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## A Right to Farm in the City: Providing a Legal Framework for Legitimizing Urban Farming in American Cities

Susanne A. Heckler

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# A RIGHT TO FARM IN THE CITY: PROVIDING A LEGAL FRAMEWORK FOR LEGITIMIZING URBAN FARMING IN AMERICAN CITIES

## I. INTRODUCTION

*"Too much of Detroit now shows no evidence of the vital city  
it once was, world-famous for its innovation and spirit."<sup>1</sup>*

Along the degraded streets of Detroit, a new phenomenon is emerging. In place of vacant lots, one now finds rows of broccoli, tomatoes, and cucumbers growing with the help of empowered community organizations. These communities are participants in urban farming—a growing national movement that uses farming to improve downtrodden, deserted areas in once successful cities. Across the nation, urban agriculture is being used as both a long-term and a short-term solution to rejuvenate degraded cities.

Urban farming communities in Detroit continue to expand, providing local communities with fresh produce as well as a cleaner and safer living environment. Large-scale farming efforts plan to convert acres of abandoned land into indoor agricultural facilities and fresh produce storefronts. Detroit communities are excited about a future in a city where urban farming has been incorporated. Residents view urban farming as a solution to economic downturn and abandoned lots. Yet, not all view urban farming this way.<sup>2</sup> City planners believe that large urban farming efforts are not an appropriate way to address the problem of shrinking populations, and state legislation stunts the potential efforts to legitimize city farming practices.<sup>3</sup>

As the urban farming phenomenon gains momentum, a growing number of regulatory issues emerge. Small community farms are unlawfully maintained because a number of current municipal and state

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<sup>1</sup> *Introducing Hantz Farms*, HANTZ FARMS DETROIT (2009), <http://www.hantzfarmsdetroit.com/introduction.html>.

<sup>2</sup> Christine MacDonald, *Neighborhood Skeptical of Urban Farming Project*, DETROIT NEWS (Aug. 19, 2011), [http://www.detroitnews.com/legacy/editions/TheDetroitNews\\_08-19-2011\\_1A.pdf](http://www.detroitnews.com/legacy/editions/TheDetroitNews_08-19-2011_1A.pdf).

<sup>3</sup> *Seeds of Progress: How Urban Farming is Changing Detroit's Future*, PBS (Aug. 19, 2011), <http://www.pbs.org/wnet/need-to-know/environment/video-seeds-of-progress-how-urban-farming-is-changing-detroits-future/11113/> [hereinafter *Seeds of Progress*]; Kami Pothukuchi, *To Support Sustainable Urban Agriculture, Detroit Needs Exemption from Michigan's Right to Farm Law*, MICH. CITIZEN, <http://michigancitizen.com/to-support-sustainable-urban-agriculture-detroit-needs-exemption-from-mic-p9230-77.htm> (last visited Sept. 26, 2011).

## 218 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47]

regulations do not allow for city farms.<sup>4</sup> Additionally, questions arise as to the logistics of farming operations in urban zones. City planners question whether pesticides should be permitted near school and work zones, whether city soil is safe for raising produce, and whether resources should focus on growing gardens or attracting investment.<sup>5</sup>

Using Detroit as a case study, this Note examines regulatory and legislative issues for cities interested in implementing or legitimizing urban agriculture and offers a solution for blighted communities. In crafting this solution, this Note provides a background of necessary terms and issues relating to the urban agriculture phenomenon.<sup>6</sup> This Note also defines the shrinking city and urban agriculture phenomena, placing these concepts within the current framework of agriculture legislation and urban planning.<sup>7</sup> Next, this Note analyzes the shortcomings of current legislation and zoning regulations that hinder the advancement of urban agriculture.<sup>8</sup> Finally, this Note introduces a statutory framework to legitimize urban agriculture within the established agriculture legislation and zoning regulations.<sup>9</sup> By addressing state and local practices, blighted cities can introduce urban agriculture and improve the outlook of their future.

## II. CONTEXTUALIZING URBAN AGRICULTURE

Cities shrink and expand over time because of a variety of factors.<sup>10</sup> In the past, cultivating crops solved a community's short-term social and

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<sup>4</sup> JOHN GALLAGHER, REIMAGINING DETROIT 53 (2010); see, e.g., Novella Carpenter, *Farmstand Canceled Due to . . . the City of Oakland*, GHOST TOWN FARM BLOG (Mar. 29, 2011), <http://ghosttownfarm.wordpress.com/2011/03/29/farmstand-canceled-due-to-the-city-of-oakland/> (illustrating how an urban farmer in Oakland bought a plot of land after being told that the area would be rezoned to incorporate urban farming but was fined \$5,000 for failing to comply with the current city ordinance); Brock Keeling, *City of Oakland Shuts Down Novella Carpenter's Farmstand*, FOOD (Mar. 30, 2011), [http://sfist.com/2011/03/30/city\\_of\\_oakland\\_shuts\\_down.php](http://sfist.com/2011/03/30/city_of_oakland_shuts_down.php).

<sup>5</sup> GALLAGHER, *supra* note 4, at 54–57.

<sup>6</sup> See *infra* Part II (describing the shrinking city phenomenon, urban agriculture, the history of zoning, and nuisance laws as well as current municipal efforts encouraging urban farming).

<sup>7</sup> See *infra* Part II.A–D (defining shrinking city, urban agriculture, and the current legislative framework for agriculture and urban planning).

<sup>8</sup> See *infra* Part III (analyzing the shortcomings of current legislation and zoning regulations affecting urban agriculture).

<sup>9</sup> See *infra* Part IV (proposing a legislative framework to legitimize urban agriculture).

<sup>10</sup> Kristin Choo, *Plowing Over: Can Urban Farming Save Detroit and Other Declining Cities? Will the Law Allow It?*, 97 A.B.A. J., Aug. 2011, at 44; see GALLAGHER, *supra* note 4, at 41–46 (discussing the history of urban farming in the United States and how economically disadvantaged people resorted to urban farming in the past during social and economic distress); see also Patricia E. Salkin, *Trends in Urban Agriculture*, STO20 A.L.I.-A.B.A. 621, 626

economic distress; cities today, however, are creating long-term urban farming programs to address more serious city shrinkage.<sup>11</sup> Part II.A discusses the long-term shrinking phenomenon plaguing many major American cities.<sup>12</sup> Part II.B explains urban agriculture and the benefits and drawbacks of urban farming in addressing urban blight.<sup>13</sup> Part II.C illustrates the history of American zoning and nuisance laws and its effect on agriculture.<sup>14</sup> Part II.D discusses current efforts to incorporate urban agriculture into a model state and city policy framework.<sup>15</sup>

#### A. *Shrinking City Phenomenon*

An increasing number of American cities are experiencing what scholars call the shrinking city, otherwise known as a rapid decline in the number of inhabitants living within an urban area.<sup>16</sup> Cities like Youngstown, Ohio; Buffalo, New York; and Cleveland, Ohio have lost over forty-five percent of their population from 1960–2000.<sup>17</sup> For a

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(2011) (describing community gardens created during World War II, including the crops that First Lady Eleanor Roosevelt cultivated on the White House lawn during that time).

<sup>11</sup> Choo, *supra* note 10, at 46; see GALLAGHER, *supra* note 4, at 41–46 (discussing the history of farming in Detroit and the potential of urban agriculture to stabilize the area); Salkin, *supra* note 10, at 623–25 (describing modern sustainable agriculture established in several cities and the variety of methods that cities use to cultivate crops); see also Alexandra Dapolito Dunn, *Sitting Green Infrastructure: Legal and Policy Solutions to Alleviate Urban Poverty and Promote Healthy Communities*, 37 B.C. ENVTL. AFF. L. REV. 41, 45–54 (2010) (advocating for green infrastructure in American cities by pointing to successful green infrastructure in Pennsylvania, Oregon, and Washington).

<sup>12</sup> See *infra* Part II.A (discussing the shrinking city phenomenon in the context of major American cities).

<sup>13</sup> See *infra* Part II.B (explaining the urban agriculture phenomenon and the reason why many cities experiencing urban blight are gravitating toward this movement).

<sup>14</sup> See *infra* Part II.C (illustrating the history of zoning and nuisance law in America and how these legal frameworks affect agriculture).

<sup>15</sup> See *infra* Part II.D (discussing urban agriculture and relevant regulations in Seattle, Washington; Cleveland, Ohio; and Detroit, Michigan).

<sup>16</sup> Catherine J. LaCroix, *Urban Agriculture and Other Green Uses: Remaking the Shrinking Cities*, 42 URB. LAW. 225, 227 (2010). Cities experiencing rapid decline in population and related industry are commonly referred to as shrinking cities, but other authors have used the term “urban blight” to describe the same phenomenon. *Id.* at 227. This Note will use the terms shrinking cities, urban shrinking, and urban blight interchangeably to refer to the long-term rapid decline of populations and subsequent loss of industry. Some scholars have narrowed the definition of shrinking city to address a special subset of older industrial cities with significant and sustained population loss and increasing level of vacant and abandoned properties, including blighted residential, commercial, and industrial buildings. Joseph Schilling & Jonathan Logan, *Greening the Rust Belt*, 74 J. AM. PLANNING ASS’N 451, 452 (2008).

<sup>17</sup> Schilling & Logan, *supra* note 16, at 452. Some vacancy occurs because the lot is for sale, for rent, or being reserved for seasonal, recreational, or migrant use. *Id.* Vacancy resulting from blight or abandonment account for 32.6% of Detroit’s vacant lots, and 41.6%

## 220 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47]

shrinking city, long-term decline in population results in the dwindling of industrial services indicative of the culture and success of the city, leading to a growing number of vacant lots and abandoned properties.<sup>18</sup>

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of Buffalo's vacant lots are the result of abandoned land. *Id.* Journalist Katharine Sweeney compares the number of people who left Detroit in the last decade with the number of people who left New Orleans after Hurricane Katrina. Katharine Q. Sweeney, *Detroit Census Confirms a Desertion Like No Other*, N.Y. TIMES, Mar. 22, 2011, <http://www.nytimes.com/2011/03/23/us/23detroit.html>. After Hurricane Katrina, more than 100,000 people left the city, decreasing the population by twenty-nine percent. *Id.* In comparison, Detroit lost 237,500 people, amounting to twenty-five percent of the population. *Id.* Unlike New Orleans, where the population decrease was the result of a unique situation, Detroit's population decline cannot be attributed to any natural disasters or extenuating circumstances. *Id.* Detroit has experienced 55,000 foreclosures since 2005, and the residential vacancy rate is 27.8% compared to the 17.8% vacancy rate in 2000. Susan Saulny, *Razing the City to Save the City*, N.Y. TIMES, June 20, 2010, [http://www.nytimes.com/2010/06/21/us/21detroit.html?\\_r=1&scp=2&sq=saulny%20detroit%20bing&st=cse](http://www.nytimes.com/2010/06/21/us/21detroit.html?_r=1&scp=2&sq=saulny%20detroit%20bing&st=cse).

<sup>18</sup> Schilling & Logan, *supra* note 16, at 452; see GALLAGHER, *supra* note 4, at 21-38 (discussing the decline of Detroit due to the auto industry and comparing Detroit's urban blight to that of Youngstown and Cleveland, Ohio); see also LaCroix, *supra* note 16, at 227-28 (discussing the decline occurring in Cleveland, Ohio; Youngstown, Ohio; Detroit, Michigan; and Buffalo, New York); Justin B. Hollander, Karina Pallagst, Terry Schwarz & Frank J. Popper, *Planning Shrinking Cities* 3-4 (Jan. 9, 2009) (unpublished manuscript) (on file with Rutgers University), available at <http://policy.rutgers.edu/faculty/popper/ShrinkingCities.pdf> (discussing urban decline both domestically and abroad, focusing on the urban blight of Eastern Germany; Detroit, Michigan; Cleveland, Ohio; and Youngstown, Ohio); see also Terry Parris Jr., *Shrinking Right: How Youngstown, Ohio, is Miles Ahead of Detroit*, MODEL D. MEDIA (May 4, 2010), <http://www.modeldmedia.com/features/ytown05022010.aspx> (comparing the urban blight in Youngstown, Ohio with that of Detroit, Michigan and discussing each city's approach to the problem). Each city takes a different approach to addressing vacant lots. In Youngstown, Ohio, for example, the population has decreased by 51.6% in forty years, with 12.6% of the vacant lots abandoned. Schilling & Logan, *supra* note 16, at 452; see Parris, *supra* (explaining that the dramatic population decline in Youngstown is a result of lost industry, and while comparable to Detroit, the author argues that Youngstown has made significant efforts to improve the future of the city, while Detroit lacks a plan to address urban blight and the future of the city). Like Youngstown, Detroit has experienced declining populations and abandoned structures. *Id.* Further, both cities were powered by a single industry, and when that industry declined, populations shrunk, crime increased, and school issues increased. *Id.* In Youngstown, community members met to discuss plans to remove blight from the community, and since then the city has demolished a portion of abandoned homes in an effort to boost community confidence. *Id.* On average, one demolition project costs Youngstown \$300,000, and between 2006-2010 the city spent \$1 million demolishing 370 structures. *Id.* The city projects that it will cost about \$8 million to remove the remaining 1,100 structures. *Id.* The problem arises, however, in finding appropriate city funding when the population decreases. *Id.* For a city like Detroit, which is twelve times larger than Youngstown, such a demolition project would present unique problems that could be more manageable by dividing Detroit into smaller projects. *Id.* Currently in empty lots, there are urban farms and manicured gardens. *Id.* Detroit has not taken tangible steps to address large areas of urban blight. *Id.* The mayor created a land use plan projected to demolish 3,000 structures initially with a total of 10,000 structures demolished by 2014. *Id.*

Vacant properties and declining populations have a substantial effect on the economic health of the surrounding area.<sup>19</sup> Generally, successful industries and individuals have left cities in pursuit of other financial hotspots, leaving shrinking cities primarily with an indigent population that requires welfare services.<sup>20</sup> At the same time, cities experience a decline in tax revenue because abandoned properties do not yield taxes.<sup>21</sup> High rates of abandoned properties contribute to large revenue losses for municipal governments.<sup>22</sup> In addition, housing prices fall within depopulated areas.<sup>23</sup>

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The specifics of this plan, however, have not been made public, and there is no document to suggest any real direction. *Id.*

<sup>19</sup> Jeremy R. Meredith, *Sprawl and the New Urbanist Solution*, 89 VA. L. REV. 447, 456 (2003); see Peter Dreier, *America's Urban Crisis: Symptoms, Causes, Solutions*, 71 N.C. L. REV. 1351, 1378 (1993) (discussing the current trends of large city demography and the policy implications of city decline); Roxann Pais, *Addressing Foreclosed and Abandoned Properties*, CENTER CT. INNOVATION (Office of Justice), Apr. 2010, at 4, [hereinafter *Addressing Foreclosure*], [http://www.ojp.usdoj.gov/BJA/pdf/CCL\\_Abandoned\\_Property.pdf](http://www.ojp.usdoj.gov/BJA/pdf/CCL_Abandoned_Property.pdf). (explaining that vacant properties have a high financial cost on neighborhoods, police services, firefighting services, demolition costs, cleaning costs, property value loss, inspection costs, social services, lost tax revenue, unpaid utility bills, and filing lawsuits).

<sup>20</sup> Meredith, *supra* note 19; see U.S. Dep't of Housing & Urb. Dev., *The Urban Fiscal Crisis: Fact or Fantasy? (A Reply)*, in CITIES UNDER STRESS: THE FISCAL CRISIS OF URBAN AMERICA 147, 152-55 (Robert W. Burchell & David Listokin eds., 1981) (explaining that urban population decline accelerated in the 1970s as population, income, and jobs left the cities to suburban areas); Sweeney, *supra* note 17 (highlighting that a major factor of population decline was the exodus of black residents to the suburbs following white flight that started in the 1960s).

<sup>21</sup> *Addressing Foreclosure*, *supra* note 19, at 1; Choo, *supra* note 10, at 49 (explaining the negative effects of vacant land on city economics). A Philadelphia study on urban blight discovered the following:

Vacancy results in blighted blocks, high maintenance costs and uncollected taxes. The study estimates that it costs the city some \$20 million a year to provide basic services for vacant lots. Meanwhile, the city loses some \$2 million a year in uncollected tax revenue. And the vacant lots cost nearby property owners an estimated \$3.6 billion in lost value.

Choo, *supra* note 10, at 47 (quotations omitted).

<sup>22</sup> Meredith, *supra* note 19, at 456. A limited number of states enacted legislation addressing the issue of lost tax revenue from abandoned property. *Addressing Foreclosure*, *supra* note 19, at 4. Kentucky imposed an abandoned urban property tax on property that has been vacant or unimproved for a year, has been delinquent for at least three years, or violated certain maintenance standards. *Id.* This tax rate is three times greater than the normal tax rate. *Id.* In Indianapolis, code inspectors impose blight penalties on property owners who have failed to meet code requirements. *Id.* In Minneapolis, city officials fine and demolish property that has been boarded up for sixty days or more, or fails to meet minimum standards. *Id.*

<sup>23</sup> Justin B. Hollander, *Moving Toward a Shrinking Cities Metric: Analyzing Land Use Changes Associated with Depopulation in Flint, Michigan*, 12 CITYSCAPE 133, 137 (2010). There is a discrepancy between housing prices when comparing blighted cities to growing cities. *Id.*

## 222 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47]

Vacant properties also affect the safety and social construct of a community.<sup>24</sup> A decline in urban populations means that there are less people to watch and prevent community crime.<sup>25</sup> Further, arsonists are more likely to start fires on abandoned property.<sup>26</sup> The shrinking city phenomenon affects the amount of city crime and can result in “food deserts” in areas surrounding the city.<sup>27</sup> Thus, the shrinking city phenomenon has a serious effect on urban people and the quality of life.<sup>28</sup> An increasing number of blighted cities are turning to urban

<sup>24</sup> From the DLBA Executive Director, DETROIT LAND BANK AUTH. [hereinafter *DLBA Executive Director*], <http://web.archive.org/web/20110629032500/http://www.detroitlandbank.org/> (last visited Sept. 9, 2011); Hollander, *supra* note 23, at 138; Kaydee Kreitlow, *Scarcity in the Land of Plenty: North American Food Deserts and How They are Being Mended* 6 (Cornell Univ. Dec. 3, 2009), available at [http://courses.cit.cornell.edu/crp384/2009reports/Kreitlow\\_Scarcity%20in%20the%20Land%20of%20Plenty.pdf](http://courses.cit.cornell.edu/crp384/2009reports/Kreitlow_Scarcity%20in%20the%20Land%20of%20Plenty.pdf).

<sup>25</sup> *DLBA Executive Director*, *supra* note 24; see Hollander, *supra* note 23, at 137 (explaining the potential long-term issues resulting from urban blight). According to Hollander, “the durability of housing poses a long-term threat to neighborhood stability. Others come to the same conclusion: if housing does not disappear as quickly as people do, then those abandoned structures may drag down neighborhoods by serving as a haven for criminal activity.” Hollander, *supra* note 23, at 137. See, e.g., Emily Vizzo, *The Gardener*, 21 NAT’L JURIST, Sept. 2011, at 22 (“Camden’s numerous vacant [buildings] are a result of 1970’s ‘broken windows’ policies authorizing the bulldozing of homes considered ‘problematic’ for the community . . . . Since then, they’ve accumulated garbage, concrete rubble and weeds—and served as hideouts for illicit drug use.”).

<sup>26</sup> Hollander, *supra* note 23, at 138; see GALLAGHER, *supra* note 4, at 25 (explaining that some houses in Detroit have a higher risk of decay because they were built quickly out of wood, which decays in the humid environment along with the presence of metal strippers and arsonists); see also MICH. COMP. LAWS ANN. § 125.72 (West 2009) (defining blighted property as a type of property that is a fire hazard and a risk to public health or safety).

<sup>27</sup> Kreitlow, *supra* note 24. Not all neighborhoods and counties have supermarkets with a variety of foods, which means that residents have to travel farther to get these food products. *Id.* Grocery stores and convenience stores in these neighborhoods rarely carry healthy or affordable foods. *Id.* See, e.g., GALLAGHER, *supra* note 4, at 47 (explaining that Detroit is viewed as a food desert because there is a limited amount of accessible and affordable food available to communities living within the city). The following provides a clear example of why Detroit is described as a food desert:

While the city offers its residents food on almost every busy street—indeed, obesity remains a major health concern in Detroit as elsewhere in America—it’s the lack of fresh fruits and vegetables, as well as food products like canned tomatoes and fresh meats and fish, that is most disturbing. The paucity of grocery stores and the lack of a decent public transportation system condemn many Detroiters to buying whatever food they can find in corner liquor stores and the like. Often it’s no better than microwavable tacos loaded with fat, sodium, and preservatives.

GALLAGHER, *supra* note 4, at 47.

<sup>28</sup> See *Why is Urban Agriculture Important?*, RUAF FOUNDATION, <http://www.ruaf.org/node/513> (last visited Sept. 15, 2011) (advocating the potential of urban agriculture to reduce poverty, food insecurity, and enhance urban management that declines as a result of urban blight); see, e.g., Vizzo, *supra* note 25 (providing descriptions of the vacant lots

agriculture as part of the solution to the problem of shrinking population.

*B. Urban Agriculture Phenomenon*

In the face of urban blight, community organizations resort to city farming in an attempt to address the secondary effects of the shrinking city phenomenon.<sup>29</sup> Urban farming is commonly understood to include community gardening in vacant city lots, parks, and schoolyards as well as rooftops and traffic strips.<sup>30</sup> Generally, growing food in the city begins with community efforts, particularly non-profit organizations.<sup>31</sup>

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within Camden city limits in New Jersey where there is rubble and yard trash in junk-filled vacant lots and drug use in the community). Vizzo illustrates the effect that urban blight has on food availability and general food knowledge in a discussion with one urban farmer activist:

Erwin decided that his garden would focus on food production. Accessing fresh produce in urban North Camden is problematic, particularly for those without cars. Without a grocery store, locals rely on McDonald's or Church's fried chicken for meals. Notions that produce would be welcomed were confirmed when gardening began. "One kid was like, 'What's this?'" Erwin said. "His dad's like, 'This is an onion. You know what's an onion, it's the white thing on a McDonald's hamburger.'"

*Id.* at 23.

<sup>29</sup> GALLAGHER, *supra* note 4, at 21–38; *e.g.*, *Garden Resource Program*, THE GREENING OF DETROIT, <http://detroitagriculture.net/urban-garden-programs/garden-resource-program/> (last visited Oct. 5, 2011) [hereinafter *Garden Program*] (providing agricultural resources for individuals and smaller grassroots efforts in order to cultivate abandoned land). Not all cities have developed urban agriculture as a method to stabilize areas experiencing urban blight. See Leah Erickson, Kyle Griggs, Matt Maria & Hester Serebrin, *Urban Agriculture in Seattle: Policy & Barriers* 5, <http://www.chicagofoodpolicy.org/Urban%20Agriculture%20in%20Seattle%20Policy%20and%20Barriers.pdf> (last visited Sept. 13, 2011) (describing the efforts in Seattle, Washington and the varying reasons why government established urban agriculture). Seattle, which is considered the leader in urban agriculture, has had a long history in developing urban agriculture as a way to improve the city's quality and to protect environmental interests despite increasing population pressure. *Id.* See *infra* Part II.D.1 (highlighting the reasons behind Seattle's booming urban agriculture movement).

<sup>30</sup> Choo, *supra* note 10, at 44; Salkin, *supra* note 10, at 623; Kate A. Voigt, Note, *Pigs in the Backyard or the Barnyard: Removing Zoning Impediments to Urban Agriculture*, 38 B.C. ENVTL. AFF. L. REV. 537, 539–41 (2011). Urban farming can be categorized into different types of agricultural activity, including community gardens, market gardens, large-scale farming, and animal husbandry. For the purposes of this Note, urban farming will generally be used to discuss community gardens and market gardens. Large-scale farming and animal husbandry also relate to the general discussion of this Note and the problems with current legislative frameworks, but are generally outside the scope of this Note.

<sup>31</sup> See ENP & ASSOCIATES, FLINT URBAN AGRICULTURE LEGAL FRAMEWORK BACKGROUND REPORT, [hereinafter *Flint Report*], [http://www.thelandbank.org/downloads/Urban\\_Food\\_Gardening\\_Report.pdf](http://www.thelandbank.org/downloads/Urban_Food_Gardening_Report.pdf) (last visited Aug. 25, 2012) (noting the trend of urban agriculture, beginning with non-profit organizations and discussing the different non-

## 224 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47]

Non-profit groups strive to improve the quality of living for downtrodden individuals through gardening empowerment.<sup>32</sup>

Communities gravitate towards urban agriculture for its economic and social benefits.<sup>33</sup> Urban farming improves the quality of life for the urban poor.<sup>34</sup> Increased amounts of trees and vegetation improve the aesthetics of the community as well as raise property values, reduce crime, and promote a greater sense of community.<sup>35</sup> Gardens “draw[] people out of their homes[,] and with more individuals present in the community, crime can be reduced.”<sup>36</sup> Using once vacant lots can attract green investors into the area.<sup>37</sup> Produce yielded from urban agriculture

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profit organizations in Seattle, Washington; Cleveland, Ohio; Philadelphia, Pennsylvania; and Toronto, Ontario promoting urban agriculture); *see also* GALLAGHER, *supra* note 4, at 47–53 (noting several community projects started in Detroit with the purpose of bringing communities together and helping individuals affected by domestic violence, recently released ex-prisoners, or inner-city school children to instill a strong sense of community and provide individuals with some positive purpose in the community).

<sup>32</sup> *See Garden Program*, *supra* note 29 (encouraging urban agriculture, a thriving local food system in Detroit, and providing resources, including seeds, to growers); *About RUAF Foundation*, RUAF FOUNDATION, <http://www.ruaf.org/node/513> (last visited Sept. 15, 2011) (providing training, technical support, and policy advice to local and national governments to stimulate urban agriculture as well as empower male and female urban residents); *see also* Choo, *supra* note 10, at 42 (using Urban Tree Connection as an example of a non-profit organization in Philadelphia supporting renewal efforts in low-income communities through urban farming).

<sup>33</sup> Dunn, *supra* note 11, at 53; RUAF FOUNDATION, *supra* note 28; *see* GALLAGHER, *supra* note 4, at 42–43 (explaining that urban farming does have monetary benefits, but it more importantly provides a way for the community to work together and decreases the need for charity); Voigt, *supra* note 30, at 544–46 (describing the tangible benefits that result from introducing urban farming into blighted communities, including health, environmental, and economic benefits).

<sup>34</sup> Dunn, *supra* note 11, at 45–54; Voigt, *supra* note 30, at 543.

<sup>35</sup> Mark A. Benedict & Edward T. McMahon, *Green Infrastructure: Smart Conservation for the 21<sup>st</sup> Century*, 20 RENEWABLE RES. J. 12, 14 (2002); Dunn, *supra* note 11, at 47–48; *see, e.g.*, GALLAGHER, *supra* note 4, at 47 (explaining that urban farming efforts in areas like Havana, Cuba enhance “the independence of urban gardeners, freeing them from the clutches of the giant agribusinesses that dominate the food economy”). For cities like Detroit, urban farming helps to address health concerns and the availability of food, as well as instills a shared goal for community social change and a way to heal the environment and food system. GALLAGHER, *supra* note 4, at 47.

<sup>36</sup> Dunn, *supra* note 11, at 48; *see* JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 34–35 (1992) (noting that when people are outside, they watch the community and their outside presence improves community safety).

<sup>37</sup> *See* David Whitford, *Can Farming Save Detroit?*, FORTUNE (Dec. 29, 2009), [http://money.cnn.com/2009/12/29/news/economy/farming\\_detroit.fortune/](http://money.cnn.com/2009/12/29/news/economy/farming_detroit.fortune/) (discussing the large-scale for-profit enterprise that John Hantz hopes to build within Detroit city limits in an effort to create jobs, address urban blight, and supply fresh produce for local and national consumers); *see also* Dunn, *supra* note 11, at 50 (explaining that greener cities attract safe and reliable jobs, both for low-income and skilled employees, in

can also be sold for a profit.<sup>38</sup> Moreover, introducing urban farming can decrease costs for blighted cities by lowering municipal maintenance costs of vacant land.<sup>39</sup>

Urban farming also has environmental and health benefits.<sup>40</sup> Food costs decrease because communities growing produce have access to affordable food that is healthier and more nutritious than the food generally available in blighted areas.<sup>41</sup> Produce from community gardens lower fossil fuel consumption for transportation, require less packaging, and lower food waste.<sup>42</sup> Similarly, air and water quality improve with increased foliage in the city.<sup>43</sup>

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construction, maintenance, installation, architecture, and engineering); Voigt, *supra* note 30, at 545 (mentioning Hantz's interest in commercial farming within the city limits of Detroit).

<sup>38</sup> RUAF FOUNDATION, *supra* note 28; see LaCroix, *supra* note 16, at 236–37 (discussing Cleveland's urban farming market garden that allows individuals or groups of individuals to grow and harvest crops for a profit). In the United States, there is an increasing demand for locally grown food, and cities participating in urban farming can capitalize on this trend. For a city as large as Detroit, it is projected that locally grown produce could generate \$200 million in sales and approximately 5,000 jobs. John E. Mogk, Sarah Kwiatkowski & Mary J. Weindorf, *Promoting Urban Agriculture as an Alternative Land Use for Vacant Properties in the City of Detroit: Benefits, Problems and Proposals for a Regulatory Framework for Successful Land Use Integration*, 56 WAYNE L. REV. 1521, 1531 (2012).

<sup>39</sup> Choo, *supra* note 10, at 47 ("Vacancy results in blighted blocks, high maintenance costs and uncollected taxes."); see Voigt, *supra* note 30, at 543 (promoting the potential of urban agriculture to clean up and utilize vacant lots, in order to alleviate city suffering from urban blight). Urban farming helps improve areas, creating more attractive communities, which raises the city's housing values and in turn will raise Detroit's tax base. Mogk et al., *supra* note 38, at 1531–32.

<sup>40</sup> Voigt, *supra* note 30, at 543–46; see LaCroix, *supra* note 16, at 236 (explaining that urban agriculture can alleviate the food desert phenomenon that contributes to poor nutrition in urban areas); CLEVELAND LAND LAB AT THE CLEVELAND URB. DESIGN COLLABORATIVE, CLEVELAND CITY PLANNING COMM'N, REIMAGINING A MORE SUSTAINABLE CLEVELAND: CITYWIDE STRATEGIES FOR REUSE OF VACANT LAND 32 (2008), <http://www.reconnectingamerica.org/assets/Uploads/20090303ReImaginingMoreSustainableCleveland.pdf> (promoting urban agriculture as a way to stabilize neighborhoods and provide permanent access to local food).

<sup>41</sup> Dunn, *supra* note 11, at 52. Normally, indigent individuals pay a considerable amount for produce in urban areas; however, city farming creates food security that is affordable. *Id.*; see LaCroix, *supra* note 16, at 236 (using Cleveland as an example of a city advocating for urban agriculture as a way to increase the availability of nutritious food). In a city like Detroit, urban farming helps to restore the nutritional gap for indigent communities, providing fresh produce and giving poorer communities access to nutritional foods that before was unavailable. GALLAGHER, *supra* note 4, at 47. See RUAF FOUNDATION, *supra* note 28 (explaining that urban agriculture may improve food intake and food quality); see also Salkin, *supra* note 10, at 627 (noting that urban farming alleviates food insecurity in impoverished areas and also promotes healthy eating to combat the increasing rates of obesity and diabetes).

<sup>42</sup> Voigt, *supra* note 30, at 544; see KATHERINE H. BROWN & ANNE CARTER, URB. AGRIC. COMM., URBAN AGRICULTURE AND COMMUNITY FOOD SECURITY IN THE UNITED STATES: FARMING FROM THE CITY CENTER TO THE URBAN FRINGE 4 (2003) (advocating for increasing

## 226 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47]

While urban farming provides a variety of benefits, urban dwellers still question whether farming can improve the quality of city life.<sup>44</sup> Some residents doubt that urban farming will be permanent, because there is a high likelihood that farms will be replaced with other profitable ventures.<sup>45</sup> Similarly, difficulties arise in regulating urban agriculture with zoning laws and state legislation.<sup>46</sup> An examination of

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local food consumption to reduce fossil fuel used for food production and to reduce food packaging and waste).

<sup>43</sup> Voigt, *supra* note 30, at 544; see Choo, *supra* note 10, at 46 (explaining that “allowing rain to soak into the soil instead of running off concrete into sewers” helps manage storm water); Dunn, *supra* note 11, at 46 (observing that increased vegetation keeps rainwater out of storm and sewer systems, decreasing overflow). Water is also absorbed and cleansed as a result of increased vegetation. *Id.* Water improvements are a result of water flowing back into surface water resources or recharging groundwater instead of overflowing in the city. *Id.*

<sup>44</sup> See Christine MacDonald, *Neighborhood Skeptical of Urban Farming Project*, DETROIT NEWS, Aug. 19, 2011, at A1 (reporting that residents are concerned that the large-scale farming interest will drive out well-established residents and create a glorified plantation). See generally GALLAGHER, *supra* note 4, at 39–72 (addressing compelling concerns regarding soil quality of overused city plots, urban inexperience with pesticides, and other agricultural advancements posing safety and health problems for communities); *Seeds of Progress*, *supra* note 3 (interviewing Detroit community members about concerns over implementing pesticides into urban communities). But see GALLAGHER, *supra* note 4, at 52–57 (explaining that potential problems with urban farming can be addressed before they negatively impact the city gardening movement). Soil issues can, for example, be resolved by raising plants like sunflowers that clean up soils, removing contaminants over time through a process called phytoremediation, while other farmers may import their own soil to avoid any issue with soil contaminants. *Id.* at 55. In addition, most gardens and farming efforts occur on small plots of land so the risk from improper pesticide use is less likely. See *id.* at 61 (noting that the vast majority of gardens in Detroit are typically smaller than forty by forty feet, which translates into less than five percent of an acre).

<sup>45</sup> See MacDonald, *supra* note 44 (reporting community concerns that urban agriculture efforts will be disruptive and merely short-term attempts to improve the area); see Choo, *supra* note 10, at 48 (noting that, in general, cities are hesitant to extend long-term leases to urban gardens). Choo points out that “even cities in states that have created land banks may balk at offering long-term leases to urban gardens and farms for fear they won’t be able to make properties available for potentially more lucrative uses by other investors later on . . . [U]rban agriculture needs longevity to reach its potential . . .” *Id.* If urban farming was legitimized, both state and city regulation could negotiate viable land for competing interests, while ignoring the urban farming movement and the potential for improving the quality of living for urbanites ignores the potential alleviation urban farming would give to municipal problems. See *id.* (discussing the shortcomings in current urban farming legislation, particularly in Detroit and Philadelphia, where tension exists between municipalities and urban farmers). Still not every vacant lot should be used to support urban agriculture. *Id.* at 70. Instead, urban agriculture “should be a larger movement toward sustainable approaches to food production” and sustainable cities. *Id.* Some of the best vacant lots for urban agriculture are in the outskirts of the city or in areas where it is unlikely to find a market for profitable ventures. *Id.*

<sup>46</sup> See *infra* Part III.A (analyzing the difficulty of using zoning restrictions and state legislation to regulate urban agriculture).

both zoning and nuisance laws is necessary to understand the difficulties in addressing urban agriculture.

### C. Zoning and Nuisance Laws

Nuisance laws were created for the following reasons: (1) to avoid harmful or annoying activity; (2) to identify harm caused by an activity; or (3) to provide legal liability arising from the activity or the harm caused by an activity.<sup>47</sup> With the advent of suburbanization, nuisance laws gained support.<sup>48</sup> As urban populations expanded out of the cities and encroached on farming land, normal farming operations became a nuisance to new suburban homeowners.<sup>49</sup> To remedy the situation, suburbanites brought nuisance suits to address noise, water, and odor pollution resulting from farming activities.<sup>50</sup> Nuisance laws, however,

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<sup>47</sup> Richard O. Faulk & John S. Gray, *Alchemy in the Courtroom? The Transmutation of Public Nuisance Litigation*, 2007 MICH. ST. L. REV. 941, 947 (2007). (“Nuisance law arose from the need to abate ‘bothersome activities’ [or conduct], usually conducted on a defendant’s land, that unreasonably interfered either with the rights of other private landowners or, in the case of public nuisance, with the rights of the general public.”). See generally Robert Abrams & Val Washington, *The Misunderstood Law of Public Nuisance: A Comparison with Private Nuisance Twenty Years After Boomer*, 54 ALB. L. REV. 359, 360–65 (1990) (explaining the difference between public and private nuisance is frequently relevant today only in theory, though there are notable differences between public and private nuisance). Traditional private and public nuisance are described as differing in three important ways:

1. Public nuisance does not necessarily involve an interference with the private enjoyment of private property; rather the interference is with a public right, usually relating to public health and safety or substantial inconvenience or annoyance to the public.

2. The interest affected by a public nuisance must be shared by the general public, although this concept is stated and interpreted in various ways.

3. Public nuisance actions are brought by a government official with the jurisdiction and authority to represent the public at large, while private nuisance actions are brought by private individuals suffering an interference in the enjoyment of their private property. The exception, of course, is the right of a private citizen to bring an action against a public nuisance if special damages can be shown—the public nuisance tort.

*Id.* at 364–65 (footnotes omitted).

<sup>48</sup> Alexander A. Reinert, *The Right to Farm: Hog-Tied and Nuisance-Bound*, 73 N.Y.U. L. REV. 1694, 1697 (1998).

<sup>49</sup> *Id.* (noting that residents unfamiliar with the smell and sounds of farm life bombarded farmers with complaints); see Margaret Rosso Grossman & Thomas G. Fischer, *Protecting the Right to Farm: Statutory Limits on Nuisance Actions Against the Farmer*, 1983 WIS. L. REV. 95, 105–07 (1983) (discussing different issues suburbanites experience when moving closer to farms).

<sup>50</sup> Grossman & Fischer, *supra* note 49, at 105–06. Standards vary in judicial decisions. *Id.* Water and odor pollution required examining the following:

## 228 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47]

were unable to manage and mitigate land use conflicts effectively. Consequently, zoning laws were created.<sup>51</sup>

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[I]n water pollution nuisance cases, [the] courts [must] decide whether an interference is unreasonable without considering surrounding land use patterns. . . . [I]n odor nuisance cases, the defendant's location is the most important factor in judicial balancing. Rural landowners are expected to tolerate some odors that might be characterized as a nuisance in a nonagricultural area, but at some point the interference becomes so overwhelming that the odor constitutes a nuisance even in an agricultural area.

*Id.*

<sup>51</sup> Voigt, *supra* note 30, at 546; see Matthew J. Parlow, *Greenwashed?: Developers, Environmental Consciousness, and the Case of Playa Vista*, 38 B.C. ENVTL. AFF. L. REV. 513, 515 (2008) (discussing the implementation of zoning laws in the twentieth century as a result of municipalities being unable to address all the land use conflicts emerging from growth). Over time, the Supreme Court validated zoning laws and stressed the importance of local government. See LaCroix, *supra* note 16, at 240–46 (noting several cases that established the current framework for zoning regulations). In 1926, the Supreme Court held that municipalities can choose their own ways to regulate land use, bearing public interest in mind, and that this legislation was constitutional. *Vill. of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 396–97 (1926) (holding that cities can choose their own view of how to regulate land use with public interest in mind); see LaCroix, *supra* note 16, at 240–41 (stressing that the Supreme Court held that municipalities could exercise their own judgment in land use considering the health, safety, and welfare of their residents, but municipalities did not need to consider neighboring cities). In *Euclid*, “[t]he Supreme Court upheld the power of municipalities to zone based on the [public] ‘health, morals, safety, and general welfare . . .’” Reinert, *supra* note 48, at 1704. After *Euclid*, “zoning became [] entrenched in the land use policies of urban areas.” *Id.* In *Berman v. Parker*, the Supreme Court held that the government has a valid interest in renewing blighted cities, even if it negatively affects individuals. *Berman v. Parker*, 348 U.S. 26, 35–36 (1954) (holding an urban renewal project as constitutional that “razed” an entire blighted neighborhood even though all the houses in the neighborhood were not blighted); see LaCroix, *supra* note 16, at 245 (quoting *Berman*'s decision that legislation has the power to determine that the community should be beautiful, healthy, spacious, clean, and well-balanced). The Ninth Circuit reiterated that local government has ranging interests in seeking to protect the public with zoning and growth management. See *Constr. Indus. Ass'n of Sonoma Cnty. v. City of Petaluma*, 522 F.2d 897, 907–08 (9th Cir. 1975) (stressing that local governments may seek to protect public interests with zoning and growth management proposals); LaCroix, *supra* note 16, at 242–47 (discussing the importance of *Petaluma* in creating the current framework for zoning regulations). The *Petaluma* decision emphasized that the government has sufficiently broad discretion in determining zoning regulations. 522 F.2d at 908–09 (“We conclude therefore that . . . the concept of the public welfare is sufficiently broad to uphold *Petaluma*'s desire to preserve its small town character, its open spaces and low density of population, and to grow at an orderly and deliberate pace.”); see LaCroix, *supra* note 16, at 244 (explaining that the court gives great deference to local planning and relies on a municipality's good faith in carrying out its plan). *Petaluma* affirmed a notion introduced in *Golden v. Planning Board of Ramapo*, where the court concluded that zoning includes the authority to direct the growth of a population for the purpose of public interest and welfare. *Golden v. Planning Bd. of Ramapo*, 285 N.E.2d 291, 305 (N.Y. 1972) (establishing that local authorities have the ability to plan and invent ways to solve local problems with population sprawl and land use); see LaCroix, *supra* note 16, at 244

Municipalities introduced zoning laws to resolve land use conflicts in advance and reduce the number of nuisance lawsuits.<sup>52</sup> The federally enacted Standard Zoning Enabling Act allowed for the division of different land uses into physically distinct zones, segregating incompatible land uses.<sup>53</sup> States delegated the ability to create zoning laws to local governments through the state's police power, and municipal ordinances regulated a variety of land uses, including agriculture.<sup>54</sup> Zoning laws divide land into districts with separately

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(highlighting the importance of the *Ramapo* decision as one of the foundations of the smart growth movement and other inventive uses of the land use system, as well as allowing local governments to develop regulation for its unique land use problems).

<sup>52</sup> Reinert, *supra* note 48, at 1703 ("Zoning is the flip side of nuisance law. Where nuisance law relies on judges to resolve conflicts in land use, zoning vests municipalities with the prescriptive right to resolve land use conflicts in advance."); see 66 C.J.S. *Nuisances* § 30 (2011) (explaining the relation between private nuisance lawsuits and zoning ordinances). Furthermore, "[a] land use may comply with the local zoning ordinance and other relevant regulations, but still constitute a nuisance because of the conditions or manner of operation of the use." *Id.* See, e.g., *City of Fargo v. Salsman*, 760 N.W.2d 123, 128 (N.D. 2009) (holding that a property was a nuisance and that any permitted uses given by the city under the zoning ordinances were not exercised properly, so the owner lost the protection normally afforded by the zoning ordinance). Zoning was widely adopted as a means to regulate land use in the 1960s, and it was not until the 1970s that rural areas introduced zoning. Reinert, *supra* note 48, at 1704. Once zoning ordinances are enacted, they can remain unchanged for long periods of time. See, e.g., *Flint Report*, *supra* note 31, at 2 (explaining that Flint, Michigan has not undergone significant revisions in its zoning ordinances for over twenty years). In fact, many cities have zoning ordinances that need updating. See Choo, *supra* note 10, at 44 (suggesting that many cities have ordinances that have not undergone significant revisions for decades). Choo stresses that "[c]ities across the country are scrambling to update ordinances to regulate--and often facilitate--a variety of agricultural activities." *Id.*

<sup>53</sup> LaCroix, *supra* note 16, at 239; Voigt, *supra* note 30, at 546. See generally ADVISORY COMM. ON ZONING, A STANDARD STATE ZONING ENABLING ACT: UNDER WHICH MUNICIPALITIES MAY ADOPT ZONING REGULATIONS (rev. ed. 1926) [hereinafter ADVISORY COMM. ON ZONING], <http://www.planning.org/growingsmart/pdf/SZEnablingAct1926.pdf> (creating some form of zoning legislation in all states so that zoning ordinances are similar nationwide, even though they are a matter of state and local law). The purpose of the Act stated the following:

For the purpose of promoting health, safety, morals, or the general welfare of the community, the legislative body of cities and incorporated villages is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes.

ADVISORY COMM. ON ZONING, *supra*, at 4-5 (internal citations omitted).

<sup>54</sup> LaCroix, *supra* note 16, at 239; Voigt, *supra* note 30, at 547; see BARLOW BURKE, UNDERSTANDING THE LAW OF ZONING AND LAND USE CONTROLS 3-5 (2d ed. 2009) (describing the scope of police power and its relationship with local land use authority). Some municipalities divide districts into agricultural districts. Voigt, *supra* note 30, at 547.

## 230 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47]

proscribed rules outlining acceptable structures and uses permitted within the area. In addition, zoning laws can create design requirements that limit building heights, restrict yard sizes, or otherwise dictate aesthetic design or placement of structures.<sup>55</sup> Agricultural ordinances, for example, restrict areas available for raising animals, or limit the concentration of residents, designating whole plots of land for agricultural purposes.<sup>56</sup> Agricultural practices often are further regulated by state legislation, like “Right to Farm” laws.

Right to Farm laws were enacted as an alternative way to curtail conflicts between farmers and suburbanites as well as preserve shrinking farmland.<sup>57</sup> State governments enacted Right to Farm laws so that agricultural operations were not presumed to be a nuisance.<sup>58</sup> Right to

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Others incorporate urban agriculture as a set of permitted, conditional, or forbidden uses, and still other municipalities do not specify whether agricultural activities are permitted.

*Id.*

<sup>55</sup> Voigt, *supra* note 30, at 547; *see, e.g.*, SEATTLE, WASH., ORDINANCE 123378 (Aug. 16, 2010), <http://clerk.ci.seattle.wa.us/~scripts/nph-brs.exe?s1=&s3=116907&s4=&s2=&s5=&Sect4=AND&l=20&Sect2=THESON&Sect3=PLURON&Sect5=CBORY&Sect6=HITOFF&d=ORDF&p=1&u=%2F~public%2Fcbory.htm&r=1&f=G> (explaining the appropriate requirements for community gardens within the city of Seattle, including limitations on the height of gardening structures as well as how much land a garden can consume within Seattle). Generally, zoning laws are detail-oriented and can potentially become overly detailed. *See* Choo, *supra* note 10, at 70 (using Kansas City, Missouri as an example of an overly detailed municipal zoning ordinance regulating agricultural use within the city).

<sup>56</sup> Voigt, *supra* note 30, at 548; *see* Nina Mukherji & Alfonso Morales, *Zoning for Urban Agriculture*, ZONING PRAC., Mar. 2010, at 2 (discussing how zoning codes affect residents interested in urban farming).

<sup>57</sup> Reinert, *supra* note 48, at 1697; *see* Grossman & Fischer, *supra* note 49, at 117 (discussing the advent of Right to Farm legislation as a method to curtail nuisance suits brought against farmers); *see, e.g.*, Steven J. Laurent, Note, *Michigan's Right to Farm Act: Have Revisions Gone Too Far?*, 2002 L. REV. MICH. ST. U. DET. C. L. 213, 240 (2002) (suggesting that the original intention of Michigan's Right to Farm Act was to protect the loss of family farms). Scholars have argued that over time Right to Farm laws have shifted away from protecting family farms. *Id.* Today the majority of Right to Farm laws focus on enacting laws that protect agribusiness. *Id.*

<sup>58</sup> Grossman & Fischer, *supra* note 49, at 117; *see* Terence J. Centner, *Governments and Unconstitutional Takings: When do Right-to-Farm Laws Go Too Far?*, 33 B.C. ENVTL. AFF. L. REV. 87, 94–95 (2006) (analyzing the protection mechanisms created by Right to Farm laws). Initially, Congress did not regulate farmland protection and, instead, delegated that duty to the states because they believed that farmland preservation was a local matter; however, over time Congress passed legislation that addressed farmland conservation. Amanda R. Wishin, Note, *Soy and the City: The Protection of Indiana's Agricultural Land in Light of Biofuel Issues*, 42 VAL. U. L. REV. 1017, 1023 (2008). Centner notes that “[t]he first approach [of protection under Right to Farm laws] incorporates a coming to the nuisance doctrine that requires the activity to predate conflicting land uses before the operation qualifies for the law’s protection against nuisance lawsuits.” Centner, *supra*, at 94. *See Fact Sheet: Right-to-Farm Laws*, FARMLAND INFORMATION CENTER (Sept. 1998), [http://www.farmlandinfo.org/documents/27747/FS\\_RTF\\_9-98.pdf](http://www.farmlandinfo.org/documents/27747/FS_RTF_9-98.pdf) [hereinafter *Fact Sheet*] (outlining how courts analyze complaints against farming operations); *Right to Farm Laws: History and Future*, FARM

Farm legislation protects farming operations from municipal zoning regulations that establish certain practices as nuisances.<sup>59</sup> Most Right to Farm acts were passed at the state level between 1978 and 1983 and exist in some form in all fifty states.<sup>60</sup> Many of these acts set forth “generally

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FOUNDATION.ORG 4 (last visited Oct. 29, 2011) [hereinafter *Right to Farm Laws: History and Future*], <http://www.farmfoundation.org/news/articlefiles/129-hipp.pdf> (offering various criticisms of Right To Farm statutes). Typically, to protect a farmer under a Right to Farm statute, an individual must: (1) conduct agricultural activities on farmland; (2) the operation must conform with all federal, state, and local laws; and, (3) the operation must have been established prior to the inception of conflicting nonagricultural activities. *Nuisances*, *supra* note 52, § 19.

<sup>59</sup> Reinert, *supra* note 48, at 1697–98. Reinert notes “[w]hen new residents successfully sue farmers on a nuisance theory, the farmers often are forced to abandon their livelihood and sell their land to developers. In addition as nonfarmers begin to outweigh farmers in the local political process, municipalities use their zoning power to ‘zone out’ offensive agricultural uses.” *Id.* at 1697 (footnotes omitted). Over time, Right to Farm legislation has been amended to have different meanings and requirements than the original enactments. Centner, *supra* note 58, at 94. The following are five significant approaches to protect farming operations from nuisance lawsuits:

The first approach incorporates a coming to the nuisance doctrine that requires the activity to predate conflicting land uses before the operation qualifies for the law’s protection against nuisance lawsuits. Second, some statutes restrain nuisance lawsuits by adopting a statute of limitations whereby persons who fail to file a nuisance lawsuit within a time period are precluded from maintaining a nuisance action. . . . [Right to Farm acts] allow[] operations to expand and adopt production changes. Fourth, qualifying management practices are employed to delineate the scope of nuisance protection in some laws. Finally, an approach adopted by a few statutes involves expansive immunity that raises questions about the constitutional rights of neighbors.

*Id.* at 94–95 (footnotes omitted).

<sup>60</sup> Reinert, *supra* note 48, at 1695–96; see Grossman & Fischer, *supra* note 49, at 117 (noting that the language of the various Right to Farm statutes differ, and the effectiveness of the statute depends, among other things, on the language of a particular statute). The Farmland Information Center has described a Right to Farm action as the following:

In a private nuisance lawsuit involving complaints against a farming operation, the court must decide whether the farm practices at issue are unreasonable. To make this decision, courts generally weigh the importance of the activity to the farmer against the extent of harm to the neighbor or community, taking into account the following factors: the degree of harm and its duration, permanence, and character[;] . . . [t]he social value that state and local law places on both farming and the type of neighboring use that has been harmed; [t]he suitability of the two sets of uses to the character of the locality; and [t]he ease with which the neighbor could avoid the harm, and the farmer’s ability to prevent or minimize the undesirable external effects of the farming operation.

*Fact Sheet*, *supra* note 58. Reviewing Right to Farm legislation with a standard of reasonableness results in consistently more favorable outcomes for farmers than for residents. *Right to Farm Laws: History and Future*, *supra* note 58, at 4.

## 232 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47]

accepted agricultural management practices” (GAAMPS) to protect certain farming operations if the farm conforms to the voluntary standards.<sup>61</sup> A typical Right to Farm act also protects agricultural production so long as certain requirements are met.<sup>62</sup> Specifically, agricultural production will be protected so long as: (1) there is no change in farming operations, (2) the action is brought within the appropriate time period, and (3) the agricultural production predates the residential owner in bringing any nuisance action.<sup>63</sup>

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<sup>61</sup> Pothukuchi, *supra* note 3; *see, e.g.*, MICH. COMP. LAWS ANN. § 286.474(1) (West 2003) (explaining that a director investigates any complaints involving “the use of manure and other nutrients, agricultural waste products, dust, noise, odor, fumes, air pollution, surface water or groundwater pollution, food and agricultural processing by-products, care of farm animals, and pest infestations” and must conduct an on-site inspection within seven days, notifying the city as well as the farmer as to whether the farmer is within the GAAMPS determined as acceptable by the Michigan Commission of Agriculture); *infra* note 112 (describing how Michigan’s GAAMPS standards operate); *see also, e.g.*, ARIZ. REV. STAT. ANN. § 3-112 (2002) (finding “[a]gricultural operations conducted on farmland that are consistent with good agricultural practices” to be presumed reasonable); COLO. REV. STAT. § 35-3.5-102 (2004) (protecting agricultural operations using methods commonly or reasonably associated with agricultural production); CONN. GEN. STAT. ANN. § 19a-341 (West 2003 & Supp. 2005) (safeguarding agricultural operations that conform to generally accepted management practices); FLA. STAT. ANN. § 823.14 (West 2000 & Supp. 2004) (noting that farming operations that follow GAAMPS will not be considered a nuisance); LA. REV. STAT. ANN. § 3:3603 (2003) (protecting persons engaged in agricultural operations conducted in accordance to generally accepted agricultural practices or traditional practices); MASS. GEN. LAWS ch. 111, § 125A (2004) (finding farming that is practiced using the normal generally acceptable farming procedures will not be deemed a nuisance); MINN. STAT. ANN. § 561.19 (West 2000 & Supp. 2005) (defining generally accepted agricultural practices to mean those practices commonly used by other farmers in the county or contiguous county in which a nuisance claim is asserted); N.J. STAT. ANN. § 4:1C-10 (West 1998 & Supp. 2005) (protecting farming operations that follow the agricultural management practices adopted by the state’s committee); OHIO REV. CODE ANN. § 929.04 (West 1994) (defending agricultural activities from nuisance lawsuits that are not in conflict with generally accepted agricultural practices); TENN. CODE ANN. § 43-26-103 (2000 & Supp. 2004) (presuming that farming operations that conform to generally accepted agricultural practices are not a nuisance); UTAH CODE ANN. § 78B-6-1104 (West 2002) (finding farming activities conducted in the normal and ordinary course of agricultural operations to be reasonable); WASH. REV. CODE ANN. § 7.48.305 (West 1992 & Supp. 2005) (presuming that farming and forestry practices are not a nuisance if they are consistent with good agricultural and forest practices); WYO. STAT. ANN. § 11-44-103 (2005) (holding that farm or ranch operations are not a nuisance if the operation conforms to GAAMPS).

<sup>62</sup> *See* Grossman & Fischer, *supra* note 49, at 127–29 (discussing how changes in farming operations are often not protected under Right to Farm statutes); *see also* Centner, *supra* note 58, at 94–95 (noting the five major ways that Right to Farm statutes are able to protect farmers); Reinert, *supra* note 48, at 1708–14 (describing the overall scope of protection available under Right to Farm laws).

<sup>63</sup> *See* Reinert, *supra* note 48, at 1708–14 (describing the overall scope of protection available under Right to Farm laws); *see, e.g.*, Payne v. Skaar, 900 P.2d 1352 (Idaho 1995) (holding that an expansion in a cattle feeding farm was a substantial change that was not protected under Idaho’s Right to Farm statute because the feedlot operation resulted in

Currently, most Right to Farm acts and agricultural legislation regulate larger farming operations.<sup>64</sup> The statutes have evolved over time to address a variety of modern agricultural endeavors.<sup>65</sup> While Right to Farm legislation protects farmers, it deprives landowners of the

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intolerable odors, dust, and flies in surrounding neighborhoods); *Jerome Twp. v. Melchi*, 457 N.W.2d 52 (Mich. 1990) (holding that an apiary was not protected under Right to Farm statutes and was subject to zoning laws because the commercial apiary was not in use before the residential classification of the area and consequently was subject to residential zoning laws); *Durham v. Britt*, 451 S.E.2d 1 (N.C. Ct. App. 1994) (holding that a change from a turkey farm to a hog production facility was not protected under North Carolina's Right to Farm law because the operational change was significant and could cause additional unforeseen nuisance issues). *But see, e.g., Laux v. Chopin Land Assocs., Inc.*, 550 N.E.2d 100 (Ind. Ct. App. 1990) (finding that expanding a hog farm from 29 feeder hogs in one summer to 300 feeder hogs did not constitute a significant change in agricultural production to lose protection under Indiana's Right to Farm Act).

<sup>64</sup> *See* ALA. CODE § 6-5-127 (1993) (listing industrial plants or establishments as qualifying for protection); IOWA CODE § 352.2 (West 2008) (defining protected farming operations as activities connected with commercial production); MICH. COMP. LAWS ANN. § 286.472 (West 2003) (defining protected farming operations as commercial facilities); MO. REV. STAT. § 537.295(1)-(2) (West 2010) (protecting commercial farming from nuisance actions); N.J. STAT. ANN. §§ 4:1C-3, 4:1C-10 (West 1998 & Supp. 2005) (defining farming protected by New Jersey's Right to Farm Act as farming expanding over five acres and worth more than \$2,500 annually); OHIO REV. CODE ANN. § 929.01(A) (West 1994) (defining farming protected from nuisance laws as commercial); OR. REV. STAT. § 30.930 (West 2009) (protecting farming operations engaged in commercial production of crops); 3 PA. STAT. ANN. § 952 (West 2001) (protecting larger farming production from nuisance laws); WASH. REV. CODE ANN. § 7.48.310 (West 1992 & Supp. 2005) (protecting agriculture that is connected with commercial production); *see also* Pothukuchi, *supra* note 3 (explaining that the Michigan Right to Farm Act was created to protect commercial production and was not intended to govern agriculture occurring inside older cities). *But see* MICH. COMP. LAWS ANN. § 285.252 (West 2003) (developing family farming on agricultural land); N.J. STAT. ANN. § 4:1C-3 (West 1998) (recognizing parcel to parcel farming operations); OHIO REV. CODE ANN. § 929.02 (West 1994) (allowing individuals to petition to add land to agricultural districts, incorporating smaller farms); 3 PA. STAT. §§ 2101-09 (West 2001) (promoting small-sized family farms, including farms developed by non-profit educational institutions to develop sustainable agriculture practices funding and protection); TEX. AGRIC. CODE ANN. § 251.002(1) (West 2007) (defining "agricultural operation" broader than other states, so that smaller farming operations are not excluded); *see also* Reinert, *supra* note 48, at 1722 (explaining that Right to Farm legislation that incorporates agribusiness can have unintended negative consequences when compared to protecting family farms).

<sup>65</sup> Centner, *supra* note 58, at 94 (explaining that courts have found different meanings behind Right to Farm statutes, which both expanded and narrowed the meaning of Right to Farm laws); *see, e.g.,* GA. CODE ANN. § 41-1-7 (West 1997 & Supp. 2005) (protecting farming operations even if conditions have changed, so long as the farm in question is not operating negligently, improperly, or illegally); MICH. COMP. LAWS ANN. § 286.474(6) (West 2003) (protecting Right to Farm laws from being revised or extended in any manner). *But see, e.g.,* *Buchanan v. Simplot Feeders Ltd. P'ship*, 952 P.2d 610 (Wash. 1998) (finding that Washington's Right to Farm statute was constitutional and should be applied narrowly to protect farms from urban encroachment and barred the Buchanans from seeking nuisance damages from odors emanating from Simplot Feeders properties).

## 234 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47]

right to bring a nuisance action against disruptive farming operations.<sup>66</sup> Consequently, landowners constitutionally challenge Right to Farm laws as taking their land without just compensation.<sup>67</sup> In *Bormann v. Board of Supervisors*, for example, the Iowa Supreme Court held that the immunity established by Iowa's Right to Farm Act constituted a *per se* taking and such immunity was unconstitutional.<sup>68</sup> Individuals in a variety of states have attacked Right to Farm acts on constitutional grounds with limited success.<sup>69</sup> This Note now turns to an examination

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<sup>66</sup> Grossman & Fischer, *supra* note 49, at 135; see Centner, *supra* note 58, at 88 (explaining that some Right to Farm laws protect too many agricultural pursuits at the expense of neighboring property owners); see also Reinert, *supra* note 48, at 1695 (arguing that Right to Farm laws privilege agricultural land over neighboring land, resulting in an unnecessary and unjust intrusion on the rights of those whose land conflicts with agricultural practices); Terence J. Centner, *Agricultural Nuisances: Qualifying Legislative "Right-to-Farm" Protection Through Qualifying Management Practices*, 19 LAND USE POL'Y 259, 265 (2002) (implying that Right to Farm laws that provide blanket immunity or permit unreasonable expansion protect too many agricultural practices). Oftentimes, farms are protected simply because they occupied the land first. Reinert, *supra* note 48, at 1710.

<sup>67</sup> Grossman & Fischer, *supra* note 49, at 135 (describing constitutional challenges to Right to Farm laws as Fifth Amendment violations); see, e.g., *Bormann v. Bd. of Supervisors*, 584 N.W.2d 309 (Iowa 1998) (finding that Iowa's Right to Farm Act violated the Fifth Amendment of the Constitution because the government infringed on the rights of property adjoining agricultural land without just compensation). Additionally, Right to Farm laws can be challenged as an infringement on procedural due process and substantive due process rights. Grossman & Fischer, *supra* note 49, at 135 n.174. Procedural due process challenges to an enacted statute, however, are unlikely to succeed because notice and the opportunity to be heard are assumed to be part of the hearings and debates that occur before a statute is enacted. *Id.* A substantive due process challenge is likely to be dismissed, because the Fourteenth Amendment only requires statutes to be supported by a rational basis. *Id.* Right to Farm laws satisfy the rational basis test, because protecting farmland from being converted into nonagricultural uses is a valid and rational government goal. *Id.*

<sup>68</sup> *Bormann*, 584 N.W.2d at 321; see Laurent, *supra* note 57, at 228–29 (considering the holding and reasoning behind the *Bormann* decision that Iowa's farming law was unconstitutional). Plaintiffs filed an action against the Iowa Board of Supervisors, because it established a 960-acre agricultural area that was immune from nuisance suits. *Bormann*, 584 N.W.2d at 311–12; see Centner, *supra* note 58, at 89 (using Iowa's Right to Farm Act and the *Bormann* case as an example of an agricultural statute that protected too many types of farming practices); Laurent, *supra* note 57, at 228 (discussing the *Bormann* case and the case's relation to current controversy surrounding Right to Farm acts in states like Michigan). According to Plaintiffs, the agricultural immunity for the 960 acres amounted to an unconstitutional taking of their adjoining land. *Bormann*, 584 N.W.2d at 312 (1998); see Laurent, *supra* note 57, at 228–29 (discussing the *Bormann* case).

<sup>69</sup> See, e.g., *Charter Twp. of Shelby v. Papesch*, 704 N.W.2d 92 (Mich. Ct. App. 2005) (holding that a township zoning ordinance aimed at limiting poultry production was unenforceable because it was preempted by Michigan's Right to Farm Act and consequently precluded the township from enforcing the requirements against farmers protected under the Right to Farm Act); *Gacke v. Pork Xtra, L.L.C.*, 684 N.W.2d 168, 179 (Iowa 2004) (holding that the statute protecting feeding operations from nuisance lawsuits was an unconstitutional use of the state's police power and violated the rights of property

of how Washington, Ohio, and Michigan vary in their implementation of state and local regulations that restrict agricultural activities and assist in legitimizing urban agriculture.

*D. Current Municipal Efforts to Facilitate Urban Agriculture*

Pressured by residents and advocacy groups, municipalities have considered and enacted a variety of legislation to facilitate urban agriculture.<sup>70</sup> Some cities are currently updating ordinances to encourage the sale of produce as well as animal husbandry.<sup>71</sup> Others have rezoned areas to incorporate long-term community gardens and commercial agriculture.<sup>72</sup> Still others have categorized different agricultural uses and requirements for residential areas.<sup>73</sup> Part II.D.1 discusses Seattle, Washington's regulations that encourage city farming.<sup>74</sup> Part II.D.2 explores Cleveland, Ohio's urban agriculture

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owners adjoining the contested hog farm); *Bormann*, 584 N.W.2d at 321 (holding that the portion of Iowa's Right to Farm statute that provided immunity against nuisance suits was unconstitutional and resulted in a *per se* taking of property adjoining the farming operation without just compensation). *See generally Buchanan*, 952 P.2d 610 (finding that the Right to Farm statute is constitutional and should be applied narrowly to protect farms from urban encroachment, which barred the Buchanans from seeking nuisance damages from odors emanating from Simplot Feeders properties); *Tex. Natural Res. Conservation Comm'n v. Accord Agric., Inc.*, 1999 WL 699825 (Tex. Ct. App. 1999) (dismissing the plaintiff's constitutional challenge against Texas' Right to Farm Act because the plaintiff's complaint did not fall under Right to Farm laws, and the plaintiff was still able to bring a nuisance claim against the defendant).

<sup>70</sup> Mukherji & Morales, *supra* note 56, at 3; Voigt, *supra* note 30, at 555.

<sup>71</sup> *See Choo*, *supra* note 10, at 56 (discussing cities like Cleveland that promote market gardens so that urban farmers can receive a profit for produce); *see, e.g., CLEVELAND, OHIO, ORDINANCE § 347.02* (Feb. 5, 2009) (regulating the types of animals permitted within city limits). Ordinance 347.02 limits the number of chickens, ducks, rabbits, and other similar animals and requires that such animals have a coop or a cage. *Id.* Goats, pigs, and sheep are permitted within city limits so long as they are kept on a parcel of land that is greater than 24,000 square feet. *Id.* Bees are also permitted in city residential areas so long as there are appropriate barriers to protect neighboring properties from harm or disturbance. *Id.* *See also, e.g., SEATTLE, WASH., ORDINANCE § 23.42.052* (2006) (permitting small animals, farm animals, domestic fowl, and bees in all zones as an accessory use to any principal use or as a permitted conditional use). In residential areas, up to four small animals are permitted on lots of at least 20,000 square feet with limitations on the type of pig and domestic fowl. *Id.* Family dwelling units are not permitted to own roosters. *Id.* Farm animals, including cows, horses, and sheep are allowed in lots of at least 20,000 square feet but must be kept at least fifty feet away from other lots in residential zones. *Id.*

<sup>72</sup> *See Choo*, *supra* note 10, at 56 (describing the purpose of the Cleveland revitalization plan); *see, e.g., CLEVELAND, OHIO, ORDINANCE § 336.03* (Mar. 9, 2007) (enacting a separate zoning area for community gardens and produce).

<sup>73</sup> *See Choo*, *supra* note 10, at 56 (noting Cleveland and Seattle zoning regulations that permit animal husbandry).

<sup>74</sup> *See infra* Part II.D.1 (discussing both city and state policies advocating urban agriculture).

## 236 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47]

policies.<sup>75</sup> Part II.D.3 focuses on Detroit, Michigan's absence of ordinances and legislation advocating urban farming.<sup>76</sup>

## 1. Seattle, Washington

Seattle has a history of supporting city agriculture and neighborhood gardening.<sup>77</sup> Unlike more recent city endeavors to encourage urban agriculture, Seattle established a network of gardens in the 1970s, which were leased through a non-profit land trust.<sup>78</sup> In Seattle, urban gardening is part of a comprehensive plan focused on improving the quality of life for residents and addressing developmental pressures.<sup>79</sup>

Since introducing urban agriculture, Seattle has expanded its urban farming initiatives to support the rapidly growing local food movement.<sup>80</sup> The city has updated its land use code, allowing urban

<sup>75</sup> See *infra* Part II.D.2 (illustrating Cleveland's efforts to encourage urban agriculture).

<sup>76</sup> See *infra* Part II.D.3 (describing how Detroit's legislation fails to address urban agriculture).

<sup>77</sup> See Choo, *supra* note 10, at 56, 70 (providing a brief history of Seattle's focus on urban agriculture as a way to improve urban quality of life); *P-Patch Community Gardens – Growing Communities*, SEATTLE.GOV, <http://www.seattle.gov/neighborhoods/ppatch/> (last visited Aug. 5, 2012) [hereinafter *P-Patch*] (explaining that the P-Patch program began in 1973 with the Picardo family who used to farm in one of Seattle's neighborhoods); Erickson et al., *supra* note 29, at 5 (noting that Seattle is considered a leader in urban agriculture primarily due to the work of dedicated communities and progressive state action).

<sup>78</sup> See Choo, *supra* note 10, at 56 (recalling the history of the P-Patch garden, the name commonly used for Seattle's network of neighborhood gardens, and noting that today there are seventy-five P-Patches around the city). P-Patch gardening establishes community gardens throughout the city where neighbors come together to plan, plant, and maintain a piece of open space. *P-Patch*, *supra* note 77. P-Patch Trust, a non-profit organization, oversees seventy-five P-Patches totaling twenty-three acres of land. *Id.* In 2010, P-Patch gardeners donated 20,889 pounds or 41,778 servings of fresh produce to Seattle food banks and feeding programs. *Id.*

<sup>79</sup> Erickson et al., *supra* note 29. For example, P-Patch Community Gardens are neighborhood programs used as restorative spaces, places to gather, visit, and a way to give back to the community. *P-Patch*, *supra* note 78. Market gardening is another program that delivers high-quality, farm-fresh produce to consumers, establishing an economic opportunity for in-city gardeners. *Seattle Market Garden*, SEATTLE.GOV, <http://www.seattle.gov/neighborhoods/ppatch/marketgardens/> (last visited Aug. 25, 2012). Other programs, including youth gardening and community food security, provide indigent, immigrant, and younger Seattle residents an opportunity to grow food for themselves and their families. *P-Patch*, *supra* note 77.

<sup>80</sup> *Seattle City Council Approves Urban Farm and Community Garden Legislation Improving Access to Locally Grown Food*, SEATTLE.GOV (Aug. 16, 2010), <http://www.seattle.gov/council/newsdetail.asp?ID=10996&Dept=28> [hereinafter *Seattle City Council*]; see SEATTLE, WASH., ORDINANCE § 123378 (Aug. 16, 2010); see also SEATTLE, WASH., RESOLUTION § 28610 (Sept. 14, 1992) (stressing Seattle's commitment to protecting urban agriculture, specifically community gardens within city limits). Other cities have followed Seattle's lead and have

farms and community gardens in all zones.<sup>81</sup> Newly introduced zoning regulations require conditional use permits for urban farming in residential zones that a director must approve or deny based on general conditional use criteria.<sup>82</sup> In conjunction with the conditional use permits, the city provides basic parameters for acceptable community gardens within the area.<sup>83</sup> Further, Seattle has increased opportunities for residents to purchase and grow food, even allowing food production on rooftop greenhouses.<sup>84</sup>

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stressed the importance of environmental initiatives within the city. 2 CITY OF MADISON, *Natural and Agricultural Resources*, in CITY OF MADISON COMPREHENSIVE PLAN 6-16 (2006).

<sup>81</sup> SEATTLE, WASH., ORDINANCE § 123378.

<sup>82</sup> See *id.* (emphasizing any odors or fumes in urban farms that are detrimental or noticeable are not allowed to escape into open air); DEPARTMENT OF PLANNING AND DEVELOPMENT, CITY OF SEATTLE, URBAN AGRICULTURE (Nov. 17, 2010) (providing a description of what urban farming is acceptable within city limits in layman's terms). The conditional permit pertains to residential areas that may require an administrative conditional use permit that is approved, conditioned, or denied by the administrative director based on the potential impact. SEATTLE, WASH., ORDINANCE § 123378. The conditional use permit requires applicants to create a management plan that addresses any probable impact and mitigation efforts. *Id.* Some larger urban farming initiatives require management plans that address equipment, chemical sprays, or pesticides the farmer intends to use and an anticipated drainage plan, or a sediment and erosion plan for the farm. *Id.* These plans may also be required to address any issues concerning water and soil quality, as well as odors and fumes resulting from the farm. *Id.*

<sup>83</sup> SEATTLE, WASH., ORDINANCE § 123378. Seattle has adopted the following parameters for urban farming in residential areas:

Community gardens:

A. In all zones, the total gross floor area of all structures for community garden use may not exceed 1,000 square feet on any lot.

B. In all zones, structures for community garden use are limited to [twelve] feet in height, including any pitched roof.

C. Structures for community garden use are subject to the development standards of the zone as they apply to accessory structures.

*Id.*

<sup>84</sup> *Seattle City Council*, *supra* note 80. The Seattle City Council approved additional urban farming legislation to support the rapidly growing local food movement. *Id.* Urban farming is permitted in all zones, with some limitations in industrial zones, and residents can sell food grown from their own property. *Id.* Recently enacted ordinances increase the opportunities for Seattle residents to purchase and grow produce within city limits. *Id.* The regulations increase the number of places where food production is allowed, including rooftop greenhouses that are shorter than fifteen feet. *Id.* According to the new ordinance, retail sales of produce are permitted "no earlier than 7:00 a.m. and [must] end by 7:00 p.m. every day of the week." SEATTLE, WASH., ORDINANCE § 123378. Commercial deliveries and pickups are limited to once a day. *Id.* The Seattle City Council hopes that such legislation will improve food stability and security in the city so that more people have healthy food choices. See *Seattle City Council*, *supra* note 80 (highlighting the projected benefits from expanding urban farming regulations in Seattle).

## 238 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47]

Washington also has legislation that relates to urban agriculture.<sup>85</sup> In 1990, Washington created the Growth Management Act to address issues, such as rapid population growth, suburban sprawl, and environmental protection, among other things.<sup>86</sup> This Act has been repeatedly amended and requires growing counties to plan extensively to maintain the state's goals of reducing sprawl, concentrating urban growth, and protecting the environment.<sup>87</sup>

Additionally, Washington's Right to Farm legislation protects farmland and forest practices from nuisance lawsuits if, among other things, the practices are consistent with good agricultural practices.<sup>88</sup> The Washington courts have interpreted the State's Right to Farm Act to protect only established farms and farming practices threatened by

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<sup>85</sup> Erickson et al., *supra* note 29, at 9; see WASH. REV. CODE ANN. § 36.70A (West 1992) (explaining the goals and expectations of the Growth Management Act).

<sup>86</sup> WASH. REV. CODE ANN. § 36.70A; Erickson et al., *supra* note 29, at 9; *Comprehensive Planning/Growth Management*, MUN. RESEARCH & SERVS. CTR. WASH. (updated June 2011), <http://www.mrsc.org/subjects/planning/compplan.aspx> [hereinafter *Comprehensive Planning/Growth Management*]. The Growth Management Act was enacted to address thirteen planning goals which included the following: (1) Urban growth, (2) reduction of sprawl, (3) transportation, (4) housing, (5) economic development, (6) property rights, (7) permits, (8) natural resource industries, (9) open space and recreation, (10) environment, (11) citizen participation and coordination, (12) public facilities and services, and (13) historic preservation. WASH. REV. CODE ANN. § 36.70A.020 (West 1992). Washington's policy to approach population growth is compatible with urban agriculture because gardening comports with Washington's goals of environmental protection and improving resident quality of life. *Comprehensive Planning/Growth Management, supra*.

<sup>87</sup> *Comprehensive Planning/Growth Management, supra* note 86. The Growth Management Act requires the fastest growing counties and cities within them to plan extensively to keep up with state legislated goals. *Id.* Twenty-nine counties that include about ninety-five percent of the state's population have either been required to comply with the Growth Management Act or have voluntarily chosen to do so. *Id.* In counties complying with the Growth Management Act, the enacted comprehensive plan should incorporate the goals established under the legislation. *Id.* The Governor has the authority to impose sanctions on cities, counties, and state agencies that fail to follow the Growth Management Act. *Id.* See generally WASH. REV. CODE ANN. § 36.70A (West 1992) (describing the responsibilities of each county following the Growth Management Act).

<sup>88</sup> WASH. REV. CODE ANN. § 7.48.305 (West 1992) (explaining the practices protected under Washington's statute); see David K. DeWolf & Keller W. Allen, *Right-to-Farm Immunity from Nuisance Claims*, 16 WASH. PRAC., TORT LAW & PRAC. § 2.27 (2011) (explaining that agricultural activities protected under Washington's Right to Farm law are limited to cases where farming practices: (1) existed before the onset of nonagricultural activities, (2) are reasonable; and (3) do not threaten public health and safety). Immunity under the Right to Farm statute applies both to suits for injunctive relief and for damages resulting from agricultural activities. *Id.* Farming practices that are presumably reasonable and do not have a substantial adverse effect on public health and safety are also protected under Washington's Right to Farm law. WASH. REV. CODE ANN. § 7.48.305.

urbanizing areas.<sup>89</sup> In *Davis v. Taylor*, the Washington Court of Appeals held that a cherry orchard was not protected under the Right to Farm Act, because it was not operating prior to the construction of the residential development.<sup>90</sup> Similarly, Cleveland has enacted zoning ordinances, and Ohio has passed state legislation that relates to urban farming.

## 2. Cleveland, Ohio

Cleveland enacted ordinances to encourage urban gardening as a way to address lost industry, population loss, and vacant lots.<sup>91</sup> Like Seattle, Cleveland encouraged gardening within the city; however, it created a special zoning district specifically for gardens.<sup>92</sup> This Garden

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<sup>89</sup> See generally *Davis v. Taylor*, 132 P.3d 783 (Wash. Ct. App. 2006) (holding that the farmer's change from apple orchards to cherry orchards was not protected under the Right to Farm act because such a change in production significantly increased the nuisance); *Buchanan v. Simplot Feeders Ltd. P'ship*, 952 P.2d 610 (Wash. 1998) (finding that the Right to Farm statute is constitutional and should be applied narrowly to protect farms from expanding urban areas); *Alpental Cmty. Club, Inc. v. Seattle Gymnastics Soc'y*, 111 P.3d 257 (Wash. 2005) (concluding that forest practices are protected under the state's Right to Farm law, but the Seattle Gymnastics Society failed to provide evidence that the society had logged prior to Alpental Community Club's arrival, or engaged in any other forest practice to receive protection under the Right to Farm law).

<sup>90</sup> *Davis*, 132 P.3d at 784. In *Davis*, the neighbors living on the property adjoining the cherry orchard complained about the orchard's use of loud guns to scare away birds. *Id.* The trial court had found that Washington's Right to Farm law insulated the farmers from the complaint, because the farm had existed as an apple orchard before the development of the residential area. *Id.* at 786. The Court of Appeals, however, rejected the trial court's holding and reasoned that the cherry orchard constituted a change of conditions in the original farming operation, because the farmers changed their crop from apples to cherries. *Id.*

<sup>91</sup> LaCroix, *supra* note 16, at 229; see Voigt, *supra* note 30, at 557 (noting that Cleveland city officials have enacted four different pieces of legislation to help residents participate in urban agricultural activities); see, e.g., CLEVELAND, OHIO, ORDINANCE § 336 (Mar. 9, 2007) (creating an urban garden zoning district where city residents can grow and sell produce); *Cleveland City Council Supports Two Ordinances Aimed at Strengthening the City's Commitment to Urban Agriculture*, CLEVELAND LEADER (Sept. 29, 2010), <http://www.clevelandleader.com/node/14836> (discussing public support for Cleveland Ordinance 814-10, which allows residents to sell agricultural products at a farm stand on the farm's site, and Cleveland Ordinance 1202-10, which establishes an urban garden for adults with developmental disabilities for employment).

<sup>92</sup> LaCroix, *supra* note 16, at 229; see CLEVELAND, OHIO, ORDINANCE § 336.01-.05 (Mar. 5, 2007) (explaining what type of farming structures are appropriate within the area that has a special district distinction). By creating a specific zoning ordinance, Cleveland has made it more difficult to replace a community garden because any process to remove the gardens would be open to public debate through the rezoning process. Voigt, *supra* note 30, at 558-59; Dustin Brady, *Councilman Introduces First Zoning Designation for Community Gardens*, PLAIN PRESS, Nov. 2007, <http://www.nhlink.net/plainpress/html/stories/2007-09/councilmanintroducesnewzoning.htm>. The city's decision to create a zoning district for

## 240 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47]

District encompasses both community and market gardens so that groups can garden for personal consumption or grow and harvest crops for profit.<sup>93</sup> City ordinances allow greenhouses, hoopouses, and similar structures in the Garden District so long as the structure is smaller than twenty-five feet in height.<sup>94</sup> Furthermore, Cleveland has restrictions on gardening within residential areas.<sup>95</sup>

Ohio also established legislation that encourages urban agriculture, including the Cuyahoga County Land Bank (“CCLB”).<sup>96</sup> The CCLB takes

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urban farming initiatives was in response to the removal of thriving community gardens to make way for a new Target store. *Id.* The people cultivating the gardens did not actually own the land, so there was no recourse for the destruction of their gardens. *Id.*

<sup>93</sup> LaCroix, *supra* note 16, at 236; CLEVELAND, OHIO, ORDINANCE § 336.03 (explaining that community and market gardens are permitted in the Urban Garden District, which permits the occasional sale of items grown in community gardens and the sale of crops produced in market gardens). The city describes the following as rationale for its unique zoning decision: “to ensure that urban garden areas are appropriately located and protected to meet needs for local food production, community health, community education, garden-related job training, environmental enhancement, preservation of green space, and community enjoyment on sites for which urban gardens represent the highest and best use for the community.” *Id.* § 336.01.

<sup>94</sup> CLEVELAND, OHIO, ORDINANCE § 336.04-.05. Ordinance 336.02 defines what is considered a hoopouse and a greenhouse in the Urban Garden District. *Id.* § 336.02(c)-(d). A hoopouse is a “structure made of PVC piping or other material covered with translucent plastic, constructed in a ‘half-round’ or ‘hoop’ shape.” *Id.* § 336.02(d). A greenhouse is a “building made of glass, plastic, or fiberglass in which plants are cultivated.” *Id.* § 336.02(c). Though they vary in size, both greenhouses and hoopouses are considered accessory uses permitted in the Urban Garden District to extend the growing season. *Id.* § 336.04. While building structures in the Urban Garden District cannot exceed fifteen percent of the garden site lot area, greenhouses and hoopouses are exempt from the total calculation of building coverage. *Id.* § 336.05. Other regulations dictate farming standards for residential areas. See CLEVELAND, OHIO, ORDINANCE § 337.25 (Oct. 4, 2010) (addressing the limitations of farming practices in residential districts).

<sup>95</sup> See CLEVELAND, OHIO, ORDINANCE § 337.25 (explaining the restrictions specifically related to residential areas within the city). According to Ordinance 337.25, greenhouses, hoopouses, composting, farm stands, rain barrels, and other agricultural structures are permitted in residential areas so long as they are smaller than fifteen feet in height. *Id.* Additionally, produce may be sold in residential zoning areas so long as the Board of Zoning Appeals approves it. *Id.* Ordinance 337.25(h) says the following concerning agricultural structures within residential areas:

A Building Permit shall be required for installation of a fence or for construction of a barn or other structure routinely requiring such permit, except that no Building Permit shall be required for cages, coops, beehives or similar structures that are not permanently attached to the ground or to another structure and do not exceed thirty-two (32) square feet in area nor eight (8) feet in height.

*Id.*

<sup>96</sup> LaCroix, *supra* note 16, at 230-33. See generally Matthew J. Samsa, *Reclaiming Abandoned Properties: Using Public Nuisance Suits and Land Banks to Pursue Economic Redevelopment*, 56 CLEV. ST. L. REV. 189 (2008) (discussing the role of state and regionally created land banks in reducing the number of abandoned lots within an area). The

tax-delinquent properties, acquired as gifts or acquired from individuals, and rehabilitates the property.<sup>97</sup> Acting as its own legal entity, the CCLB is able to bundle clusters of properties to attract developers.<sup>98</sup> CCLB property can further the efforts of urban agriculture because the land can remain in public or private hands so long as they advocate urban farming.<sup>99</sup>

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Cuyahoga Land Bank was created in 2006 as a non-profit, government purposed entity with the following goals for the Cleveland area:

1. strategically acquire blighted properties
2. return them to productive use through
  - a. rehabilitation
  - b. sale to new private owners
  - c. demolition
  - d. preparation for traditional economic development
  - e. creative reuse such as gardening [or] green space . . .
3. increase property values through these efforts
4. support community goals . . .
5. and improve the quality of life for Cuyahoga County residents . . .

*About Us*, CUYAHOGA LAND BANK, <http://www.cuyahogalandbank.org/aboutUs.php> (last visited Jan. 1, 2012) [hereinafter *About Us*]. “The primary funding [of the land bank] comes from the accumulation of penalties and interest on collected delinquent real estate taxes and assessments.” *Id.* Very little of the primary levied taxes, however, are used to fund the operations of the land bank. *Id.* Instead, the Cuyahoga Land Bank’s primary revenue stream is supplemented by grants from partners, sale of acquired properties, and donations. *Id.* Cleveland’s land bank has been considered successful in rescuing blighted areas because it includes the following characteristics:

- (a) transparent disposition policies;
- (b) cooperation among the city, county, and the community development corporation (CDC) community;
- (c) connection to a redevelopment mission;
- (d) state legislation providing clear title;
- (e) realistic pricing of land; and
- (f) willingness and capacity to hold land for redevelopment.

Schilling & Logan, *supra* note 16, at 459. Additionally, CCLB has the authority to approve projects without the approval of city council so that city-owned land can be efficiently sold. See GALLAGHER, *supra* note 4, at 141; *About Us*, *supra*.

<sup>97</sup> LaCroix, *supra* note 16, at 232. To rehabilitate a home, the Cuyahoga Land Bank teams up with rehabilitators and homeowners to renovate homes to provide affordable housing. *Housing*, CUYAHOGA LAND BANK, <http://www.cuyahogalandbank.org/housing.php> (last visited Aug. 5, 2012). These rehabilitation partnerships are only sold to responsible homeowners, landlords, and rehabbers who meet the land bank’s professional standards and submit an acceptable rehabilitation plan. *Id.* Properties are not only available for renovation and resale but also for a deed in escrow or a straight sale. *Id.*

<sup>98</sup> LaCroix, *supra* note 16, at 232; see OHIO REV. CODE ANN. § 1724.01(B)(2)(a) (West 1994) (enacting legislation that encourages community incorporations, like a land bank, to “facilitat[e] the reclamation, rehabilitation and reutilization of vacant, abandoned, tax-foreclosed, or other real property”).

<sup>99</sup> LaCroix, *supra* note 16, at 233; see *Demolition and Vacant Lot Use*, CUYAHOGA LAND BANK, <http://www.cuyahogalandbank.org/demolition.php> (last visited Nov. 5, 2011) [hereinafter *Demolition and Vacant Lot Use*] (explaining the procedure required by residents interested in buying and reusing vacant lots that the Land Bank currently owns). According to the Cuyahoga Land Bank’s website, the Land Bank supports urban

242 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47

In addition, Ohio has enacted Right to Farm laws.<sup>100</sup> Under Ohio's Right to Farm Act, agricultural activities are protected so long as the activities are: conducted in agricultural districts, predate the residential owner's land use, and are not in conflict with federal, state, and local laws and rules.<sup>101</sup> Recently, the Ohio Supreme Court provided protection to a winery under its Right to Farm laws.<sup>102</sup> The Ohio Supreme Court found that the Ohio Right to Farm law would safeguard the winery and its practices if any portion of the land was used to grow grapes.<sup>103</sup> Contrary to Washington's narrow interpretation of its Right to

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agriculture so long as it comports with local city policy and the Land Bank deems urban farming practical for the proposed location. *See Demolition and Vacant Lot Use, supra* (explaining the procedure required by residents interested in buying and reusing vacant lots that the Land Bank currently owns).

<sup>100</sup> *See generally* OHIO REV. CODE ANN. § 929 (West 2001) (describing the types of farming operations and the protections afforded against civil nuisance lawsuits under the Right to Farm law). Under Ohio's Right to Farm Act, in a civil action for nuisance, a farmer has an affirmative defense if:

- (A) the agricultural activities were conducted within an agricultural district;
- (B) agricultural activities were established within the agricultural district prior to the plaintiff's activities or interest on which the action is based;
- (C) the plaintiff was not involved in agricultural production; and
- (D) the agricultural activities were not in conflict with federal, state, and local laws and rules relating to alleged nuisance or were conducted in accordance with generally accepted agricultural practices.

The plaintiff may offer proof of a violation independently of proof of a violation or conviction by any public official.

OHIO REV. CODE ANN. § 929.04 (West 2001).

<sup>101</sup> OHIO CODE § 929.04. According to Ohio Code § 929.02, agricultural activities are defined as being on the land for five years exclusively for agricultural production or if the land is greater than ten acres or if the land yields an average yearly gross income of at least \$2,500 during a three-year period. *Id.* § 929.02.

<sup>102</sup> *Court Affirms Right to Farm Policy in Ohio*, OHIO FARM BUREAU (Aug. 23, 2011), <http://ofbf.org/news-and-events/news/1763/> [hereinafter *Court Affirms Right to Farm Policy in Ohio*]. The case involved Myrddin Winery, which is a small winery located in a residential area in Mahoning County. *Id.* Along with growing the grapes, the winery also crushed, fermented, and sold the final product. *Id.* The township argued that the winery operation was not agricultural activity, because only five percent of the property's production was devoted to growing grapes. *Id.* Instead, the town wanted to label the operation as a restaurant or retail business, which was not allowed in the residential area where the farm was located. *Id.* The trial court and appellate court agreed with the township that the farm should not be labeled as a farm and protected under Ohio's Right to Farm law, because the primary use of the property was not growing grapes, but making and selling wine, which was not an agricultural exemption from the township zoning. *Id.*

<sup>103</sup> *Id.* The court found that the Ohio Right to Farm law did not require selling and bottling the wine in order for viticulture to be a secondary use of the property. *Id.* There was no indication in the legislation that there is a threshold requirement for vineyards to

Farm laws, Ohio courts have taken a broader approach.<sup>104</sup> Conversely, Michigan's legislative approach varies substantially from Ohio and Washington.

### 3. Detroit, Michigan

Residents of Detroit have initiated gardens and farming within the city as a result of urban blight.<sup>105</sup> Detroit, however, has not implemented any zoning regulations to address urban agriculture.<sup>106</sup> Existing city

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receive protection; thus, the court held that agricultural protection should extend to vineyards. *Id.* Additionally, the court reasoned that the state law "clearly spells out that viticulture does not need to be the primary function on a property that is making wine and . . . the language [of] the state law was 'clear and unambiguous' [on the matter]." *Id.*

<sup>104</sup> See *id.* According to David Pennington, who represented the farm operated by the Sperry: "The Ohio legislature has consistently supported the right to farm in Ohio and this decision is a strong affirmation of that intent by Ohio's highest court." *Id.* (internal quotations omitted).

<sup>105</sup> See, e.g., Jon Kalish, 'The Gift of Detroit': Tilling Urban Terrain, NPR (Oct. 2, 2011), <http://www.npr.org/2011/10/02/140903516/the-gift-of-detroit-tilling-urban-terrain> (interviewing Detroit residents who are gardening within city limits). According to one farmer in a neighborhood riddled with drug dealers:

'I hope what I'm doing makes the neighborhood more attractive—that people would want to move into the neighborhood—because, at this point, there is no reason why anyone would want to move into this neighborhood . . . ' 'There are no stores besides liquor stores in this entire neighborhood.'

*Id.*; see also, e.g., Janice Trimm, *The Detroit Urban Farming Initiative*, EXAMINER (Nov. 19, 2010), [www.examiner.com/community-initiatives-in-detroit/the-detroit-urban-farming-initiative](http://www.examiner.com/community-initiatives-in-detroit/the-detroit-urban-farming-initiative) (discussing the success of the Garden Resource Program where experienced farmers pass their expertise on to younger and inexperienced farmers with the help of Michigan State University and non-profit organizations, including the Greening of Detroit, EarthWorks, Urban Farm, and the Detroit Agriculture Network). In 2009, over 790 gardeners attended classes about basic gardening, irrigation, pest control, fertilization, and many other subjects through the Detroit Urban Farming Initiative with a fifty-six percent increase in attendance. *Id.*

<sup>106</sup> GALLAGHER, *supra* note 4, at 53 ("Detroit still lacks any zoning classification for urban farming, a deficit it shares with many other cities."); Choo, *supra* note 10, at 49 ("There [] are more than 400 community gardens and farms operating throughout the city [of Detroit]. Most, however, exist on the shady side of the law because Detroit's zoning ordinance does not recognize agriculture as a permitted use."). Detroit has not yet fined any farms that are in violation of current zoning ordinances. GALLAGHER, *supra* note 4, at 53. The decision not to enforce zoning regulations against urban farming can result in the city losing its right to regulate agricultural activity, because the city has delayed in asserting its rights against farmers who violate zoning ordinances. Choo, *supra* note 10, at 49. If a city waits too long to assert a claim against a farmer violating its ordinances, a city could waive its rights against that farmer. See *id.* (explaining that a city's decision to not enforce zoning regulations against urban farmers can run afoul with the doctrine of laches and result in a city losing its right to assert a claim against any farmer within city limits).

## 244 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47]

codes do not recognize urban agriculture.<sup>107</sup> Detroit's city council has discussed urban agriculture and policies, but no legislation has been adopted to address established garden operations.<sup>108</sup>

Currently, there is no state legislation that discusses environmental initiatives in urban settings.<sup>109</sup> In 2009, Michigan enacted legislation to curtail urban blight called the Blight Area Rehabilitation Act, which requires cities to plan for future development.<sup>110</sup> Michigan's Right to

<sup>107</sup> GALLAGHER, *supra* note 4, at 53. Though the city has not encouraged urban gardens, community gardening has flourished in Detroit: "By the 2009 season, the Garden Resource Network was helping 517 family gardens, forty-six school gardens, and 244 community gardens . . . [C]ommunity gardeners in the city [grew] 330,000 pounds of food." *Id.* at 51.

<sup>108</sup> Choo, *supra* note 10, at 56; Pothukuchi, *supra* note 3. See generally *Seeds of Progress*, *supra* note 3 (discussing the hesitation of Detroit's city council to enact and address urban farming within city limits). In November 2011, Michigan Senator Virgil Smith set about introducing a bill to the Michigan legislature that would exempt the city of Detroit from the Right to Farm Act so that Detroit could independently regulate large farming operations within city limits. Dawson Bell, *Bill Would Create Right to Farm Act Exemption for Detroit*, DETROIT FREE PRESS, Nov. 28, 2011, <http://www.freep.com/article/20111128/NEWS06/111280346/Bill-would-create-Right-Farm-Act-exemption-Detroit>. The Michigan Farm Bureau, however, does not want to create exceptions for its Right to Farm legislation, because it would weaken protection of farmers. *Id.* The Michigan Farm Bureau, which has fought hard for farmer protections, is interested in facilitating urban agriculture but does not think an exception for Detroit should be the solution, especially by way of amending the Right to Farm Act. *Id.*

<sup>109</sup> See Choo, *supra* note 10, at 49 (explaining that Michigan has several barriers to legitimizing urban farming, including enacting legislation that promotes and protects the conduct); Pothukuchi, *supra* note 3 (noting that necessary policy to promote urban agriculture is absent in Michigan).

<sup>110</sup> MICH. COMP. LAWS SERV. §§ 125.71-125.84 (LexisNexis 2001) (requiring approval and consultation from a citizen council to implement urban renewal projects). The purpose of the Blight Area Rehabilitation Act includes:

[The] authoriz[ation] of counties, cities, villages, and townships [] to adopt plans to prevent blight and to adopt plans for the rehabilitation of blighted areas; to authorize assistance in carrying out such plans by the acquisition of real property, the improvement of such real property and the disposal of real property in such areas; to prescribe the methods of financing the exercise of these powers . . .

*Id.* § 125.72. The Blight Area Rehabilitation Act designates the following as appropriate methods of improving blighted areas:

- (i) Partial or total vacation of plats, or replatting.
- (ii) Opening, widening, straightening, extending, vacating, or closing streets, alleys, or walkways.
- (iii) Locating or relocating water mains, sewers, or other public or private utilities.
- (iv) Paving of streets, alleys, or sidewalks in special situations.
- (v) Acquiring parks, playgrounds, or other recreational areas or facilities.
- (vi) Street tree planting, green belts, or buffer strips.
- (vii) Property renovation in accordance with this act.
- (viii) Parking facilities.
- (ix) Commercial area promotion.

Farm Act discusses rural agricultural issues.<sup>111</sup> Specifically, Michigan's Act protects farmers whose agricultural conduct comports with generally accepted agricultural management practices as defined in the statute.<sup>112</sup> The protection under the recent amendments to Michigan's Right to Farm Act are superior to municipal acts and "preempt[s] any local ordinance, regulation, or resolution that purports to extend or revise in any manner the provisions of this act or generally accepted agricultural and management practices" or that threaten to revise or enlarge the current Right to Farm laws.<sup>113</sup> Michigan's regulations, along

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(x) Economic restructuring of commercial areas.

(xi) Recruiting of new businesses.

(xii) Other appropriate public improvements and activities which address rehabilitation or blight prevention . . . .

*Id.* § 125.74(9)(b).

<sup>111</sup> See Choo, *supra* note 10, at 49 (noting that Michigan's Right to Farm Act was passed in 1981 to protect farmers who found themselves suddenly subject to zoning regulations that restrict agricultural activities). See generally MICH. COMP. LAWS ANN. §§ 286.471-474 (West 2003).

<sup>112</sup> Choo, *supra* note 10, at 49; Pothukuchi, *supra* note 3. According to the statute, GAAMPS are practices defined by the Michigan commission of agriculture. MICH. COMP. LAWS ANN. § 286.472. When determining what will be part of GAAMPS, the statute requires the agricultural commission to give due consideration to information available from the Department of Agriculture and recommended by Michigan State University College of Agriculture and Natural Resource in cooperation with the United States Department of Agriculture Natural Resources Conservation Service and Consolidated Farm Service Agency, the Michigan Department of Natural Resources, and other professional and industry organizations. *Id.* Once the commission has established GAAMPS, the Department of Agriculture is required to:

(a) Annually submit to the standing committees of the senate and house of representatives with jurisdiction over issues pertaining to agriculture and local government a report on the implementation of [the Right to Farm Act].

(b) Make available on the department's website current [GAAMPS].

(c) Establish a toll-free telephone number for receipt of information on noncompliance with [GAAMPS].

MICH. COMP. LAWS ANN. § 286.474; see, e.g., *Right to Farm: Generally Accepted Agricultural Management Practices*, DEP'T OF AGRIC. & RURAL DEV., [http://www.michigan.gov/mdard/0,4610,7-125-1567\\_1599\\_1605---,00.html](http://www.michigan.gov/mdard/0,4610,7-125-1567_1599_1605---,00.html) (last visited Jan. 7, 2012) (providing newly enacted GAAMP for irrigation water use, farm markets, site selection, manure, pesticides, animal care, and cranberry production as well as the annual public comment reports for the 2010 recommended GAAMP). Michigan's current GAAMPS are limited to rural agricultural and are not "intended to govern agriculture occurring inside older cities, nor do GAAMPS address the impacts of agricultural operations on the quality of urban air, water, soil, drainage, sewers, and roads, where such impacts can be especially critical." Pothukuchi, *supra* note 3.

<sup>113</sup> MICH. COMP. LAWS ANN. § 286.474; Pothukuchi, *supra* note 3. Michigan amended its Right to Farm statute in 1995 and 1999. Laurent, *supra* note 57, at 222, 224. The 1995 amendments noted that the Right to Farm laws were intended to protect farming

246 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47

with those of Ohio and Washington, have weaknesses that should be analyzed in the context of the problems inherent in both local zoning and state regulations that pertain to urban agriculture.

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operations even when there were changes in ownership, type, or size of the farming operations. *Id.* at 222. Section 286.473(3) of the 1995 amendments stated the following:

A farm or farm operation that is in conformance with subsection (1) [operation under a GAAMP] shall not be found to be a public or private nuisance as a result of any of the following:

- (a) A change in ownership or size.
- (b) Temporary cessation or interruption of farming.
- (c) Enrollment in governmental programs.
- (d) Adoption of new technology.
- (e) A change in type of farm product being produced.

MICH. COMP. LAW ANN. § 286.473(3); *see, e.g.*, *City of Troy v. Papadelis*, 572 N.W.2d 246 (Mich. Ct. App. 1997) (holding that the farmer who expanded his farm across his property and expanded parking into a residential area was partially protected by the Right to Farm statute). In *Papadelis*, the court found that the expansion on the farmer's property was protected. *Id.* at 249–50. The expanded parking, however, was not protected under the Right to Farm Act, because it was an illegal use for a residential area according to the local zoning ordinance. *Id.* at 250. This amendment failed to protect farmers from changes in zoning ordinances, including any neighborhood efforts to create anti-farm zoning laws. Laurent, *supra* note 57, at 224. The 1999 amendment addressed the issue of local laws placing constraints on farming practices, stating:

Beginning June 1, 2000, except as otherwise provided in this section, it is the express legislative intent that this act preempt any local ordinance, regulation or resolution that purports to extend or revise in any manner the provisions of this act or [GAAMPS] developed under this act. Except as otherwise provided in this section, a local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that conflicts in any manner with this act or [GAAMPS] developed under this act.

MICH. COMP. LAWS ANN. § 286.474(6). The 1999 Amendment provides immunity from nuisance suits as well as zoning laws for farmers that qualify for protection. Laurent, *supra* note 57, at 225; *see* MICH. COMP. LAWS ANN. § 286.474(6) (describing the protection afforded to farmers that follow GAAMPS); *see, e.g.*, Choo, *supra* note 10, at 49 (observing the impact of the 1999 amendments on cities like Detroit in relation to urban agriculture). Choo explains that “[i]f Detroit passes ordinances recognizing agriculture as a permitted use, the Right to Farm Act would automatically kick in and render any attempts to set standards different from those of the Agricultural Commission invalid.” *Id.* As a result of the 1999 amendments, cities like Detroit would have to petition the Michigan Agricultural Commission to declare an exemption from Right to Farm laws if the city wanted to enact its own ordinance that purportedly extended or revised the Right to Farm Act. *Id.* But the Agricultural Commission only grants exemptions on the basis of adverse environmental or health impacts to the community. *Id.*

## III. ANALYSIS

States where urban agriculture is occurring have approached regulating and controlling the phenomenon in a variety of ways.<sup>114</sup> Seattle updated its land use code to accommodate urban agriculture and incorporated urban farming into the general goals of the state legislation.<sup>115</sup> On the other hand, Cleveland created a special zoning district for agricultural endeavors and enacted a land bank that manages vacant land.<sup>116</sup> The ability of these states and others to successfully address and regulate urban agriculture depends upon laws relating to zoning and agriculture.<sup>117</sup> Part III.A analyzes the potential benefits and problems that result from zoning laws and Right to Farm laws.<sup>118</sup> Part III.B analyzes Seattle's approach to urban agriculture and the legal mechanisms it has employed to regulate the phenomenon.<sup>119</sup> Part III.C analyzes Cleveland's legal framework to regulate urban farming.<sup>120</sup> Part III.D analyzes how Detroit restricts and regulates urban farming.<sup>121</sup>

A. *Applying Zoning Laws and Right to Farm Laws*

Zoning laws and Right to Farm legislation are contrasting forces in nuisance law.<sup>122</sup> Generally speaking, neither zoning laws nor Right to Farm laws have successfully incorporated urban agriculture.<sup>123</sup> Both of

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<sup>114</sup> See *supra* Part II.D (describing the regulations of Seattle, Cleveland, and Detroit that address or implicate urban agriculture).

<sup>115</sup> See *supra* Part II.D.1 (discussing the regulations in Seattle that control or implicate urban agriculture).

<sup>116</sup> See *supra* Part II.D.2 (considering the regulations in Cleveland that control or implicate urban agriculture).

<sup>117</sup> See *supra* Part II.C (describing zoning ordinances and Right to Farm statutes, both of which implicate urban agriculture).

<sup>118</sup> See *infra* Part III.A (analyzing nuisance laws and Right to Farm laws as a framework for addressing urban agriculture).

<sup>119</sup> See *infra* Part III.B (examining Seattle's regulations that pertain to urban agriculture).

<sup>120</sup> See *infra* Part III.C (analyzing Cleveland's regulations that address urban agriculture).

<sup>121</sup> See *infra* Part III.D (scrutinizing Detroit's restrictions on urban agriculture).

<sup>122</sup> *Nuisances*, *supra* note 52, § 19.

<sup>123</sup> See Choo, *supra* note 10, at 44 (explaining that local land use regulations are lagging behind urban agriculture, and most cities do not have zoning categories that recognize agricultural activities). *But see, e.g.*, SEATTLE, WASH., ORDINANCE § 123378 (Aug. 23, 2010) (requiring conditional use permits for urban farming in some residential areas, so long as the appointed director approves the permit, and requiring other residential areas to keep urban farms on the principal lots and to follow acceptable farming parameters). *But see* Brock Keeling, *City of Oakland Shuts Down Novella Carpenter's Farmstand*, FOOD (Mar. 30, 2011), [http://sfist.com/2011/03/30/city\\_of\\_oakland\\_shuts\\_down.php](http://sfist.com/2011/03/30/city_of_oakland_shuts_down.php) (describing how an urban farm in Oakland, California was shut down because it was out of compliance with zoning regulations for engaging in agricultural activities, resulting in a \$5,000 fine for growing chard in a residential area).

248 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47

these approaches, however, bring potential benefits to legitimizing urban agriculture. This portion of the Note examines the benefits and drawbacks of nuisance and Right to Farm laws. First, Part III.A.1 analyzes the potential and the problems associated with applying Right to Farm laws.<sup>124</sup> Second, Part III.A.2 considers the benefits and drawbacks of nuisance law when applied in zoning conflicts.<sup>125</sup>

1. Right to Farm Legislation and Urban Agriculture

Right to Farm laws were originally created to address zoning conflicts resulting from suburbanization in the 1970s and the crisis in preserving farmland.<sup>126</sup> Even though agriculture has changed drastically since the 1970s, Right to Farm laws are still the driving force behind agricultural regulations.<sup>127</sup> Right to Farm acts have changed substantially from their original purpose in an effort to address modern agricultural issues and, as a result, there are more limitations concerning the types of suits actionable against agricultural production.<sup>128</sup> By amending legislation to address modern issues in agricultural operations, Right to Farm legislation has survived large changes in

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<sup>124</sup> See *infra* Part III.A.1 (analyzing the application of Right to Farm laws).

<sup>125</sup> See *infra* Part III.A.2 (examining the application of nuisance laws for zoning conflicts).

<sup>126</sup> Reinert, *supra* note 48, at 1695; see Grossman & Fischer, *supra* note 49, at 118 (asserting that Right to Farm legislation was developed to address increasing conflict between farmers and urban neighborhoods encroaching on rural farmland).

<sup>127</sup> See Centner, *supra* note 58, at 94 (examining the problems that modern agricultural production presents for Right to Farm laws because modern agriculture incorporates new approaches to farming practices).

<sup>128</sup> See *supra* note 64 (providing examples of state statutes that have limited Right to Farm protections to only large agricultural operations). Over time, Right to Farm legislation has been amended to have different meanings and requirements than the original enactments. Centner, *supra* note 58, at 94. According to Centner, the following are five significant approaches to protect farming operations from a nuisance lawsuit:

[Legislation] incorporat[ing] a coming to the nuisance doctrine that requires the activity to predate conflicting land uses before the operation qualifies for the law's protection against nuisance lawsuits. Second, some statues restrain nuisance lawsuits by adopting a statute of limitations whereby persons who fail to file a nuisance lawsuit within a time period are precluded from maintaining a nuisance action. A third approach allows operations to expand and adopt production changes. Fourth, qualifying management practices are employed to delineate the scope of nuisance protection in some laws. Finally, an approach adopted by a few statutes involves expansive immunity that raises questions about the constitutional rights of neighbors.

*Id.* at 94-95 (footnotes omitted).

agricultural production.<sup>129</sup> In the process, however, legislation has narrowed the protection of farming practices to a small category of farming production.<sup>130</sup> Most Right to Farm legislation protects large farming operations and agribusinesses of a certain size and profit, but fail to defend small farmlands.<sup>131</sup>

Right to Farm legislation is beneficial for agriculture, because it provides security for farmers and protects farmers so long as their practices are reasonable.<sup>132</sup> Enacting farming legislation guarantees that farmers maintain their livelihood, even when surrounding communities change.<sup>133</sup> Without Right to Farm legislation, many farmers would be forced to abandon agricultural production and would subsequently lose

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<sup>129</sup> See *supra* note 64 and accompanying text (giving examples of state statutes that follow the trend of current legislation by catering to large farming operations); see also Centner, *supra* note 58, at 94-95 (examining current Right to Farm legislation and the modern approaches these statutes implement to curtail nuisance lawsuits).

<sup>130</sup> See Pothukuchi, *supra* note 3 (highlighting that most Right to Farm laws protect large-scale farming operations).

<sup>131</sup> See *supra* note 64 (listing Right to Farm legislation and the definition of what type of farm is protected under the legislation); Reinert, *supra* note 48, at 1708 (examining the varying protections that are offered under Right to Farm legislation). See generally Centner, *supra* note 58 (examining the new approach of Right to Farm laws, noting that farming legislation no longer protects farmland and farm operations but agribusiness and industry).

<sup>132</sup> *Fact Sheet*, *supra* note 58. The Farmland Information Center has described a Right to Farm action as the following:

In a private nuisance lawsuit involving complaints against a farming operation, the court must decide whether the farm practices at issue are unreasonable. To make this decision, courts generally weigh the importance of the activity to the farmer against the extent of harm to the neighbor or community, taking into account the following factors:

- The degree of harm and its duration, permanence and character . . . .
- The social value that state and local law places on both farming and the type of neighboring use that has been harmed;
- The suitability of the two sets of uses to the character of the locality; and
- The ease with which the neighbor could avoid the harm, and the farmer's ability to prevent or minimize the undesirable external effects of the farming operation.

*Id.* Reviewing Right to Farm legislation with a standard of reasonableness results in consistently more favorable outcomes for farmers than for residents. *Right to Farm Laws: History and Future*, *supra* note 58.

<sup>133</sup> See Reinert, *supra* note 48, at 1697 (discussing the change that results from the introduction of nonagricultural land use in a primarily rural area where nonagricultural neighbors sue under nuisance theory for farming practices and use their political power to "zone out" offensive agricultural uses).

## 250 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47]

their political power to nonagricultural neighbors.<sup>134</sup> Right to Farm legislation protects farmers from zoning ordinances that unreasonably control farming operations and gives farmers more flexibility to efficiently and effectively farm.<sup>135</sup> Furthermore, Right to Farm laws provide an incentive for farmers to maintain reasonable farming practices that are acceptable under GAAMPS to receive protection under the legislation.<sup>136</sup> Right to Farm acts protect against the conversion of farmland into nonagricultural uses, preserving the American farming tradition.<sup>137</sup>

Although there are benefits derived from Right to Farm acts, the legislation has some drawbacks to the agricultural community. Over time, Right to Farm statutes developed so that they protect a narrow group of farmers, ultimately encouraging the consolidation of existing family farms, which contradicts the inferred original purpose of the legislation and promotes destructive agricultural practices.<sup>138</sup> While a purpose may be inferred in this type of legislation, Right to Farm statutes

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<sup>134</sup> See *supra* notes 57–63 and accompanying text (describing how Right to Farm laws were created and the general protections afforded under such legislation).

<sup>135</sup> See *Fact Sheet, supra* note 58 (noting the benefits Right to Farm laws provide to farmers).

<sup>136</sup> See Pothukuchi, *supra* note 3 (describing how some Right to Farm laws also protect farmers that conform with GAAMPS); *Fact Sheet, supra* note 58 (explaining that Right to Farm laws help established farmers with good management practices prevail in lawsuits).

<sup>137</sup> See Grossman & Fischer, *supra* note 49, at 118 (examining the legal parameters of legislation protecting farmers from nuisance lawsuits); Reinert, *supra* note 48, at 1697 (discussing that the primary purpose of enacting Right to Farm legislation was to preserve shrinking farmland). According to Grossman and Fischer, “Right to Farm statutes are designed to prevent the conversion of farmland to nonagricultural uses by insulating farmers and farming operations from nuisance liability.” *Id.* See Centner, *supra* note 58, at 90 (analyzing the approaches that modern Right to Farm laws take to protect farmers). Centner notes that “[t]he expansion of nonagricultural uses into the countryside and the corresponding loss of farmland provided justifications for right-to-farm legislation.” Centner, *supra* note 58, at 90 (footnote omitted). The drafters of Michigan’s Right to Farm Act, for example, clearly had some intention to protect the state from a loss of family farms even though it was not specifically stated as a legislative purpose in the original version of the Act. Laurent, *supra* note 57, at 240.

<sup>138</sup> See Laurent, *supra* note 57, at 240 (explaining the shifting approach of Right to Farm laws away from family farms to agribusiness). Laurent argues “revisions to the statute may actually encourage the expansion or consolidation of small farms into agribusinesses, or similarly may attract such farm businesses from elsewhere to replace existing family farms.” *Id.* See Reinert, *supra* note 48, at 1722 (“[B]y extending protection to industrial operations, [Right to Farm statutes] may sweep within their protection industries that contribute to the degradation of rural land and rural life, including other agricultural operations.”); see, e.g., ALA. CODE § 6-5-127(a) (1993) (listing industrial plants or establishments as qualifying for protection). *But see, e.g.,* 3 PA. STAT. ANN. §§ 2101–2117 (West 2008) (promoting small-sized family farms and farms developed by non-profit educational institutions to develop sustainable agricultural practices funding and protection).

often fail to provide a clear purpose for statutory interpretation, which in turn affects the ability of courts to appropriately apply the statute in a way that provides a framework for analyzing the effectiveness of the law in meeting its goals.<sup>139</sup>

Furthermore, Right to Farm statutes normally extend protection only to well-established agricultural activities.<sup>140</sup> This strategy has created two notable limitations for the current agricultural framework. First, some Right to Farm legislation does not protect agricultural operations that have changed their original farming practices.<sup>141</sup> Significant changes in agricultural production, which occur after the introduction of residential neighborhoods, present new nuisance issues unanticipated by residential neighbors, and often result in new disturbance lawsuits.<sup>142</sup> Substantial changes, like converting a produce operation to hog farming, will not be protected under Right to Farm legislation in its current version.<sup>143</sup> Problems arise, however, when the changes in production are not dramatic, because it can be difficult to determine whether protection is warranted, which leads to inconsistent results.<sup>144</sup> Second, the majority of Right to Farm acts do not protect agricultural production that does not predate the existence of residential neighborhoods.<sup>145</sup> Farming practices

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<sup>139</sup> Reinert, *supra* note 48, at 1718.

<sup>140</sup> *See id.* (explaining that traditionally new residents would sue well-established farmers because their practices disturbed the newly created suburban areas); *see also* Grossman & Fischer, *supra* note 49, at 127 (examining how Right to Farm legislation affects changes in agricultural production).

<sup>141</sup> Centner, *supra* note 58, at 106; Reinert, *supra* note 48, at 1712-13.

<sup>142</sup> Grossman & Fischer, *supra* note 49, at 127-28.

<sup>143</sup> *See supra* notes 61-63 and accompanying text (explaining the general protections afforded under Right to Farm legislation); *see, e.g.,* Durham v. Britt, 451 S.E.2d 1 (N.C. Ct. App. 1994) (holding that a change from a turkey farm to a hog production facility was not protected under North Carolina's Right to Farm law because the operational change was significant and could cause additional unforeseen nuisance issues).

<sup>144</sup> *See generally* Centner, *supra* note 58 (noting the five major ways that Right to Farm statutes are able to protect farmers); *see, e.g.,* Payne v. Skaar, 900 P.2d 1352 (1995) (holding that an expansion in a cattle feeding farm was a substantial change that was not protected under Idaho's Right to Farm statute because the feedlot operation resulted in intolerable odors, dust, and flies in surrounding neighborhoods). *But see, e.g.,* Laux v. Chopin Land Assocs., Inc., 550 N.E.2d 100 (Ind. Ct. App. 1990) (finding that expanding a hog farm from 29 feeder hogs in one summer to 300 feeder hogs did not constitute a significant change in agricultural production to lose protection under Indiana's Right to Farm Act).

<sup>145</sup> Centner, *supra* note 58, at 87; *see* Reinert, *supra* note 48, at 1705-14 (explaining the history and purpose of Right to Farm acts). According to Reinert, Right to Farm law's "stated purpose is to protect against the extension of nonagricultural uses into agricultural areas." Reinert, *supra* note 48, at 1707 (footnote omitted). *See, e.g.,* Jerome Twp. v. Melchi, 457 N.W.2d 52 (Mich. Ct. App. 1990) (holding that an apiary was not protected under Right to Farm statutes and was subject to zoning laws because the commercial apiary was not in use before the residential classification of the area and consequently was subject to residential zoning laws).

## 252 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47]

established after the introduction of residential zoning are subject to zoning laws.<sup>146</sup>

The majority of Right to Farm acts seek to protect long-established rural farmers; thus, urban agriculture receives no mention or protection under state agriculture laws.<sup>147</sup> While Right to Farm laws provide a potential approach to legitimizing urban agriculture on a statewide level, the current legislation contradicts the purpose of urban farming. Right to Farm acts protect agricultural operations from encroaching on residential areas.<sup>148</sup> The purpose of urban farming, however, is to incorporate agriculture into preexisting residential areas.<sup>149</sup> Similarly, Right to Farm legislation protects agricultural activities that predate nonagricultural activities.<sup>150</sup> Yet, urban farming seeks to introduce new agricultural production alongside already existing nonagricultural activities.<sup>151</sup> Urban farming changes over time as a result of the

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<sup>146</sup> See *Nuisances*, *supra* note 52, § 19 (explaining that Right to Farm statutes protect farming operations that were established before the inception of nonagricultural activities, or such farming practices are subject to litigation claims in nuisance); see, e.g., *Davis v. Taylor*, 132 P.3d 783 (Wash. Ct. App. 2006) (holding that a farmer's change from raising apple orchards to cherry orchards was not protected under Right to Farm laws and was instead subject to zoning laws, because the farming practices of the cherry orchards did not predate the residential area).

<sup>147</sup> See *supra* notes 59–66 and accompanying text (describing the purpose behind Right to Farm legislation and the focus on large-scale rural farming operations).

<sup>148</sup> See *Nuisances*, *supra* note 52, § 19 (describing the type of farming operations that are protected by Right to Farm statutes and the alternative cause of action for farming that falls outside the scope of Right to Farm laws); Reinert, *supra* note 48, at 1697 (explaining the evolution of Right to Farm laws as an alternative method for addressing conflicting land uses between residential communities and established farmers). To protect a farmer under a Right to Farm statute, an individual must conduct agricultural activities on farmland; the operation must conform with all federal, state, and local laws; and the operation must have been established prior to the inception of conflicting nonagricultural activities. *Nuisances*, *supra*.

<sup>149</sup> See *supra* II.B (providing an overview on the purpose of urban agriculture and the focus on using agriculture as a mechanism to restore blighted community structures).

<sup>150</sup> Centner, *supra* note 58, at 94. Reinert notes “[s]ome statutes require that a farm have been on the land before the plaintiff acquired an interest in the land or before any changes in the vicinity occurred. While [Right to Farm laws] enumerate minimal requirements other than prior use, for the most part the laws protect farms simply for being there first.” Reinert, *supra* note 48, at 1710–11 (footnotes omitted). But see, e.g., ARIZ. REV. STAT. ANN. § 3-112 (West 1995) (protecting agricultural production facilities that comport with generally accepted management practices); OHIO REV. CODE ANN. § 929.04 (West 1994) (requiring farms to conform with accepted management practices in order to receive protection under Right to Farm laws); MICH. COMP. LAWS ANN. § 286.473(2) (West 1996) (protecting farms so long as they were not a nuisance when they first began operating and have limited changed conditions to within one mile of the farm).

<sup>151</sup> See *supra* notes 31–43 and accompanying text (explaining that the purpose of urban farming is to rehabilitate vacant lots so that they are beneficial to the surrounding community).

increasing knowledge of city farmers learned through the course of experience.<sup>152</sup> Still, Right to Farm statutes discourage changes in farming production and do not protect farmers who vary in farming practices.<sup>153</sup> While Right to Farm acts fail to address urban farming issues in their current legislative framework, zoning laws provide another legal mechanism for addressing city farms.

## 2. Implementing Nuisance Law in Land Use Conflicts

Like Right to Farm acts, zoning ordinances have potential benefits for legitimizing urban farming. Zoning regulations were enacted as a proactive measure to address any conflicting land uses in areas where there is a variety of land uses present.<sup>154</sup> Unlike Right to Farm legislation, zoning regulations require a greater level of specificity to mitigate a variety of conflicting land uses.<sup>155</sup> Zoning ordinances address a larger variety of land conflicts and are enacted on a local level; as a result, the regulations are more tailored to the current interests and issues of property owners.<sup>156</sup> This method provides a more precise approach to city dwellers as to what type of farming the city will recognize.<sup>157</sup>

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<sup>152</sup> See *supra* note 32 (illustrating the importance of non-profit organizations in providing city dwellers the information and resources needed to farm effectively).

<sup>153</sup> See generally Centner, *supra* note 58 (discussing the extent of protection afforded under Right to Farm laws, including limits to changes in farming operations that are protected); Reinert, *supra* note 48, at 1707-14 (describing the overall scope of protection available under Right to Farm laws).

<sup>154</sup> See Reinert, *supra* note 48, at 1703 (stating that zoning laws were the result of an effort to mitigate the number of nuisance lawsuits and land use conflicts that occurred with the onset of suburbanization); see also *id.* at 1699 (describing how nuisance lawsuits, zoning ordinances, and Right to Farm statutes interrelate with one another, but pointing out that nuisance law was one of the earliest examples of environmental regulation).

<sup>155</sup> See Voigt, *supra* note 30, at 547 (explaining how zoning laws determine the acceptable parameters of structures within a community).

<sup>156</sup> *Vill. of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 390-91 (1926) (stressing that municipalities can choose their own way to regulate land use). Reinert stresses that:

The Supreme Court upheld the power of municipalities to zone based on the “health, morals, safety and general welfare of the community” in the landmark case *Village of Euclid v. Ambler Realty Co.* With that decision, zoning became firmly entrenched in the land use policies of urban areas. Suburbs did not widely adopt zoning as a means of regulating land use until the 1960s, and zoning did not appear in force in rural areas until the 1970s.

Reinert, *supra* note 48, at 1703-04 (footnotes omitted).

<sup>157</sup> See *supra* notes 82-84 and accompanying text (providing an example of land use codes in Seattle that dictate the limits of urban farming within the city); see, e.g., SEATTLE, WASH., ORDINANCE § 123378 (Aug. 16, 2010) (explaining the amendments to Seattle’s zoning code).

254 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47

Nevertheless, zoning laws have the potential to be detrimental to the urban farming phenomenon. First, zoning regulations do not protect farming operations from nuisance lawsuits, which fails to provide farmers with the security necessary to legitimize city agricultural endeavors.<sup>158</sup> This structure means that zoning ordinances have the ability to regulate and restrict urban farming, but zoning regulations cannot provide any assurance to a farmer that they will not be sued for nuisance.<sup>159</sup> Second, because zoning laws are created at the community level and require a certain level of specificity, regulations can become so complicated that it is difficult for urban farmers to understand what conduct is acceptable.<sup>160</sup> Similarly, reformulating zoning regulations with significant revisions is time consuming and a rarity in city planning.<sup>161</sup>

Unlike Right to Farm laws, zoning ordinances are typically tailored to urban areas where there are a variety of appropriate land uses

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Seattle Ordinance Number 123378 designates the acceptable boundaries within city limits with specificity:

Community gardens:

A. In all zones, the total gross floor area of all structures for community garden use may not exceed 1,000 square feet on any lot.

B. In all zones, structures for community garden use are limited to 12 feet in height, including any pitched roof.

C. Structures for community garden use are subject to the development standards of the zone as they apply to accessory structures.

*Id.* § 123378.

<sup>158</sup> *Nuisances*, *supra* note 52, § 30 (“Zoning regulations, in permitting certain uses of property in specified zones, do not thereby conclusively establish that such uses are not a private nuisance.”).

<sup>159</sup> *See supra* note 52 and accompanying text (explaining that zoning laws are merely a preventative measure taken by states and municipalities to mitigate nuisance lawsuits, but these regulations do not necessarily protect against nuisance issues).

<sup>160</sup> *See, e.g.,* Choo, *supra* note 10, at 70 (explaining the benefits and drawbacks of several city ordinance measures to legitimize urban farms). Choo further notes, “provisions for agricultural activities in municipal zoning code ordinances can become overly detailed.” *Id.* A new urban agricultural ordinance in Kansas City, Missouri, for example, “designates four different categories of agricultural use in residential areas, each with its own set of requirements.” *Id.* According to Choo, “[j]ust reading what they have, you think, ‘This is so complicated you need a lawyer to figure it out. And I just want to have a garden.’” *Id.*

<sup>161</sup> *See supra* notes 52–54 (discussing, generally, the way municipalities use zoning regulations to mitigate nuisance lawsuits); *see, e.g., Flint Report*, *supra* note 31, at 2 (providing a background on the current statistics of Flint, Michigan, and proposing a zoning scheme to incorporate urban farming into the local ordinances). According to Flint urban agriculture advocates, “[Flint’s] Zoning Ordinance was originally written in 1968 and has not undergone significant revisions for over 20 years.” *Flint Report*, *supra* note 31, at 2.

regulated, which would make it easier to incorporate urban farming.<sup>162</sup> Furthermore, zoning regulations address specific issues within the community in order to use land efficiently and effectively so that the general welfare is promoted within the relevant area.<sup>163</sup> Thus, zoning regulations could incorporate urban farming as an efficient and effective way to address community blight but would fail to instill a sense of security in city farmers.<sup>164</sup> While solely state enacted laws and municipally enacted regulations are problematic for urban farming, Seattle has established urban farming practices through both statewide and locally based regulations.

*B. A Review of Seattle's Urban Agriculture Regulations*

In Seattle, both the state and local government have enacted legislation that either directly relates to urban agriculture or implicates urban farming as an acceptable land use practice.<sup>165</sup> Washington's Right to Farm laws afford only a narrow class of farmers protection against nuisance lawsuits, and while farmers that demonstrate good agricultural practices are protected, the statute fails to mention how good agricultural practices can be consistently determined.<sup>166</sup> However, the State's focus on environmental protection and incorporating environmental components into communities provides an alternative way to legitimize and protect Washington's urban farming initiatives.<sup>167</sup>

<sup>162</sup> See Reinert, *supra* note 48, at 1704 (explaining that zoning ordinances were originally created for regulating urban land uses).

<sup>163</sup> See *supra* II.D.1-2 (discussing varying zoning regulations incorporated into Cleveland's and Seattle's ordinances to address specific issues in the areas); see, e.g., *supra* notes 80-84 and accompanying text (explaining the steps taken in Seattle to incorporate urban farming into zoning regulations by updating land use codes so that community zones are allowed in all zones and, in certain areas, limited animal husbandry); see also *supra* notes 92-95 and accompanying text (discussing the Cleveland municipality's efforts to incorporate community gardens and animal husbandry into zoning ordinances).

<sup>164</sup> See *supra* notes 33-43 and accompanying text (illustrating the potential of urban farming as a way to address urban blight).

<sup>165</sup> See Erickson et al., *supra* note 29, at 9 (explaining the current trends in Seattle's rules to further urban farming and Washington's resolution to focus on environmental protection and preservation).

<sup>166</sup> See *supra* notes 88-90 and accompanying text (explaining Washington's Right to Farm law and the court's narrow interpretation of the legislation); see also WASH. REV. CODE ANN. §§ 7.48.300-320 (West 1992) (describing Washington's Right to Farm legislation as protecting farmers whose practices are consistent with good agricultural and forest practices, but the legislation fails to define what a good agricultural or forest practice is, where the information is accessible, and who determines good agricultural and forest practices).

<sup>167</sup> See *Comprehensive Planning/Growth Management*, *supra* note 86 (explaining Washington's goal to ensure that the environment is protected and preserved even with population growth, which is compatible with the notion of urban farming).

## 256 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47]

With local and state support, Seattle has been successful in expanding its urban farming initiative.<sup>168</sup> Even so, this strong support is unique to Seattle and areas with an environmentally progressive attitude.<sup>169</sup> Cities like Detroit, which have a strong industrial tradition, will likely experience more resistance towards incorporating and encouraging environmental initiatives that merely implicate urban farming without explicitly protecting it.

Seattle's city ordinances encompass a wide variety of farming practices in residential and business zoning areas. These regulations provide clear guidelines as to what is legally acceptable within communities and business districts.<sup>170</sup> Simple regulations for popular farming practices, like community gardening, encourage greater participation because residents recognize municipal limitations.<sup>171</sup> The regulations, however, do not generally discuss restrictions for pesticides and chemicals in urban farming.<sup>172</sup> Only when urban farming is contingent upon a conditional use permit in Seattle is the issue of farming chemicals mentioned.<sup>173</sup> Like Seattle, Cleveland has had success implementing portions of its urban agriculture initiatives.

### C. Analysis of Cleveland's Urban Agriculture Regulations

Unlike Seattle, Cleveland has not always had a strong focus on farming within the city.<sup>174</sup> Cleveland, however, has encouraged

<sup>168</sup> See *supra* notes 80–84 and accompanying text (noting that Seattle recently updated its land use code so that residents could increase their farming initiatives).

<sup>169</sup> See, e.g., 2 CITY OF MADISON, *Natural and Agricultural Resources*, in CITY OF MADISON COMPREHENSIVE PLAN, *supra* note 80, at 6–16 (devoting resources to maintaining existing agricultural operations in Madison, encouraging community gardens, and the establishment of new gardens).

<sup>170</sup> See, e.g., SEATTLE, WASH., ORDINANCE § 123378 (Aug. 16, 2010) (restricting community gardens in all zones to less than 1,000 square feet on any lot with structures limited to twelve feet in height, and structures used in community gardens are subject to the development standards of the zone). No other limitations, however, are placed on the type of gardens found in residential zoning districts. *Id.*

<sup>171</sup> See *supra* notes 78–79 (noting the number of P-Patch gardens that have increased in Seattle since their inception in the 1970s).

<sup>172</sup> See *supra* notes 82–84 (discussing different portions of Seattle Ordinance § 123378 that provide restrictions to both community gardens and urban farming within the city, but noting that neither portion of the ordinance addresses pesticides or other harmful chemicals used in farming).

<sup>173</sup> See SEATTLE, WASH., ORDINANCE § 123378 (requiring applicants to disclose any potential use of chemical sprays or pesticides in their management plan to be reviewed by an administrative director).

<sup>174</sup> See LaCroix, *supra* note 16, at 228–29 (explaining that Cleveland enacted ordinances to encourage urban gardening after losing major industry and experiencing the shrinking city phenomenon); see also *supra* notes 16–28 and accompanying text (discussing the shrinking city phenomenon).

gardening within the city through its Re-Imagining Cleveland initiative, along with the help of the State's land bank.<sup>175</sup> Ohio's Right to Farm Act and Ohio's Supreme Court suggest that urban farming would be afforded protection on a state level.<sup>176</sup> Ohio Supreme Court's broad interpretation of Right to Farm legislation insinuates that a residential property with a portion of land used for urban farming could be protected under Ohio legislation.<sup>177</sup> Yet, Ohio's Right to Farm law does not provide a clear definition on what generally accepted agricultural practice would constitute a defense against a nuisance lawsuit or who determines the generally accepted agricultural practices.<sup>178</sup>

Cleveland has legitimized community gardens and urban farming in a unique way compared with Seattle. Cleveland created a special zoning district known as the Garden District, which uses the area specifically for community gardening and the selling of produce.<sup>179</sup> This unique zoning district protects the established gardens from being replaced because removing a zoning district is a public issue open to debate.<sup>180</sup> Because Cleveland has a separate district for urban agriculture, it allows larger gardens and larger building structures than Seattle's community gardens accommodate.<sup>181</sup> While Cleveland's approach provides additional protection for community gardens, it does not provide any comprehensive explanation of permitted fertilizers and other chemical synthesizers that may be used to increase agricultural yields or any other restrictions that may be necessary to mitigate any nuisance issues with

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<sup>175</sup> See *supra* notes 92-99 and accompanying text (describing the steps taken by both local government and Ohio to encourage urban farming).

<sup>176</sup> See *Court Affirms Right to Farm Policy in Ohio*, *supra* note 102 (explaining a recent Ohio Supreme Court case that afforded a vineyard agricultural protection even though the majority of the property was used for selling and bottling wine).

<sup>177</sup> See *supra* notes 100-04 and accompanying text (describing Ohio's Right to Farm legislation and the recent Ohio Supreme Court decision guaranteeing farming protection for a vineyard that also sold and packaged wine).

<sup>178</sup> See *supra* notes 100-01 and accompanying text (providing the statutory language of affirmative defenses against nuisance lawsuits in Ohio but failing to mention any comprehensive approach to determining a generally accepted agricultural practice); see also OHIO REV. CODE ANN. § 929.04(D) (West 2002) (describing the protection against nuisance lawsuits afforded to Ohio farmers but failing to mention what is considered a good agricultural practice).

<sup>179</sup> See LaCroix, *supra* note 16, at 236-37 (describing the unique district Cleveland created, which uses the area specifically for community gardens and selling produce).

<sup>180</sup> Voigt, *supra* note 30, at 558-59; Brady, *supra* note 92.

<sup>181</sup> See, e.g., CLEVELAND, OHIO, ORDINANCES § 336.05 (Mar. 6, 2007) (permitting the building of structures that are lower than twenty-five feet tall in the gardening district). But see *supra* note 83 (quoting Seattle's ordinance that allows building structures that are shorter than twelve feet).

## 258 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47]

adjoining residential areas.<sup>182</sup> Gardening outside this special district is also permitted, but the regulations are difficult to understand and stricter so that residents opt to use the Garden District.<sup>183</sup>

Cleveland's special district for gardening was a result of the CCLB.<sup>184</sup> The Land Bank supports urban agriculture when the CCLB finds such a practice appropriate for the area, so long as it comports with local city policy.<sup>185</sup> Other states that may be interested in legitimizing urban farming may not have the resources necessary to establish a CCLB that buys vacant lots to sell for a nominal price.<sup>186</sup> While Cleveland has received support both locally and from the state, cities like Detroit do not have the same legislative programs in place to legitimize urban farming.

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<sup>182</sup> See, e.g., CLEVELAND, OHIO, ORDINANCES § 336.01-.05 (explaining that the permitted use of the Garden District is for community gardens or for market gardens and mentioning the specific requirements for fences and signs in the district, but making no mention of restrictions on fertilizers, any permit requirements, or other restrictions typical of larger community garden issues).

<sup>183</sup> See, e.g., CLEVELAND, OHIO, ORDINANCE § 337.25 (Oct. 4, 2010) (describing acceptable agricultural uses in residential districts within city limits). The following is an example of the language of Cleveland's regulations on agriculture within residential areas outside the Garden District:

A Building Permit shall be required for installation of a fence or for construction of a barn or other structure routinely requiring such permit, except that no Building Permit shall be required for cages, coops, beehives or similar structures that are not permanently attached to the ground or to another structure and do not exceed thirty-two (32) square feet in area nor eight (8) feet in height.

*Id.* Like the regulations established for the Garden District, agricultural uses in residential zones do not have specific requirements as to what farming practices and conduct are tolerated within the city.

<sup>184</sup> See *supra* notes 96-99 and accompanying text (explaining how the CCLB acquires and sells vacant land).

<sup>185</sup> *Demolition and Vacant Lot Use*, *supra* note 99. Local city policy, however, can be unclear as to what types of farming practices are appropriate for residential locations. See, e.g., *supra* note 183 (quoting Cleveland Ordinance section 337.25 which permits agricultural uses in residential districts, but fails to provide tangible limits to the size of farming endeavors and acceptable farming practices).

<sup>186</sup> See, e.g., GALLAGHER, *supra* note 4, at 141-42 (explaining that cities like Detroit have been unsuccessful in creating land bank systems that have the power to buy and sell land for urban farming, which the land bank believes is a practical and appropriate use of the vacant land). Unlike CCLB, most land banks do not have the authority to approve projects without the approval of the city council. *Id.* at 141. Without providing a land bank the authority to accept land use practices, selling city-owned land is a tedious process that normally does not happen. *Id.* The result of this time-consuming procedure is an increase in the amount of land owned by the city that remains vacant and that has not been resold to residents so that the city can collect taxes. *Id.* at 137-41.

*D. An Examination of Detroit's Urban Agriculture*

Unlike Cleveland and Seattle, Detroit has not implemented any zoning regulations to encourage urban agriculture.<sup>187</sup> Current city codes do not recognize urban agriculture or support the phenomenon, but Detroit does not ticket or fine community gardens that do not conform to zoning regulations.<sup>188</sup> Community members have discussed and brainstormed policies for urban agriculture, but Detroit has made no noticeable progress in legitimizing urban farming.<sup>189</sup>

In addition, Michigan has failed to pass legislation that encourages or comports with urban agriculture.<sup>190</sup> Michigan enacted the Blight Area Rehabilitation Act in 2009, requiring cities to plan for future development to curtail urban blight, but no urban agriculture plan has been implemented using this legislation.<sup>191</sup> Michigan's Right to Farm Act provides flexibility and broad protection to farmers with comprehensive information on how to access approved GAAMPS and the approval process for GAAMPS.<sup>192</sup> The GAAMPS and protection afforded under Michigan's Right to Farm Act only extend to traditional farmers and ignore new farming practices like urban agriculture.<sup>193</sup> Moreover, the legislation prohibits local laws from recognizing new farming practices that would revise or expand the protections set forth by the Right to Farm Act.<sup>194</sup> Consequently, any city ordinance that attempts to legitimize urban farms or provide protections to urban farmers from nuisance violations will not be recognized at the state level, limiting the power of local communities to legitimize urban farming.<sup>195</sup>

<sup>187</sup> GALLAGHER, *supra* note 4, at 53.

<sup>188</sup> *Id.* Though the City has not encouraged urban gardens, community gardening has flourished in Detroit: "By the 2009 season, the Garden Resource Network was helping 517 family gardens, forty-six school gardens, and 244 community gardens . . . [and] community gardeners in the city [grew] 330,000 pounds of food." *Id.* at 51.

<sup>189</sup> Pothukuchi, *supra* note 3.

<sup>190</sup> *See id.* (noting that necessary policy to promote urban agriculture is absent in Michigan); *see also* Choo, *supra* note 10, at 49 (discussing that Michigan has several barriers to legitimizing urban farming, including enacting legislation that promotes and protects the conduct).

<sup>191</sup> MICH. COMP. LAWS SERV. §§ 125.71-.84 (LexisNexis 2001) (requiring approval and consultation from a citizen council to implement urban renewal projects).

<sup>192</sup> *See supra* note 112 (highlighting the language in Michigan's Right to Farm Act that explains the process of the state's Department of Agriculture in determining GAAMPS).

<sup>193</sup> *See supra* notes 112-13 and accompanying text (describing the farming practices protected under Michigan's most current Right to Farm legislation).

<sup>194</sup> *See* MICH. COMP. LAWS ANN. § 286.474(6) (West 2003) (precluding local ordinances from revising or expanding the protection to farmers afforded by Michigan's Right to Farm Act).

<sup>195</sup> *See generally id.* (precluding local ordinances from revising or expanding the protection to farmers afforded by Michigan's Right to Farm Act); Choo, *supra* note 10, at 49 ("If Detroit

Nevertheless, the state and local regulatory deficits obstruct the growing urban agriculture trend in Michigan, and the problem must be addressed.<sup>196</sup>

#### IV. CONTRIBUTION

The solution to the problem caused by unregulated urban agriculture is for state legislatures to adopt a statute that clearly defines the role that urban farming has in local communities. Using Michigan's Right to Farm law as a model, protections for urban agriculture, in the context of neighboring nonagricultural activities, must be added. Such an approach could be adopted by other states lacking a legislative framework for urban agriculture.

This proposed model statute provides an example of the legislation that could be incorporated nationwide into existing agricultural statutes. It recognizes concerns prevalent in regulating urban agriculture and coordinates a committee with agricultural expertise to decide what types of urban agricultural practices are acceptable or prohibited. Moreover, it adopts a framework for states and local units of government to collaboratively create a manageable standard for regulating and legitimizing urban farming both on a local and statewide basis.

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passes ordinances recognizing agriculture as a permitted use, the Right to Farm Act would automatically kick in and render any attempts to set standards different from those of the Agricultural Commission invalid." *But see id.* (explaining the danger of not enforcing or regulating urban agriculture). The city could potentially petition Michigan's Agricultural Commission to declare urban farming regulations as an exemption to Right to Farm laws. *Id.* This, however, is an unlikely solution, because the Agricultural Commission only grants exemptions on the basis of adverse environmental or health impacts to the community. *Id.* Choosing not to enforce city regulations against urban farming can result in the city altogether losing its right to regulate city agricultural activity. *See Choo, supra* note 10, at 49 (discussing how the city's decision not to enforce zoning regulations, even though it knows there are farms operating against current zoning, can run afoul with the legal doctrine of laches and result in the city waiving any claim or right against the farmer); *see also* Pothukuchi, *supra* note 3 (noting that the Right to Farm laws were not "intended to govern agriculture occurring inside older cities, nor do GAAMPS address the impacts of agricultural operations on the quality of urban air, water, soil . . . drainage, sewers, and roads, where such impacts can be especially critical").

<sup>196</sup> *See* Pothukuchi, *supra* note 3 (imploping Michigan government to enact legislation protecting urban agriculture); *see also* Choo, *supra* note 10, at 56 (noting the deficit in state legislation).

A. *Proposed Legislation*<sup>197</sup>

(a) *Within six months of the passage of this section, the Commission shall issue generally accepted agricultural and management practices for urban agriculture, including locations with approved livestock and city or town locations growing produce. The Commission shall adopt generally accepted agricultural and management practices within nine months of the passage of this section. In developing these generally accepted agricultural and management practices for city or town farming, the Commission shall do the following:*

(i) *Create an advisory committee to provide recommendations for the commission. The advisory committee shall include entities listed in section 2(d), 2 individuals representing townships, 1 individual representing counties, and 2 individuals representing urban agricultural organizations.*

(ii) *Consider the following factors when establishing generally accepted agricultural and management practices for urban areas: greenhouses, hoopouses or other agricultural structures, community gardens, fertilizer, composting, farm animals, and other factors determined necessary by the commission.*

(b) *The Commission shall notify local units of government of urban agricultural standards and practices as adopted by the Commission. Local units of government may write proposed ordinances that comply with the generally accepted agricultural and management practices. A copy of any proposed ordinance created by a local unit of government may be submitted to the director for review, after a 30 day public comment period. If the director finds in its review of the ordinance failure to comport with generally accepted urban agricultural and management practices set forth by the Commission, the director will provide at least 45 days, but not exceeding 90 days, for the local unit of government to revise the ordinance and hold a local public meeting concerning the revised ordinance.*

(c) *The department shall do the following in regards to urban agriculture:*

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<sup>197</sup> This proposed legislation creates another subsection to Michigan's Right to Farm Act that should be added to the current legislation to recognize and legitimize urban agriculture. The language is based on the current Michigan Right to Farm law.

- (i) Annually submit to the standing committees of the senate and house of representatives with jurisdiction over issues pertaining to agriculture and local government a report on the implementation of this Act, after a 60 day period for public comments.
- (ii) Make available on the department's website current generally accepted agricultural and management practices for urban farming.
- (iii) Establish a toll-free telephone number for receipt of information on noncompliance with urban agricultural and management practices.
- (d) As used in this section:
  - (i) "Urban agriculture" means farming efforts that take place within city or town limits including community gardens, individual gardens, market gardens, and small farming operations with a limited number of livestock.
  - (ii) "Commission" means the department of agriculture.
  - (iii) "Director" means the director of the department or his or her designee.

#### B. Commentary

The purpose of Michigan's Right to Farm Act is to protect farmers following approved management practices from losing their livelihood.<sup>198</sup> Extending Michigan's Right to Farm Act to incorporate urban farming legitimizes urban farming and designs a template for other states to follow. The proposed amendment to Michigan's Right to Farm Act creates a tangible timeline to approve GAAMPS and establishes an advisory committee with the expertise necessary to guide the commission in creating practical urban farming standards. Section (a)(ii) of the proposed legislation ensures that important issues relating to urban agriculture are addressed by an agricultural committee and that no necessary safeguards are overlooked at the local level.<sup>199</sup> The proposed legislative changes, only for this specific agricultural issue, the 1999 amendment preempting local ordinances by designating a role for local units of government.<sup>200</sup> Finally, the statute defines urban

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<sup>198</sup> See *supra* notes 136–39 and accompanying text (exploring the purpose of Right to Farm legislation).

<sup>199</sup> See, e.g., *supra* note 182 and accompanying text (observing that city ordinances, like Cleveland's, can fail to address issues that could be a safety risk to the community).

<sup>200</sup> See *supra* note 113 and accompanying text (quoting the 1999 amendment to Michigan's Right to Farm Act).

agriculture to include a variety of different farming practices occurring within the city or town.

The proposed statute solves problems raised by incorporating urban agriculture into zoning regulations and Right to Farm statutes.<sup>201</sup> While Right to Farm statutes provide protection unavailable through zoning regulations, Right to Farm laws lack the specificity necessary to regulate local issues.<sup>202</sup> Zoning regulations, however, fail to provide the assurances required for farmers to flourish.<sup>203</sup> The proposed statute balances the role of the state legislature and the local government in regulating urban agriculture. The legislation identifies a role for local government, allowing them to regulate agriculture in a way unique to their location, but requires the zoning to adhere to statewide standards for urban agriculture.

Enacting a statewide urban agricultural and management practice provides a clear and concise direction for communities as well as individuals interested in urban agriculture. The standards notify individuals of state approved farming techniques, making it easier for communities and individuals to participate in urban agriculture. Furthermore, statewide standards protect urban farming practices that comport with the legislation's approach, even if the local zoning ordinances fail to incorporate regulations or create confusing restrictions.<sup>204</sup> Another benefit to a statewide agricultural and management practice is that the standards are reviewed every year and are subject to public comment. Because standards are subject to annual review, there is a stronger likelihood that proposed urban agricultural and management practices will be able to keep up with urban farming techniques that change over time.<sup>205</sup>

Creating a role for the local entity of government allows for the flexibility and specificity that state legislation fails to deliver. Statewide legislation cannot address every local concern or promote general welfare for a small community. Local governments, however, have the

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<sup>201</sup> See *supra* Part III.A (discussing the benefits and problems associated with zoning laws and Right to Farm statutes in relation to urban farming).

<sup>202</sup> See *supra* Part III.A.1 (analyzing Right to Farm legislation in the context of urban agriculture).

<sup>203</sup> See *supra* Part III.A.2 (investigating the strengths and weaknesses of zoning laws in addressing current urban farming issues).

<sup>204</sup> See *supra* notes 182–83 and accompanying text (noting that a major weakness in Cleveland's zoning regulations is that the language itself is confusing and hard to follow). *But see supra* note 170 and accompanying text (highlighting the clear and simple language used in Seattle's urban farming regulations).

<sup>205</sup> See *supra* notes 141–44 and accompanying text (commenting on the limitations of Right to Farm legislation because it is unable to absorb agricultural changes that occur frequently, especially in urban farming).

expertise and experience in the community to understand the needs of a specific area, and the proposed legislation ensures that local entities of government can create regulations unique to the area.<sup>206</sup> Moreover, the statutory language assures that local governments play an important role in regulating an urban farm without being preempted by state statutes. With this proposed section added to Michigan's Right to Farm Act, the local government can regulate urban farming within the community, but the state can designate safe and consistent standards.<sup>207</sup>

While this additional section of legislation solves most of the problems created by regulating the emerging urban farming phenomenon, it could be argued that the statute expands the power of the Right to Farm Act to include traditionally unprotected farmers. This expanded power leaves nonagricultural neighbors powerless against city farmers and potential nuisance issues. Subsection (b) of the proposed legislation, however, ensures that neighborhoods and towns can determine the type of urban farming allowed within city limits.<sup>208</sup> Moreover, subsection (c) subjects the Commission's urban agricultural and management practices to annual review and public comment, which gives communities an opportunity to voice concerns regarding urban farming standards. This additional piece of legislation provides adequate safeguards for community members to express concerns and gives the local unit of government the authority to dictate the boundaries for locally accepted urban farming.

Another potential criticism of this proposed legislation is the increased power of the state in local issues. Local governments retain power under zoning laws to make restrictions, but this authority is delegated by the state. It is necessary, however, to have a coherent piece of agriculture legislation, because there are safety risks and health concerns associated with fluctuating limits on fertilizer, pesticides, and other potentially harmful components of farming. Having a statewide standard determined by experts ensures that the amount of harmful chemicals used is static throughout the state. This proposed legislation attempts to strike a balance between the power of the state legislature

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<sup>206</sup> See *supra* notes 155–57 and accompanying text (discussing the benefits of zoning regulation in allowing for regulations that are tailored to the needs and concerns of the local area); see also *supra* note 45 (noting that urban farming should be used along with other approaches to create more sustainable cities and that local governmental units could avoid areas that are more likely to attract profitable ventures when zoning urban farming).

<sup>207</sup> See *supra* notes 194–95 and accompanying text (illustrating the shortcomings of Michigan's preemptory language in its Right to Farm legislation).

<sup>208</sup> See *supra* Section (b) of the proposed legislation (requiring local governments to subject their urban farming regulations to a thirty day period for public comment so that residents can voice their concerns).

and the traditional authority given to local governments so that all parties affected by urban agriculture play a role in regulating it.

The proposed legislation ensures a clear, concise statewide urban agricultural standard that local units of government can incorporate into their ordinances. Zoning schemes only address a portion of the problem and relying solely on state statutory amendments fails to highlight the strengths of zoning regulations. Changing state legislation to acknowledge urban farming and allow for local ordinances to regulate farming is the most comprehensive way to legitimize urban farming along with providing the appropriate guidance to individuals interested in participating.

#### V. CONCLUSION

Urban agriculture is a phenomenon that is gaining momentum in the United States, particularly in blighted communities. Current zoning laws and state legislation in many states fail to regulate urban farming, despite its increasing popularity and its benefits for downtrodden areas. Cities and states cannot continue to ignore the urban farming phenomenon or the benefits of the movement, because many American cities no longer experience population or economic booms. Rather, cities are subject to economic decline, industry loss, and consequently lower populations. While some cities, like Seattle and Cleveland, have revised and adopted state and local regulations to address the urban farming movement, other blighted areas, like Detroit, are struggling to legitimize urban farming. Detroit has no clear guidelines for urban farming, and Michigan's Right to Farm Act prevents the enactment of new local zoning ordinances that address urban agriculture. Scholars and communities urge new standards to be adopted, but there is no workable standard that has been approved on either a state or local level.

The most comprehensive approach to regulating urban agriculture is to add a section of legislation that focuses on a statewide approach to urban agriculture, such as in Michigan's Right to Farm Act. No statewide standard has been proposed in the past that creates acceptable urban agricultural standards; but in doing so, the state can designate a clear and coherent foundation for urban farming and a direction for local governments to construct zoning regulations. If Michigan were to add a section to its agricultural statutes that addresses urban agriculture, the state would have, for the first time, a clear acknowledgement of urban farming that other communities and individuals could follow. The proposed legislation removes any uncertainty, provides notice, and assures that urban farmers have an appropriate agricultural standard. Incorporating urban agriculture into state legislation is necessary to

266 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 47

assure that all Americans can live healthy, safe, and productive lives even in blighted communities.

**Susanne A. Heckler\***

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