



Item 9

May 16, 2012

Planning and Development Department

Land Use Planning Division

MEMORANDUM

DATE: May 16, 2012

TO: Members of the Planning Commission

FROM: Jordan Harrison
Associate Planner

SUBJECT: Public Hearing: Sale of Non-Processed Edibles from Residential Lots

Recommendation

Conduct a public hearing and upon conclusion:

1. Adopt the proposed definition of Non-Processed Edibles;
2. Select one of following options for allowing sales of Non-Processed Edibles from residential lots when produced on-site:
 - a. Exempt from zoning regulation;
 - b. Subject to a Zoning Certificate.

Background

On April 4, 2012, the Commission considered the proposed zoning amendments and asked for two additions: inclusion of honey as one of the products allowed for sale, and flexibility in the screening of sales activities in situations where accessible options are needed. The Commission also requested that both options for allowing sales from residential lots, as an exempt activity or with a Zoning Certificate, remain available for consideration. The attached amendments include the changes proposed by the commission.

Please refer to the April 4, 2012, staff report for additional background.

Attachments:

1. Zoning Amendments
2. Public Hearing Notice
3. April 4, 2012 staff report

New Definition – Chapter 23F.04

Non-Processed Edibles: Foods, including fruit, vegetables, nuts, honey, and shell eggs from fowl or poultry, but not including meat or cannabis as defined in Chapter 12.26, grown or raised in accordance with the Berkeley Municipal Code, that are whole and intact and have not been processed. Washing, trimming, bundling, and similar handling of otherwise whole and intact foods shall not be considered processing.

Option 1

Chapter 23C.20 - EXEMPTIONS

23C.20.010 Exempted Accessory Uses

A. The renting of rooms and/or the providing of board in a dwelling unit to four (4) or fewer persons not living as a household is permitted by right as an accessory use in all residential districts, provided that:

1. The rental of rooms is for periods of at least fourteen (14) days; and
2. The rooms which are rented:
 - a. Are fully integrated within the dwelling unit such that they have interior access to the rest of the dwelling unit;
 - b. Do not have separate kitchen(s); and
 - c. Do not have separate street addresses assigned to such room(s).
3. All requirements for off-street parking are met.

B. The sale or donation of Non-Processed Edibles grown or raised on the premises is permitted by right as an accessory use in all residential districts, provided that:

1. Sales are directly to the end consumer of the Non-Processed Edibles;
2. Sales-related activities take place between the hours of 8am and 8pm and are located either indoors or in an area generally shielded from view from the public right-of-way to the extent practical based on the accessibility of the subject lot;
3. The sale of Non-Processed Edibles does not involve hazardous materials or processes or create offensive or objectionable noise, vibration, odors, heat, dirt, or electrical disturbance perceptible by the average person beyond the lot line of the subject lot.
4. The sale of Non-Processed Edibles does not involve more than ten customer visits to the premises in one day.

CB. Notwithstanding any to the contrary, this Section does not permit a Commercial Use in a Residential District unless such a Use is specified in the regulations for the District.

Option 2

Repeat in all Residential District Chapters

23D.16.030 Uses Permitted Table

<u>Accessory Uses and Structures</u>

<u>Sale of Non-Processed Edibles grown or raised on-site</u>	<u>ZC</u>	<u>Occupied lots only. Subject to Section 23D.16.060.A</u>
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23D.16.060 Use Limitations

A. Sale of Non-Processed Edibles are subject to the following conditions:

1. Sales shall be directly to the end consumer of the Non-Processed Edibles;
2. Sales-related activities shall take place between the hours of 8am and 8pm and be located either indoors or in an area generally shielded from view from the public right-of-way to the extent practical based on the accessibility of the subject lot;
3. Sales-related activities may not:
 - a. Involve hazardous materials or processes or create offensive or objectionable noise, vibration, odors, heat, dirt, or electrical disturbance perceptible by the average person beyond the lot line of the subject lot;
 - b. Involve more than ten customer visits to the premises in one day.



PLANNING COMMISSION

NOTICE OF PUBLIC HEARING

MAY 16, 2012

Amendments to Berkeley Municipal Code Title 23 (Zoning Ordinance): Sale of Non-Processed Edibles from Residential Lots

The Planning Commission of the City of Berkeley will hold a public hearing on the above matter, pursuant to Zoning Ordinance Section 23A.20.030, on **Wednesday, May 16, 2012**, at the City Council Chambers in Old City Hall, 2134 Martin Luther King, Jr. Way, Berkeley (wheelchair accessible). The meeting starts at 7:00 p.m.

PROJECT DESCRIPTION: The proposed zoning amendments will allow the sale of certain foods produced on-site to be sold from occupied residentially-zoned lots. The foods eligible for sale are defined as “non-processed edibles” and include fresh, whole and intact fruit and vegetables, nuts, honey, and shell eggs from fowl or poultry. The sales activity may be subject to a Zoning Certificate or may be exempt from zoning regulation, meaning no zoning permit would be required. The sales shall be made directly to the end consumer of the foods, shall be limited between 8am and 8pm, and shall be shielded from view from the street to the extent practical. The sales shall not involve hazardous materials or processes or create offensive odors, vibration, noise, heat, dirt, or electrical disturbance. The zoning may limit sales to 10 customer visits in one day.

LOCATION: Residentially-zoned districts throughout the city.

ENVIRONMENTAL REVIEW STATUS: The proposed changes would be exempt from the California Environmental Quality Act pursuant to Guidelines Section 15061(b)(3) because it can be seen with certainty that allowing the sale of foods produced on occupied residential lots would not have a significant effect on the environment because the limited commercial activity introduced with this amendment is not expected to result in physical changes to the environment. The production of food for personal consumption on residential lots is already allowed and subject to certain regulations; the proposed change would be to allow the sale of food produced on-site from residential lots. Most residential lots in Berkeley have limited land area available for food production; therefore, the amount of food produced would not be large enough to result in a significant amount of sales activities at a particular site. Further, it is anticipated that the small number of residents who produce food on their property for the purpose of sales will be dispersed throughout the city, thus unlikely to result in a concentration of home garden-related sales activity.

PUBLIC COMMENT & FURTHER INFORMATION

Comments may be made verbally at the public hearing and in writing before the hearing. Those wishing to speak at the hearing must submit a speaker card. Written comments or questions concerning this project should be directed to:

Planning Commission
Alex Amoroso, Secretary
Land Use Planning Division
2120 Milvia Street
Berkeley, CA 94704

Fax: (510) 981-7490
E-mail: aamoroso@ci.berkeley.ca.us
(510) 981-7520

To assure distribution to Commission members prior to the meeting, **a single copy of any correspondence must be received by 12:00 noon, eight (8) days before the meeting – May 8th.** For items with more than 10 sheets/pages, 15 copies must be submitted. For any length item submitted less than eight days before the meeting, 15 copies must be submitted to the Secretary prior to the meeting date.

COMMUNICATION ACCESS

To request a meeting agenda in large print, Braille, or on audiocassette, or to request a sign language interpreter for the meeting, call (510) 981-7410 (voice) or 981-6903 (TDD). Notice of at least five (5) business days will ensure availability. Agendas are also available on the Internet at: www.ci.berkeley.ca.us.

FURTHER INFORMATION

Questions should be directed to Jordan Harrison, at (510) 981-7416, or JHarrison@ci.berkeley.ca.us.



Item 9 - Attachment 3
Planning Commission
May 16, 2012

Item 9
April 4, 2012

Planning and Development Department
Land Use Planning Division

STAFF REPORT

DATE: March 29, 2012
TO: Members of the Planning Commission
FROM: Jordan Harrison, Associate Planner
SUBJECT: Sale of Non-Processed Edibles from Residential Lots

Recommendation

Consider the new definition and two options for permitting sale of Non-Processed Edibles grown or raised on occupied residential lots, provide feedback to staff, and direct staff to set the matter for a public hearing or return with additional information.

Background

Council Referrals and Staff Approach

The City Council made two slightly different referrals to the Planning Commission on the sale of Non-Processed Edibles. Both referrals include the same definition of “non-processed edibles” and propose to treat sales as a Home Occupation. Councilmember Arreguin referred a proposal for a Moderate Income Home Occupation, subject to an Administrative Use Permit (AUP), and suggested the Commission consider lowering the permit level to a ZC. Councilmembers Capitelli and Wengraf jointly referred a proposal for a Low Impact Home Occupation, subject to a Zoning Certificate (ZC), and with a garden size limit of 1,000 square feet. The referrals are attached and a more detailed summary of the Council referral timeline is below under “Additional Background.”

Staff evaluated the two referrals, consulted with the City Public Health Department and conferred with a number of stakeholders on the subject. As a result, staff incorporated the concepts into a definition of “Non-Processed Edibles” and two options for the regulation of sales:

- (1) exempt the sales activity, similar to yard sales; or
- (2) create a new accessory residential use, “Sale of Non-Processed Edibles,” subject to a Zoning Certificate.

Residential Character and Potential Impacts

The act of growing produce is not regulated; it is the sale of that produce from the residential lot that is currently prohibited. Growing produce on residential lot is a normal residential activity that is not restricted or regulated. Sharing the produce with others is also not regulated by the Zoning Ordinance. Very few commercial activities are permitted in residential districts and are subject to specific conditions, such as home occupations, the renting of rooms, and garage sales. If a resident wishes to sell food produced in a home garden, the activity of selling produce on-site would need to be expressly permitted. Giving the produce away, or selling it off-site through a farmers market or at another established retail outlet, is already allowable but subject to other state and county regulations pertaining to food production, marketing and/or farmers market certification.

While the activity of producing food is consistent with residential uses, is already allowed, and is not considered a source of impacts, the activity of *selling* that food may result in minor impacts by introducing a commercial activity in a Residential District. It could be considered detrimental to neighborhood character and there is potential for short-term parking impacts.

However, the potential scale of these impacts is very low. Lot sizes in Berkeley are such that few properties are large enough to produce so much food that its sale would be noticeable in the neighborhood. Sale of foods grown on-site will likely involve customer's visits once weekly to pick up a food box. Based on the experience of an existing backyard farm in Berkeley, operating from a roughly 15x15 foot growing area, the amount of produce available for sale would be enough for seven families. If a few families choose half shares, staff estimates up to 10 customers. Ten visitors one day a week would not result in a greater impact to the neighborhood than a yard sale, which could attract 50 or more visitors and is an exempt use allowed once per month.

Staff recommends the activity be exempt from zoning regulation, similar to yard sales. Further, if impacts should arise, staff feels existing ordinances, including the noise ordinance and nuisance and abatement ordinance, enable the City to address the impacts.

Discussion*Proposed Options*

Staff proposes to treat the sale of food grown on-site in residential districts as an accessory use, and offers two regulatory approaches: (1) exempt the sales activity, similar to yard sales, or (2) create a new accessory residential use of "Sale of Non-Processed Edibles" subject to a Zoning Certificate (cost \$180).

Under both options, staff proposes to include specific standards based on the home occupation standards and the California Retail Food Code. Attachment 1 provides the proposed zoning language. The options are summarized in the table below. Staff

recommends the exemption option because of the potential cost burden to the applicant of the ZC and business license fees and the lack of significant impacts from this activity.

Option 1 – Exempt	Option 2 – Zoning Certificate
<p>Edit the existing Exemptions Chapter, 23C.20, to add Sale of Non-Processed Edibles grown or raised on occupied residential lots as an exempt activity.</p> <ul style="list-style-type: none"> • Sell directly to consumer • Sales between 8am and 8pm and shielded from view • Not result in hazardous materials, noise, odors, etc. 	<p>Edit the “Uses Permitted” table in each residential chapter (23D.xx.030) to add as an accessory use the Sale of Non-Processed Edibles on occupied lots, subject to specific provisions under “Use Limitations” (23D.xx.060).</p> <ul style="list-style-type: none"> • Include a 10 customer visits limit • Sell directly to consumer • Sales between 8am and 8pm and shielded from view • Not result in hazardous materials, noise, odors, etc.

Use Limitations

Staff consulted with the City’s Environmental Health Department about possible food safety concerns and applicable state or county laws. The Heath Department staff advised that the sale be permitted only to the consumers who are the end users of the produce, consistent with California Food and Agricultural Code standards regarding direct marketing of produce.

To protect residential character, use limitations are included in both options based on the home occupation standards included in the Council referral. Language regarding hazardous materials, noise and odors was copied from the home occupations chapter. Any buildings associated with the sales activity or growing would remain subject to the development standards and permits applicable to any other residential accessory structures.

The provisions to limit sales times and require shielding of sales from the public right-of-way are intended to make the sales activity barely noticeable to most neighbors. In addition, a customer visit limit was included in the Zoning Certificate option as an extra precaution for people concerned about neighborhood impacts. The City can inform the applicant of this limitation as a condition of ZC approval.

Proposed Definition

The proposed definition of Non-Process Edibles is provided below. It is based on the City Council referral, input from the City’s Environmental Health Department, and California food safety laws.

Non-Processed Edibles: Foods, which include fruit, vegetables, nuts, and shell eggs from fowl or poultry, and does not include marijuana/cannabis, grown or raised in accordance with the Berkeley Municipal Code, that are fresh, whole and

uncut and have not been processed. Washing, trimming, bundling, and similar handling of otherwise fresh, whole and uncut foods shall not be considered processing.

The definition includes foods “grown or raised” in accordance with the Berkeley Municipal Code (BMC), which allows the sale of animal-related products from animals legally raised in Berkeley. Chapter 10.2 of the BMC permits the keeping of various types of animals, such as chickens and rabbits. However, state law does not allow the sale of meats that were not slaughtered in a USDA-inspected slaughter house. *Therefore, no animal meats could be sold.* To make this point clear, the definition lists what products can be sold: fruits, vegetables, nuts and shell eggs that are fresh and whole and from chickens kept in accordance with the BMC.

A food safety concern raised is the possible handling of cut food with unclean hands or utensils, such as for samples or to process and package fresh into dried food, which could introduce pathogens. To avoid this, staff recommends sales of home-grown foods should be limited to fresh, whole, uncut, and unprocessed products.

Why not a home occupation?

Staff considered the home occupation route for regulating the sale of foods grown on-site on residential lots, but concluded that this is not the best way to allow this activity for the following reasons:

1. The sales activity is not likely to be an occupation in the same way as other home occupations regulated by the City.
2. The sales activity is not likely to introduce impacts any greater than those experienced by yard sales (which are exempt); therefore, an AUP would be over-regulating the activity due to the cost and the processing time.
3. Under the existing hierarchy of the home occupation regulations, Low Impact Home Occupations are subject to a ZC and *do not involve any customer visits*. Moderate Impact Home Occupations are subject to an AUP and allow limited customer visits. Staff would prefer to maintain this clear distinction between low and moderate impact occupations by not creating a low impact home occupation that involves customer visits for food sales.

Why not a garden size-threshold?

Staff is concerned the 1,000 s.f. threshold could be misconstrued as the regulation of growing activities, rather than the sales activities. Staff prefers to link the regulations directly to the sales activity, which is currently not allowed, rather than the size of the garden, which is not subject to regulation. Further, it would be difficult to enforce as gardens could change size and shape over time and fruit trees could be considered a part of the growing area even if mainly used for ornamental purposes. Staff does not think that the average lot size in Berkeley lends itself to an excessively productive vegetable plot, and so does not feel that limiting garden sizes is necessary.

Other Issues

Possible soils contamination: The original Council referral raised the issue of soils contamination and suggested requiring soils testing. The City's Community Environmental Advisory Commission (CEAC) researched this issue and came to the conclusion that generally speaking, soils contamination is not a health risk because plants do not take up enough soil toxins to be detrimental to human health. Direct ingestion of the soil (such as by young children) presents a greater risk. Their research also identified the most likely sources of soil contamination: runoff from lead paint within the first few feet adjacent to a building and leaching from treated wood used for raised beds. They recommend that home gardeners use imported soil and raised beds made from safe wood. For this reason, staff does not recommend soils testing be required.

Business License and Fees: A business license is required for any sales activity in the City. The initial cost would be \$76 and \$51 annually. With either option, exempt or Zoning Certificate, the home gardener would be able to legally obtain a business license; the ZC option would first require Planning Department approval and sign-off, which has a fee of \$180.

Additional Background

Council Referral Summary: In October, 2010 Councilmember Arreguin referred "Home and Community Garden Zoning" accompanied with draft language proposing an AUP for a Moderate Impact Home Occupation, and introducing a new AUP fee level (\$185.75).

In July, 2011, Councilmember Arreguin provided a letter and FAQ about the edible gardens legislation proposal and an updated version of the Moderate Impact Home Occupation zoning.

On September 20, 2011, Councilmember Arreguin and Councilmembers Capitelli and Wengraf jointly referred slight different legislation:

- Councilmember Arreguin provided the updated version of the Moderate Impact Home Occupation zoning and suggested the Council consider allowing the use as a Low Impact Home Occupation with a Zoning Certificate.
- Councilmembers Capitelli and Wengraf referred to the commission consideration of sale of non-processed food items as a low impact home occupation on gardens under 1,000 square feet subject to a Zoning Certificate.

Other Cities Examples: The City of Oakland is in the process of developing new regulations for urban agriculture. In the interim, they allow sales of food grown onsite incidental to a residential use as a home occupation with a zoning clearance, similar to a Berkeley ZC. The sales activities are required to take place indoors.

San Francisco recently adopted new categories and rules for urban agriculture that differentiates between Neighborhood Agriculture (one acre or less) and Large Scale Urban Agriculture. Backyard gardens that are accessory to residential uses are considered Neighborhood Agriculture, and limited sale of produce is allowed without a permit. Large Scale Urban Agriculture requires a discretionary permit.

Attachments:

1. Proposed Zoning Amendment Definition and Regulatory Options
2. City Council Referrals
3. CEAC memo on soils safety

Note, under Communications, there are four (4) letters pertaining to this agenda item.

New Definition – Chapter 23F.04

Non-Processed Edibles: Foods, which include fruit, vegetables, nuts, and shell eggs from fowl or poultry, and does not include marijuana/cannabis, grown or raised in accordance with the Berkeley Municipal Code, that are fresh, whole and uncut and have not been processed. Washing, trimming, bundling, and similar handling of otherwise fresh, whole and uncut foods shall not be considered processing.

Option 1

Chapter 23C.20 - EXEMPTIONS

23C.20.010 Exempted Accessory Uses

A. The renting of rooms and/or the providing of board in a dwelling unit to four (4) or fewer persons not living as a household is permitted by right as an accessory use in all residential districts, provided that:

1. The rental of rooms is for periods of at least fourteen (14) days; and
2. The rooms which are rented:
 - a. Are fully integrated within the dwelling unit such that they have interior access to the rest of the dwelling unit;
 - b. Do not have separate kitchen(s); and
 - c. Do not have separate street addresses assigned to such room(s).
3. All requirements for off-street parking are met.

B. The sale or donation of Non-Processed Edibles grown or raised on the premises is permitted by right as an accessory use in all residential districts, provided that:

1. Sales are directly to the end consumer of the Non-Processed Edibles;
2. Sales-related activities take place between the hours of 8am and 8pm and are located either indoors or in an area generally shielded from view from the public right-of-way;
3. The sale of Non-Processed Edibles does not involve hazardous materials or processes or create offensive or objectionable noise, vibration, odors, heat, dirt, or electrical disturbance perceptible by the average person beyond the lot line of the subject lot.

CB. Notwithstanding any to the contrary, this Section does not permit a Commercial Use in a Residential District unless such a Use is specified in the regulations for the District.

Option 2

Repeat in all Residential District Chapters

23D.16.030 Uses Permitted Table

<u>Accessory Uses and Structures</u>		
<u>Sale of Non-Processed Edibles grown or raised on-site</u>	<u>ZC</u>	<u>Occupied lots only. Subject to Section 23D.16.060.A</u>

23D.16.060 Use Limitations

- A. Sale of Non-Processed Edibles are subject to the following conditions:
 - 1. Sales shall be directly to the end consumer of the Non-Processed Edibles;
 - 2. Sales-related activities shall take place between the hours of 8am and 8pm and be located either indoors or in an area generally shielded from view from the public right-of-way;
 - 3. Sales-related activities may not:
 - a. Involve hazardous materials or processes or create offensive or objectionable noise, vibration, odors, heat, dirt, or electrical disturbance perceptible by the average person beyond the lot line of the subject lot;
 - b. Involve more than ten customer visits to the premises per day.



Jesse Arreguín
Councilmember, District 4

ACTION CALENDAR
September 20, 2011

To: Honorable Mayor and Members of the City Council

From: Councilmember Jesse Arreguin

Subject: Referring to Planning Commission revised Zoning Language Relating to the Sale of Non-Processed Edibles

RECOMMENDATION:

Refer to the Planning Commission revised Zoning language relating to the sale of Non-Processed Edibles in Residential districts and suggest consideration of the following option:

- Lowering the permitting requirement for the sale of Non-Processed Edibles to a Low Impact Home Occupation use (Zoning Certificate) subject to the conditions in the draft zoning language (limits on customer sales; hours of sales; location of sales; soils testing etc.)

BACKGROUND:

Attached please find an updated version of legislation that was proposed in October 2010 to facilitate sales activity related to Non-Processed Edibles grown or raised in Berkeley's residential districts.

When this item was referred to the Planning Commission last year, Council included a number of requests for clarification, and additional comments were also received from the community. In addition, we consulted with numerous stakeholders including the Ecology Center and the Berkeley Food Policy Council. Ecology Center brought in the Sustainable Economies Law Center whose attorneys reviewed the proposed legislation. We received a visit from a Council Member and discussed and addressed that individual's questions and concerns. Finally, we reviewed San Francisco's very comprehensive legislation and considered elements from that policy which might be relevant to Berkeley's residential areas.

Taking all of this input into consideration, and working closely with Ecology Center and the Berkeley Food Policy Council, we have updated the proposed legislation and have also prepared a "Term Sheet" explaining why certain items are included, and why other possibly relevant items, after consideration, are not included in the proposed legislation but rather are addressed by existing laws. This significant additional input and collaboration has resulted in a much stronger proposal, which I believe has taken into

account many of the issues that have been raised and will allow growing and limited sales of Non-Processed edibles in Berkeley's residential districts, furthering our Climate Action Plan goals.

San Francisco recently passed significant legislation on this very timely issue, and Oakland is moving forward full swing. A large coalition of individuals and organizations is forming to support this legislation. The Sierra Club, Ecology Center, Spiral Gardens, Berkeley Food Policy Council, City Health Commission, author Michael Pollan, and over a hundred other individuals have already given their support.

FINANCIAL IMPLICATIONS:

Unknown. Staff time will be involved in researching and writing Zoning amendments for Planning Commission and City Council consideration and in developing best practices guidelines.

CONTACT PERSONS:

Jesse Arreguin, Councilmember, District 4 981-7140

Attachments:

1. Proposed Zoning amendments
2. Proposed Tax code amendments
3. Berkeley Edible Gardens Initiative Term Sheet regarding proposed Zoning changes

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTIONS 23C.16.030 AND 23F.04.010
TO ESTABLISH SALE OF NON-PROCESSED EDIBLES HOME OCCUPATION USE
AND THE DEFINITION OF NON-PROCESSED EDIBLES

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 23C.16.030 is amended to read as follows:

23C.16.030 Moderate Impact Home Occupations Subject to Use Permit

A. A teaching-related home occupation which meets all of the following conditions shall be allowed subject to issuance of an Administrative Use Permit and subject to payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.

1. Such Home Occupations must:
 - a. Be conducted entirely within the dwelling unit or group living accommodation room;
 - b. Operate within the hours of 10 a.m. and 10 p.m.; and
 - c. Occupy less than 400 square feet and less than 20% of the dwelling unit or group living accommodation room;
2. Such home occupations may not:
 - a. Involve more than four students at a time;
 - b. Involve storage, service, repair, handling or transport of goods or products on or at the subject premises;
 - c. Involve hazardous materials, or processes; or
 - d. Create offensive or objectionable noise, vibration, odors, heat, dirt or electrical disturbance perceptible by the average person beyond that lot line or party walls of multi-unit buildings, or the subject premises.

B. Home occupations involving the sale of fruits, vegetables and other Non-Processed Edibles, as defined in Section 23F.04.010, grown or raised as allowed by the Berkeley Municipal Code, which meet all of the following conditions, shall be allowed subject to issuance of an Administrative Use Permit:

1. Activity relating to the sale of Non-Processed Edibles, grown or raised as allowed by the Berkeley Municipal Code, may occupy no more than 400 square feet or

20% of the dwelling unit or group living accommodation room, whichever is smaller. Sales of Non-Processed Edibles must take place either indoors or in a location not visible from public or private property.

2. Applicants must present results of a soils test with a lead level no greater than 300ppm, and shall attest that:
 - a. Testing was performed in accordance with City of Berkeley Specifications
 - b. Soils tested are those to be used for growing or raising
 - c. The applicant shall use reasonable care, including additional soils testing if warranted, to assure that any future imported soils used for growing or raising do not exceed 300ppm lead content
3. Sales of Non-Processed Edibles shall take place within the hours of 8 am to 8 pm.
4. Sales of Non-Processed Edibles may not:
 - a. Involve more than 4 customer visits per hour
 - b. Involve storage, service, repair, handling or transport of any goods or products on or at the subject premises, except that fruits, vegetables and other Non-Processed Edibles, other than marijuana/cannabis, grown or raised as allowed by the Berkeley Municipal Code, may be stored, handled and transported on or at the subject premises incidental to such sales.
 - c. Involve hazardous materials or processes; or
 - d. Create offensive or objectionable noise, vibration, odors, heat, or electrical disturbance perceptible by the average person beyond that lot line or party walls of multi unit buildings, or the subject premises.

C. All other home occupations that involve customer visits, or products on the subject premises, as set forth in Sections 23C.16.020.B.1 and 23C.16.020.B.2, may be authorized only by a Use Permit and public hearing, and are subject to the payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04. (Ord. 6909-NS § 1 (part), 2006; Ord. 6478-NS § 4 (part), 1999)

Section 2. That Berkeley Municipal Code Section 23F.04.010 is amended to read as follows:

Non-Processed Edibles: Any foods, other than marijuana/cannabis, grown or raised, in their raw or natural state, that have undergone little or no processing. Washing, trimming, bundling, and other handling of otherwise raw or natural foods shall not be considered processing. Individuals engaged in the growing or raising of Non-Processed Edibles are encouraged to employ organic methods.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 9.04.230 TO EXEMPT SALE OF NON-PROCESSED EDIBLES HOME OCCUPATION BUSINESSES FROM PAYMENT OF AN ANNUAL LICENSE FEE AND GROSS RECEIPTS TAX

Section 1. That Berkeley Municipal Code Section 9.04.230 is amended to read as follows:

9.04.230 Minimum tax--Real property rental, certain businesses operated from homes, nonprofit organizations, general.

A. Every person commencing, transacting or carrying on the business of renting real property, as defined in Section 9.04.195 of this chapter, shall pay a minimum license fee of seventy-seven dollars for each building, structure, or property subject to licensing.

B. Every person commencing, transacting or carrying on any business in his/her home in a residential zone not as a nonconforming use, whose annual gross receipts are two thousand dollars or less, shall pay an annual license fee of twenty-six dollars. Except that every person commencing, transacting or carrying on the sale of Non-Processed Edibles, as permitted in Section 23C.12.030.B, shall be exempt from payment of an annual license fee and gross receipts tax.

C. Every nonprofit corporation or association as defined in Section 9.04.305 of this chapter, shall pay a minimum annual license fee of twenty-six dollars.

D. Every person or organization not covered by the provisions of subsections A, B or C of this section, or charged a flat license fee as provided in Section 9.04.235 of this chapter, who maintains an office or operates a business in the City of Berkeley, shall pay a minimum license fee of fifty-one dollars per year, whether or not any gross receipts of such person are derived from or attributable to the business activities by such person in the City of Berkeley.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

Berkeley Edible Gardens Initiative – Update to Proposed Changes to the Berkeley Municipal Code and Frequently Asked Questions (FAQ) - June 10, 2011

This Document includes an updated version of legislation that was proposed to the Berkeley City Council in October 2010 to facilitate sales activity related to Non-Processed Edibles grown or raised in Berkeley’s residential districts.

When the legislation was referred by Council to the Planning Commission last year, Council included a number of suggestions and requests for clarification. Comments on the proposed legislation were also received from the community. Numerous stakeholders provided additional input, including the Ecology Center, the Berkeley Food Policy Council and the Sustainable Economies Law Center. A visit from a Council Member provided additional potential concerns. Finally, we reviewed San Francisco’s recently adopted and very comprehensive legislation and elements which might be relevant to Berkeley’s residential areas.

Taking in all of this input, and working closely with Ecology Center and the Berkeley Food Policy Council, the proposed legislation has been updated and a list of “Frequently Asked Questions” has been prepared, explaining why certain items are included, and why other possibly relevant items, after consideration, were not included and rather are addressed in current city law. This significant additional input and collaboration has resulted in a stronger proposal. We look forward increasing opportunities for community produced food – with significant health, environmental and social benefits - while maintaining the integrity of Berkeley’s residential neighborhoods.

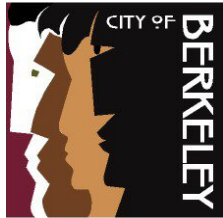
What is the definition of Non-Processed Edibles?	The Proposed Legislation defines Non-Processed Edibles as: “Any foods, other than marijuana/cannabis, grown or raised, in their raw or natural state, that have undergone little or no processing. Washing, trimming, bundling, and other handling of otherwise raw or natural foods shall not be considered processing. Individuals engaged in the growing or raising of Non-Processed Edibles are encouraged to employ organic methods.”
	<p>This language is derived from definitions of the US Environmental Protection Agency (EPA and the US Food, Drug & Cosmetics Act, and also references local encouragement for such Edibles to be grown or raised using organic methods.</p> <p>The EPA defines a “Raw Agricultural Commodity” as “An unprocessed human food or animal feed crop (e.g., raw carrots, apples, corn, or eggs.). See http://www.epa.gov/OCEPAterms/.</p> <p>The Federal Food Drug & Cosmetics Act, SEC. 201., 21 U.S.C. 321 CHAPTER II—DEFINITIONS 1: (r) includes the following definition: The term “raw agricultural commodity means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.”</p> <p>The decision to “encourage” organic methods rather than <i>require</i> organic methods or formal Organic Certification is discussed further below.</p>
Where can Edibles be Grown or Raised?	Edibles can be grown or raised in all areas of a residential property, in accordance with all other applicable sections of the Berkeley Municipal Code (BMC). The BMC includes provisions about what can be grown or built (such as fences, raised beds, etc.) within the City’s Right of Way (usually 2-4 feet in from the sidewalk – this is indicated for each property on official city maps). Other provisions cover keeping of fowl and other animals, and address noise, smells, etc.

What changes are being proposed?	Currently the Berkeley Municipal Code requires a costly and time consuming permit for “Non-Processed Edibles” grown or raised at a Residential property to be sold, traded or bartered, even on a very small, neighbor-to-neighbor scale. The Use Permit costs several thousand dollars, requires public hearings and routinely takes a half year to obtain. The proposed changes to the Berkeley Municipal Code (BMC) create an exception to the Use Permit requirement which closely parallels an existing exception for “Teaching Related Home Occupations.” A permit is still required, and conditions must be met, but the permit is “over the counter” and much reduced in cost. We believe this strikes the appropriate balance between enabling community produced food – a significant health, environmental and social benefit - and preserving the residential nature of Berkeley’s neighborhoods.
Why A Moderate Impact and not Low Impact Home Occupation?	Different activities in Berkeley require different types of permits. Some are “over the counter” and cannot be appealed once they are granted (Zoning Certificates). Others are over the counter but can be appealed by community members once they are granted (Administrative Use Permits). Others cannot be obtained until a lengthy process has taken place, including public notice and hearings, and can be appealed (Use Permits, Variances). There are different costs associated with different permits.
Why an Administrative Use Permit and not a Zoning Certificate?	Residences generally cannot be used for business or commercial purposes, but there are some exceptions. Low Impact Home Occupations not involving Customer Visits OR Products can be permitted by over-the-counter, non-appealable Zoning Certificates if they meet certain other criteria. Basically, Low Impact Home Occupations is a category for consultants, writers and others who work from home but do not receive customers/clients or create or store products at home.
	Occupations carried out in Residential Areas which include Customer Visits, Products or both require a Use Permit which is costly and time consuming. There is one exception to the Use Permit requirement for activities involving customers and/or products in residential areas, for Teaching Related Home Occupations. Teaching Occupations are considered “Moderate Impact” and require only an “Administrative Use Permit.” This is an over-the-counter permit that allows for appeals after the fact, and is much less costly and time consuming than a Use Permit.
	Sales of Non-Processed Edibles involve products and could involve customers, so fall into the category of activities normally allowed only with a Use Permit. Because this activity has very little impact on the residential character of the neighborhood and provides important health, environmental and other benefits to the community, we believe it should fall into the same category as Teaching Related Home Occupations – Moderate Impact. Thus we have crafted a second category entitled “Sale of Non-Processed Edibles Home Occupation” to parallel the Teaching Related Home Occupations exception.
	Finally, we believe that the possibility of appeal with an Administrative Use Permit is important in the residential setting. It is conceivable that a circumstance could arise where the activity – or the homeowner involved – should not be allowed to go forward. The Administrative Use Permit provides an important benefit to the community through the possibility of appeal.
What taxes and fees will apply to this Activity?	In general, Sales of Non-Processed Edibles should be encouraged as a Social Good, so long as the activity is carried out in a manner that does not unduly impact the residential quality of our neighborhoods. The provision of healthy, locally grown food should thus be enabled without undue barriers. As the size of residential lots and the realities of growing or raising

	<p>edibles significantly limit total output, it is not expected that these “businesses” will generate much positive cash flow. The exchange of value – in the form of direct sales, trading or cooperative/CSA-type arrangements (Community Supported Agriculture) is generally expected to be incidental to enabling of the activity, and not an end in and of itself. In short, this is not a profit driven activity but an activity undertaken for the health and benefit of the community. As such, we believe it should not be subject to taxation.</p> <p>Currently, four separate taxes and fees would apply to the Sale of Non-Processed Edibles Home Occupation</p> <ol style="list-style-type: none"> 1. A one-time Permit fee. The fee for “Moderate Impact” Teaching Related Home Occupations is \$257. The fee for Low Impact Home Occupations is \$180. We propose that the permitting fee for Sale of Non-Processed Edibles be the same as for Low Impact Home Occupations, \$180. This amount is sufficient to process the permitting transaction and presents a less significant barrier for individuals seeking to engage in a socially beneficial activity that is unlikely to provide much, if any, income. 2. A one-time Business License Application Fee of \$25. We feel this is reasonable and propose that this fee be required. 3. An initial Business License Tax of \$51. Given the social benefits, the tradition of not taxing food sales and the extremely low net income potential of this activity, we propose to exempt Sale of Non-Processed Home Edibles from this tax. 4. A yearly Gross Receipts Tax. We propose that this tax not be required, for the same reasons indicated at item 3, above.
Where can the Sales and Business aspects of the Occupation take place?	<p>Under the proposed changes to the BMC, all sales, exchanges and other “business” aspects of the Sale of Non Processed Edibles Home Occupation would be <i>hidden from view</i>: “Sales of Non-Processed Edibles must take place either indoors or in a location not visible from public or private property.” This is preserve the residential character of the neighborhood, and is adapted from language in Berkeley’s Medical Marijuana legislation mirroring the Teaching Related Home Occupations exception, “business” aspects of the Sale of Non-Processed Edibles Occupation cannot occupy more than the lesser of 400 square feet or 20% of the dwelling.</p>
How many Customer Visits can take place at one time?	<p>4 per hour. This is identical to the Teaching Related Home Occupations exception. Again, in seeking to limit impacts not commensurate with normal expectations of residential areas, we feel this limitation is reasonable. It should be noted that volume of customer visits is also limited by the amount of Edibles which can be grown or raised on a residential parcel. While a teacher working from home can conceivably schedule four students per hour, 12 hours per day, 7 days a week, it is virtually impossible for a home-based edibles “business” to generate this many customer visits due to the limitations of nature and arable space. The 4 per hour customer visit limit was acceptable for another category of Home Occupation and therefore should be acceptable with regards to Sales of Non-Processed Edibles as well.</p>
During What Hours can Customer Visits Take Place?	<p>8am to 8pm. Teaching Related Home Occupations can already operate for 12 hours a day – from 10 am to 10 pm. In the context of Edibles, 8 am to 8 pm should better accommodate “pick-ups” before or after work, typical times when residents are available for this activity.</p>
Should Organic be required?	<p>The definition of “Non-Processed Edibles” encourages use of organic methods but does NOT require organic methods or organic certification. With regard to organic standards, residents are not currently limited in their gardening and landscaping practices. While we strongly encourage organic practices, this is up to the individual grower and any potential clients he or she may have.</p>

	Organic certification is a very onerous process and is not appropriate for micro-scaled production where consumers can easily verify and influence growing and production methods. Farmer's Market produce often is not "Certified Organic," even when grown according to organic methods, as the certification process is too onerous even for small "full time" farms. In the case of customers obtaining food directly from the producer, there is ample opportunity to determine whether growing methods meet the consumer's satisfaction.
Why not require Certified Producer's Certificate from the Alameda County Agricultural Commissioner?	A Certified Producer's Certificate exists to provide assurance to customers that produce being sold at a Farmer's Market is grown by the seller and was not purchased wholesale to be resold. It does not address growing methods, organics or other topics which might be suggested by the certification title. Where a neighbor or community member is obtaining edibles directly from the producer at the production site, and/or is easily able to verify that edibles are in fact being grown or raised at the site, Certification serves no purpose. Should a residential grower/raiser wish to sell edibles at a farmer's market, Certification will be required to participate in the market and thus will have to be obtained.
What about Value Added/ Processed Products such as jam, pickles, canned goods, etc?	While canning, pickling and similar processing of fresh edibles is a logical extension of growing and harvesting, we do not propose to allow the sale of these items. Processing food is heavily regulated at the Federal, State, County and City levels. In San Francisco's recent comprehensive legislation, sale of processed edibles is allowed, but only outside of Residential areas. We concur. Nothing prevents growers or customers/cooperative members from processing foods for their own household's consumption, or to give as gifts.
What about noise and other potential impacts?	The Sale of Non-Processed Edibles Home Occupation addresses SALES only – the activity that triggers the Use Permit requirement - and not the growing and raising of edibles. Adequate rules about what can be grown or raised on a residential property, and the conditions under which these can take place, are already in place in the BMC.
	Growing edibles has no greater impacts than growing ornamentals in a well-tended garden. While the images of large farming operations – with their machine-made furrows, tractors, and farm workers - are indelibly written in many peoples' minds; small scale, residential food production is a very different undertaking, with virtually identical in inputs and growing time to ornamental gardens. Once a week tending by one or a few individuals is adequate to do all the planting, tending, weeding and harvesting necessary in a residential-scale edible garden, and after the initial installation of beds (with no more – and often much less – impact than the installation of an ornamental garden), there is no role for mechanized or motorized equipment whatsoever. Edibles grow as silently as ornamentals!
	The BMC already contains provisions limiting or prohibiting excessive noise, smells, and other unacceptable nuisances in residential areas. These provisions already provide the necessary protections for Berkeley's residential areas, and apply equally to the growing of edibles as ornamentals. Rules addressing the raising of animals are also in place. As such, there is no need for new specifications in the currently proposed legislation, which addresses only the impacts and conditions associated with SALES – the activity which triggers the need for the permit.
Why should this be allowed in all Residential Areas? Why not some restrictions?	The Teaching Related Home Occupations exception applies in all residential areas of Berkeley. The Sale of Non-Processed Edibles exception involves the same number of hours of operation, the same number of customer visits per hour, and other parallel or identical terms. There is no reason to allow those impacts in the case of Teaching Related Occupations but restrict them with respect to Sales of Non-Processed Edibles. Medical Marijuana collectives, without restriction on number of members, number of visits per hour or hours of operation are also permitted in all residential areas. Again, there is no

	reason to limit the geographic scope of Sales of Non-processed Edibles when even greater potential impacts are allowed in all Residential areas of Berkeley for other activities. Finally, growing and raising edibles is currently allowed in all residential areas of Berkeley, so the potential to generate – and share or sell – edibles, with all the positive outcomes for health, labor and the environment, should be fully enabled throughout.
What about Food Safety?	With regard to Food Safety in particular, most efforts to address food safety concern themselves with two things: Production Practices and “Traceability.” Many resources exist which outline best Production Practices. Given that liability falls to the producer, it is expected that individuals undertaking this activity will consult and follow such practices, as is the case with any other subject to liability for its activities. Traceability refers to a chain of custody documenting the movement of food from production to consumption.
	While traceability does not prevent the occurrence of food borne illness, it is important in order to track disease outbreaks to their origin. In most cases, direct sales of farm produce (Farm Stands, CSAs and Farmers’ Markets) are exempt from traceability requirements because the chain of custody is simply one transaction—from producer to consumer. Given that the sale of Non-Processed Edibles by a backyard gardener to a neighbor or other community member is an equally – or even more - direct transaction (sales occur where the food is produced, and conditions and practices can be verified), the problem of knowing where food originated is rendered moot.
What about Soil Contamination/Safety?	In Residential Areas in Berkeley, the most likely soil contaminant is lead dust/residue from paints used on home exteriors before the banning of lead in paints. Applicants will be required to show proof of a soil test with a lead level no greater than 300ppm, a nationally accepted standard. In addition, applicants will have to sign a form stating that the lead test was performed according to prescribed specifications, on soil actually to be used for growing, and commit to “use reasonable care, including additional soils testing if warranted, to assure that any future imported soils.” Only testing for lead will be required for growing in Berkeley’s residential areas, as the other soil hazards – such as those which can be found in previously industrial or commercial land - are unlikely to be present.
What about the Producer’s liability?	Production and sale of food is regulated by state and federal regulations. The liability for these activities clearly falls on the producer/vendor. Most small farmers have producer insurance to protect them in the case of a lawsuit. Homeowners’ general liability insurance may or may not cover these activities depending on the carrier and policy. Additional producer insurance is commercially available. Obtaining and verifying insurance coverage for Sale of Non-Processed Edibles is a private matter, and therefore the proposed legislation is silent.
What is the City’s Liability exposure?	So long as the City of Berkeley follows its own policies and procedures, it is shielded from any liability related to Sales of Non-Processed Edibles – or any other activity it permits.



Berkeley City Council

ACTION CALENDAR
September 20, 2011

To: Honorable Mayor and Members of the City Council

From: Councilmember Laurie Capitelli
Councilmember Susan Wengraf

Subject: Sale of Non-Processed Edibles in Residential Districts

RECOMMENDATION

Refer to the Planning Commission consideration of defining businesses in residential areas that sell non-processed food items grown on site in gardens under 1000 square feet as low-impact home occupations that require only zoning certificates and business licenses. Refer to the City Manager City development of guidelines and “best practices” for these very small food producers.

FINANCIAL IMPLICATIONS

Unknown staff time to research and develop guidelines.

BACKGROUND

In October of 2010, the City Council referred to the Planning Commission a proposal to develop appropriate zoning regulations for “home and community gardens.” In June, 2011, Councilmember Jesse Arreguin submitted to the Planning Commission a report and proposed draft language (see attached.) In October 2011, the Commission will consider whether to allow in residential districts the sale of “non-processed food items” with an Administrative Use Permit and reduced permit fee.

We suggest that the City make a clear designation between food sales from “small urban farms” - growing areas no larger than 1000 square feet - and larger farms designed for large-scale production.

A “Small Urban Farm” should be allowed with a zoning certificate. Staff should devise information and “best practices” for gardeners who choose to sell their produce on site. (Those who want to sell produce at an organized farmers market already are subject to relatively expensive insurance requirements.) The size restriction of the growing area would limit the activities of employees, visitors and patrons to the garden, making the neighborhood impacts no greater than the occasional visit of a landscape gardener.

We do recommend that there be conditions for those who sell produce from small, urban farms:

- Soil testing for lead, documentation upon request of patron
- No signs or sales equipment visible from the street

CONTACT PERSON

Councilmember Laurie Capitelli, District 5 981-7150

Councilmember Susan Wengraf, District 6 981-7160

ATTACHMENTS:

1. Edible Gardens Proposed Ordinance 6-1-11
2. Edible Gardens Proposed Ordinance 6--9-11
3. Berkeley Edible Gardens Initiative: FAQ's

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTION 9.04.230 TO EXEMPT SALE OF NON-PROCESSED EDIBLES HOME OCCUPATION BUSINESSES FROM PAYMENT OF AN ANNUAL LICENSE FEE AND GROSS RECEIPTS TAX

Section 1. That Berkeley Municipal Code Section 9.04.230 is amended to read as follows:

9.04.230 Minimum tax--Real property rental, certain businesses operated from homes, nonprofit organizations, general.

A. Every person commencing, transacting or carrying on the business of renting real property, as defined in Section 9.04.195 of this chapter, shall pay a minimum license fee of seventy-seven dollars for each building, structure, or property subject to licensing.

B. Every person commencing, transacting or carrying on any business in his/her home in a residential zone not as a nonconforming use, whose annual gross receipts are two thousand dollars or less, shall pay an annual license fee of twenty-six dollars. Except that every person commencing, transacting or carrying on the sale of Non-Processed Edibles, as permitted in Section 23C.12.030.B, shall be exempt from payment of an annual license fee and gross receipts tax if annual gross receipts are greater than two thousand dollars.

C. Every nonprofit corporation or association as defined in Section 9.04.305 of this chapter, shall pay a minimum annual license fee of twenty-six dollars.

D. Every person or organization not covered by the provisions of subsections A, B or C of this section, or charged a flat license fee as provided in Section 9.04.235 of this chapter, who maintains an office or operates a business in the City of Berkeley, shall pay a minimum license fee of fifty-one dollars per year, whether or not any gross receipts of such person are derived from or attributable to the business activities by such person in the City of Berkeley.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

ORDINANCE NO. -N.S.

AMENDING BERKELEY MUNICIPAL CODE SECTIONS 23C.16.030 AND 23F.04.010
TO ESTABLISH SALE OF NON-PROCESSED EDIBLES HOME OCCUPATION USE
AND THE DEFINITION OF NON-PROCESSED EDIBLES

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 23C.16.030 is amended to read as follows:

23C.16.030 Moderate Impact Home Occupations Subject to Use Permit

A. A teaching-related home occupation which meets all of the following conditions shall be allowed subject to issuance of an Administrative Use Permit and subject to payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04.

1. Such Home Occupations must:
 - a. Be conducted entirely within the dwelling unit or group living accommodation room;
 - b. Operate within the hours of 10 a.m. and 10 p.m.; and
 - c. Occupy less than 400 square feet and less than 20% of the dwelling unit or group living accommodation room;
2. Such home occupations may not:
 - a. Involve more than four students at a time;
 - b. Involve storage, service, repair, handling or transport of goods or products on or at the subject premises;
 - c. Involve hazardous materials, or processes; or
 - d. Create offensive or objectionable noise, vibration, odors, heat, dirt or electrical disturbance perceptible by the average person beyond that lot line or party walls of multi-unit buildings, or the subject premises.

B. Home occupations involving the sale of fruits, vegetables and other Non-Processed Edibles, as defined in Section 23F.04.010, grown or raised as allowed by the Berkeley Municipal Code, which meet all of the following conditions, shall be allowed subject to issuance of an Administrative Use Permit:

1. Activity relating to the sale of Non-Processed Edibles, grown or raised as allowed by the Berkeley Municipal Code, may occupy no more than 400 square feet or 20% of the dwelling unit or group living accommodation room, whichever is smaller. Sales of Non-Processed Edibles must take place either indoors or in a location not visible from public or private property.
2. Applicants must present results of a soils test with a lead level no greater than 300ppm, and shall attest that:
 - a. Testing was performed in accordance with City of Berkeley Specifications
 - b. Soils tested are those to be used for growing or raising
 - c. The applicant shall use reasonable care, including additional soils testing if warranted, to assure that any future imported soils used for growing or raising do not exceed 300ppm lead content
3. Sales of Non-Processed Edibles shall take place within the hours of 8 am to 8 pm.
4. Sales of Non-Processed Edibles may not:
 - a. Involve more than 4 customer visits per hour
 - b. Involve storage, service, repair, handling or transport of any goods or products on or at the subject premises, except that fruits, vegetables and other Non-Processed Edibles, other than marijuana/cannabis, grown or raised as allowed by the Berkeley Municipal Code, may be stored, handled and transported on or at the subject premises incidental to such sales
 - c. Involve hazardous materials or processes; or
 - d. Create offensive or objectionable noise, vibration, odors, heat, or electrical disturbance perceptible by the average person beyond that lot line or party walls of multi unit buildings, or the subject premises.

C. All other home occupations that involve customer visits, or products on the subject premises, as set forth in Sections 23C.16.020.B.1 and 23C.16.020.B.2, may be authorized only by a Use Permit and public hearing, and are subject to the payment of gross receipts tax pursuant to the City's business license tax ordinance as set forth in Chapter 9.04. (Ord. 6909-NS § 1 (part), 2006; Ord. 6478-NS § 4 (part), 1999)

Section 2. That Berkeley Municipal Code Section 23F.04.010 is amended to read as follows:

Non-Processed Edibles: Any foods, other than marijuana/cannabis, grown or raised, in their raw or natural state, that have undergone little or no processing. Washing, trimming, bundling, and other handling of otherwise raw or natural foods shall not be

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Berkeley Edible Gardens Initiative – Update to Proposed Changes to the Berkeley Municipal Code and Frequently Asked Questions (FAQ) - June 10, 2011

This Document includes an updated version of legislation that was proposed to the Berkeley City Council in October 2010 to facilitate sales activity related to Non-Processed Edibles grown or raised in Berkeley’s residential districts.

When the legislation was referred by Council to the Planning Commission last year, Council included a number of suggestions and requests for clarification. Comments on the proposed legislation were also received from the community. Numerous stakeholders provided additional input, including the Ecology Center, the Berkeley Food Policy Council and the Sustainable Economies Law Center. A visit from a Council Member provided additional potential concerns. Finally, we reviewed San Francisco’s recently adopted and very comprehensive legislation and elements which might be relevant to Berkeley’s residential areas.

Taking in all of this input, and working closely with Ecology Center and the Berkeley Food Policy Council, the proposed legislation has been updated and a list of “Frequently Asked Questions” has been prepared, explaining why certain items are included, and why other possibly relevant items, after consideration, were not included and rather are addressed in current city law. This significant additional input and collaboration has resulted in a stronger proposal. We look forward increasing opportunities for community produced food – with significant health, environmental and social benefits - while maintaining the integrity of Berkeley’s residential neighborhoods.

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	<p>edibles significantly limit total output, it is not expected that these “businesses” will generate much positive cash flow. The exchange of value – in the form of direct sales, trading or cooperative/CSA-type arrangements (Community Supported Agriculture) is generally expected to be incidental to enabling of the activity, and not an end in and of itself. In short, this is not a profit driven activity but an activity undertaken for the health and benefit of the community. As such, we believe it should not be subject to taxation.</p> <p>Currently, four separate taxes and fees would apply to the Sale of Non-Processed Edibles Home Occupation</p> <ol style="list-style-type: none"> 1. A one-time Permit fee. The fee for “Moderate Impact” Teaching Related Home Occupations is \$257. The fee for Low Impact Home Occupations is \$180. We propose that the permitting fee for Sale of Non-Processed Edibles be the same as for Low Impact Home Occupations, \$180. This amount is sufficient to process the permitting transaction and presents a less significant barrier for individuals seeking to engage in a socially beneficial activity that is unlikely to provide much, if any, income. 2. A one-time Business License Application Fee of \$25. We feel this is reasonable and propose that this fee be required. 3. An initial Business License Tax of \$51. Given the social benefits, the tradition of not taxing food sales and the extremely low net income potential of this activity, we propose to exempt Sale of Non-Processed Home Edibles from this tax. 4. A yearly Gross Receipts Tax. We propose that this tax not be required, for the same reasons indicated at item 3, above.
Where can the Sales and Business aspects of the Occupation take place?	<p>Under the proposed changes to the BMC, all sales, exchanges and other “business” aspects of the Sale of Non Processed Edibles Home Occupation would be <i>hidden from view</i>: “Sales of Non-Processed Edibles must take place either indoors or in a location not visible from public or private property.” This is preserve the residential character of the neighborhood, and is adapted from language in Berkeley’s Medical Marijuana legislation mirroring the Teaching Related Home Occupations exception, “business” aspects of the Sale of Non-Processed Edibles Occupation cannot occupy more than the lesser of 400 square feet or 20% of the dwelling.</p>
How many Customer Visits can take place at one time?	<p>4 per hour. This is identical to the Teaching Related Home Occupations exception. Again, in seeking to limit impacts not commensurate with normal expectations of residential areas, we feel this limitation is reasonable. It should be noted that volume of customer visits is also limited by the amount of Edibles which can be grown or raised on a residential parcel. While a teacher working from home can conceivably schedule four students per hour, 12 hours per day, 7 days a week, it is virtually impossible for a home-based edibles “business” to generate this many customer visits due to the limitations of nature and arable space. The 4 per hour customer visit limit was acceptable for another category of Home Occupation and therefore should be acceptable with regards to Sales of Non-Processed Edibles as well.</p>
During What Hours can Customer Visits Take Place?	<p>8am to 8pm. Teaching Related Home Occupations can already operate for 12 hours a day – from 10 am to 10 pm. In the context of Edibles, 8 am to 8 pm should better accommodate “pick-ups” before or after work, typical times when residents are available for this activity.</p>
Should Organic be required?	<p>The definition of “Non-Processed Edibles” encourages use of organic methods but does NOT require organic methods or organic certification. With regard to organic standards, residents are not currently limited in their gardening and landscaping practices. While we strongly encourage organic practices, this is up to the individual grower and any potential clients he or she may have.</p>

	Organic certification is a very onerous process and is not appropriate for micro-scaled production where consumers can easily verify and influence growing and production methods. Farmer's Market produce often is not "Certified Organic," even when grown according to organic methods, as the certification process is too onerous even for small "full time" farms. In the case of customers obtaining food directly from the producer, there is ample opportunity to determine whether growing methods meet the consumer's satisfaction.
Why not require Certified Producer's Certificate from the Alameda County Agricultural Commissioner?	A Certified Producer's Certificate exists to provide assurance to customers that produce being sold at a Farmer's Market is grown by the seller and was not purchased wholesale to be resold. It does not address growing methods, organics or other topics which might be suggested by the certification title. Where a neighbor or community member is obtaining edibles directly from the producer at the production site, and/or is easily able to verify that edibles are in fact being grown or raised at the site, Certification serves no purpose. Should a residential grower/raiser wish to sell edibles at a farmer's market, Certification will be required to participate in the market and thus will have to be obtained.
What about Value Added/ Processed Products such as jam, pickles, canned goods, etc?	While canning, pickling and similar processing of fresh edibles is a logical extension of growing and harvesting, we do not propose to allow the sale of these items. Processing food is heavily regulated at the Federal, State, County and City levels. In San Francisco's recent comprehensive legislation, sale of processed edibles is allowed, but only outside of Residential areas. We concur. Nothing prevents growers or customers/cooperative members from processing foods for their own household's consumption, or to give as gifts.
What about noise and other potential impacts?	The Sale of Non-Processed Edibles Home Occupation addresses SALES only – the activity that triggers the Use Permit requirement - and not the growing and raising of edibles. Adequate rules about what can be grown or raised on a residential property, and the conditions under which these can take place, are already in place in the BMC.
	Growing edibles has no greater impacts than growing ornamentals in a well-tended garden. While the images of large farming operations – with their machine-made furrows, tractors, and farm workers - are indelibly written in many peoples' minds; small scale, residential food production is a very different undertaking, with virtually identical in inputs and growing time to ornamental gardens. Once a week tending by one or a few individuals is adequate to do all the planting, tending, weeding and harvesting necessary in a residential-scale edible garden, and after the initial installation of beds (with no more – and often much less – impact than the installation of an ornamental garden), there is no role for mechanized or motorized equipment whatsoever. Edibles grow as silently as ornamentals!
	The BMC already contains provisions limiting or prohibiting excessive noise, smells, and other unacceptable nuisances in residential areas. These provisions already provide the necessary protections for Berkeley's residential areas, and apply equally to the growing of edibles as ornamentals. Rules addressing the raising of animals are also in place. As such, there is no need for new specifications in the currently proposed legislation, which addresses only the impacts and conditions associated with SALES – the activity which triggers the need for the permit.
Why should this be allowed in all Residential Areas? Why not some restrictions?	The Teaching Related Home Occupations exception applies in all residential areas of Berkeley. The Sale of Non-Processed Edibles exception involves the same number of hours of operation, the same number of customer visits per hour, and other parallel or identical terms. There is no reason to allow those impacts in the case of Teaching Related Occupations but restrict them with respect to Sales of Non-Processed Edibles. Medical Marijuana collectives, without restriction on number of members, number of visits per hour or hours of operation are also permitted in all residential areas. Again, there is no

	reason to limit the geographic scope of Sales of Non-processed Edibles when even greater potential impacts are allowed in all Residential areas of Berkeley for other activities. Finally, growing and raising edibles is currently allowed in all residential areas of Berkeley, so the potential to generate – and share or sell – edibles, with all the positive outcomes for health, labor and the environment, should be fully enabled throughout.
What about Food Safety?	With regard to Food Safety in particular, most efforts to address food safety concern themselves with two things: Production Practices and “Traceability.” Many resources exist which outline best Production Practices. Given that liability falls to the producer, it is expected that individuals undertaking this activity will consult and follow such practices, as is the case with any other subject to liability for its activities. Traceability refers to a chain of custody documenting the movement of food from production to consumption.
	While traceability does not prevent the occurrence of food borne illness, it is important in order to track disease outbreaks to their origin. In most cases, direct sales of farm produce (Farm Stands, CSAs and Farmers’ Markets) are exempt from traceability requirements because the chain of custody is simply one transaction—from producer to consumer. Given that the sale of Non-Processed Edibles by a backyard gardener to a neighbor or other community member is an equally – or even more - direct transaction (sales occur where the food is produced, and conditions and practices can be verified), the problem of knowing where food originated is rendered moot.
What about Soil Contamination/Safety?	In Residential Areas in Berkeley, the most likely soil contaminant is lead dust/residue from paints used on home exteriors before the banning of lead in paints. Applicants will be required to show proof of a soil test with a lead level no greater than 300ppm, a nationally accepted standard. In addition, applicants will have to sign a form stating that the lead test was performed according to prescribed specifications, on soil actually to be used for growing, and commit to “use reasonable care, including additional soils testing if warranted, to assure that any future imported soils.” Only testing for lead will be required for growing in Berkeley’s residential areas, as the other soil hazards – such as those which can be found in previously industrial or commercial land - are unlikely to be present.
What about the Producer’s liability?	Production and sale of food is regulated by state and federal regulations. The liability for these activities clearly falls on the producer/vendor. Most small farmers have producer insurance to protect them in the case of a lawsuit. Homeowners’ general liability insurance may or may not cover these activities depending on the carrier and policy. Additional producer insurance is commercially available. Obtaining and verifying insurance coverage for Sale of Non-Processed Edibles is a private matter, and therefore the proposed legislation is silent.
What is the City’s Liability exposure?	So long as the City of Berkeley follows its own policies and procedures, it is shielded from any liability related to Sales of Non-Processed Edibles – or any other activity it permits.



Jesse Arreguín
Councilmember, District 4

CONSENT CALENDAR
October 19, 2010

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguín
Subject: Refer to the Planning Commission: Home and Community Garden Zoning

RECOMMENDATION:

Refer to the Planning Commission the proposed Zoning amendments to allow home-based garden-grown edibles businesses in Berkeley's residential areas and request that the Planning Commission review the proposal and make a recommendation to City Council.

BACKGROUND:

As a City, we should encourage urban agriculture as a means to meet our Climate Action Plan and to support the consumption of locally grown produce. Our current zoning laws do not contemplate the sharing, trading or sale of home-grown produce –defining the associated home-based economic activity by default as a “moderate impact home occupation.” This category of activity requires costly and time consuming permits which act as a virtual bar.

For our community to be able to fully embrace urban agriculture in an economically viable manner, we propose a small amendment to the Zoning Code – enabling those who seek compensation for their small, usually low- or no-profit “edibles businesses” to obtain permits with greater ease and lower cost.

The proposed legislation mirrors an existing exception to the Moderate Impact Home Occupation permitting requirements - for Teaching Related Home Occupations. Permits are still required, but the cost and time burdens are greatly reduced to facilitate and support highly valued, low impact economic activity consistent with residential uses.

CONTACT PERSON:

Jesse Arreguin, Councilmember, District 4 981-7140

Attachments:

1. Proposed Changes
2. NY Times Article “Urban Farming for Cash Gains a Toehold in San Francisco”

Amend Zoning Code 23C.16.030 Moderate Impact Home Occupations Subject to Use Permit to add the following as new subsection B and re-designate subsequent subsections accordingly:

23C.16.030 B

Home occupations involving the sale of fruits, vegetables and other non-processed edibles, other than marijuana/cannabis, grown on the premises, which meet all of the following conditions, shall be allowed subject to issuance of an Administrative Use Permit and subject to payment of Gross Receipts Tax, pursuant to the City's Business License Tax Ordinance, as set forth in Chapter 9.04.

1. Such Home Occupations must:
 - a. Occupy less than 400 square feet and less than 20% of the dwelling unit or group living accommodation room
 - b. Operate within the hours of 8 am and 10 pm
 - c. Be conducted entirely within the dwelling unit or group living accommodation room
2. Such Home Occupations may not:
 - a. Involve more than 4 customer visits per hour
 - b. Involve storage, service, repair, handling or transport of any goods or products on or at the subject premises, except that fruits, vegetables and other non-processed edibles, other than marijuana/cannabis, grown on the premises, may be stored, handled and transported on or at the subject premises incidental to sales.
 - c. Involve hazardous materials or processes; or
 - d. Create offensive or objectionable noise, vibration, odors, heat, dirt or electrical disturbance perceptible by the average person beyond that lot line or party walls of multi unit buildings, or the subject premises.

Also add to AUP Fee Schedule to charge same as Teaching Related Home Occupation:

Fruit, Vegetable and Non Processed Edible Sales Home Occupation (Moderate Impact) - \$185.75

August 13, 2010

Urban Farming for Cash Gains a Toehold in San Francisco

By ZUSHA ELINSON

Brooke Budner and Caitlyn Galloway are a common sight on the streets of the Mission district — covered in dirt and carrying baskets of salad mix from their backyard farm to Bar Tartine, a stylish upscale restaurant.

“We’re fairly scrappy ladies and often pretty dirty,” said Ms. Galloway, 29, a part-time sign painter who founded [Little City Gardens](#) with Ms. Budner, 29, last year.

But their new piece of land — three-quarters of an acre on a quiet residential block in the outer Mission — is now mostly quiet and overgrown with weeds and without much sign of the lettuce, kale, arugula, purslane, lemon balm and other greens for which the women are known.

The problem is the legality of selling vegetables grown in San Francisco without a special permit, an expensive and time-consuming requirement for a small, low-profit business.

Even as the hype around [urban agriculture](#) and the local-food movement has exploded, laws governing land use are still stuck in another era, one that frowned on farming in the city, especially in residential areas, experts in urban planning say.

“There was an effort to zone agriculture out; it wasn’t seen as the highest and best use of the land,” said Jennifer Wolch, dean of the College of Environmental Design at the [University of California, Berkeley](#). “Culturally, there was a shift in the postwar period where it was unacceptable.”

A changing attitude and new ventures like Little City Gardens are now prompting city planners to consider revising zoning laws.

San Francisco is set to roll out significant changes this fall, following cities like Detroit, Kansas City, Mo., and Seattle. The new rules would let city farmers sell their produce without the old roadblocks and enshrine 21st-century urban agriculture in the books.

AnMarie Rodgers, a San Francisco city planner and the daughter of an Iowa pig farmer, is circulating a draft zoning change — one that has not been made public — that she hopes will be introduced in mid-September. It has the support of Mayor [Gavin Newsom](#), who last year ordered the city to increase healthy and sustainable food.

“There are beginning to be relatively small-scale gardening operations that are running up against the constraints of the current code,” Ms. Rodgers wrote in a recent memo to city officials. “This is an issue that cities around the country are grappling with, and many big cities are revising or considering revising their zoning codes to support at least small-scale urban agriculture.”

San Francisco, Oakland and Berkeley are full of gardens in backyards and schoolyards and on rooftops and vacant lots. From the chef [Alice Waters](#)’s famed edible schoolyard at [Martin Luther King Jr. Elementary School](#) in Berkeley to City Slicker Farms and the People’s Grocery, which are trying to bring fresh produce to West Oakland, the Bay Area’s innovative horticultural endeavors are widely known.

But when vegetables are exchanged for cash, it’s a different story.

Sophie Hahn, a Berkeley community activist and stay-at-home mother, is growing enough vegetables for six families in her backyard. Wanting to recoup some of her investment from neighbors to whom she has been giving the vegetables, Ms. Hahn looked into getting the right paperwork from the city. She found that obtaining a permit for home businesses like teaching piano, tutoring and even growing medical [marijuana](#) was easy, without public hearings or great expense. A backyard “community supported agriculture” venture was a different story.

“It’s actually easier in Berkeley to have a pot collective than to have a vegetable collective,” said Ms. Hahn, a former candidate for City Council who is putting together a legislative solution she plans to take to the Council.

For now, Ms. Hahn gives away the beets, basil, beans and everything else that grows in her North Berkeley yard.

Little City Gardens started out small, with 2,500 square feet of donated land near 18th and Guerrero Streets. But Ms. Budner, a part-time illustrator, and Ms. Galloway decided they wanted to make an experiment of their venture: Could they — or anyone for that matter — actually make a living as urban farmers?

“In the last couple of years, there’s been huge jazz around urban agriculture,” Ms. Galloway said this week. “A lot of projects seem symbolic or temporary, and I’m excited about celebrating those, but we wanted to do something that makes farming a permanent part of the city.”

They found the larger plot, a vacant lot covered with weeds behind a chain-link fence, and signed a lease this spring for a year and a half. They raised \$20,394 for their startup costs on the Web site [Kickstarter, which calls itself a financing platform for ideas and endeavors](#).

They got an informal go-ahead from the San Francisco Planning Department, but a complaint from a neighbor in May brought scrutiny. The verdict was that Little City Gardens must get a conditional-use permit, which can cost up to \$3,000 and take three to five months to complete, if they wanted to sell their produce.

Ms. Galloway and Ms. Budner saw that decision as a barrier to entry for farmers on small budgets and smaller plots. So instead of paying, they decided to fight. Citing Mayor Newsom's edict for more healthy food in the city, they sought a change in the law.

Ms. Rodgers, the city planner, agreed. "What we found," she said, "is the requirement for a conditional-use permit is a bit of a barrier."

Now in draft form, the changes in San Francisco would allow backyard gardeners to sell their produce to their neighbors any way they liked.

Market gardens like Little City Gardens would also be permitted in all areas of the city, whether in a residential or industrial area, if they were less than an acre. Operations of more than an acre would be allowed in areas zoned for industrial use. The new permit would cost a bit over \$300.

There are two primary conditions, Ms. Rodgers said: No marijuana, and farms must abide by certain rules, like locating compost away from neighbors and limiting use of heavy machinery. Pesticides and herbicides permitted by the federal government would be allowed.

Ms. Rodgers said the trigger for a more extensive permitting process would now be the farm's impact on the neighborhood, rather than just the sale of vegetables.

The proposal and the push for it are not without critics. Some are wary of overregulation. Others do not think that clearing the way for urban farming as a business in San Francisco — with its high land prices and slivers of vacant land — will benefit anyone except food enthusiasts with money to burn at fancy restaurants.

"Any public investment, even in changing the zoning code, has to be mindful of public benefit," said Mary Beth Pudup, a professor of community studies at the [University of California, Santa Cruz](#). "A lot of the urban-food movement can kind of skew to the high end."

Not-for-profit-farmers are watching with great interest.

"In the Bay Area, I am really interested to see if people can make a profit because land is so valuable and how much can you really produce," said Barbara Finnin, executive director at [City Slicker Farm](#), a nonprofit in West Oakland.

Meanwhile, Ms. Budner and Ms. Galloway have cleared part of their parcel, built a greenhouse, even tilled a small section and hauled in horse manure. But with the changes in the zoning code working their way through the system, they have yet to plant much. They did put in a short row of sunflowers near the entrance of the property, just behind a chain-link fence, which they water with their water bottles. The flowers are now about knee high.

Ms. Galloway said they had wanted to plant at least something while they waited.

“We planted the sunflowers out of desperation,” she said.

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What are best practices for urban gardening?

How to get your soil tested for lead and arsenic

Best Practices for Urban Gardening Lead and Arsenic in Berkeley Soil

Lead and arsenic are two potentially harmful heavy metals commonly found in Berkeley soil. Although lead and arsenic occur naturally in the environment, human activities have contributed to increased contamination of soil. Gardening in an urban environment can be beneficial for your health and the environment, but it's important to learn how to minimize your risk of exposure. Lead and arsenic can accumulate in the body and children are at greatest risk. Lead can harm your child's developing brain and impact normal development. Lead is a probable human carcinogen and arsenic is a known carcinogen.

The most serious source of exposure to lead and arsenic is from ingesting or inhaling contaminated soil or dust. Although it is known that plant uptake of lead and arsenic does occur, the magnitude of exposure from the ingestion of home grown produce under normal dietary practices is less than the ingestion of contaminated soil and inhalation of dust. This pamphlet aims to encourage residents to grow their own produce, while identifying simple ways to reduce the health risks associated with heavy metal exposure.

What are the risk factors for garden exposure to lead and arsenic?

Berkeley soil is low in naturally occurring lead (1-15 ppm*), but the past use of lead-based paints and leaded gasoline have contributed to high concentrations in some soil. High levels of arsenic (8-18 ppm) are naturally occurring in Berkeley soil.

Gardening in soil near buildings constructed before 1978 or near busy roads or freeways may put you in contact with lead. Homes built before 1978, which are common in Berkeley, are likely to have been painted with lead paint. The chipping and exfoliation of paint over time causes lead to deposit and accumulate in the top layer of soil near the home. A house repainted without leaded paint does not necessarily mean the soil has not been contaminated. Lead persists and moves slowly in soils, unless soil is moved in landscaping activities.

Arsenic may leach from decks and fences built with wood that has been treated with arsenic pesticides, such as chromated copper arsenate (CCA). Soil near railways can also be subject to leaching from arsenic-treated wood ties or from pesticide application to the tracks.

* Soil and arsenic are measured in parts per million (ppm) or milligrams per kilogram (mg/kg). Both measurements are equivalent.

The most significant risk comes from ingestion or inhalation of soil as dust. Children are most vulnerable because they like to play in dirt and often put their hands into their mouths. They also have a greater rate of absorption of metals than adults. Pregnant women are also at risk.

The eating of fruits and vegetables grown in contaminated soil is much less of a concern than the direct ingestion or inhalation of contaminated soil or dust. In soils testing high in lead, it is possible for some lead to be taken up by the edible plants, but studies have shown that lead does not readily accumulate in the fruiting parts of vegetable and fruit crops. Higher concentrations are more likely to be found in leafy vegetables and on the surface of root crops. Plants grown in soil high in arsenic tend to hold what arsenic they accumulate in their roots. Uptake into plant tops and fruits is very small.

Best practices for urban gardening

- **Garden in raised beds** or other containers filled with clean soil if you believe your soil is contaminated. Place raised beds away from the source of lead paint. There is a chance for new contamination if the source of lead paint has not been covered or removed. The Ecology Center's Directory lists places where you can purchase soil.

When building raised beds, the best choices are untreated and rot-resistant wood like redwood, red cedar, or lumber made from recycled plastic. If you build raised beds from older or reclaimed lumber, be aware that the lumber may be treated with arsenic if it was first sold before 2004. In this case, be sure to line the inside of the bed with heavy plastic to avoid leaching. Plants will not take up arsenic unless the soils are deficient in phosphorus. Gardeners who use compost generously keep their soil rich in phosphorus. Newer lumber is treated with arsenic free ACQ or CA-B)

- **Place a barrier** between the contaminated soil and the clean soil at the base of your raised beds. Use natural fabrics such as jute or landscape cloth. Limit exposure by covering other bare soil in the yard with barriers and plantings.

- If you must plant directly into soil, **test your soil** to determine if there's a problem. See right for more information. The Alameda County Lead Poisoning Prevention Program provides advice, site evaluations, and recommendations on abatement.

- **Wash or peel fruits and vegetables** thoroughly to remove any remaining soil. Carefully wash leafy vegetables like lettuces and spinach and peel root vegetables such as carrots and potatoes. Supervise children when playing in the garden and make sure they do not eat unwashed edibles or dirt.

- **Take caution not to track** contaminated soil into your house. Do not eat or drink while gardening to minimize hand and mouth contact, and wear separate clothing and shoes.

- **Remediating soils.** The US EPA cites evidence that adding fish bone meal to contaminated soil converts some heavy metals to stable crystalline form that cannot easily be absorbed in digestion ([link](#)). Currently, insufficient information is available on proper use of bone meal.



How do I get my soil tested for heavy metals?

If you want to plant in your existing soil, it's best to have your soil tested. The Ecology Center's Directory includes a list of companies that will test your soil ([link](#)).

The US EPA also provides guidance on selecting a laboratory ([link](#)). Although testing is the only way to confirm if your soil is contaminated, testing for arsenic and replacing your soil can be costly. Following the best practices outlined below may be the most cost effective solution.

How can I tell if I have hazardous levels of lead in my soil?

The California EPA has determined soil- lead levels greater than **80 ppm** can lead to increases in a child's blood lead level when taking into account other sources of lead exposure ([link](#)). It is recommended that people with soil levels **above 80 ppm of lead** should follow the best practices outlined here.

(Arsenic recommendations)

Links and Resources



Additional information on lead:

Lead poisoning and children:

<http://www.cdph.ca.gov/programs/CLPPB/Documents/CLPPB-LearnAboutLead%28E%29.pdf>

Treated wood:

Alternatives to pressure treated chromated copper arsenate (CCA) wood:

http://www.ecologycenter.org/factsheets/pressure-treated_wood.html

<http://www.epa.gov/oppad001/reregistration/cca/alternativestocca.htm>

Information on alkaline copper quaternary (ACQ):

<http://www.epa.gov/oppad001/reregistration/cca/acq.htm>

Where to purchase soil, mulch or compost:

<http://www.ecologycenter.org/directory/> [Click on 'compost/mulch sources']

Information on soil additives:

<http://ehp03.niehs.nih.gov/article/info%3Adoi%2F10.1289%2Fehp.120-a20a>