



**FOOD FOR ALL
BROWARD**

**SB 82 and its Implications for Local
Florida Municipalities**

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Introduction

The recent passage of SB 82 earlier this year has led to significant discussion around the practice of residential home gardens. The bill effectively prohibits local governments from regulating vegetable gardens on residential properties except as otherwise provided by law; given the law's brevity, there has been some uncertainty on the part of local governmental agencies regarding how best to proceed in such a manner as to promote not just local food access for Florida residents, but also sustainable urban agricultural practices. The purpose of this memorandum is to further clarify the implications of SB 82 for local municipalities and other local governing bodies, as well as provide examples of opportunities, challenges, and pieces of model ordinances in order to assist municipalities in crafting ordinances and regulations that comply with the limits of the law and are tailored towards promoting the above agendas while being mindful of their own specific communities and their needs.

SB 82

The text of SB 82 is as follows (portions bolded for emphasis):

An act relating to vegetable gardens; creating s. 604.71, F.S.; providing legislative intent; prohibiting local governments from regulating vegetable gardens on residential properties except as otherwise provided by law; specifying that such regulations are void and unenforceable; specifying exemptions; providing applicability; defining the term "vegetable garden"; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 604.71, Florida Statutes, is created to read:

604.71 Local regulation of vegetable gardens.—

(1) The Legislature intends to encourage the development of sustainable cultivation of vegetables and fruits at all levels of production, including for personal consumption, as an important interest of the state.

(2) **Except as otherwise provided by law, a county, municipality, or other political subdivision of this state may not regulate vegetable gardens on residential properties.** Any such local ordinance or regulation regulating vegetable gardens on residential properties is void and unenforceable.

(3) This section **does not preclude the adoption of a local ordinance or regulation of a general nature that does not**

specifically regulate vegetable gardens, including, but not limited to, regulations and ordinances relating to water use during drought conditions, fertilizer use, or control of invasive species.

(4) As used in this section, the term “vegetable garden” means a plot of ground where herbs, fruits, flowers, or vegetables are cultivated for human ingestion.

Section 2. This act shall take effect July 1, 2019.

Implications for Municipalities

From the letter of the law, it can be understood that municipalities, counties, and other political subdivisions cannot create legislation that specifically regulates gardens on residential properties, but they are able to create ordinances, policies, and regulations that are not specifically aimed at regulating vegetable gardens but would have the secondary effect of indirectly regulating home gardens (i.e., permitted water use during drought conditions; use of fertilizers in residential zones; introduction of invasive plant species). Some examples of general ordinances that could be used to indirectly regulate vegetable gardens may potentially include but are not limited to:

- Water use in drought and other conditions, i.e., the regulation of water use on vegetable gardens as part of a broader program of water conservation;
- Fertilizer use, potentially may need to be framed in terms of runoff and other environmental impacts;
- Aspects of vegetable gardens that might impact or introduce invasive species, and/or the use of native plants and non-invasive species for residential landscaping;
- Standing water, potable water, and other elements that may be used by residential gardeners but may also serve as breeding areas for mosquitos and other insects;
- Size/growth of vegetable gardens under public nuisance laws;
- Structures that could pertain to vegetable gardens (ie, greenhouses, hoop houses);
- Taxation of vegetable garden supplies, where it is not prohibited by Florida Statute 212.08 and/or other exemptions;
- Whether food grown in residential home gardens can be sold commercially, or under what circumstances it can be sold, assuming compliance with Florida Administrative Code 64E-11.003 and other food safety measures;
- Use of fencing and other perimeter measures around vegetable gardens;
- What types of plants can be grown in residential neighborhoods (i.e., medicinal herbs, toxin-containing plants, marijuana)?

Notably, this does not appear to apply to private organizations/authorities such as homeowners' or condominium associations, which do not fall under the category of a political subdivision. This means that HOAs, for instance, can freely regulate whether their members can or not have vegetable gardens. Additionally, this does not appear to apply to animals of any kind – beekeeping, cattle & poultry raising, etc. are still able to be regulated.

Potential Challenges for Municipalities

- Municipalities are effectively prohibited from directly developing ordinances and policies that promote ecologically friendly, sustainable gardening policies, and must instead indirectly regulate them in some of the ways mentioned above;
- Depending on the definition of “residential property”, and assuming that this encompasses residential zoning more generally, this may apply to larger areas than anticipated (as an example, a large community garden built on the rooftop of an apartment building).¹

Potential Opportunities to Promote Sustainability and Food Access

- The usage of ordinances that penalize or disincentivize unsustainable gardening policies, in conjunction with ordinances, grants, and other incentive mechanisms to encourage sustainable urban agriculture and residential gardening;
- The usage of ordinances to promote or incentivize development of residential vegetable gardens in “food desert/food swamp” areas and possibly the sale of produce from said vegetable gardens, from food stands or mobile vending carts or other means;
- Promotion of farmers' markets and other cooperatives, indirectly promoting those residential vegetable gardens that choose to vend to them, via ordinances, for example mandating that schools and other public facilities procure a certain amount of their fresh produce via local means;
- Promotion of smaller food sales operations (mini-markets, smaller farmers' markets, mobile produce carts, etc.) that can be supplied via residential gardens, wherein they comply with Florida Administrative Code 64E-11.003 and other food retail standards.

¹ For a further summary of the issue, please see deChant, 2019. “Op-Ed: This residential vegetable gardening bill is rotten.” *Tampa Bay Times*. Mr. deChant is a member of the Board of Directors of the Florida Food Policy Council. <https://www.tampabay.com/opinion/columns/column-this-residential-vegetable-gardening-bill-is-rotten-20190603/>

Examples of Ordinances for Food Access Promotion

To help develop alternative venues for home gardeners to sell products –

From the San Jose Code of Ordinances:²

20.80.255 Small Certified Farmers' Markets - Development Permit Exemption

A. Notwithstanding the provisions of Part 16 of Chapter 20.80 of this Title, no event permit or Development Permit shall be required for a Certified Farmers' Market that meets all of the following criteria:

1. Said Certified Farmers' Market comprises fifteen (15) or fewer certified producers or producers of agricultural products allowed to be sold or offered for sale at a Certified Farmers' Market pursuant to state and local laws and regulations, as the same may be amended from time to time, and

2. Said Certified Farmers' Market does not occupy an area greater than ten thousand square feet (10,000 sq. ft.); and

3. Said Certified Farmers' Market meets all of the requirements set forth in Sections 20.80.270 and 20.80.275 of this Part.

B. A Certified Farmers' Market that meets all of the criteria set forth above in this Section 20.80.255 is referred to in this Title as a "Small Certified Farmers' Market."

C. In addition to the maximum of fifteen (15) certified producers or producers of agricultural products allowed to be sold or offered for sale at a Certified Farmers' Market as set forth in Subsection 20.80.255.A.1 above, a Small Certified Farmers' Market may also include up to one (1) vendor of non-agricultural products located near a Small Certified Farmers' Market, in the manner allowed by laws and regulations of the State of California and County of Santa Clara as the same may be amended from time to time, for every five (5) certified producers or producers of agricultural products at the Small Certified Farmers' Market.

From the Minneapolis Code of Ordinances:

201.40. - Mini market requirements.

The holder of a mini market license issued pursuant to this chapter shall comply with the following requirements:

² The San Jose Code of Ordinances can be found at <https://www.sanjoseca.gov/DocumentCenter/View/6727>.

- (1) Mini markets may contain a maximum of five (5) vendors. At least one (1) vendor must be a product of the farm (grower/farmer).
- (2) Mini markets may contain a maximum of one (1) seasonal food permit vendor reselling only fresh fruits and vegetables, and only when said produce is not in season and not available at the market from product of the farm (growers/farmers) vendors.
- (3) A maximum of one (1) cottage food vendor selling foods intended for off-site consumption including pickles, jams, jellies, breads, etc.
- (4) Mini markets may not contain market vendors of the following types:
 - a. Vendors of foods intended for immediate consumption.
 - b. Craft producers.
 - c. Vendors of services.
 - d. Plant vendors.
- (5) Mini markets shall take place outdoors, with the exception of up to six (6) indoor events per year, as designated on the license application and approved by the appropriate departments in advance of the indoor event or events. (2011-Or-095, § 4, 11-4-11; [Ord. No. 2017-017](#), § 7, 4-28-17)

For model ordinance to introduce fresh produce carts from which residents can sell produce from their vegetable gardens, please visit: <https://www.changelabsolutions.org/product/model-produce-cart-ordinance>.

To develop taxation ordinances that do not specifically target vegetable gardens –

Bill Introduced to the Illinois 99th General Assembly:³

AN ACT concerning revenue.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Retailers' Occupation Tax Act is amended by adding Section 1t as follows:

(35 ILCS 120/1t new)

Sec. 1t. Sellers of seeds and starter plants.

- (a) When persons who are engaged in the business of selling seeds or plants sell seeds or plants to purchasers who use the seeds or plants in raising lawn grass, vegetables, fruits, nuts, crops, or other plants which they will use or consume and not resell, these retailers are engaged in the business of selling tangible personal property to

³ Available at

<http://www.ilga.gov/legislation/BillStatus.asp?DocTypeID=HB&DocNum=6208&GAID=13&SessionID=88&LegID=95748>

purchasers for use or consumption and are required to remit the tax imposed under this Act on gross receipts from those sales.

- (b) Persons who sell seeds or plants to purchasers who employ those seeds or plants in raising vegetables, fruits, nuts, crops, or other plants for sale are selling seeds or plants to purchasers for purposes of resale and are not required to remit the tax imposed under this Act on gross receipts from those sales.

To introduce ordinances that regulate invasive species –

Sec. 7. INVASIVE EXOTIC PLANT SPECIES PROHIBITION. PUBLIC NUISANCE DECLARED. SURVEY REQUIRED FOR NEW DEVELOPMENT. ⁴

The City declares that invasive exotic species are a public nuisance that degrade landscaped and natural areas. The City shall prohibit the planting of any invasive exotic plant species in all public and private properties. The city may require the owner of the property to remove any invasive exotic species that the city deems to be a public nuisance pursuant to the procedures set forth below.

(a) The city manager or the city manager's designee has authority to declare as a public nuisance a property previously found to be in violation of this ordinance if the owner of the property has not corrected the violation within the thirty (30) days provided by this ordinance.

(b) Notice

- (1) After declaration of a public nuisance due to invasive plants, the city manager or his or her designee shall provide notice to the owner of the affected property.
- (2) The notice shall include the date of the declaration, the date of the previous and uncorrected violation of this ordinance, the name or names of the invasive plants giving rise to the declaration, notification that the property owner may contest the declaration of a nuisance by requesting a hearing within 15 days of the declaration of nuisance, and information on how to request a hearing.

(c) Right of Property Owner to Cure the Nuisance The owner of a property with invasive exotic species that have been declared a public nuisance shall have thirty (30) days after receipt of notice to eliminate the invasive exotic plants.

(d) Right to a Hearing to Contest Designation of a Nuisance Owners of a property declared a public nuisance have the right to a hearing to contest the declaration of a public nuisance. At the conclusion of the hearing and after considering all evidence

⁴ Model ordinance for invasive species legislation – available at https://www.law.ufl.edu/_pdf/academics/centers-clinics/clinics/conservation/resources/MLOFinal2-6-2-05.pdf

presented at such hearing, the board is authorized to issue findings of fact based upon the evidence presented and made part of the record that a public nuisance does not exist or that an unlawful public nuisance does exist.

(e) Local Government May Abate Nuisance, Charge Owner, and File a Lien Should a property owner fail to correct a violation of this ordinance within either thirty (30) days of a declaration of nuisance or thirty (30) days after conclusion of a hearing to contest a declaration of nuisance, if one was requested, the City may enter the property and abate the public nuisance.

- (1) All costs incurred by the City in abatement of a nuisance on private property may be charged to the owner of the property. A copy of these costs and other costs authorized to be levied against a property owner may be filed in the public records.
- (2) Should the property owner fail to pay the City's expenses incurred in abatement of the nuisance within thirty (30) days of billing by the City, the City may file a certified copy of the City's expenses to abate the nuisance and other expenses authorized in subsection (3) below in the public record. Such a filing then shall constitute a lien on the property.