

Dig, Eat, and Be Healthy

A Guide to Growing Food on Public Property



ChangeLab Solutions

Law & policy innovation for the common good.



Acknowledgments

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Introduction to This Guide

As any gardener can attest, it isn't easy to grow a great tomato. You need fertile soil, water, and sunshine. You need to start with good seeds. And you need the know-how to give your plant what it needs at the right time. Growing a tomato on public land takes know-how, too.

Although thriving gardens and farms have been established on public lands throughout the country, many communities have yet to make the most of the significant resource that such lands represent. For example, one study in Oakland, Calif., found that the city could grow 5 percent of its recommended vegetable needs using only half of its vacant and underutilized public land – that's 4,650 tons of produce!¹ And urban agriculture produces more benefits than just fresh, healthy food. It can also promote civic participation, public safety, food literacy, job skills, and urban greening – in short, healthier, more vibrant places.²

While public agencies often have land that could be used to grow food – like vacant fields, school yards, utility rights-of-way, and even the rooftops of public buildings – community groups and nonprofit organizations don't always have the tools to access those sites. This guide seeks to change that:

- **Section 1** Outlines opportunities to work with public agencies to identify and inventory suitable growing sites and develop a process for partners to access these sites.
- **Section 2** Describes common types of agreements that govern the relationship between food-growing groups and public entities, such as leases, licenses, and joint use agreements.
- **Section 3** Identifies some of the common provisions in those agreements, such as liability, utilities, maintenance, growing practices, contamination, access and security, and improvements.
- **Section 4** Highlights special issues related to growing food on school district property.

The guide does not dig into each and every detail that may arise when trying to establish urban agriculture on public property. However, by laying out a framework and identifying some of the unique legal and policy issues related to growing food on public land, this guide helps local gardeners and growers get one step closer to harvesting that tomato.



Urban agriculture promotes healthy food, civic participation, public safety, and job skills – to name a few benefits.

Defining Urban Agriculture

The terms presented in this guide are not yet terms of art. Different communities may use them to mean different things, and some communities may use alternative terminology. We've chosen to use the following terms for both simplicity and clarity, with the caveat that they should be used or modified as local circumstances dictate.

URBAN AGRICULTURE is an umbrella term that describes a range of food-growing practices in urbanized areas, from backyard gardens to urban farms. We use the term *urban agriculture* to describe activities that involve growing food on public land in “urbanized” environments, including cities, suburbs, or small towns.

COMMUNITY GARDENS are smaller-scale urban and suburban agriculture sites (often serving a neighborhood) where individuals and families grow food primarily for personal consumption or donation.

URBAN FARMS are larger-scale, more intensive sites and may include entrepreneurial opportunities such as growing food for sale.

For additional urban agriculture resources, see ChangeLab Solutions' "Seeding the City: Land Use Policies to Promote Urban Agriculture" at: www.changelabsolutions.org/publications/seeding-city, and "Ground Rules: A Legal Toolkit for Community Gardens" at: www.changelabsolutions.org/publications/ground-rules



Why Grow Food on Public Land?

Integrating food production into places where people live, work, and play supports healthy eating, community resilience, and food literacy. While urban agriculture may not address all of a community's social and environmental challenges, growing food on public land provides unique opportunities and benefits.

For example, in cities with high land values, public land may be the only space affordable to nonprofit and resident groups, who often struggle to compete with market rates to buy or lease private property for growing food. Governments can make public land available to food-growing groups for minimal costs, and public land is not encumbered by property taxes. And in cities with low property values, urban agriculture can actually raise property values³ and stabilize neighborhoods with vacant and blighted properties – either permanently or until future development occurs.

Moreover, as governments challenged by stretched resources look for creative ways to reduce expenses, agreements with community and resident groups to grow food on public land can offer a way to share maintenance costs. Beyond simply paying for upkeep, urban agriculture can create green spaces that provide ecological services and monetary savings to municipalities, such as mitigating storm water runoff, thereby reducing treatment plant loads and pollution of waterways, and increasing infiltration.⁴

Finally, in all types of communities – cities, suburbs, and small towns – urban agriculture can contribute to a range of social and health benefits. It can promote community engagement and social capital⁵ as well as support crime prevention by activating underutilized community space and increasing “eyes on the street”⁶ (a term coined by urbanist Jane Jacobs to describe the crime-prevention effect that neighbors and residents have when they are able to watch over space). It also provides moderate exercise for people of all ages.⁷ And it can increase food security by providing a local food source in times of natural or man-made disasters that interrupt transportation networks.⁸





Thinking Outside the (Planter) Box: Working with Public Agencies

Public agencies are essential partners in using public land to grow food. They can help urban agriculture groups identify and inventory suitable sites, then make these sites available. And they can provide valuable guidance as groups prepare a plan for how they will use the land.

Identifying Urban Agriculture Opportunity Sites

Public land comes in many shapes and sizes – and a variety of forms of ownership and use. When seeking out unused or underutilized parcels for growing food, public agencies and their community partners should consider a range of opportunity sites.

Understanding how local governments manage land that may be suitable for urban agriculture is important in identifying potential sites. Some public land, like parks or public utility rights-of-way, will be owned by public agencies for the foreseeable future but may have underutilized areas that could be managed by partner groups for growing food. *Surplus property* – a term that encompasses a variety of land that government owns but does not wish to own or manage over the long term – may also be suitable for temporary use as urban agriculture sites or for long-term management or ultimate transfer for urban agriculture initiatives.

Surplus and Tax-Foreclosed Property

SURPLUS PROPERTY is property that a public entity wishes to sell because it is no longer needed for a public purpose.

TAX-FORECLOSED PROPERTY is land claimed by the government after a private property owner has failed to pay taxes.

In both cases, in order to sell the property, the public entity generally must go through a specific procedure set forth by law. The procedure differs by state and/or locality and by the particular type of public entity but usually includes some or all of the following steps: identifying surplus or tax-foreclosed properties, notifying the public that the property is for sale, and holding a sale, usually through a bidding process or an auction. Notably, cities and counties around the country have established programs that facilitate the transformation of vacant city lots, tax-foreclosed property, and surplus property into community gardens.⁹

Conducting a survey of public land is an important step toward using public land for urban agriculture. For example, in Oakland, Calif., a graduate student led an effort to map public lands owned by a variety of public agencies (including local, regional, and state entities), using site visits, soil testing, and GIS analysis to identify sites that had a high potential for urban agriculture of different sizes and scales.¹⁰ A city commissioner in Portland, Ore., asked a team of students to conduct a similar report, focusing on lands that city bureaus maintain but for which they had no plans to put to immediate use.¹¹ Figures 1 and 2, below, show maps that were developed for these studies. In San Francisco, a mayoral directive requiring all departments with jurisdiction over property to “conduct an audit of their land suitable for or actively used for food producing gardens or other agricultural purposes” found a total of 120 potential options, with 13 high-priority sites that would be targeted for new gardens.¹²

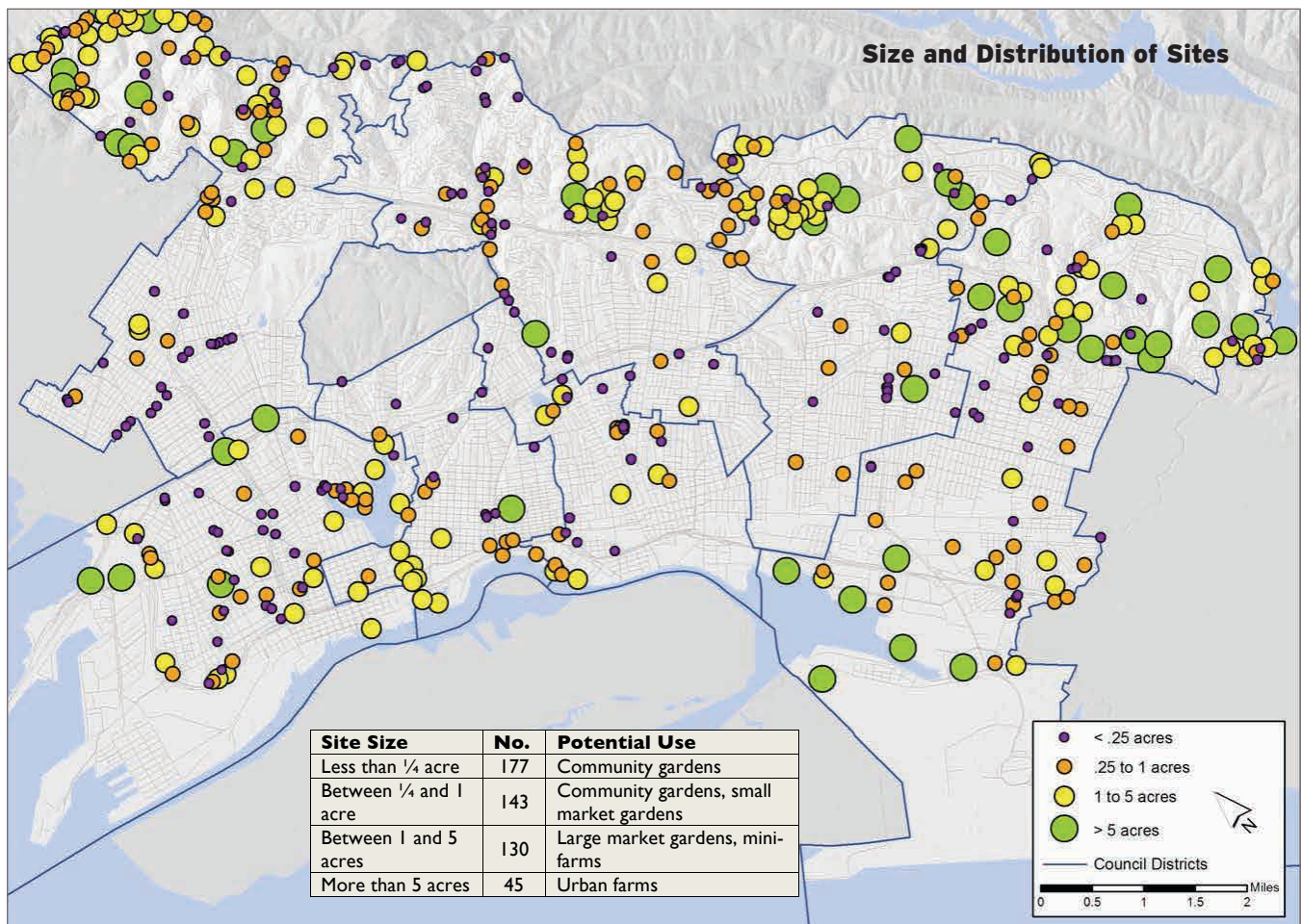


FIGURE 1: Potential urban agriculture sites on public land in Oakland, Calif.¹³

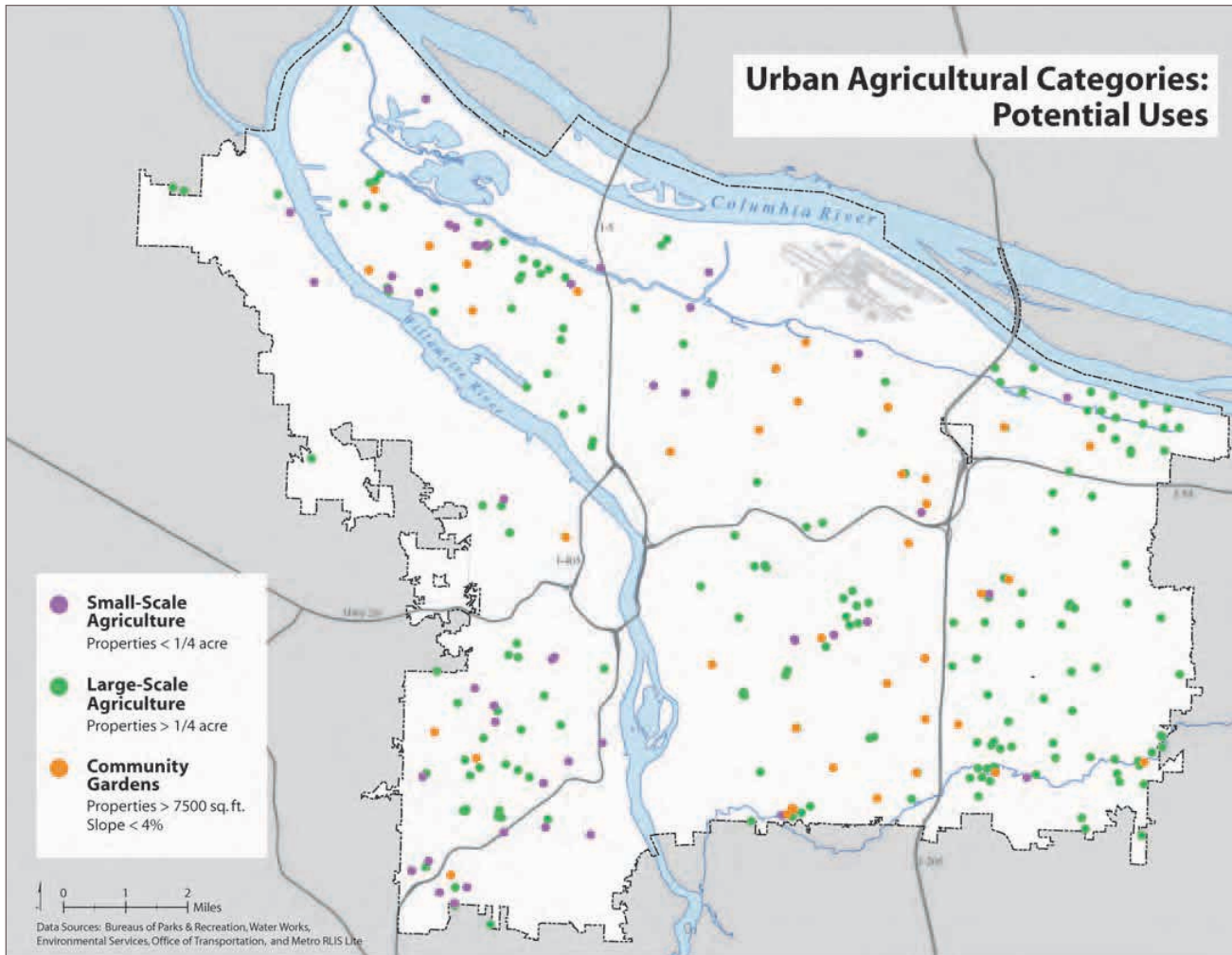


FIGURE 2: Potential urban agriculture sites on public land in Portland, Ore.¹⁴



Urban Agriculture and Land Use Laws

Local land use laws, like zoning codes, affect where urban agriculture can legally occur within a jurisdiction. Publicly owned land is usually subject to zoning regulations, including vacant residential parcels or designated open space, so it's important to find out whether and where urban agriculture is allowed under your local code. Many cities – including Chicago, Cleveland, Kansas City, Mo., Portland, Ore., Seattle, and San Francisco – have updated their land use laws to specifically allow for community gardens and other types of urban agriculture in specific districts.¹⁵

For more information on creating land use policies that promote urban agriculture, see ChangeLab Solutions' toolkit "Seeding the City: Land Use Policies to Promote Urban Agriculture" at: www.changelabsolutions.org/publications/seeding-city



Soil Testing and Contamination

When using public property for urban agriculture, public agencies will likely insist that the site chosen is free of contamination. To determine whether the site is contaminated, the first step is to examine the site's past uses. Land use maps and photos can help determine if a potential source of contamination, such as a building or junk yard, was present on the site.¹⁶ A site's past use should serve as a guide for determining what types of contaminants to test for as soil testing is the only way to determine definitively whether the site is contaminated and suitable for growing food. The cost of testing varies widely. For example, testing for lead and arsenic can range from \$10 to \$50 per sample, while testing for solvents from industrial uses or dumping can be hundreds of dollars per sample. Any testing should occur before entering into an agreement with the public agency so that both parties know the status of the site and its suitability for urban agriculture. Depending on the test results, the parties may determine that the site is not appropriate for growing food. Or, the public agency may require that the partnering organization mitigate certain negative conditions on the site, such as removing/amending soil or using only raised beds to grow food. See the section "Keep Digging: Resources" on page 39 for more information on soil testing and mitigation resources.

In addition to ensuring that the site is free of contamination, public agencies may likewise prohibit the use of harmful or hazardous materials to ensure that the site will not become contaminated over time. Partnering organizations should be upfront with the public agency on the types of substances that they may use to grow food.

Public agencies will address issues of contamination and use of harmful or hazardous materials in any written agreement between the two parties, and it is critical for any food-growing group to know the limits of its rights and responsibilities as they pertain to soil quality and contamination.

Those involved in surveying suitable public land should consider the following:



- ▶ the owner of the site (such as a municipality or utility district)



- ▶ the types of structures and uses (past and present) on the site



- ▶ the site characteristics, such as slope, solar exposure, ground cover (e.g., soil/grass versus concrete), soil quality, contamination, water, and electricity access (see sidebar "Soil Testing and Contamination" for more information)



- ▶ the site location relative to potential users, including schools, community centers, and residential areas



- ▶ accessibility of the site via transit, parking, and various forms of active transportation (e.g., walking and bicycling)



- ▶ allowable uses for the site (see "Urban Agriculture and Land Use Laws" on page 11 for more information)

Making Sites Available to Community Partners

Once potential sites have been identified, public agencies may set up a process to facilitate their use by community partners. A number of communities have established such processes as a component of a robust program to support the use of public land for urban agriculture. As discussed below, many of these programs rely on the public agency leasing – as opposed to selling – vacant or surplus property to community partners.

Leasing property is a good way for a public agency to evaluate whether the proposed use will be sustainable over time. If, after a successful term, the community partner wishes to buy the property, the public agency will be much more likely to enter into negotiations if it has a favorable opinion of both the project and the partnering organization.

For instance, in Minneapolis, nonprofits, or garden groups with a nonprofit sponsor, can lease vacant city-owned lots through the Homegrown Minneapolis Community Garden Program. The leases, which the city kept intentionally affordable at one dollar per year, range from one year for new groups to between three and five years for experienced community garden groups. The available lots are all too small or oddly shaped to build on, which means they will likely be available for gardening even if the surrounding area is redeveloped. The lots are leased on a first-come, first-served basis. In 2012, seven of the 18 available lots were leased for community gardens.¹⁷

Similarly, the city of Boston has sought requests for proposals (RFPs) for city-owned vacant parcels (either tax-foreclosed or surplus municipal land) from “qualified individuals, businesses, and/or organizations to farm these properties, either as for profit or not-for-project enterprises.”¹⁸ The RFP strongly encourages local community members to submit proposals and includes “incentives for partnerships between the farmers and local community organizations to encourage farming that is responsive to community needs and interests.”¹⁹



Baltimore has also used such a process to identify nonprofit and for-profit partners through a request for qualifications. The city was interested in supporting urban agriculture initiatives on city-owned sites that had no short- or medium-term development plans that would “develop successful entrepreneurial urban farms throughout the City of Baltimore ... ameliorate the problem of food deserts in Baltimore City neighborhoods, and ... transform vacant and unused land to achieve economic, social and environmental benefits.”²⁰

Cleveland has been overwhelmed by vacant and foreclosed properties – nearly 20,000 in total, with 8,000 owned by the City of Cleveland Land Bank.²¹ The city has turned this challenge into an opportunity, launching an initiative called ReImagining Cleveland to turn city-owned vacant sites into productive, beautiful open space – including urban agriculture projects.²² In 2010, ReImagining Cleveland issued a call for applications that sought to “empower neighborhood residents and community stakeholders to turn vacant land bank lots into community assets” that:

- ▶ provide productive use and benefits to the public
- ▶ build community stewardship over land and inspire community pride
- ▶ increase the community’s self-reliance on food and energy through community gardens and energy production
- ▶ enhance the city’s ecosystem functions through storm water management, enhancing biodiversity, or remediating contaminated sites
- ▶ advance the city administration’s comprehensive sustainability strategy²³

Applicants sign a five-year lease on the properties, with the option to renew or even acquire the property in the future. This successful initiative has resulted in the establishment of dozens of community and market gardens, orchards, vineyards, and a host of other green space projects throughout the city.²⁴

Finally, in Multnomah County, Ore., an initiative called CountyDigs! facilitates the donation of surplus properties to qualified nonprofit organizations for use as a community garden, urban farm, teaching garden, or green space.²⁵ Every year, the Department of County Management asks a Greenspace Review Committee to screen and identify tax-foreclosed properties that are appropriate for use as green space, including community gardens.²⁶ Upon approval of an application, the property is transferred to the sponsor organization at no cost other than property title recording fees. If the property is not used for the intended donation purpose, ownership reverts to the county. As of 2012, County Digs! has facilitated the donation of such property to groups operating five community gardens.

Planning for Public Benefits on Public Sites

As a prerequisite for accessing a particular piece of public property, users should be able to articulate a vision and a plan for their future urban agriculture activities. Creating such a plan has obvious benefits: it helps to identify needed partnerships and resources (including and beyond land) and is central to engaging community residents and project participants.

A clear plan also allows site users to specifically describe the public benefits of the proposed activities in order to avoid any potential legal hurdles associated with an illegal gift of public funds.

How does a “gift of public funds” concern arise when growing food on public land? The answer is rooted in how most states treat private benefits gained from public resources. When food-growing groups want to engage in activities that have a sales component or other private benefit, like an on-site farm stand that provides job training, they may hear concerns that these programs raise a “gift of public funds” issue because of the appearance that only certain residents are benefiting from programs paid for with public dollars.²⁷

Similarly, as interest in eating healthy, local food grows, many community garden programs cannot keep up with demand and have long waiting lists of gardeners wanting to access a plot. Allowing a limited, select group of individuals to have access to a community garden on publicly owned property – and gain the individual benefits that such access creates – may also raise a legal challenge on gift of public funds grounds.

Although opponents may raise these claims, it’s unlikely that they would be successful. To our knowledge, no court has ever found use of public property for urban agriculture projects to be an unlawful gift of public resources. Perhaps more important, and as noted throughout this guide, urban agriculture activities offer myriad benefits to the public – including promoting healthier eating, physical activity, community engagement, and neighborhood building, as well as increasing property values. Encouraging economic self-sufficiency and healthy food access through sales of produce also serves an important public benefit.



Gift of Public Funds

Almost every state constitution contains a provision that bars public entities from using public funds or resources to benefit private purposes, often referred to as the “anti-gift clause” or the prohibition against a “gift of public funds.”²⁸ The purpose is laudable – to ensure that tax dollars raised from citizens are spent for the benefit of the public rather than to enrich individuals. These clauses vary across state constitutions in form and scope. Some are limited to prohibitions on lending state funds to private enterprises while others are a broader prohibition against using public monies in any form for any private purposes.²⁹ Despite these variations, the basic rule that public resources cannot be used to create a private benefit is nearly universal.

Most states recognize that the anti-gift clause is not violated when the use of public resources provides a public benefit or serves a public purpose, even if the public resource incidentally also benefits a private individual or group. This public purpose or public benefit exception has been recognized in a wide variety of uses, including encouraging economic development, providing subsidized housing, and financing and constructing sports arenas.^{30, 31}

To minimize any risks associated with an illegal gift of public funds, community groups should work with public agencies to ensure that their plan for urban agriculture activities does the following:

- ▶ **Clearly articulates the public benefits of the program** (such as job training, nutrition education, food access for low-income residents, etc).³²
- ▶ **Establishes eligibility criteria** so that participants in the urban agriculture activities are those whom the program is designed to benefit.
- ▶ **Ensures that garden plots/shares (if relevant) are allocated in a fair and unbiased manner**, particularly if the number of interested participants exceeds the land available. (A lottery or first-come, first-served system is less likely to be perceived as unfair.)

A good example of these principles in action can be found in the ReImagining Cleveland Request for Proposals. Applicants must ensure that “their project will integrally involve or hire city residents in planning and implementation of the project. Community organizations should have a majority of its members residing in a defined geographical area ... with a purpose to improve the quality of life in that area.... An applicant organization cannot discriminate in admission of members, and must demonstrate active participation of neighborhood residents.”³³



Participants in urban agriculture projects in Maui, Hawaii, and Evansville, Ind., benefit from fresh produce and nutrition education.

CASE STUDY

Growing a Nonprofit Partnership in San Jose, Calif.

The San Jose Community Garden Program began in 1977 on a five-acre city lot, growing over the years to more than a dozen plots across the city.³⁴ But despite high demand for more gardens – with more than 500 residents on waiting lists – the city had to place a moratorium on new gardens in 2009, facing budget constraints and limited staff capacity. Now the city is experimenting with a new model involving a partnership with a local nonprofit to meet community demand.

San Jose's Community Garden program is administered by the Department of Parks, Recreation, and Neighborhood Services, led by parks manager Simeon Mercado with support from part-time garden coordinator Manny Pérez. The parks department charges gardeners nominal water use and management fees, but this revenue covers only a small portion of the cost of staff time and large-scale maintenance services the city provides to gardeners, from fixing broken fences to trimming trees.

“With all the communication and coordination it takes, Manny can barely keep up with the gardens we already have,” says Mercado. While trained volunteer garden managers help ensure each garden is safe, well maintained, and in compliance with program rules, parks department staff are ultimately responsible. “It’s a very political program,” Mercado says. “If residents have a problem, they’ll go talk directly with their council member.”

Confronting limited resources and growing demand for more gardens, Mercado and his staff knew they needed to explore new models and methods for expanding the program. The Health Trust, a local nonprofit that had been coordinating healthy food access work through the Campaign for Healthy Food San Jose, approached the parks department with a plan and a partner. CommUniverCity, a nonprofit focused on service-learning programs for local youth, was interested in starting a community garden on a piece of land owned by the water district. Mercado and his team saw this partnership as an opportunity to establish a pilot program for nonprofit managed community gardens on public land.

To make this pilot a reality, the new partners had to overcome a few challenges. First, the water district was hesitant to enter into a lease agreement with a nonprofit organization that didn't have much experience in managing community gardens. Second, the parks department had little experience negotiating lease agreements with nonprofits. Inherent in both of these challenges were concerns about liability and legal responsibilities. What's more, past partnerships between the parks department and community groups interested in operating gardens had failed after only a year, leaving the city holding the bag.

To address the first issue, the parks department relied on its experience operating two other gardens on water district land. The water district was willing to enter into a lease agreement with the parks department, which in turn would sublease the land to CommUniverCity.

For help with the second issue – negotiating its lease agreement with the nonprofit – the parks department turned to the Campaign for Healthy Food San Jose, which provided an example lease agreement from a nearby city. In the proposed arrangement, CommUniverCity is responsible for all garden maintenance and operations, must carry a \$1 million liability insurance policy, and must indemnify the city. (For more information on indemnification, see the “Liability” section on page 26.) Unlike the existing gardens, the parks department will be responsible only for managing the lease.

Patience has been critical, Mercado says, to deal with all the approvals, build consensus, and pursue accommodations from various agencies. For example, the water district had to approve the change of land use for the garden, and the two agencies are still working out the final details of their agreement.

“These gardens are important to community members, they provide a hobby for seniors, and they support low-income families,” says Simeon Mercado, San Jose parks manager.

Mercado notes that The Health Trust has played an important role throughout, providing funding for the garden as well as promoting gardens at the city council level. He is optimistic about the pilot program’s success, which he considers a win-win for the city and for prospective gardeners alike.



CASE STUDY

Turning “No” into “Yes” in Maui

Despite Hawaii’s rich volcanic soils and a year-round tropical growing season, the state imports up to 90 percent of its food.³⁵ Given this heavy reliance on imports, it can be hard for many residents to find affordable fresh fruits and vegetables. Native Hawaiians have been hit particularly hard by high rates of health conditions linked to poor nutrition, including obesity, diabetes, and heart disease.³⁶

To make it easier for residents to grow their own fruits and vegetables, the Maui Department of Public Health used grant funding to help expand the number of community gardens on the island. The health department commissioned the Community Work Day Program (CWD),³⁷ a local environmental beautification project, to lead the effort. With strong ties to government, businesses, landowners, and community groups, CWD was able to leverage \$670,000 in in-kind support from \$72,000 of direct funding to help establish gardens at schools, homeless and domestic violence shelters, parkland, and abandoned plantation lands. But the process hasn’t been easy.

Providing fresh, affordable fruits and vegetables to communities relying on expensive imports might seem like a popular idea. But CWD director Rae Chandler says that despite the health and economic benefits of community gardens, the group’s efforts met with a lot of resistance. “The parks and schools were opposed to the idea at the beginning,” she says, citing concerns about liability and maintenance. Schools had the added concern of security and safety for their students.

To address these challenges in the school setting, CWD pursued a number of strategies:

Cultivating champions. This was especially critical for school sites, given opposition from the school superintendent. CWD approached individual schools directly – sometimes finding support from the principal, sometimes from a teacher or a maintenance staff person. Often, a combination of allies at individual schools made it possible to start new gardens.

Working with informal agreements. CWD doesn’t have formal written agreements with schools, but the nonprofit carries a \$1 million liability insurance policy and covers each school. CWD also provides educational garden programming tailored to state standards, which creates an added incentive for schools to participate. In return, CWD asks that each site create a sustainability plan for how they will continue to cover operational costs into the future. Often, a school’s Parent Teacher Association (PTA) will host several fundraiser events throughout the year that involve sales of produce grown in the garden. (See page 24 to learn more about informal agreements.)

Building strong community partnerships. Most schools have to recruit community members to cover maintenance in the summer months. One elementary school created an arrangement that addressed maintenance concerns while easing



Before and after photos of a garden established by Maui’s Community Work Day Program (CWD).

administrators' concerns about accountability: the school garden can be used by community members with a connection to the school. The school decided to extend the reach beyond parents and teachers to include alumni. Alumni support is common for colleges and universities, says Chandler, but "it was surprising how many people were really excited to go back and support their elementary school."

Once a few school gardens were established, other schools began calling CWD to have a garden of their own. Even the school superintendent, initially resistant, has had a change of heart: he's planted a garden at his own home and calls CWD from time to time for gardening tips.

Chandler says the number of community gardens in Hawaii is the highest it's been since 1942, when food imports stopped and residents turned to victory gardens. CWD continues to field requests for more community gardens on Maui and has swayed the arborists at the county parks department to allow edible plantings, particularly fruit trees, despite initial fears of rotting fruit littering the ground and sick people suing the department. And CWD is working to include policies that support healthy food production in the upcoming general plan revision. "We won't let liability be the end of all good ideas," Chandler says adamantly.

Community support is key to CWD's successful school gardens.



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Understanding Common Types of Agreements

While state and local laws and policies can encourage the use of public land to grow food, agreements are critical to bring those possibilities to life. Agreements help define the relationship between individuals, community organizations, and public entities and provide clarity to all those involved.

Depending on the public agency that owns the land, a variety of agreement types may be used. Some states grant broad authority to public entities to convey or lease public property.³⁸ Others provide more detailed rules based on the type of public entity, the interest being conveyed (ownership vs. lease vs. use agreement), and the type of use.³⁹ This section describes some of the basic legal principles of common types of agreements that may be used for growing food on public land.

Remember that *agreements* for the use or possession of land to grow food are distinct from any *land use laws* that a local government establishes to govern how land can be used. For a general discussion on land use policies and laws relating to growing food, see “Urban Agriculture and Land Use Laws” on page 11.

For examples of each of the agreements described below, see: www.changelabsolutions.org/publications/dig-eat-be-healthy

Leases

A lease is a contract in which the owner (e.g., the public entity) conveys the right to use and occupy the property to another person or entity (e.g., the gardening group), in exchange for something of value – typically rent. The lease term can last for the life of one party, for a fixed period of time, or until either party decides to terminate the lease.⁴⁰ Anyone who has rented an apartment is familiar with the term *lease* and understands that the lessee – the one who leases – has the right to solely occupy and use the property for the duration of the lease. The landlord can terminate the lease if the lessee violates one of the lease’s terms.

Leases are the most common type of legal arrangement between public entities and food-growing groups for the use of public land. For example, the City of Portland leases vacant public property to a nonprofit organization for the exclusive purpose of gardening and food production.

Licenses and Permits

A license is a contract in which the owner gives a person or entity permission to engage in a particular activity on the property.⁴¹ A license gives more limited access to use property than a lease. Under a lease agreement, the lessee usually has the sole right to occupy the land with the landowner having very limited rights of entry. Under a license agreement, the licensee – the one who holds the license – does not have sole right to occupy the land. Rather, the licensee has authorization to enter the land solely for the duration and activities provided in the license.

A license and a permit are essentially the same thing. Anyone who has ever reserved a campground or picnic site is familiar with permits. A permit holder has the temporary right to engage in the activities stated in the permit – such as to camp in a particular place in a park for the length of the permit. The permit allows the permit holder to engage in the activities, but it doesn't give an exclusive right to occupy the park. The park rangers can enter the land and other campers can walk through and use the site, although the site capacity is generally limited by park rules.

It's not unusual for an urban agriculture project to be governed by a license agreement. For example, the Lafayette Community Garden in California is on public land owned by the East Bay Municipal Utility District (EBMUD), a local water agency. A license agreement between EBMUD and the City of Lafayette, along with a sublicense agreement between the City and a local nonprofit, allows the community garden to operate on EBMUD property.⁴²

Joint Use Agreements

Joint use agreement is more of a descriptive term than a specifically defined legal term like *lease* or *license*. In essence, a joint use agreement is a type of contract – typically between two governmental entities but also between a government entity and an established nonprofit organization – that sets forth the rights and obligations of both parties regarding use of the property. Sometimes, particularly when the arrangements do not involve an exchange or expenditure of funds, the government parties prefer to call the arrangement an *agreement*, rather than a license or contract. These arrangements usually rely on the goodwill of the parties to carry out their obligations. While the arrangements are legally enforceable, if there is a conflict the parties are more likely to abandon the arrangement than seek legal recourse.

What's in a Name? Contracts, Agreements, and MOUs

At its core, a contract is an agreement between two or more parties creating obligations that are legally recognized or enforceable. A contract may be verbal or written, but for the most part, people use the term *contract* to describe a written agreement. There are many types of contracts and a variety of names for them. A grant is a type of contract, as is a lease, a license, a permit, or even the receipt you receive in a parking garage. Contracts are the legal mechanisms to formalize agreements between individuals, businesses, or different governmental entities.

Sometimes government entities use the term *agreement* or *memorandum of understanding* (MOU) for contracts with other governmental entities. These agreements are still contracts, but because of agency history or practice, the agencies may prefer the term agreement. What the document is called isn't important; what is important is the intent of the parties and the terms that set forth the privileges and obligations of each party.

For a more detailed discussion of this issue, see ChangeLab Solutions' fact sheet "Contracts and MOUs: Understanding Key Terms" at: www.changelabsolutions.org/publications/MOU-contracts

Shared use of facilities by a city and school district or other governmental entity can occur with already existing facilities, too. For example, in Milpitas, Calif., the city and the school district entered into a joint use agreement that allows the city to establish a community garden at an elementary school.⁴³ And in Seattle, the city and the school district have pooled their recreation facilities to increase access for both students and city residents.⁴⁴



Informal Agreements

In many instances, community gardens start through more informal or “handshake” agreements. For example, the City of Attleboro, Mass., has had a long-standing unwritten agreement with the Attleboro Land Trust to operate a community garden on city land. The city provides water and compost, and the land trust manages the gardeners, including having all gardeners sign a liability waiver and contract. This garden has been operating successfully for over 14 years.



Although this type of arrangement is not uncommon, particularly in long-standing relationships, in most situations formalizing the arrangement will benefit everyone. First and foremost, a signed contract provides each party with enforceable rights. For example, without a formal agreement gardeners have no legal protection for their continued use of the land. Second, informal agreements are dependent upon the goodwill of those who make them. When key personnel change, agreements may be abandoned. Finally, the process of negotiating and signing a formal written agreement provides a vehicle for parties to learn about each other’s expectations and concerns, address those concerns, and ensure that everyone understands and agrees to the terms of the relationship. The development of the written contract allows the parties to better understand their rights and responsibilities so that fewer conflicts arise – and to resolve any disputes that may occur.

Access to public property for gardening and food production can improve food access for community residents.



What to Look for in an Agreement

Once the parties have agreed to use public land for urban agriculture, the next step is to memorialize the agreement in writing. When entering into an agreement with a public agency, community partners should expect that the agency will have a formal agreement that contains numerous provisions.

The purpose of this section is not to discuss each and every provision that community partners are likely to encounter. Rather, the aim is to highlight some of the most common and/or contentious issues pertaining to the use of public land so that community partners can better understand what to expect from public agencies and how to address specific issues that may arise during the negotiation process.



Liability: Indemnification and Insurance

One of the first issues to arise when partnering with a public entity is *indemnification*. When you agree to indemnify someone, it means that you will reimburse that person for any loss suffered due to your own (or sometimes a third party's) action or lack of action. For example, if someone sues a public entity for an injury arising out of the terms of an agreement concerning the use of the public property for urban agriculture, the partnering organizations will likely be required to indemnify the public entity – that is, pay for all costs incurred by the public entity as a result of the lawsuit, including any monetary damages awarded by a court.

Additional Insured?

Nonprofits or other community organizations can sometimes be added as an additional insured on a primary party's insurance. This is sometimes called being endorsed onto the insurance agreement or buying a rider to the agreement. The public agency's risk manager or legal counsel should know whether this is an option and can find out what it would cost. If the public agency will not cover urban agriculture activities in its own policy, smaller gardening groups or neighborhood block associations may want to partner with a larger nonprofit that can cover liability insurance for the activities.

Indemnification is typically a nonnegotiable term, but there usually should be an exception to the duty to indemnify if any harm is caused by either the willful misconduct or the gross negligence of the public entity itself. And although indemnity provisions do in fact create potential exposure to liability for a partnering organization, such exposure is mostly manageable through insurance and/or proper care and management of the urban agriculture site.

Insurance is another issue that typically arises in the beginning of any negotiations. Insurance is a contract in which one party (the insurer) agrees to protect another party (the insured) against the risk of loss, damage, or liability arising from some specified contingency, such as a lawsuit. The insured pays a premium to the insurer, who in return agrees to cover the cost in the event that the contingency occurs.

All public agencies carry some form of liability insurance. Whether growing food is a covered activity depends on the terms of the policy. For an agency such as a parks department, for example, public recreational use is likely a covered activity, but growing food for consumption may not be. In publicly operated programs, the

government agency typically covers liability, although sometimes public entities will also cover liability when a nonprofit or community group is involved by adding the group as an additional insured (see “Additional Insured?” on page 26). Other times, nonprofit organizations are required to carry liability insurance, usually for a specified amount of coverage such as \$1 million. There are different types of liability insurance, and agreements can get quite specific as to what levels and types of insurance are required.



Utilities

Partnering organizations can and should negotiate with public agencies based on anticipated water and utility usage, local climate, and costs. Sometimes it can be more expensive for an urban agriculture group to install a meter for water and power than for the public entity to pay for it. This is especially true if the agency is also using water or electricity on the site. Other times groups will share or cover the entire expense. At Glenwood Leadership Academy in Evansville, Ind., for example, there was no water connection on site. Residents were so committed to the project that they would carry buckets of water by hand up the street to keep the plants alive during the hot summer months. A grant from the local public health department provided funding for an irrigation system to be installed, and the school will pay for all water use. Any agreement should also list contact information for the agency and the individual who is responsible for maintaining utilities. That will help alleviate confusion in case of an emergency, such as a water line flooding.



Maintenance

Maintenance is a major concern for public agencies, especially school districts, and can be a reason some government entities may not initially want an urban agriculture project on their property. Agreements help spell out who is responsible for what types of maintenance. In joint use school-community gardens, for example, maintenance is often divided by time. The school is typically responsible for maintenance during school hours, and the community partner is responsible for after-school hours, weekends, and during the summer break. The host agency or school will sometimes allow the garden to use the existing waste removal service used by the public entity.



Sustainable Growing Practices and Pest Management

Agreements for urban agriculture projects on public property almost always address the use of pesticides, herbicides, and chemical fertilizers. Some agreements ban the use of any chemicals, others allow only the least toxic, and some require the implementation of an integrated pest management program^{45, 46} or that growing practices comply with the National Organic Program.⁴⁷ State and local law, together with public agency policy, may dictate if and how chemicals can be used on public property.⁴⁸ In addition, most states have laws specifically addressing the use of pesticides on school property.⁴⁹

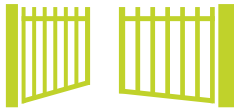
In deciding to limit the use of pesticides, make sure that maintenance staff with access to the site are aware that food growing areas should be free of pest-control substances, including rat poison. It is also a good practice to be aware of any pesticide use on adjacent property (particularly if you are near agricultural or other landscaped property) because sprayed pesticides can “drift” in the air. Conversely, if you do decide to allow the use of chemicals, be sure to take into consideration any special characteristics or uses of neighboring properties. For example, pesticide use is not allowed at the Lafayette Community Garden in Lafayette, Calif., because it is adjacent to a creek that is home to sensitive fisheries.⁵⁰

Finally, when growing food on a school or other site that will be accessed by children, limiting the use of pesticides is recommended. Pesticide exposure poses unique risks to children for a number of reasons. First, children have activity patterns – like putting their hands in their mouths – that can increase their exposure to pesticides. Second, because they have smaller bodies, children end up taking in more pesticides per unit of body weight than adults. Third, growing bodies and brains are more susceptible to adverse health and development effects.^{51, 52}



Contamination

As discussed in “Soil Testing and Contamination” on page 12, growing food on public property requires that 1) the property itself be free of contamination, and 2) materials used to grow food will not contaminate the property over time. Soil testing should be done during the site selection process and before entering into an agreement, and test results should be attached to any agreement. Further, most public agency agreements will contain provisions addressing the use of harmful or hazardous materials (as those terms are defined in federal, state, or local law). Community partners will want to clarify whether they can use certain materials or substances for growing practices, and if so, whether there will be any obligation to clean up the site if the urban agriculture use ever ceases.



Access and Security

Many urban agriculture projects are enclosed by a fence, perhaps with a locked gate. While this may seem at odds with notions of public space, fences are important to prevent vandalism and theft of plants and tools. Controlled access is a key way that gardeners keep the garden safe and secure.



Improvements

Similar to a lease for office space or an apartment, an agreement for the use of land to grow food should define what types of improvements, if any, will be allowed. For example, will the partnering organization be permitted to erect raised beds? Dig a trench for irrigation? Construct a shed or fence? And if any improvements are allowed, who owns them if the parties terminate their agreement? All of these issues should be addressed so that the parties understand their rights and responsibilities when altering (even temporarily) the property with improvements. Urban agriculture organizations should identify beforehand, if possible, the types of improvements that they expect to make so that the parties can reach a mutual understanding when drafting the agreement. The parties could also attach a list of improvements as an exhibit to the agreement and state that the list could be amended upon written agreement of the parties since needs may change over time.



SECTION 4

Growing Partnerships with Public Schools

Across the country, public schools serve as centers of community life; some states even refer to schools as the “civic centers” of a community.⁵³ As urban agriculture becomes more prevalent, it seems only natural to look to unused public school property for opportunities to grow food.

Keep in mind that growing food on school property doesn't necessarily translate to a “school garden.” A “school garden” is a garden on school property primarily used by the school and its students for nutrition and educational purposes. In contrast, urban agriculture that is located on school property is made available to the public generally and is often operated by a public entity or a private nonprofit organization such as a community gardening group. This section discusses some of the unique legal and policy issues that arise when community groups want to grow food on school grounds.



Is Urban Agriculture Allowed on School Property?

Schools often have sufficient space on their grounds to support urban agriculture, but it is not always clear whether they have the legal authority to make their land available to do so. Specifically, it may be unclear whether, or to what extent, state law permits urban agriculture on school grounds since it may arguably require schools to expend resources on non-educational activities that may interfere with schools' educational charters.

Urban agriculture sites exist on school district property across the country.



School districts, like cities and counties, are political subdivisions of the state. As such, they lack any inherent power, and instead their programs and regulations must be justified by delegations of authority from the state. Many states provide their cities and counties with extensive authority, called *home rule authority*, to act independently to address local concerns. In contrast, school districts are rarely provided such sweeping authority.⁵⁴ If a school wishes to support urban agriculture on its property, it usually must point to some provision in state law authorizing that program.

Most states require school facilities and property to be used for educational purposes, but allow community use of school property when such use doesn't interfere with educational activities. In fact, many states have statutes expressly authorizing schools to grant community access to school grounds for recreational and other civic activities. In Pennsylvania, for instance, school districts may authorize the use of school grounds for "social, recreational, or other proper purposes."⁵⁵ Similarly, in Iowa, school districts may permit school grounds to be used for "community recreational activities" and "similar community purposes."⁵⁶ These statutes are likely broad enough to authorize school districts to allow urban agriculture on school property as a recreational, community activity.

In some states it may be less clear whether urban agriculture projects like community gardens are allowed on school district property, or whether private groups can operate them. For example, multiple sections of the California Education Code address community recreational use of school property. These provisions make clear that California school districts have "broad authority" to "carry on activities and programs" that address their "diverse" and "unique" needs, and that districts have wide latitude to enter into joint use agreements.^{57, 58} But two potentially conflicting sets of provisions in the Education Code have caused some concern among food growing groups and their allies.⁵⁹ Some school districts have interpreted these provisions to mean that only specific public entities are permitted to operate community gardens on school grounds and that private nonprofit groups are prohibited from doing so. Others have concluded differently, but the ambiguity in state law has caused unnecessary conflict.

In contrast to California, Minnesota's state law on community use of school property is relatively simple. Minnesota vests school boards with broad authority to allow the lease or use of school property for community purposes so long as "school purposes" are not disrupted.⁶⁰ Under this broad authority, the Minneapolis Public Schools district has crafted a detailed policy on school gardens, including

community gardens.⁶¹ Under the policy, organizations may apply to become an official “Community Partner” of the Minneapolis Public Schools and then enter into a license agreement with the district to use school property as a community garden.⁶² Community partners must agree to a set of standard assurances, which include provisions on insurance, indemnification, and background checks of volunteers, and must complete an annual renewal.^{63,64}

In short, state law delegating authority to school districts can be quite complicated, and it may not always appear internally consistent. School districts and private groups interested in promoting urban agriculture on school property should carefully review all applicable laws to determine the scope of school district authority to engage in nonschool activities. Although differing interpretations of various statutes may result in an unexpected bump in the road, do not be discouraged – urban agriculture sites exist on school district property across the country.⁶⁵

Who Are the Stakeholders?

Because school districts typically operate independently of other city/county agencies, the range of stakeholders a community group might interact with will differ. Urban agriculture groups will need the approval of the school and the district, as well as other relevant stakeholders. The stakeholder with the most clout during the process may be the school principal, as she will ultimately need to approve the garden at her site. Principals can also serve as a liaison to the school district and help potential urban agriculture groups navigate relevant district requirements. Supportive teachers or staff, such as maintenance workers, can be helpful allies in encouraging a reluctant principal to see how the benefits of growing food on school grounds can far outweigh any concerns.

Where's the Beet? Serving Community Garden Food in School Cafeterias

The school cafeteria may seem like a logical place to serve the fresh fruits and vegetables grown in a garden on school grounds, but school districts often have questions about what foods, including garden produce, they are allowed to serve in their cafeterias. Federal and state law currently offer no guidance on whether school cafeterias may serve yield from urban agricultural projects on school grounds, but they do offer some guidance on produce from school gardens. Most school cafeteria programs are subject to regulations under the National School Lunch Program (NSLP),⁶⁶ which does not directly address serving school garden produce in cafeterias. However, the USDA, which administers the NSLP, has stated that cafeterias can serve school garden produce as part of a reimbursable school lunch program.⁶⁷ The USDA also provides grants for school gardens as part of its efforts to promote healthy eating and increase the amount of local and regionally produced foods served in school cafeterias.⁶⁸ There is nothing to suggest that this support for school gardens generally, and serving school garden produce in cafeterias in particular, does not extend to produce from other kinds of urban agriculture on school grounds.

Potential school partners include:

- ▶ principals and teachers
- ▶ school board
- ▶ school district real estate office
- ▶ school district risk management department
- ▶ maintenance, landscaping, and custodial staff
- ▶ school nutrition services
- ▶ parents and Parent Teacher Associations (PTAs)
- ▶ health/wellness committee (responsible for creating school wellness policies)

No matter where the produce comes from, state law imposes health and sanitation requirements on all food establishments, including school cafeterias. In most states, these requirements are spelled out in the state's version of the Model Food Code (MFC). While the MFC does not specifically address the use of produce grown on school grounds in school cafeterias, it sets standards for the storage, handling, and preparation of all food served in school cafeterias.^{69,70} Fruits and vegetables grown on school grounds are subject to these same standards, so schools should review their state's laws and make sure that they follow these standards for any garden produce served in the school cafeteria.⁷¹

For a more detailed discussion of this issue, see ChangeLab Solutions' fact sheet "Serving School Garden Produce in the Cafeteria" at: www.changelabsolutions.org/publications/school-garden-produce

Volunteers on School Property

Even if they have no direct contact with schoolchildren, gardeners on school property may be treated as school volunteers. As school districts increasingly require volunteers to undergo criminal background checks, gardeners may be subject to these same rules.

State laws regarding criminal background checks of school volunteers vary greatly in breadth and scope. Background checks are required in some states⁷² and are optional in others;⁷³ in those states with no explicit law, the decision will fall to individual districts.⁷⁴ The requirement may extend only to volunteers who have certain specified levels of contact with students,⁷⁵ or may except parents, guardians, or even grandparents of district students.⁷⁶ Some states require fingerprinting as part of the criminal background check of school volunteers⁷⁷ and some require presentation of government-issued identification.⁷⁸

School district volunteer policies will spell out the exact mechanisms of any criminal background check requirement (presumably in compliance with state law where applicable). It is up to individual districts whether to treat gardeners as school volunteers and subject them to any district policy requiring criminal background checks.

Denver Urban Gardens (DUG) operates a number of community gardens on school property (called School Parcel Community Gardens). Under its agreement with the Denver Public Schools, DUG gardeners at School Parcel Community Gardens are treated as school volunteers, even if they have no contact with schoolchildren. Because Denver Public Schools require all school volunteers to undergo a criminal history and background check, DUG's gardeners must go through the same process.⁷⁹ Similarly, gardeners at the Dowling Community Garden on the grounds of Dowling Environmental School in Minneapolis are treated as school volunteers and must pass a criminal history background check required by the Minneapolis School District.⁸⁰

CASE STUDY

Community Makes It Happen in Vanderburgh County, Ind.

A community garden in Evansville, Ind. – where obesity rates recently ranked among the highest in the United States⁸¹ – is a shining example of how an entire community can come together to make healthy foods more accessible to all residents. Community members established and continue to sustain a community garden at the Glenwood Leadership Academy, a public school in a lower-income neighborhood.⁸²

The Glenwood garden was born out of a larger effort to revitalize neighborhoods struggling in the wake of the loss of manufacturing jobs in the region. The revitalization effort has brought together city agencies, the school board, local businesses, nonprofits, and other organizations, including the Welborn Baptist Foundation, which took the lead in supporting a local neighborhood association in establishing the Glenwood garden.

Driven by community volunteers, the garden started small, with one woman regularly walking several blocks with buckets of water to keep things growing. Support from local organizations, such as Keep Evansville Beautiful and the Purdue Cooperative Extension, were a vital source of materials and technical assistance during the beginning phase.

With a goal of serving the entire community, the Glenwood Community Garden does not have individual plots for gardeners. For the first few years, the school principal, neighborhood residents, and Welborn staff got together in the spring to plan the garden for the coming year. At first, the garden was open to the community, but due to vandalism, they've had to put up a fence and a locked gate. Now volunteers come regularly during times coordinated by the neighborhood association leaders. During the summer and fall the garden is open to residents to come and take free produce two evenings a week. On Saturdays, it hosts a small farmers' market for the neighborhood.

“The success of this garden resulted from collaboration, commitment, and education on behalf of the entire Glenwood community,” says Jill Walters, lead staff for the garden project at the Welborn Baptist Foundation.

The garden operates on verbal agreements, made possible because of the trust that has developed over the years between the principal and the neighborhood association leaders. The school takes responsibility for all liability and pays for the water used by the garden. A grant covers the costs of tools, supplies, and much of the irrigation infrastructure. Other resources came through in-kind donations. For instance, a local Eagle Scout troop recently built a pergola for the garden. These efforts demonstrate how community partnerships can transform the food landscape in low-income communities.

The Glenwood Garden grows healthy food for neighborhood residents.





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SECTION 5

Sample Agreements

Public entities use several common types of agreements when contracting with groups to grow food on public land. Examples of these types of agreements are included online. Please note that these examples are from the field and reflect local conditions and practices. Accordingly, we do not endorse them as legally sufficient nor complete in all regards. We always recommend that you consult an attorney licensed to practice in your state when drafting and/or negotiating an agreement to grow food on public property.

Visit www.changelabsolutions.org/publications/dig-eat-be-healthy to view the following sample agreements:

- ▶ *Agreement Between City of Sunnyvale and Sustainable Community Gardens for the Development, Operation, and Maintenance of Community Gardens*
- ▶ *Lease Agreement between City of Portland and Mercy Enterprise Corporation*
- ▶ *License Agreement between City of Berkeley and the Boss Urban Gardening Institute*
- ▶ *License Agreement between East Bay Municipal Utility District and the City of Lafayette and Revocable Sublicense Agreement between the City of Lafayette and Sustainable Lafayette*

For a model lease, please refer to “Ground Rules: A Legal Toolkit for Community Gardens,” which contains model language with accompanying commentary to help better understand some of the legal implications of certain agreement provisions, at: www.changelabsolutions.org/publications/ground-rules



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Keep Digging: Resources

Starting a Community Garden

American Community Gardening Association (ACGA)

Starting a Community Garden

www.communitygarden.org/learn/starting-a-community-garden.php

Rebel Tomato: Plotting Our Future One Garden at a Time

www.communitygarden.org/rebeltomato/index.php

Let's Move!

Community Garden Checklist

www.letsmove.gov/community-garden-checklist

Denver Urban Gardens

Growing Community Gardens: Denver Urban Gardens' Best Practices Handbook for Creating and Sustaining Community Gardens

www.dug.org/storage/public-documents/DUG_Best_Practices_digital_copy.pdf

National Gardening Association (NGA)

www.garden.org

Find a Gardening Expert

Find a Master Gardener to help you through your local Agricultural Extension Program.

www.extension.org/pages/9925/state-and-provincial-master-gardener-programs:-extension-and-affiliated-program-listings

Find a local Extension Office.

www.csrees.usda.gov/Extension/index.html

Model Leases, Gardener Agreements, and Forms

ChangeLab Solutions

Contracts and MOUs: Understanding Key Terms

www.changelabsolutions.org/publications/MOU-contracts

Ground Rules: A Legal Toolkit for Community Gardens

www.changelabsolutions.org/publications/ground-rules

University of Missouri Extension

Community Garden Toolkit

www.extension.missouri.edu/publications/DisplayPub.aspx?P=MP906-6#Resources

Denver Urban Gardens

Growing Community Gardens: Denver Urban Gardens' Best Practices Handbook for Creating and Sustaining Community Garden

www.dug.org/storage/public-documents/DUG_Best_Practices_digital_copy.pdf

American Community Gardening Association

Tools: Sample Form

www.communitygarden.org/learn/tools.php

Land Use Policies to Support Gardening

ChangeLab Solutions

Seeding the City: Land Use Policies to Promote Urban Agriculture
www.changelabsolutions.org/publications/seeding-city

Public Land Inventory Examples

UrbanFood.org

Cultivating the Commons: An Assessment of the Potential for Urban Agriculture on Oakland's Public Land
www.web.pdx.edu/~ncm3/files/Cultivating_the_Commons2010.pdf

Portland/Multnomah Food Policy Council

The Diggable City Phase III: Implementation Strategies and Recommendations
www.portlandoregon.gov/bps/42793

Suitability of Site and Soil Testing

American Planning Association

Creating Community-Based Brownfields Redevelopment Strategies
www.planning.org/research/brownfields

American Community Garden Association

How Do I Pick a Site? Site Considerations and Analysis
www.communitygarden.org/rebeltomato/roots/pick-a-site.php

Cornell Waste Management Institute, Department of Crop and Soil Sciences in the College of Agriculture and Life Sciences at Cornell University

Sources and Impacts of Contaminants in Soils
Guide to Soil Testing and Interpreting Results
Soil Contaminants and Best Practices for Healthy Gardens
www.cwmi.css.cornell.edu/soilquality.htm

U.S. Environmental Protection Agency

Steps to Create a Community Garden or Expand Urban Agriculture
www.epa.gov/brownfields/urbanag/steps.htm

Sustainable Growing Practices

U.S. Environmental Protection Agency

Integrated Pest Management (IPM) Policies Fact Sheet
www.epa.gov/opp00001/factsheets/ipm.htm

Safer Pest Control Project

Municipal Pesticide Reduction Toolkit: Strategies for Sustainable Pest Control
www.spcpweb.org/attachments/SPCPMunicipalToolkitFinal.pdf

Beyond Pesticides

Schooling of State Pesticide Laws 2010 Update
www.beyondpesticides.org/schools/publications/Schooling2010.pdf

National Organic Program

www.tinyurl.com/5vanen

Joint Use Agreements

ChangeLab Solutions

Model Joint Use Resolution

www.changelabsolutions.org/publications/model-joint-use-resolution

Checklist for Developing a Joint Use Agreement (JUA)

www.changelabsolutions.org/publications/checklist-developing-joint-use-agreement-jua

A Look at State Rules Affecting Joint Use Agreements

www.changelabsolutions.org/publications/state-rules-JUAs

Model Joint Use Agreement Resources: Increasing Physical Activity by Opening Up School Grounds

www.changelabsolutions.org/publications/model-JUAs-national

Food Safety and Gardens at School

ChangeLab Solutions

Serving School Garden-Grown Produce to Students

www.changelabsolutions.org/publications/school-garden-produce

National Food Service Management Institute, University of Mississippi

Produce Safety Resources

www.nfsmi.org/ResourceOverview.aspx?ID=394

Food Safety Tips for School Gardens Fact Sheet

www.nfsmi.org/documentlibraryfiles/PDF/20110822025700.pdf

Volunteers and Liability

ChangeLab Solutions

Volunteers and Liability: The Federal Volunteer Protection Act

www.changelabsolutions.org/publications/volunteer-protection-act

Fundraising

American Community Gardening Association

Fundraising

www.communitygarden.org/rebeltomato/roots/fundraising.php

The Peoples Garden (United States Department of Agriculture)

Gardening Resources

www.usda.gov/wps/portal/usda/usdahome?navid=GARDEN_RT3&parentnav=PEOPLES_GARDEN&navtype=RT

National Gardening Association

Grants and Fundraising

www.grants.kidsgardening.org



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- 13 *The Diggable City*, *supra* note 12, at 24.
- 14 McClintock N and Cooper J. *Cultivating the Commons: An Assessment of the Potential for Urban Agriculture on Oakland's Public Land*. 2010, p. 14. http://web.pdx.edu/~ncm3/files/Cultivating_the_Commons2010.pdf
- 15 Chicago, Ill., Zoning Ordinance §§ 17-9-0103.3, 17-9-0103.5 (2013); Cleveland, Ohio, Zoning Code § 336.01, et seq. (2012); Kansas City, Mo., Zoning and Development Code § 88.312.02 (2012); Portland, Ore. Ordinance No. 185412 (2012); Seattle, Wash., Municipal Code § 23.42.051 (2012); San Francisco, Cal., Planning Code § 102.35 (2012).
- 16 Sanborn Fire Insurance maps from 1867 to 1970 are available online at <http://sanborn.umi.com>. City planning offices also have extensive map and photo archives.
- 17 More information about the Homegrown Minneapolis Community Garden Program is available at: www.minneapolismn.gov/sustainability/homegrown/dhfs_gardeners

- 18 “City Seeks Proposals for Pilot Urban Agriculture Projects: Three Parcels Available in Dorchester to Produce Fresh, Healthy Food for Residents.” *Boston Redevelopment Agency News and Updates*, July 12, 2011. www.bostonredevelopmentauthoritynews.org/2011/07/12/city-seeks-proposals-for-pilot-urban-agriculture-project/; A copy of one of the RFPs is available at: www.cityofboston.gov/dnd/pdfs/rfps/D06338_Vacant_Land_for_Community_Gardening_Colgate_Road.pdf
- 19 *Id.*
- 20 *Request for Qualifications: Urban Agriculture in the City of Baltimore*. Baltimore City Department of Planning and Department of Housing and Community Development, 2011, p. 2. <http://cleangreener.highrockhosting2.com/uploads/files/Urban%20Agriculture%20RFQ%203.25.11.pdf>
- 21 Zautner L, ed. *ReImagining Cleveland: Ideas to Action Resource Book*. Kent State University's Cleveland Urban Design Collaboration and Neighborhood Progress, Inc., 2011, p. 5. <http://reimaginingcleveland.org/files/2011/03/IdeastoActionResourceBook.pdf>
- 22 More information about ReImagining Cleveland is available at: www.npi-cle.org/places/urban-greening/about-reimagining-cleveland
- 23 *Grant Guidelines and Application*. Re-Imagining Cleveland, 2009, p. 1. http://cd.city.cleveland.oh.us/forms/Application_ReImaginingCleveland.doc
- 24 More information about Re-Imagining Cleveland's projects is available at: <http://reimaginingcleveland.org/projects-3>
- 25 The CountyDigs! program was established by Multnomah County, Ore., County Code §§ 7.400-7.410 (2012). More information about CountyDigs! is available at: <http://web.multco.us/sustainability/county-digs>
- 26 The tax-foreclosed properties identified by the DCM are first offered to former owners for repurchase. A separate Affordable Housing Review Committee undertakes a similar process to identify properties that may be appropriate for development as affordable housing.
- 27 Urban agriculture organizations can take steps to alleviate concerns about unfair profits by conducting group – rather than individual – sales and investing any sale proceeds back into the organizations as opposed to distributing individual profits. For example, the Tassafaronga Community Garden and Youth Urban Farm in Oakland, Calif., operates a summer farm stand with all proceeds going into education savings accounts for participants in its youth gardening programs.
- 28 See, e.g., Ariz. Const. art. IX, § 7; Cal. Const. art. XVI, § 6; Haw. Const. art. VII, § 4; N.Y. Const. art. VII, §8, art. VIII, §1; Okla. Const. art. X, § 15; Wash. Const. art. VIII, §7.
- 29 See *id.*
- 30 See, e.g., *The MacMillan Co. v. Clarke, et al.*, 184 Cal. 491 (1920) (providing free school textbooks); *In re Interrogatory Propounded by Governor Roy Romer on House Bill 91S-1005*, 814 P.2d 875 (Colo. 1991) (encouraging economic development); *Cal. Housing Finance Agency v. Elliott*, 17 Cal.3d 575 (1976); *Winkelman v. City of Tiburon*, 32 Cal. App.3d 834 (1973) (financing subsidized housing for low- and moderate-income families); *Ragsdale v. City of Memphis*, 70 S.W.3d 56 (Tenn. Ct. App. 2001); *CLEAN v. State of Wash.*, 928 P.2d 1054 (Wash. 1996) (financing construction and operation of sports arenas).
- 31 In determining violations of anti-gift clauses, courts show great deference to legislative determinations of what constitutes a public purpose or benefit. Because the U.S. Constitution specifically grants authority to the states to enact and enforce laws that protect and promote public health, safety, and welfare, money spent on or resources allocated to promote public health is almost certainly considered a public purpose or benefit expenditure, even if private individuals incidentally benefit. See, e.g., *Community Memorial Hospital of San Buena Ventura v. County of Ventura*, 50 Cal.App.4th 199 (1996).
- 32 Nonprofit entities already must demonstrate a charitable purpose when they incorporate as tax-exempt organizations. Accordingly, they may be less vulnerable to issues associated with gifts of public funds.
- 33 *Grant Guidelines and Application*, *supra* note 23.
- 34 Case study based in part on interview with Simeon Mercado, parks manager, City of San Jose Department of Parks, Recreation, and Neighborhood Services, in San Jose, Calif., October 18, 2012.
- 35 *Food Self-Sufficiency in Hawaii*. Hawaii Department of Agriculture White Paper, 2008, pp. 3-4. <http://hawaii.gov/hdoa/add/White%20Paper%20D14.pdf>
- 36 *Native Hawaiian and Pacific Islander Health Disparities*. Asian and Pacific Islander American Health Forum, 2010. www.apiahf.org/sites/default/files/NHPI_Report08a_2010.pdf
- 37 Case study based in part on interviews with Rae Chandler, executive director, Community Work Day, in Maui, August 9, 2012, and Lorrin Pang, M.D., district health officer, State of Hawaii Department of Health in Wailuku, August 6, 2012.
- 38 See Colo. Rev. Stat. § 30-11-101 (2012); Haw. Rev. Stat. § 46-1.5(16) (2012); Ind. Code §§ 36-2-23, 36-10-3-11 (2012).

- 39 See Cal. Govt. Code §§ 37350 (sale by city), 37380, 37396 (lease by city), 25363, 25521-25539.10 (sale or lease of county property), 25549.1-25449.13 (joint use of nonschool property) (2012).
- 40 *Black's Law Dictionary* (9th ed. 2009).
- 41 *Id.*
- 42 More information about the Lafayette Community Garden and license agreements can be found in ChangeLab Solutions' *This Land Is Our Land: A Legal and Policy Primer for Accessing Public Property for Recreation* (in publication).
- 43 More information about the garden can be found here: <http://milpitas.patch.com/listings/cesar-e-chavez-community-garden#>; The joint use agreement is available here: www.ci.milpitas.ca.gov/_pdfs/council/2010/030210/item_09.pdf
- 44 For more information on joint use, see ChangeLab Solutions' suite of joint use products available at: www.changelabsolutions.org/childhood-obesity/joint-use
- 45 The Los Angeles Unified School District has an integrated pest management policy that applies to joint use agreements/gardens on school property. www.laschools.org/employee/mo/ipm/docs/ipmpolicyretype.pdf
- 46 U.S. Environmental Protection Agency. *Integrated Pest Management (IPM) Policies Fact Sheet*. www.epa.gov/opp00001/factsheets/ipm.htm
- 47 The U.S. Department of Agriculture describe the standards and regulations of the National Organic Program here: www.tinyurl.com/5vanen
- 48 Pincus S and Rosenberg R. *Municipal Pesticide Reduction Toolkit: Strategies for Sustainable Pest Control*. Safer Pest Control Project, 2010, Appendix A. <http://sppcweb.org/attachments/SPCPMunicipalToolkitFinal.pdf>
- 49 Owens K. *Schooling of State Pesticide Laws 2010 Update*. Beyond Pesticides, 2009. www.beyondpesticides.org/schools/publications/Schooling2010.pdf
- 50 Interview with Steve Boeri, manager of real estate, East Bay Municipal Utility District, October 3, 2012.
- 51 Eskenazi B, Bradman A and Castronia R. "Exposures of Children to Organophosphate Pesticides and Their Potential Adverse Health Effects." *Environmental Health Perspectives*, 107(Suppl 3): 1999. www.ncbi.nlm.nih.gov/pmc/articles/PMC1566222
- 52 Sanborn M, Bassil K, Vakil C, et al. *2012 Systematic Review of Pesticide Health Effects*. Ontario College of Family Physicians, 2012. www.ocfp.on.ca/docs/pesticides-paper/2012-systematic-review-of-pesticide.pdf?sfvrsn=6
- 53 See, e.g., Cal. Educ. Code §§ 38130-38139 (2012); Utah Code Ann. § 53A-3-413 (2012).
- 54 Though it is extremely rare, some states, such as Texas, do provide school districts with home rule authority. These school districts are empowered to institute any program providing for the needs of their community, so long as it does not conflict with specific state laws governing home rule school districts. In states such as Texas, home rule school districts have the power to approve the establishment and operation of community garden programs without reference to specific state authorization. Look to the home rule school district's governing plan, or "charter," to see if community gardens are expressly or impliedly authorized.
- 55 24 Pa. Cons. Stat. § 7-775 (2012).
- 56 Iowa Code § 297.9 (2012).
- 57 Cal. Educ. Code §§ 35160, 35160.1 (2012).
- 58 Cal. Educ. Code § 17515 (2012). See also Cal. Educ. Code § 17516-17526 (2012).
- 59 Cal. Educ. Code § 10900-10914.5 (2012). See also Cal. Educ. Code §§ 38130-38139 (2012).
- 60 Minn. Stat. Ann. § 123B.51(2) (West 2012) (school board may authorize the use of school property for "community purposes ... that will not interfere with their use for school purposes"); Minn. Stat. Ann. § 123B.51(4)(a) (West 2012) (school board may lease property, or portion of property, "that is not needed for school purposes"); see also Minn. Stat. Ann. § 123B.02(1) (West 2012) (grants school board "the general charge of the business of the district").
- 61 Minneapolis Public Schools Policies 7000, 7000A, 7000B (2012). <http://policy.mpls.k12.mn.us>
- 62 Minneapolis Public Schools Policy 1301 (2012). <http://policy.mpls.k12.mn.us>; Community Partners Online, Minneapolis Public Schools. <https://secure.mpls.k12.mn.us/CPO>
- 63 *Community Partners Standard Assurances 1-11NSC, Standard Assurances for License or Lease Holders With No Student Contact*. Minneapolis Public Schools. https://secure.mpls.k12.mn.us/CPO/documents/Assurances_1_11_NSC.pdf
- 64 Minneapolis Public Schools Policy 1301(II)(F) (2012). <http://policy.mpls.k12.mn.us>

- 65 See, e.g., Grant High School Community Garden in Portland, Ore. <http://ghscommunitygarden.wordpress.com>; Lancaster Community Garden in Lancaster, Penn. <http://lancastercommunitygardens.com>; Northland Pines Community Garden in Eagle River, Wis. www.vilaspublichealth.com/healthyfood.html and www.facebook.com/NorthlandPinesCommunityGarden; Greenhouse and nursery at Ralph J. Bunche Academy in Oakland, Calif. www.cityslickerfarms.org/greenhouse; and the Champlain School Community Garden in Burlington, Vt. www.burlingtongardens.org/virtual.htm
- 66 The National School Lunch Program was created by the National School Lunch Act, 42 U.S.C. § 1751 et seq.
- 67 July 21, 2009 FNS Memorandum 32-2009 titled "School Garden Q&As" (prepared by Cynthia Long, director, Child Nutrition Programs). www.fns.usda.gov/cnd/governance/Policy-Memos/2009/SP_32-2009_os.pdf. Unlike the FDA, the USDA is not authorized to issue formal Advisory Opinions; however, divisions within the USDA can provide informal opinions at their discretion in response to queries.
- 68 These grants are made under the Farm to School Program, established by the Healthy, Hunger Free Kids Act of 2010 (S.3307), § 243. More information is available at: www.fns.usda.gov/cnd/f2s
- 69 See FDA Food Code 2009, ch. 3. www.fda.gov/Food/FoodSafety/RetailFoodProtection/FoodCode/FoodCode2009
- 70 The National Food Service Management Institute (the USDA-funded central training institute for school food service workers) has a number of produce safety resources on its website, including a "Food Safety Tips for School Gardens Fact Sheet." More information is available at: www.nfsmi.org/ResourceOverview.aspx?ID=394
- 71 Because some states modify the Model Food Code, the retail food code for a particular state should be reviewed to make sure it does not deviate from the model code in some way that would limit the use of community garden produce in school cafeterias.
- 72 See, e.g., Ky. Rev. Stat. Ann. § 161.148(4) (2012); Mass. Gen. Laws ch.71, § 38R (2012); Utah Code § 53A-3-410 (2012); Tex. Educ. Code § 22.0835 (2012).
- 73 See, e.g., N.J. Rev. Stat. § 18A:6-7.1 (2012); Cal. Educ. Code §§ 35021.1, 35021.3 (2012).
- 74 Note that in so-called "home rule" states, school districts are granted broad authority. See, e.g., Ind. Code § 20-26-3-1 (2012) (granting school districts "all the powers needed for the[ir] effective operation").
- 75 See, e.g., Ky. Rev. Stat. Ann. § 161.148(4) (2012) ("all volunteers who have contact with students on a regularly scheduled or continuing basis"); Mass. Gen. Laws ch.71, § 38R (2012) (volunteers who will have "direct and unmonitored contact with children"); N.J. Rev. Stat. § 18A:6-7.1 (2012) (volunteers who have "regular contact with pupils"); Utah Code § 53A-3-410 (2012) (volunteers who will have "significant unsupervised access to a student").
- 76 See, e.g., Tex. Educ. Code § 22.0835 (2012).
- 77 See, e.g., Utah Code § 53A-3-410 (2012) (fingerprinting is mandatory for all new volunteers and optional for existing volunteers; fingerprints are kept on file and the school district is notified of any new offenses involving sex, drugs, alcohol, or offenses against the person); Cal. Educ. Code § 35021.3 (2012) (defining a voluntary process whereby districts create a registry of before- and after-school program volunteers; prospective volunteers must provide fingerprints to the state Department of Justice and, in some instances, the FBI).
- 78 See, e.g., Tex. Educ. Code § 22.0835 (2012).
- 79 More information on the background check requirement for gardeners at DUG's School Parcel Community Gardens is available at: <http://dug.org/faq/gardening-in-a-denver-urban-gardens-comm/do-i-need-a-background-check-to-garden-with-dug.html>
- 80 More information on the background check requirement for gardeners at the Dowling Community Garden is available at: <http://dowlingcommunitygarden.org/pdf/dowBGD.pdf>
- 81 Mendes E. "More Than 1 in 5 Adults Obese in Metro Areas Nationwide." *GALLUPWellbeing*, March 17, 2011. www.gallup.com/poll/146669/adults-obese-metro-areas-nationwide.aspx
- 82 Case study based in part on interview with Jill Walters, senior program coordinator, Welborn Baptist Foundation, in Evansville, Ind., September 7, 2012.

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