

MEMORANDUM

TO: Honorable Chair and Members of the City of Tucson Planning Commission

RE: Proposed Draft Urban Agriculture Ordinance

FROM: Neighborhood Infill Coalition

DATE: September 10, 2015

You could almost be forgiven for not reading the draft of the Urban Agriculture Code. If you tried and got the distinct impression that you were the proverbial dog chasing its tail, you were not imagining things.

After attempting to put all the parts of the various permitted uses of this code together, and coming away frustrated, we decided to break it down to its essential elements. Those have been mapped for your reading pleasure ☺ and are attached as a separate document.

While it became apparent that these sections look like tangled spaghetti, complete with what we call “feedback loops” that continue into infinity, these charts only reveal a portion of the code. If you didn’t read this draft, these are some of the things you would have missed.

1. Setbacks for Accessory Structures: Animal shelters and greenhouses are considered accessory structures. If they exceed six feet in height, they must meet the setback requirements of the primary structure. However, there is a mechanism within our code that permits a person to request a reduction in the required setback. The 50’ notice procedure (3.3.4) allows them to seek this permission. It contains a provision in 3.3.4.J that permits them to bypass some of the requirements of this section if they can get all “parties of record” to sign off. Parties of Record is defined as the Neighborhood Association, all persons who received notice, all persons who provided written comments and all persons who gave testimony.

The proposed Urban Agriculture ordinance contains this 50’ Notice provision. However, it also contains a second provision, one that contradicts the 50’ Notice provision. That Section, 6.6.2.D, allows the person seeking the reduced setback to get approval by just getting the adjoining property owner to sign off.

Both of these provisions can be found together in virtually all sections of this proposed code except on-site sales and accessory farmers markets. This is disingenuous. A decision needs to be made as to which of these sections will be required and the opposing section needs to be removed.

2. Setbacks in General: This code proposes to reduce the current 50-foot setback requirement for animal shelters to a 0-foot setback, so long as the shelter is not higher than six feet. It requires the shelter to be at least 20 feet from the adjoining neighbor's principal structure. We believe this provision is fundamentally flawed for the following reasons.

a. The 20' setback does not apply to the property where the animal shelter is located. It is conceivable that the owner could place the shelter 50' from their principal structure, in effect providing themselves with greater protections than that of the adjoining property owner.

b. Since the requirement only applies to the principal structure, adjoining neighbors who happen to have a guesthouse on their property may find the animal shelter located just over the wall from that guesthouse, providing the occupants with no protection.

c. This provision violates a fundamental principal of zoning. Setbacks have always been calculated from the property line of the person seeking the benefit. By allowing the owner of the animal shelter to "borrow" 20 feet from their neighbor, we are ignoring the property rights of that adjoining property owner. That adjoining property owner may have no desire to be a participant in urban agriculture activities, or they may have health issues that require them to avoid animals. This provision gives that person no say in the matter, effectively placing more value on the chicken than on their life.

3. Vertical Gardens: These are gardens that are permitted to be mounted on walls and fences. This provision does not take into account who actually owns the wall or fence. Many of our neighborhoods have walls that separate adjoining properties, and most of them do not sit on the property line. If one neighbor has just invested considerable money installing a new fence, they may not wish to have someone drilling into that fence to mount their vertical garden. This provision needs to be changed to limit vertical gardens to rear walls that adjoin alleys or right-of-ways, and front patio walls, since both of these are less likely to separate adjoining properties.

4. Animal Unit: This is one of the more troubling aspects of this proposed code. This measurement is normally utilized on an industrial scale and applied to large farms and animal producing operations. It is intended to calculate the amount of animal waste that is produced to ensure proper management practices are followed. It does not scale down well, particularly when we apply it to the size of a lot.

Lot area was the original term used in conjunction with animal unit. It has now been changed to "lot size". This change in semantics does not alter the fact that this is still flawed. Most lots contain structures, and those structures come in a variety of shapes and sizes. Unless the city has decided to allow chickens to live on the roof or in the home, the important consideration has to be the amount of open space that is available for the animals to utilize. Twenty chickens might be fine in an area that measures 50' x 50', but be stressed in an area that only measures 10' x 10'.

This raises a more fundamental issue. Is the regulation of animals and the number of permitted animals an appropriate area for PDS to administer? The Tucson Code has

numerous chapters. It defines the purposes and function of PDS as developing land use code, development compliance, development standards, administrative manual, technical standards manual, zoning maps, Board of Adjustment, Planning Commission, sign code committee and advisory board, and design review board. Planners are trained in managing the built environment, not in animal husbandry or health department regulations. There is a reason why the Planning department does not oversee Civil Service, Parks and Recreation, Pensions or Emergency Services. These are not their areas of expertise. This proposed Urban Agriculture code crosses that boundary into Chapter 4 (Animals and Fowl). The agencies responsible for overseeing the enforcement of the provisions of Chapter 4 are law enforcement and Pima Animal Care. Under these proposed regulations, the Zoning Administrator may approve increases in the number of allowable animals, but there are no mechanisms that allow law enforcement or Pima Animal Care to weigh in, even though they will have to intervene if a problem arises as a result of this increase.

This raises the issue of consistency in our codes. Chapter 4 limits the number of chickens to 24. The proposed Urban Agriculture ordinance, through the animal unit, allows that number to go as high as 48. This is poor code writing. If we are going to allow 48 chickens, then we need to state that in Chapter 4. If we intend to cut the number off at 24, then this proposed code needs to reflect that and indicate that the additional 24 animals can only be made up of different species of animals.

Finally, some of the allowable species of animals may not be appropriate in many of our residential lots. Geese are one of these. They can be territorial, loud and aggressive and may be better suited to larger lots or more rural settings.

5. Food Producing Animal: The term “small farm animals” has been changed to “food producing animal”. Chickens lay eggs for several years, but they can live for a number of years after they stop laying eggs. Staff’s cover memo refers to the “no kill philosophy” that some chicken owners have as justification for allowing those owners to request additional chickens. However, that means the chickens that have stopped laying eggs can no longer be considered “food producing animals” under this code.

How do we handle this? Do they get covered by another code? Will we allow a resident to have 30 non-egg laying chickens and 10 that actually lay eggs and pretend the 30 don’t exist? Does an inspector line up “the girls” and demand that they reveal which of them is no longer laying eggs? Or do we stop play the game of semantics and set reasonable numbers and require the animal owner to take responsibility for deciding whether their chicken is food or a pet and then living with the consequences of that decision?

6. Accessory Use: The code is broken into “uses” and “accessory uses”. Under accessory uses, it permits accessory uses. What in the world is an accessory use to an accessory use? There is no definition in the code of what that means.

7. On-Site Sales: Yard sales restrictions were put into place to limit the continual traffic, trash and left-over signage that plagued a number of our neighborhoods. The sales

language in this proposed code undermines these protections. Section 6.6.5.G contains key exemptions to the limitations on sales. If an “event” is advertised by signs posted in the neighborhood, it is EXEMPT from the provisions of this Section. This means that not only can a property owner hold an “event” as many times per year as they wish, but they are not bound by the hours of 7:00am to 8:00pm. Since their event has no hours attached, it effectively never starts or ends. This means they are also not bound by the requirement that booths and awnings be removed from the front yard at the end of the event.

Some of our most stressed neighborhoods fight ongoing battles over signage and traffic in their neighborhoods, and this exemption is a non-starter for them.

8. Farmer’s Markets: This is one of the most confusing and poorly written sections of this proposed ordinance. If you look at the Permitted Use charts, which are in blue, you can identify those zones where Farmer’s Markets are permitted. However, there are also zones where Accessory Farmer’s Markets are permitted. You have to go the Accessory Farmer’s Market section of the code to find which zones those are permitted in. To make things more confusing, once you get to the Accessory Farmer’s Market section (6.6.5.C) you will also find a list of the zones where Farmer’s Markets are permitted. Unfortunately, that list doesn’t match the blue charts. If you weren’t already confused, there is a separate section for Farmer’s Markets (4.9.9.A.12) which also has a list of zones, and that list doesn’t match the blue charts either, nor does it match the Farmer’s Market Section in 6.6.5.C.

9. Urban Farms: This section of the proposed ordinance is particularly troubling to us. The level of intense activity that is permitted by these proposed provisions includes the operation of heavy farm equipment and vibrations that can occur every hour during a 24-hour period. In addition, while most people assume that an Urban Farm would be organic, the proposed regulations do not limit the use of chemicals or pesticides. This is why allowing Urban Farms to be located in commercial zones, such as O-1 and C-1, needs to be changed. Many residential zones abut these commercial zones and could be negatively impacted by Urban Farm operations. In addition, Urban Farms are permitted in the P zone, which is defined as a zone that provides for off-street parking within residential areas. Zones for Urban Farms need to be limited to the industrial zones, and the city should consider regulations that will ensure the safe use of pesticides and chemicals.

10. Section 4.9 of the code contains revisions that are not easy to trace back to a specific section. Some of the criteria in the blue charts, such as Community Gardens, on page 11, as well as some of the original code requirements, do list references to sections of 4.9. However, most of the new proposed changes don’t. Section 4.9 has had numerous changes and additions, and once the red text is removed, they will become more difficult to locate. These changes need to be cross-referenced in either the blue charts or the individual sections of the code.

11. Institutional Reserve Zone: We are puzzled by the continued use of this zone in this code. The IR zone is designed to encompass federal, state, city, county and other public

lands that are intended to be natural reserves or wildlife reserves. As such, it is an inappropriate zone for urban agriculture. This exposes some problems with our existing code, where uses were placed in zones like the IR zone, where they never should have been permitted. The UDC may need a review to address some of these issues at a later date.

12. Crop Production: This is another area of our existing UDC that needs to be reviewed. Crop Production is described as the growing and harvesting of agricultural products. It lists typical uses as field crops, fruit and nut orchards, and NURSERIES. In the blue Permitted Use charts, crop production is not listed as allowed in C-2 zoning. However, if you check PDSO's records, in 2013, Mesquite Valley Growers, a nursery, was permitted to rezone their property to C-2. The criterion in Crop Production is another area that will need to be addressed at a later date to correct this.

We hope this will help you to understand why we proposed a stand-alone ordinance. We tried to create one that didn't have any ambiguity and was based on the practices which other communities have had in place for some time. Urban Agriculture is a complex issue with many moving parts, and learning from other communities that already have ordinances in place made sense to us. We don't know if this proposed code can ever truly be fixed, given its tangled nature, but we will continue to try and make this a fair, balanced ordinance for our community.