose of this document to provide recommendations to amend the City of Wilmington Code of Ordinances to address existing limitations and facilitate a physical environment and political landscape where urban agriculture can flourish in the City.

The Current System

Urban Agriculture in Wilmington

There are various urban agriculture production methods found in Wilmington, including urban farms, community gardens, and school gardens (Figure 1). Together, they create a network of 47 projects working to improve healthy food access and benefit their communities. Among the active non-urban farm projects, 25 (including all 18 school gardens) utilize the produce for internal uses of the sponsoring organization, such as in food and nutrition education, in-house food service, outdoor recreation, and therapy. Additionally there are nine projects where a majority is taken for personal use by individual growers, and nine projects which donate a portion, if not all, of what they grow to local food pantries, social service organizations, and others in need. According to a survey completed in 2022, these projects help supply six different Wilmington organizations with fresh produce for distribution throughout the community.

As previously stated, growing fresh food isn't the only benefit urban farms and gardens are able to provide. Over half of these sites have reported hosting events such as food giveaways, educational workshops, community resource fairs, and community celebrations at their locations. These spaces have become hubs which actively strengthen and build connections amongst their neighbors, which promotes resiliency and supports community cohesion.

What's more is that many of these benefits are items called for in the City of Wilmington 2028 Comprehensive Plan. They align with goals of building "Strong & Safe Neighborhoods," "Healthy & Thriving Communities," "Robust Local Economy," and "Sustainable and Resilient City." Overall, increasing food access for city residents and overcoming barriers to urban agriculture activities are key to the development of local and regional food systems, reduction of food waste, building community, increasing the amount of green space in the city, and raising property values. In addition, increasing the amount of green space in cities is associated with reduction in crime, violence and fear.¹⁰

However, if we look at when urban agriculture projects have been started over the last two decades (Figure 2) we can observe the number of new projects peaked in 2015 and has been trending downward since, with fewer new urban farms and gardens starting each year. The only exception was the record number of school gardens built in 2021, due to delays caused by COVID-19 and an increase in funding for outdoor

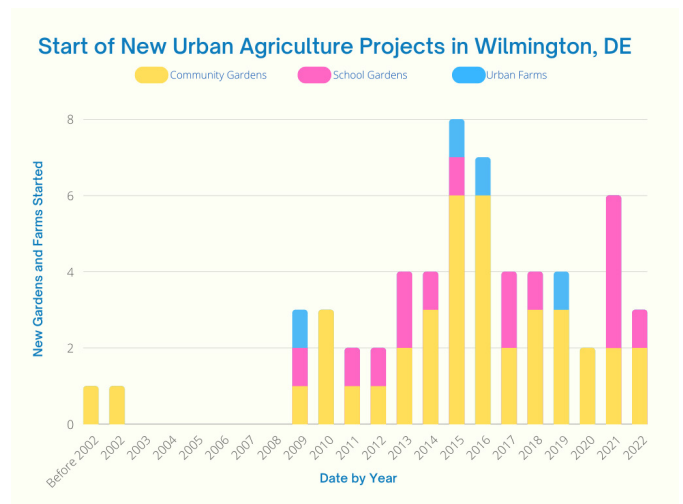


Figure 2: Shows the starting year of different types of urban agriculture projects over the last 20 years within Wilmington.

activities during 2020. What makes this trend unusual is that while fewer farms and gardens are being started, the interest in starting them has not decreased.

In 2022, the New Castle Conservation District and DEUFFC conducted a Community Agriculture Resource Review to better understand the impact and challenges of urban growers and the organizations that support those efforts. Through interviews and focus groups, it was clear there was strong interest in these projects but that land access and tenure were prominent barriers for preventing implementation.

Current Zoning in Wilmington

The Code of Ordinances for the City of Wilmington does not directly define or reference urban agriculture, though it does touch upon agriculture broadly in the following ways.

The following agriculture-related terms are defined in the zoning chapter of the Code of Ordinances¹¹:

- Compost
- Composting and Recycling Facility
- Green House
- Hydroponic
- Hydroponic Farm
- Indoor Commercial Horticultural Operation
- Plant Nursery
- Vertical Farm

Additionally, the Code of Ordinance defines and allows "as a matter of right" indoor commercial horticultural operations in five zoning districts along with associated parking spaces¹² and provides guidelines for rooftop gardens in all commercial zoning districts.¹³

The Code of Ordinances also establishes limitations for animals or fowl “suitable for slaughter or the production of milk, eggs, or fiber.”¹⁴ The keeping of such animals is prohibited with six exceptions. Those are:

- animals or fowl kept for exhibition purposes by circuses, zoos and educational institutions,
- police department horses,
- fish or crustaceans or both being raised or produced in tanks inside of buildings that are located in nonresidential zones only,
- livestock held or kept on a temporary basis not to exceed 96 hours at the Port of Wilmington,
- as otherwise provided in Chapter 42, Article X (farmers’ market),
- or as a support animal as defined by Sec 3-14.

Yet, production is only one side of the supply and demand coin, and the market for agricultural products is also a critical component of this review. In 1974, 22 Del. C. § 104 59 which stated:

“The City Council of the City of Wilmington shall not ordain any ordinance restricting or prohibiting farmers exposing and selling fresh meats or any other farm products raised and produced by the farmers and offered for sale in the City, in any street location which may at any time be appointed or used as a curbside market for the sale of farm To begin with State law products.”

was repealed. In its place Del. L. Ch. 294, § 4 was adopted authorized the the City of Wilmington to:

“establish, locate, regulate and supervise in the City of Wilmington a public market and to have control and power over all matters related to said market; such market to be occupied by farmers and truckers as defined by the City of Wilmington.”

This power was utilized by the City to establish the former Orange Street Farmers’ Market and the current Rodney Square Farmers’ Market along with corresponding rules and regulations.¹⁵

Taking all of this into consideration, what becomes clear is that there are two primary issues that exist. The regulatory information is conveyed in such a way that it becomes challenging for those unfamiliar with policy to interpret and it is missing some key supporting elements for urban agriculture to thrive.

The recommendations in this brief detail and promote a broader spectrum of urban agriculture activities; and provide City Council action steps to formalize the role of urban ag in Wilmington and establish a framework for cities throughout the state.

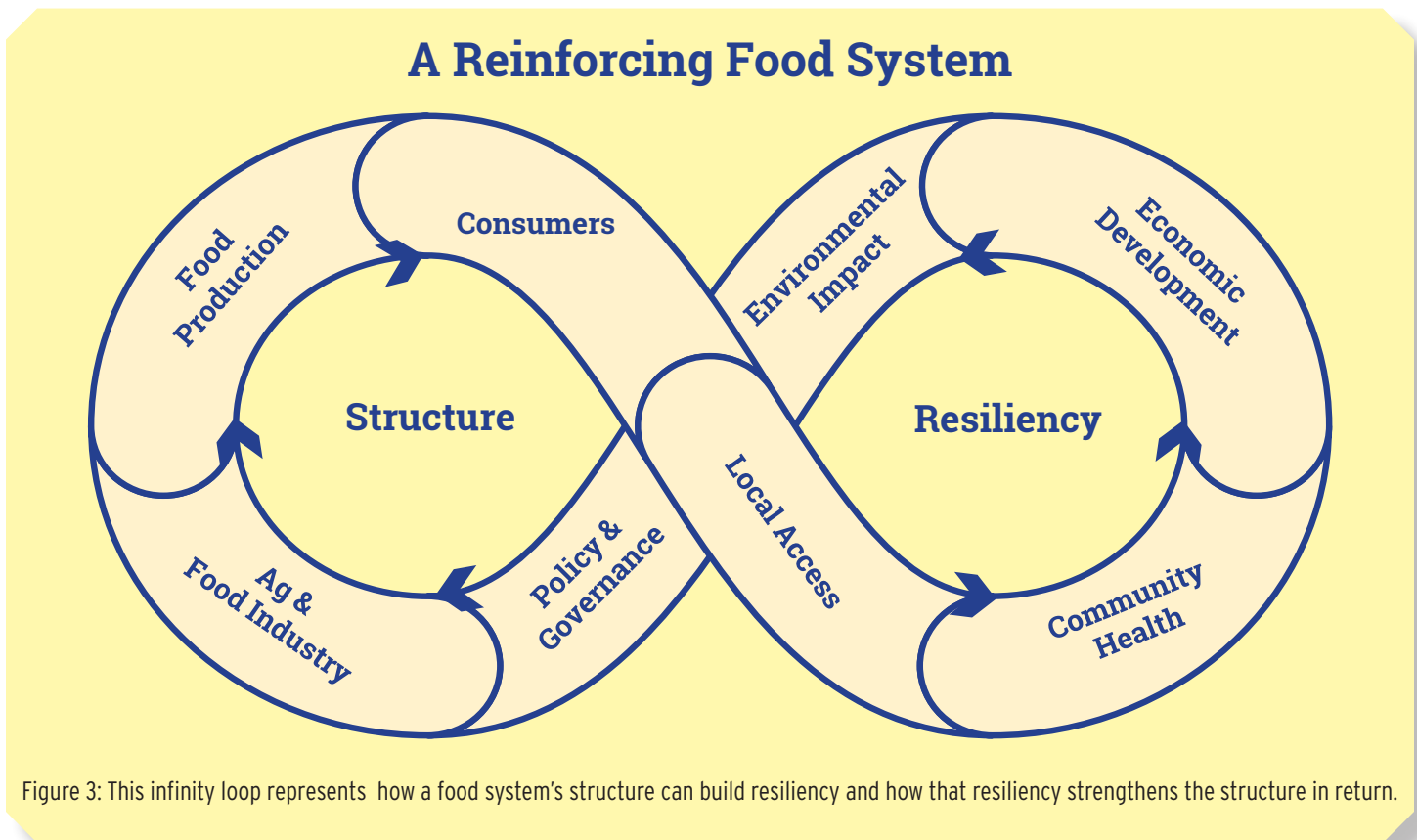


Figure 3: This infinity loop represents how a food system’s structure can build resiliency and how that resiliency strengthens the structure in return.

Recommended Actions

A crucial step in increasing food access and urban agriculture activities is to confirm and endorse urban agricultural activities within the City of Wilmington's zoning code. After reviewing dozens of policies and local food plans from around the country, the Delaware Urban Farm and Food Coalition (DEUFFC) recommends that the City of Wilmington take the following steps to help guide zoning changes that strengthens and builds resiliency in urban agriculture.

1) Provide clarity on agricultural terms.

In addition to the agriculture terms currently included in Wilmington's zoning code, we recommend defining additional terms that relate directly to urban agriculture. This could include, but is not limited to, the following:

- Urban Agriculture
- Community Garden
- Urban Farm
- Animal Husbandry
- On-Site Farm Stand

The inclusion of these terms would create a shared vocabulary to reduce confusion and would demonstrate the city's commitment to build a healthier and more resilient future by making provisions for activities that help achieve such a vision.



2) Specify which zones allow urban agriculture and allow agricultural uses in as many zones as possible.

According to Delaware Code, while county councils may regulate zoning "no such regulation or regulations shall apply to any land, building, greenhouse or other structure proposed to be devoted to any agricultural use..." followed by clarification on what is deemed as "agricultural use."¹⁷ However this limitation of power is not shared by municipalities and does not extend the protections to most forms of urban agriculture.

Thus the recommendation of this brief is to incorporate agricultural uses, including non-commercial agriculture production and small animal husbandry, into the permitted use table, for the City of Wilmington, thereby ensuring legal protection of use and ease of understanding where agricultural activities are allowed within city limits.

This action would allow residents and organizations (churches, nonprofits, etc.) to confidently pursue land for food production and increase their ability to grow food for themselves, their families, and their communities. Should small animal husbandry be included, it would reduce restrictions on keeping animals which can limit residents from producing additional food besides fruit and vegetables, such as milk, eggs, honey, and or fish products.

Furthermore, allowing gardens and farms in zones where people live their day to day lives, prevents an "out of sight, out of mind" mentality. This close proximity leads to a more consistent maintenance of the space and the consistent presence helps to deter unwanted pests and criminal activity.

Overall, taking this step would make it easier to implement successful urban farms and gardens, thus increasing the availability of nutritious, affordable, and culturally- appropriate foods for all Wilmingtonians.

3) Allow on-site sales of products whenever possible.

The intent of this recommendation is two fold. First is to increase access to healthy foods for city residents and the second is to provide a viable outlet and revenue source for urban agriculture projects. Several cities around the U.S. define and allow on site farm stands and detail various limitations as what can be sold on site. One such example is the City of Detroit City Code Sec. 50-12-398 which states:

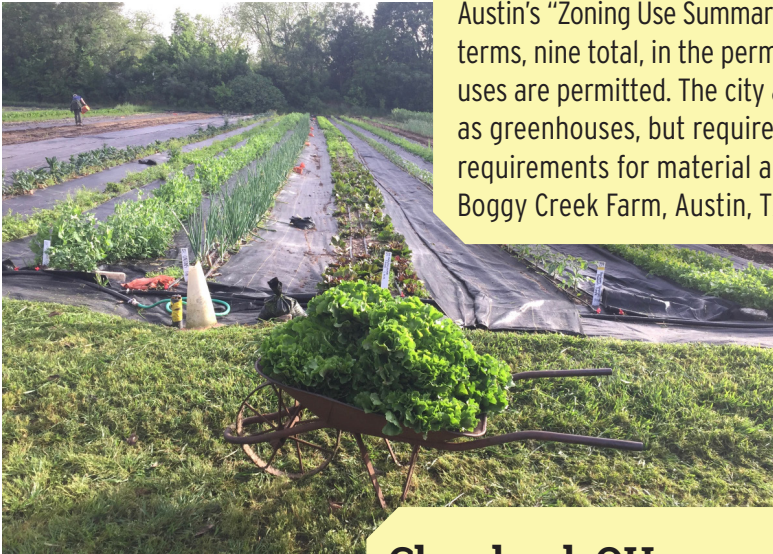
"Sale of farm products grown or produced at urban gardens and urban farms is allowed as an accessory use at a farm stand located on the property of the urban garden or urban farm from which the farm product is grown or produced."

Within this provision, the code references the definition of a farm stand found in Sec. 50-16-201 which specifies the structure must be temporary and the product may be "vegetables or produce, flowers, orchard products, locally-produced packaged food products, and similar non-animal products."

AROUND THE COUNTRY

Austin, TX

Austin's "Zoning Use Summary Table" includes all defined agricultural terms, nine total, in the permitted use table and clearly shows where uses are permitted. The city also permits accessory structures such as greenhouses, but requires them to comply with Building Code requirements for material and engineering design.¹⁹ Photo Credit: Boggy Creek Farm, Austin, TX



Cleveland, OH

Cleveland's land use code creates different allowances for residential and non-residential animal-keeping (bees and small farm animals), including regulations on fencing, number and size, and license requirements.²⁰ Photo Credit: Ohio City Farm



Philadelphia, PA

In Philadelphia, urban farms are permitted as-of-right in most residential, commercial, and industrial districts.²¹ Agricultural structures are allowed as an accessory use with specifications on size and lot requirements.¹⁸ Photo Credit: North Philly Peace Park, Philadelphia, PA

Minneapolis, MN

Here an urban farm is defined as "An establishment where food or ornamental crops are grown or processed to be sold or donated that includes, but is not limited to, outdoor growing operations, indoor growing operations, vertical farms, aquaponics, aquaculture, hydroponics and rooftop farms."²² Additionally the city defines and allows: on site farm stands, the keeping of bees, chickens, and small farm animals, and season extension structures including cold frames, greenhouses, and hoop houses.²³ Photo Credit: Growing Lots Urban Farm, South Minneapolis, MN



4) Allow accessory structures such as greenhouses, hoop houses, and other season extension structures or devices.

These additional structures and devices increase the viability of urban agriculture by allowing products to be grown during more months of the year. Not only does this improve access to healthy produce year round, but it also keeps the site active for more of the year keeping participants actively tending the space outside of the traditional growing season. Furthermore the city should specify any size and lot requirements and should consider a policy similar to Philadelphia which waves permit requirements if the structure is erected in fewer than 180 days.¹⁸

5) Include equity language in the zoning code.

Only a few cities include a stated goal of equity directly in their zoning code. However by incorporating an equity goal in the zoning code the City of Wilmington would promote the importance of equitable practice across all spheres. If implemented this recommendation would encourage food equity by providing guidelines within the code for practices and strategies that make food access available to all Wilmington residents. Precedent shows there are two primary methods.

The first is to incorporate language that expresses intent similar to the approach found in Portland, Oregon. Portland's Zoning Code states that the goal of allowing urban agriculture is to "increase affordable, healthful, food for all, especially for those who may have limited options because of location, access, or income."²⁴ The second is to include guidelines that ensure equitable practices much like in Golden, Colorado, where the Municipal Code section 18.26.010 requires farmers' markets and neighborhood markets to accept SNAP benefits and sell a certain amount of SNAP-eligible foods.²⁵

Summary

Agriculture is deeply rooted in the heritage, economy, environment, and social fabric of Delaware. Where farmers and producers boast some of the most productive per capita yields in the country; where community organizations and food supply chain entities work together to distribute wholesome food products to families in their communities; and where local governments partner with healthcare providers and state agencies to administer and support food access

and nutrition initiatives.

The Delaware Urban Farm & Food Coalition's Policy Committee understands the role of urban agriculture as part of the local food system and the importance of supporting agricultural activities in the City of Wilmington. Since 2002, urban agriculture activities have taken shape in the City, and today Wilmington boasts 3 urban farms, 18 school gardens, and 29 community gardens. The value of this work extends beyond growing food, and in an urban setting it can facilitate community development, improved health outcomes, and environmental benefits.

However, as discussed throughout the brief, while the existing laws and codes do not excessively limit urban agriculture activities their vague nature leaves room for varying interpretations which can negatively impact community food security and economic development. Yet, when policies and zoning codes that set parameters for land uses are clear and well defined, property owners and community members are empowered to engage and participate in urban agriculture.

To that end, the Committee offers this brief "the Urban Agriculture as Principal and Accessory Use as a Matter of Right " as the first step in a framework that reflects the Committee's incremental approach to achieve growth in urban agriculture within the City of Wilmington.

Proposed Framework

1) Tell the Story

Develop a briefing memo to communicate and present the work. This includes creating a robust timeline to document the history and evolution of distinct agricultural activities (food production, distribution, etc.) within Wilmington.

2) Coordinate the Scope

Facilitate a series of discussions with key community partners to identify gaps, areas of opportunity, areas of ambiguity, and consensus.

3) Facilitate Change

Develop clear language or work plans to address identified gaps and provide recommendations for specific language to revise the City's zoning code along with detailed action steps.

End Notes

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14. Wilmington, DE, Code of Ordinances Ch. 3 § 3-14 ; Ord. No. 16-058, § 1, (2016); Ord. No.17-026, § 2, (2018).
15. Wilmington, DE, Code of Ordinances Ch. 42, Article X "Farmers' Market"
16. Cities included are: Ft. Lauderdale, FL; Atlanta, GA; Lawrence, KS; Boston, MA; Baltimore, MD; Detroit, MI; Minneapolis, MN; Silver City, NM; New Rochelle, NY; Southampton, NY; Cleveland, OH; Portland, OR; Philadelphia, PA; Nashville, TN; Austin, TX; Ft. Worth, TX; Seattle, WA. ⁴
17. 9 Del. C. § 2601
18. Philadelphia Municipal Code Title 14, § 14-604 (9)
19. Austin, TX, Code of Ordinances Title 25, § 25-12-3
20. Cleveland, OH, Code of Ordinances Ch. 347, § 347.02
21. Philadelphia Municipal Code Title 14, § 14-602 Table § 14-602-1; Table 14-602-2; Table 14-602-3
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