

DEPARTMENT MEMORANDUM

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**DATE: MARCH 4, 2021**  
**TO: PLANNING AND COMMUNITY DESIGN COMMISSION**  
**FROM: CARLOS TREJO, AICP**  
**DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT**  
**RE: URBAN AGRICULTURE**

STAFF SUMMARY

LATEST DRAFT FOR COMMISSION CONSIDERATION AS OF 2021 03-04

This draft was initially prepared by the City Attorney on February 18, 2021.

The draft has been modified to address Council concerns from a work session meeting held March 1, 2021.

There are several outstanding items the Council has requested the City Attorney guide staff, and are noted within, and summarized as follows:

- Pre-existing conditions

Urban Agriculture will be a standalone Chapter in the Land Use Code, and not part of Chapter 400 Zoning Regulations.

Key changes incorporated addressing recent Commission concerns:

- Achieving a consensus on a definition for tall grasses, whether native or non-native:
  - Increase the size/area permitted without any permit: from zero, to 150 sf., to now 250 sf.
  - Revised managed natural landscape to be specific to high grasses, whether native or non-native. Added graphics.
  - Plain and simple, prohibit roosters and bamboo. (City Attorney addressing grandfathering)
  - Ensure Commission is accountable to review standards when considering a variation.
  - Handouts have been updated.
    - Chickens: removed references to reuse of feces/manure
    - Bees: Increased setback requirement from 5 ft to 10 ft.
    - Managed Natural Landscape: focused on height of grasses and increased area to 250 sf.

4-Attachments:

- Draft ordinance language
- Draft application for rearing chickens
- Draft application for rearing bees
- Draft application for excessive landscaping

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Chapter 445 URBAN AGRICULTURE

Section 445.010 Definitions.

Apiary: A place where bees are kept; a collection of beehives.

Bamboo: Any monopodial (running) woody or arborescent grasses from the genera bambusa, arundinaria and dendrocalamus of the subfamily bambusoideae, from tropical or temperate regions having hollow stems and thick rhizomes, including, but not limited to, Acidosasa, Arundinaria, Bashania, Brachhystachyum, Chimonbambusa, Gelidocalamus, Indocalamus, Indosasa, Ochlandra, Phyllostachys, Pleioblastus, Pseudosasa, Sasa, Sasaella, Semiarundinaria, Shibataea, and Sinobambusa.

Bamboo Owner: Any person who, at the time of adoption of this Chapter or thereafter, plants, grows, or maintains Bamboo, or who permits Bamboo to grow or remain, on property which such person owns or lawfully occupies.

Commission: The Olivette Planning and Community Design Commission.

Horticulture: Garden cultivation and management.

Livestock: Domesticated animals, including bees, raised in an agricultural setting to produce labor and commodities such as meat, eggs, milk, honey, fur, leather, and wool.

Managed natural landscape:

For the purposes of this Chapter, a managed natural landscape is a planned, intentional, and maintained planting of grasses, whether native or non-native, wildflowers, and forbs in excess of the height limitations under Chapter 220 Nuisances, including those used as landscapes associated with rain gardens or other bioretention facilities, meadow vegetation, and ornamental plantings.

Acceptable Managed Natural Landscape used as raingarden	Acceptable Managed Natural Landscape used as ornamental planting	Managed Natural Landscape that would require Site Plan Review
		
<p>Authorized administratively</p> <ul style="list-style-type: none"> <li>• Less than <b>250 sf.</b></li> <li>• Outside of right-of-way.</li> </ul>	<p>Subject to application</p> <ul style="list-style-type: none"> <li>• Exceeds <b>250 sf.</b></li> <li>• Contains defined perimeter.</li> </ul>	<p>Subject to Site Plan Review</p> <ul style="list-style-type: none"> <li>• Exceeds 10% of Front Yard Area.</li> <li>• Encroaches into right-of-way.</li> </ul>

Rearing: The process of keeping, feeding, breeding, and medical care of useful animals.

Urban Agriculture: The practicing of horticulture, exclusive of bamboo, or the rearing of livestock or bees within the City.

**Section 445.020 Purpose and Intent.**

The purpose of this section is to:

- (1) Recognize the balance necessary to regulate traditional agricultural activities within a single family residential urban setting;
- (2) Establish defined Community parameters for urban agricultural activities in residential properties;
- (3) Maintain neighborhood identity and ensure that minimum standards are met regarding the condition, appearance and upkeep of the Olivette community's private yard areas (i.e., hedges, grass lawns, natural green spaces, livestock pens and hives, etc.);
- (4) Develop access and resources for residents to be informed of the investment requirements for urban agriculture;
- (5) Provide an orderly exit strategy for concluding urban agriculture activities;
- (6) Preserve and protect private and public property from the damaging spread of certain bamboo grasses, protect indigenous plant materials from the invasive spread of bamboo, and maintain the general welfare of the City's residents; and
- (7) Provide a framework for permitting and ~~regulating~~ **inspecting** urban agriculture activities.

**Section 445.030 Rearing Livestock.**

- (1) The following livestock may be reared by administrative permit:
  - a. Chickens
    - Limited to hens only.
    - No more than six (6) hens more than 18-weeks of age.  
(Do we want to increase the number to ten (10)?)
  - b. Bees.
    - Limited to 3 hives, with size standards as provided in Section 400.1592 of this Code.
- ~~(2) Non-enumerated livestock less than 25 pounds may be reared by administrative permit after being subject to Site Plan Review as provided in Article XI of this Chapter.  
(Council would like to see this removed)~~
- (3) The rearing of roosters more than 18 weeks of age is prohibited.

**Section 445.040 Horticulture.**

- (1) Managed natural landscapes **in excess of 250 square feet require an** administrative permit, and are subject to the following conditions:
  - Defined perimeter or edge;
  - Setback 5-feet from an adjacent property line;
  - May not encroach into an abutting street right-of-way; and
  - Limited to no more than 25% of the lot yard area, with no more than 10% encompassing either the front or side yards.

(Why? Many grasses (whether native or non-native) would violate the nuisance code if they exceed 7-inches in height. This would allow a means to allow administratively and not be in conflict with the nuisance code.)
- (2) Managed natural landscapes may not include bamboo, or noxious or nuisance weeds.
- (3) The planting of bamboo is prohibited.

## Section 445.050 Variations and Pre-Existing Urban Agriculture Activities.

- (1) **Variations.** Upon written request, a property owner may request to exceed the standards under Section 445.030 and Section 445.040 following the procedures of Site Plan Review under Chapter 400 Zoning Regulations. The Commission may consider variations to the number of livestock or managed natural landscape conditions. The Commission may vary the requirements established or authorized herein when the Commission determines that compliance with any requirement of this Section will impose unnecessary hardship or practical difficulty upon a particular property. In no case can the Commission authorize the rearing of roosters or bamboo.
- a. In exercising this authority, the Commission shall consider:
- **Circumstances.** *The circumstances as to why the property owner is seeking to exceed the parameters of any requirement (i.e. for stormwater management purposes; screening from an arterial roadway; screening from a nonresidential or multifamily use).*
  - **Placement.** *The placement and location of the urban agriculture activity.*
  - **Visual Buffering.** *Visual buffering or screening of the activity to limit visibility from neighboring properties, including excess setbacks, screened landscape perimeters, or installed privacy fencing.*
  - **Noise Mitigation.** *An intuitive strategy to reduce the overall impact of noises generated by an Urban Agriculture activity on its surroundings.*
  - **Lot Size.** The size of the lot if exceeding the minimum lot area of the SR Single Family Residential District.
  - **Lot Characteristics.** The topography or natural features of the property, including adjacency to creeks, parks, highways, etc., and the abutting to nonresidential properties.
- b. In exercising this authority, the Commission, consistent with the aesthetic, health, compatibility and safety objectives of this Chapter:
- Shall vary requirements only to the extent necessary to alleviate the unnecessary hardship or practical difficulty; and
  - May impose conditions on the granting of a variance.

(2) **Pre-existing urban agriculture activities.**

**THIS SUBSECTION WILL BE ADDRESSED BY THE CITY ATTORNEY**

- ~~a. Livestock or horticulture activities existing at the time of adoption of this Section that conform with the noted regulations shall be subject to permit application and approval.~~
- ~~b. Livestock or horticulture activities existing at the time of adoption of this Section **that do not conform** with the noted regulations shall be subject to permit application and approval after being subject to Site Plan Review as provided in Article XI of this Chapter.~~
- ~~c. Permit approval applications for pre-existing livestock or horticulture activities shall be submitted within 90 days of the adoption of this Chapter.~~
- ~~d. Pre-existing livestock or horticulture activities shall be allowed to continue until such time as a final decision has been made on the permit application.~~

**Section 445.060 Urban Agriculture Permits.**

- (1) Applications. A person desiring to engage in urban agriculture as provided herein shall apply to the City of Olivette Department of Planning and Community Development for an urban agriculture permit.
  - a. An application shall be made at the time the applicant first seeks an urban agricultural permit, which shall be valid upon issuance through December 31 of the initial application year. Thereafter, a permittee shall apply annually to continue the urban agricultural practice, but such application shall not be made later than January 31 of any continuance year. Any permit authorizing a continuing urban agricultural practice shall be valid through December 31.
  - b. The Commission shall develop application forms consistent with this Chapter, including at minimum the following information:
    - Applicant's contact information, including the address at which the urban agricultural practice is to take place;
    - Applicant's relationship to the property (tenants, lessees, and temporary occupants shall require written permission of the owner);
    - A site plan or other acceptable depiction of the location and dimensions of improvements and yard boundaries;
    - The proposed method for housing livestock; and
    - Existing or proposed screening.
  - c. The Commission, with the approval of the City Council, may establish from time to time additional regulations to implement this Chapter, which such regulations shall be included in the application forms.
- (2) Scope and nature of permit.
  - a. An urban agriculture permit is administrative in nature. It is exclusive to the permittee, is not transferable, is subject to the regulations established by law, and does not create any vested right in the permittee's use of the permitted property beyond the context of the permit and this Chapter.
  - b. A permitted urban agricultural practice shall be subject to city inspection at least annually to determine compliance with this Chapter.
- (3) Fees. The permit fee shall be \$25.00, or such other fee as may be established by the City Council from time to time. The initial permit fee shall be payable on application; thereafter, the fee shall be payable on issuance of the permit after January 1 of each year.

**Section 445.070 Termination and Revocation of Urban Agricultural Permit.**

- (1) Termination. An urban agricultural permit shall terminate if the permittee quits the property or for any reason ceases or abandons the permitted practice.
- (2) Revocation.
  - a. If a complaint is filed regarding a violation of this Chapter, or in the absence of a complaint, on the Department of Planning and Community Development's reasonable suspicion of a violation, an investigation shall be made by the Director of Planning and Community Development or his or her designee.
  - b. If the investigation substantiates a violation, the city shall issue a written notice of the violation. The notice shall be served by personal delivery, by mailing it to the last known address of the permittee, or by posting the property at a conspicuous location. The notice shall direct the permittee to abate the violation within ten days of the date of the notice. The permittee shall then be required to correct the violation and notify the Director by certified mail, requesting a reinspection to verify that such violations have been corrected. The permittee's response shall be dated and mailed within 10-day correction window. The Director may extend the correction window for good cause.
  - c. If the permittee fails to correct the violation and notify the Director within the ten-day correction window (or any extension thereof), the Director shall revoke the permit by written notice delivered to the permittee by certified mail.
  - d. Permit revocations may be appealed as follows:
    - Appeals must be filed in writing within five days of the date of the revocation notice, stating the grounds for the appeal;
    - Appeals shall be determined after an informal hearing by the City Manager or his or her designee;
    - At least five days' written notice of the hearing shall be given to the permittee by personal delivery, by mail, or by posting; and
    - The permittee and any other interested party may appear at the hearing and testify and present evidence concerning the conditions giving rise to the revocation.
- (3) On termination or revocation of an urban agricultural permit, the permittee shall (i) remove all structures used for the rearing of livestock or the managed natural landscape area and (ii) restore the grounds to reflect the adjacent yard area.

### Section 445.080 Bamboo.

- (1) Prohibition. Except for pre-existing bamboo, the planting, growing or cultivating of **running** bamboo by any person is prohibited.

**CITY ATTORNEY IS WORKING ON GRANDFATHERING STANDARDS FOR PRE-EXISTING BAMBOO**

- (2) Pre-Existing Bamboo. Within ~~90~~ **180** days of the adoption of this Chapter, a bamboo owner shall manage, trim, or cut all running bamboo, including the root system, so that it shall be no closer than **ten feet** from any **public right of way** or any **property line**. The bamboo owner shall also provide barriers to prevent future encroachment of running bamboo or root systems into these areas.
- (3) Encroachment Notice and Enforcement.
  - a. If any bamboo encroaches within ten feet of any public right of way or adjacent property, the City may issue an encroachment notice for removal of such bamboo within 30 days from the date of the notice.
  - b. The notice shall be served by personal delivery, by mailing it to the last known address of the bamboo owner, or by posting the property at a conspicuous location.
  - c. If the bamboo owner fails to remove the encroachment within the allotted 30 days, the City may pursue one or more of the following remedies:
    - Enter the property and remove the encroachment at the owner's cost, taking reasonable action to eradicate its re-growth, and if such costs are unpaid more than 30 days after demand for payment has been made by the City on the bamboo owner, the City may lien the property of the bamboo owner for these costs, plus interest, fees, and expenses, including attorney fees, as may be allowed by law;
    - Issue a municipal court citation to the bamboo owner for violating this Chapter; and/or
    - Institute suits, in equity or at law, to restrain, prevent, or abate the encroachment, with the expense of such proceedings, including attorney fees, being recoverable from the bamboo owner in any manner as may now or hereafter be provided by law.

### Section 445.090 Violations and Penalty.

- (1) It shall be unlawful for a person to engage in urban agriculture without (i) applying for a permit as required herein or (ii) complying with the regulations authorized by and implemented through this Chapter.
- (2) It shall be unlawful for a person to plant bamboo after the date of the adoption of this Chapter, and it shall be unlawful for a bamboo owner to fail to manage pre-existing bamboo as required by this Chapter.
- (3) Any person convicted of a violation of this Chapter shall be subject to punishment in accordance with Section 100.180 of the City Code.