

CITY OF SALEM  
JOINT PUBLIC HEARING  
OF THE CITY COUNCIL AND PLANNING BOARD  
MARCH 15, 2022

A Joint Public Hearing of the City Council and Planning Board was held remotely on Tuesday, March 15, 2022 at 6:30 P.M. for the purpose of discussing two (2) Zoning Ordinance Amendment relative to Sec. 6.8 – Visibility at Intersections and Urban Agriculture via remote participation in accordance with Chapter 40A, SS 5, of the Massachusetts General Laws and in accordance with Chapter 20 of the Acts of 2021 and Ch. 22 of Acts of 2022. The complete text of the proposed amendments to the Zoning Ordinance is noted below and on file and available for inspection by calling or emailing the City Clerk's Office, 93 Washington Street, Salem, MA at 978-619-5610 or isimons@salem.com or the Department of Planning & Community Development, 2nd floor, City Hall Annex, 98 Washington Street, Salem, MA. 978-619-5685.

Notice of this meeting was posted on February 24, 2022, at 1:19 P.M. and advertised in the Salem News on February 28, 2022 & March 7, 2022.

City Council President Patricia Morsillo presiding.

Councillor Domingo Dominguez was absent.

Planning Board Members in attendance were: Zach Caunter, Sarah Tarbet, Kirt Rieder, Carole Hamilton, Tom Furey, Todd Waller

Also in attendance: Elena Eimert, from the Planning Department and Kerry Murphy from the Board of Health

**(#103) - ZONING ORDINANCE AMENDMENT RELATIVE TO SEC. 6.8 – VISIBILITY AT INTERSECTIONS (SEE COMPLETE TEXT BELOW)**

- **Council President Morsillo:** This came from a complaint. Specifically at the Wilson and Highland intersection. Limit for signs was 25ft from intersections, think it makes sense to add another 10ft to avoid any type of obstructions at intersections.
- **Councillor McCarthy:** Where this is regarding temporary obstructions, has there been any thought to reducing the size of the obstructions? Would that help?
- **Councillor Morsillo:** It could potentially help but think there is a lack of interest in dictating the size of political signs.
- **Councillor Prosniewski:** Saw that the signs aren't going to be any higher than 3ft and 35 sqft away.
- **Councillor Morsillo:** Think that is referring to signs within the 35 sq ft.
- **Councillor Prosniewski:** Think there are quite a few intersections with signs that are closer than the 25ft limit already in place. Are we just talking about the Wilson and Highland intersections or all of them? Know of signs at other intersections that don't comply.

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- **Councillor Morsillo:** Not sure I have the answer here. I did run this by Tom St. Pierre and he had no problem adjusting.
- **Kirt Rieder:** Assuming this is going forward and not retroactive. What is not clear is where the dimension is measured from. Think we would all benefit from a graphic here. Is it measured from the center line, curb line, etc.?
- **Councillor Morsillo:** Is the text within not clear enough?
- **Kirt Rieder:** Not to me. If I pulled up Google Maps and drew the line, there is too much opportunity for interpretation. A graphic may help tease out the language and alleviate questions.
- **Councillor Morsillo:** We have not changed any of the text, just the number. Understand what you're saying and can get clarity on that.
- **Todd Waller:** What ordinance would take precedent here? In the Entrance Corridor Overlay District there is a 4ft max for fences.
- **Kirt Rieder:** I agree, is there a square footage obstruction? For example, street signs may not be considered despite being taller than 4ft. More language to define would be helpful.
- **Councillor McCarthy:** When this comes back from the Planning Board, would we look for language updates? Think this is more geared towards non-permitted temporary obstructions.
- **Kirt Rieder:** To build on that, think the Department of Traffic & Parking should also be a part of this. Suspect the whole premise of this is based on motor vehicle movement and safety.
- **Councillor Merkl:** Thinking the Salem police might have some helpful input as well. Wondering if they have any suggestions or opinions on changing this.

There was no public comment.

Councillor Riccardi makes a motion to close the Public Hearing. The Public Hearing was closed by a roll call vote of 10 yeas, 0 nays and 1 absent. Councillor Dominguez was recorded as absent.

Councillor Riccardi makes a motion to refer the matter to the Planning Board for further recommendation. The matter carries by a roll call vote of 10 yeas, 0 nays and 1 absent. Councillor Dominguez was recorded as absent.

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**(#20) - ZONING ORDINANCE AMENDMENT RELATIVE TO URBAN AGRICULTURE (SEE COMPLETE TEXT BELOW)**

**Councillor Varela recused himself from this matter.**

- **Kerry Murphy:** Want to thank everyone involved in putting this draft together. There has been an interest in expanding agriculture. A way to make our community more resilient. Currently the ordinance only includes chickens, now expands to include composting, beekeeping, etc. Intending to additionally pull together a best practices guide, including a summary of what is being proposed, requirements, etc.
- **Councillor Riccardi:** Thanked employees, residents and farmers that helped pull this together. Salem started as a fishing village; this is a way for us to go back to our roots.
- **Councillor Cohen:** Grateful to be part of this team. Know Salem has experienced a lot of food scarcity due to COVID, think this will make a big impact on the community.
- **Councillor Merkl:** This will contribute to the overall sense of community in Salem. The past few years have been very isolating. I've seen the joy this brings residents. A way for neighbors to connect with one another and help to some extent with mental health.
- **Councillor McClain:** Very exciting to see this come forward. Right in line with what we need to be doing to prepare for the future ahead of us. Has the Zoning Board taken a look at this?
- **Councillor Riccardi:** We've had multiple conversations with the Building Inspector and the zoning expert. Compromise is that the setbacks for structures need to fit current building permits. A few minor differences, but for the most part meets current setbacks.
- **Councillor Hapworth:** Echo what everyone else has said. What is the guidance around setbacks for beekeeping? What is that based on?
- **Kerry Murphy:** Based on a lot of research and guidance. Spoke with beekeepers as well. Everything we've included is current best practices and proper precautions. There is already beekeeping happening in Salem, this will help us provide guidance and monitoring. Inspections and permits will be required.
- **Councillor Hapworth:** Is there a science that says is it safer 5 ft from property line?
- **Kerry Murphy:** Not sure if science but what other communities do.
- **Councillor McCarthy:** Looking at the chart and wondering why we are giving every zone the same ability here. Thinking about the industrial zone. Wondering the rationale here is going straight across the board. And how close do we mimic the Chicken ordinance.
- **Councillor Riccardi:** For the industrial zone, think roof gardens. There are additional use cases. If a restaurant wants to do a roof garden, I don't think we should stop them. Did start with the existing laws and added to it. If old then allowed structure.

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- **Kerry Murphy:** Change language to domestic fowl and added space. Previous sale of eggs prohibited now allows for it.
- **Sarah Tarbet:** Very excited to see this. Thank you for the hard work put into this. Think the setbacks for fowls and compost are going to rule out a lot of properties in the denser neighborhoods. Wondering if there is room for pushback on that? Also have concerns around pesticides. What your neighbors uses will affect you. Wondering if there is room to add something about only using pesticides approved for use in organic systems.
- **Kerry Murphy:** Setbacks have already been reduced to 5ft minimum. Know a lot of people have small lots but this is actually an improvement from previous setbacks. We are also working with the board of health on a separate set of health regulations. The pesticide concerns would be part of that. Planning to also provide a toolkit to help encourage sustainable and organic growing practices.
- **Kirt Rieder:** Spoke about state laws what you can use. Don't know if apply to personal or just commercial. Just want to echo Councilor McClain. Great program

Public comment:

Katie McGuire, 83 Essex St: Wanted to address the questions around setbacks for beekeeping. Completed a training for beekeeping in 2018 and have been practicing since. In training we were told bees are not territorial beyond about 3ft from their hive. Outside of that they are looking to pollinate. At the training they gave everyone a rule of thumb of 4ft. Though the side where bees are entering and exiting is different. I think that is why other communities have adopted the 5ft setback.

- **Kirt Rieder:** All bees must be owned by land owner? Some places rent out space. Why rule it out.
- **Councillor Riccardi** stated we had conversations around that topic.
- **Councillor McCarthy:** Is there a process in place if composting becomes an issue i.e. smell, critters, since the setback is being reduced?
- **Kerry Murphy:** This will be one of the issues working with the Board of Health on regulations.
- **Councillor McCarthy:** Process of appeal – make sure people have an ability to address this.
- **Kerry Murphy:** Same language in this originally. Pest Control but took it out and put it into Board of Health regulations.
- **Kirt Reider:** spoke about composting (i.e. vegetable) versus manure – quantitative. A distinction should be made between the two piles.
- **Sarah Taubert:** There are many types of composting.

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Councillor Riccardi makes a motion to close the Public Hearing. The Public Hearing was closed by a roll call vote of 9 yeas, 0 nays, 2 absent. Councillor Dominguez and Varela were recorded as absent.

Councillor Riccardi makes a motion to refer the matter to the Planning Board for further recommendation. The matter carries by a roll call vote of 9 yeas, 0 nays, 2 absent. Councillor Dominguez and Varela were recorded as absent.

On the motion of Councillor McCarthy the meeting adjourned at 7:25 P.M.

ATTEST:

ILENE SIMONS  
CITY CLERK

COMPLETE TEXT OF ZONING ORDINANCES

**(#103) - ZONING ORDINANCE AMENDMENT RELATIVE TO SEC. 6.8 – VISIBILITY AT INTERSECTIONS**

**An Ordinance to amend the Zoning Ordinance regarding Special Regulations**

Be it Ordained by the City Council of the City of Salem as follows:

**Section 1.** Section 6.8 Visibility at Intersections of Chapter 6 – Special Regulations is hereby amended by replacing the word twenty-five (25) with thirty-five (35) as follows:

“In order to provide unobstructed visibility at intersections, no sign, fence, wall, hedge or other structure or planting of more than three (3) feet above the established street grade shall be erected, placed or maintained within the triangular area formed by the intersection street lines and a straight line joining said street lines at points which are thirty-five (35) feet distant from the point of intersection, measured along said street lines.”

**Section 2 .** This Ordinance shall take effect as provided by City Charter.

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**(#20) - ZONING ORDINANCE AMENDMENT RELATIVE TO URBAN AGRICULTURE**

**An Ordinance** to amend an ordinance relative to zoning and urban agriculture.

*Be it ordained by the City Council of the City of Salem, as follows:*

**Section I.** Section 10 of the Zoning Ordinance is hereby amended by deleting the definitions for *Agricultural use, nonexempt; Coop; Customary agricultural, horticultural and floricultural operations; Farm stand, nonexempt; and Urban agriculture* in their entirety and inserting the following new definitions:

**“Agriculture, Urban (Urban Agriculture):** An umbrella term that describes a range of accessory food and plant growing practices, either for personal use or for sale as an accessory use, that may include composting, the keeping of domestic fowl and honeybees, but does not include other livestock.

**Arbor:** An accessory Structure consisting of an open frame, freestanding or attached to another structure, with horizontal and/or vertical latticework often used as a support for climbing food or ornamental crops.

**Coldframe:** A Temporary Structure that is an accessory unheated outdoor Structure built close to the ground, no higher than thirty-six inches (36”) typically consisting of, but not limited to, a wooden or concrete frame and a top of glass or clear plastic, used for protecting seedlings and plants from cold weather.

**Composting:** A process of accelerated biodegradation and stabilization of organic material under controlled conditions yielding a product which can safely be used as fertilizer.

**Coop:** An enclosed shelter that houses domestic fowl.

**Domestic fowl:** A breed of bird specialized for meat production and/or egg laying and specifically excluding roosters.

**Commercial Farm, Exempt (noun):** Protected by G.L. c. 40A, § 3- meaning the use of land for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, including those facilities for the sale of produce, wine and dairy products, provided that either during the months of June, July, August and September of each year or during the harvest season of the primary crop raised on land of the owner or lessee, 25 per cent of such products for sale, based on either gross sales dollars or volume, have been produced by the owner or lessee of the land on which the facility is located, or at least 25 per cent of such products for sale, based on either gross annual sales or annual volume, have been produced by the owner or lessee of the land on which the facility is located and at least an additional 50 per cent of such products for sale, based

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upon either gross annual sales or annual volume, have been produced in Massachusetts on land other than that on which the facility is located, used for the primary purpose of commercial agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, whether by the owner or lessee of the land on which the facility is located or by another, except that all such activities shall be limited to parcels of 5 acres or more or to parcels 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture. For the purposes of this definition, the term "agriculture" shall be as defined in section 1A of chapter 128, and the term horticulture shall include the growing and keeping of nursery stock and the sale thereof; provided, however, that the terms agriculture, aquaculture, floriculture and horticulture shall not include the growing, cultivation, distribution or dispensation of marijuana as defined in section 2 of chapter 369 of the acts of 2012, marijuana as defined in section 1 of chapter 94C or marijuana or marijuana as defined in section 1 of chapter 94G.

**Roof Farm:** Urban agriculture, on a roof of a principal or accessory structure with the intent to make personal use of or to sell whole, unprocessed produce, honey and/or eggs as an accessory use or, in the case of a commercial use, to be used in products sold on-site. All sales are subject to compliance with local, state and federal regulations.

**Yard Farm:** Urban agriculture on a residential Lot with intent to make personal use of or to sell whole, unprocessed produce, honey and/or eggs as an accessory use. All sales are subject to compliance with local, state and federal regulations including Board of Health soil testing requirements.

**Farm Stand (Accessory):** A Temporary Structure such as a table, stall or tent, operated by a sole vendor for the purpose of selling clean, whole, eggs, or honey, unprocessed produce and plants, all of which must be grown or produced on site.

**Farm Structures:** Includes, but are not limited to, sheds, compost bins, shade pavilions, trellises or other vertical supports for growing crops, and structures used to extend the growing season such as Greenhouses, Hoop houses, Coops, Coldframes and similar structures.

**Garden, home/yard:** An accessory use on a residential lot to grow plants and produce for beautification, recreation, and personal consumption. The garden may be outdoors, in an accessory structure or on the roof of a structure. Sales are prohibited.

**Greenhouse:** A Structure primarily constructed of a frame and transparent plastic material, in which temperature and humidity can be controlled for the cultivation or protection of plants or other agricultural products. All greenhouse structures are subject to setback and building code requirements.

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Honeybee: A common domestic bee, *Apis mellifera* species.

Hoop house: An accessory Temporary Structure typically made of, but not limited to flexible PVC piping or other material covered with translucent plastic, constructed in a “half-round” or “hoop” shape, for the purposes of growing food or ornamental crops.

Raised Bed: method of cultivation in which soil is placed over a geotextile barrier, raised and ordinarily formed into three (3) to four (4) foot wide mounds. The soil may be enclosed by a frame generally made of untreated wood. Raised beds are not considered a Structure.

**Section II.** Section 3.1 Table of Principal and Accessory Use Regulations of the Zoning Ordinance is hereby amended by deleting the following uses: within B. EXEMPT AND INSTITUTIONAL USES: *Facilities for the sale of produce, and wine and dairy products, provided that during the months of June, July, August, and September of every year, or during the harvest season of the primary crop, the majority of such products for sale, based on either gross sales dollars or volume, have been produced by the owner of the land containing more than five acres in area on which the facility is located and Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture on a parcel of more than five acres in area*; within , C. COMMERCIAL USES: *Agricultural use, nonexempt and Farm stand, nonexempt*; and within E ACCESSORY USES: *Urban agriculture and Customary agriculture, horticulture and floriculture operation ...* and inserting the following new uses within the Table:

TABLE OF PRINCIPAL AND ACCESSORY USE REGULATIONS											
PRINCIPAL USES	RC	R1	R2	R3	B1	B2	B4	B5	I	BPD	NRCC
B. EXEMPT AND INSTITUTIONAL USES											
Commercial Farm, Exempt <sup>1</sup> :	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

<sup>1</sup> A Commercial Farm, Exempt operated on a City-owned Lot or by the City on a Lot that is not owned by the City is exempt from the requirement that such use be conducted on parcels of 5 acres or more or parcels 2 acres or more if the sale of products produced from the agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture use on the parcel annually generates at least \$1,000 per acre based on gross sales dollars in area not zoned for agriculture, aquaculture, silviculture, horticulture, floriculture or viticulture, so long as the products produced thereon are to be used for the benefit of the community and any revenue from any sales of those products are used for the sole purpose of sustaining the community farm.



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E. ACCESSORY USES	RC	R1	R2	R3	B1	B2	B4	B5	I	BPD	NRCC
Urban Agriculture (Subject to Section 3.2.7):	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Garden, home/yard	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

**Section III.** Section 3.2 - Accessory Uses of the Zoning Ordinance is hereby amended by deleting Section 3.2.7 *Urban Agriculture* and Section 3.2.1 *Customary Agricultural, Horticultural and Floricultural Operations* in their entirety and replacing it with the following:

**“3.2.7 Urban Agriculture**

Urban Agriculture is allowed as an Accessory Use in all zoning districts, provided that no Urban Agriculture activity shall be conducted, nor Farm Structure erected, except in compliance herewith and with any other applicable laws, rules regulations including without limitation the building code and any requirements of the Salem Board of Health. .

**1. Sale of Products**

The on-site sale of agricultural products, including whole, unprocessed produce, honey or eggs, is allowed subject to the following provisions:

- a. Retail sale display areas shall not exceed fifty square feet.
- b. One Farm Stand is allowed per lot.
- c. No sales display, sign or Structure, including a Farm Stand, shall be located on a public sidewalk or street or block vehicle and/or pedestrian flow.
- d. Signage shall be limited to one (1) sign and not exceed six (6) square feet; signs shall not be illuminated or require electricity. No off premises signs are allowed.
- e. All products sold on the Lot must be produced on-site. For purposes of this Ordinance, the term “produced on-site means” grown on the Lot or, in the case of domestic fowl or honey bees produced on the Lot by the animals kept thereon .
- f. Sales of products shall be permitted between the hours of 7:00 am and 6:00 pm., May 1 to October 31<sup>st</sup>. Sales shall not be permitted more than three days per week and no more than 25 total days per year.

**2. Domestic Fowl**

- a. Domestic fowl must be owned by a resident of the dwelling on the lot who shall be responsible for the care and control of the fowl.
- b. No roosters shall be kept under an Urban Agricultural use or any other use on lots in Salem.

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c. Dimensional Regulations

i. Maximum Height.

1. Coop. Enclosed Coop space shall not exceed eight (8) feet in height.
2. Run. Runs shall not exceed eight (8) feet in height.

ii. Size

1. Coop structures shall meet all building code requirements. Structures exceeding one hundred twenty (120) sq feet or eight (8) feet in height will require building permits and structures with electrical or plumbing shall require appropriate permits. Changes in the building code shall pre-empt this section.
2. Coop. Coop space must allow a minimum of four (4) square feet per fowl and one (1) nest box per three (3) fowl.
3. Run. Runs must allow a minimum of four (4) square feet per fowl.

d. Setback Requirements

- i. No fixed coop or run shall be located nearer than five (5) feet to any principal building, including the principal building on an abutting lot, and no coop or run shall be located nearer than five (5) feet to any side or rear lot line. Side lots in this instance refer to a projected line starting from the front lot line, terminating at the rear lot line parallel five (5) feet from the side lot line.
  - ii. Coops and/or runs are not permitted within 20 feet of a front lot line.
  - iii. Moveable coops (i.e. coops on wheels) and runs are not subject to setback requirements.
  - iv. Any lawfully existing domestic fowl-keeping use or structure in existence prior to the adoption of this Section shall be allowed to continue, as per the zoning code enforcement standards for other pre-existing nonconforming uses and structures. Any future alterations to applicable pre-existing uses or structures shall comply with this section or seek necessary approvals.
  - v. Coop structures shall not interfere with any existing public easements.
- e. Any domestic fowl-keeping use or structure in existence prior to the adoption of this Ordinance shall be allowed to continue, as per the zoning code enforcement standards of other pre-existing nonconforming uses and structures. Any future alterations to applicable pre-existing uses or structures shall seek necessary approvals.

**3. Honeybees**

- a. Honeybees must be owned by a resident of the dwelling on the lot who shall be responsible for the care and control of the Honeybees.
- b. A maximum of two (2) hives may be kept on a Lot with additional hives pending approval from the Salem Board of Health. Additional Board of Health regulations may further limit the number and/or manner of keeping of honeybees on lot.
- c. Dimensional Regulations
- i. No Hive shall exceed five (5) feet in height and twenty (20) cubic feet in size on any Lot or roof.
- d. Setback Requirements
- i. Where there is a solid wall, fence or similar barrier between the subject property and abutting property, no setback from the property line is required. Where there is no wall, fence or similar

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barrier between subject property and abutting property, Hives shall be set back five (5) feet from the property line.

- ii. No Hive shall be located closer than ten (10) feet from the lot line dividing the Lot from a sidewalk or street.
- e. Hive Placement and Flyways.
  - i. For any ground level Hive that is within twenty (20) feet of the doors and/or windows of the principal building on an abutting Lot, either of the following conditions must exist:
    - ii. The Hive opening must face away from doors and/or windows; or
    - iii. A flyway of at least six (6) feet in height comprising of a lattice fence, dense hedge or similar barrier must be established in front of the opening of the Hive such that the honeybees fly upward and away from neighboring properties. The flyway shall be located within three (3) feet of the entrance to the Hive and shall extend at least two (2) feet in width on either side of the Hive opening.
  - f. Specific Rooftop Beekeeping Requirements.
    - i. Dimensional Regulations.
      - 1. No Hive shall exceed five (5) feet in height and twenty (20) cubic feet in size on any Lot or roof.
    - ii. Setback Requirements
      - 1. Hives shall be set back six (6) feet from the edge of the roof.
    - iii. Hive Placement and Flyways.
      - 1. For any roof level Hive that is within twenty (20) feet of the doors and/or windows of the principal building on an abutting Lot, either of the following conditions must exist:
        - a. The Hive opening must face away from doors and/or windows; or
        - b. A flyway of at least six (6) feet in height comprising of a lattice fence, dense hedge or similar barrier must be established in front of the opening of the Hive such that the honeybees upward and away from neighboring properties. The flyway shall be located within three (3) feet of the entrance to the Hive and shall extend at least two (2) feet in width on either side of the Hive opening.

#### **4. Yard Farms**

- a. Yard farms may be kept on residential properties only.
- b. Ownership, care and control of the farm shall be the responsibility of a resident of the dwelling on the lot.
- c. Land devoted to the Yard Farm shall be well-maintained and free from debris, noxious odor and excessively tall weeds and grass.
- d. Yard farms may include Raised Beds, Arbors, Greenhouses, Hoop Houses and Cold Frames as accessory structures subject to applicable setbacks and dimensional regulations.
- e. All accessory structures shall also be well-maintained in a safe condition.

#### **5. Roof Farms**

- a. Ownership, care and control of the roof farm shall be the responsibility of the owner or tenant of Lot.

#### **6. Farm Structures**

- a. Farm structures such as arbors, greenhouses, hoop houses and cold frames, shall be allowed as accessory structures subject to the following provisions:
  - i. Green houses are allowed within any rear or side yard up to but not closer than five (5) feet from the Lot line.

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- ii. Arbors, hoop houses and cold frames are allowed within any rear or side yard up to but not closer than one (1) foot from the Lot line.
- iii. Farm Structures shall not exceed a maximum height of 15 feet and cannot be taller than the principal structure on the Lot; the covers shall be removed and stored when plants are not being cultivated or structure is not being used for an urban agricultural use
- iv. Farm structures, when combined with other buildings on the property, shall not exceed the maximum lot coverage by all buildings listed in the Table of Dimensional Requirements.
- v. Farm Structures shall not interfere with any existing public easements.

**7. Composting**

- a. Composting must be contained within an enclosed bin that does not have direct contact with flammable materials.
- b. Setback Requirements
  - i. Compost bins, structures and windrows shall be set back five (5) feet from all Lot lines.
  - ii. Compost bins, structures and windrows shall not be located in any portion of a yard area that abuts a Street.
- c. Accessory composting shall be used primarily to support onsite operations and shall comprise no more than five (5%) percent of the Lot area."

**Section IV.** This Ordinance shall take effect as provided by City Charter.