

**Willig, Robert A.**

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**From:** [REDACTED]  
**Sent:** Friday, October 11, 2019 5:52 PM  
**To:** Willig, Robert A.  
**Cc:** [REDACTED]  
**Subject:** ACRE Review Request: [REDACTED] (City of Philadelphia)

Dear Mr. Willig:

This is in response to your letter of September 18, 2019, addressed to [REDACTED] here in the City Law Department, in which you ask for a response to [REDACTED] "complaint" under the Agricultural Communities and Rural Environment ("ACRE") Act concerning his proposal to engage in urban farming operations at [REDACTED]. [REDACTED] asked me to respond on behalf of the Law Department. Please be advised that, after a review of the relevant statute and ordinances, the City Law Department is comfortable that all actions of the City have been in conformity with both local legislation and ACRE.

As best I can understand [REDACTED] "complaint," he questions two City actions: the denial by the Department of Licenses and Inspections ("L&I") of [REDACTED] request to engage in urban farming and sales activity on the subject property; and the proposal then-pending in City Council to limit on-street parking in front of the subject property. Both actions are well within the City's authority. I will first walk you through the relevant local legislative provisions; and then I will explain why these are fully in compliance with ACRE.

[REDACTED] primary concern is with L&I's refusal to allow him to engage in sales of produce directly from his property, a property which he also proposes to use for a single family home. (Critically, L&I has not limited in any way [REDACTED] right to engage in farming operations on his property, so long as he does not conduct sales directly from his lot.) Under the City's Zoning Code, the use category in which he wishes to engage is called Urban Agricultural Use, and the subcategory is called Market or Community-Supported Farm. They are defined as follows:

(11) Urban Agricultural Use Category.

This category includes uses such as gardens, farms, and orchards that involve the raising and harvesting of food and non-food crops and the raising of farm animals. The urban agriculture subcategories are:

\* \* \*

(c) Market or Community-Supported Farm.

An area managed and maintained by an individual or group of individuals to grow and harvest food crops or non-food crops (e.g., flowers) for sale or distribution that is not incidental in nature. Market farms may be principal or accessory uses and may be located on a roof or within a building.

Phila. Code § 14-601(11).

The problem with [REDACTED] proposal is that, to the extent he wishes to engage in his proposed Market or Community-Supported Farm as a principal use on his property, along with the principal use of a single family dwelling, such dual principal uses are prohibited by the Zoning Code. “No more than one principal use is allowed per lot in RSD, RSA, and RTA zoning districts, except as otherwise expressly stated in this Zoning Code.” *Id.* § 14-401(4)(a). The subject lot is zoned RSA-2. And, to the extent he wishes to engage in his proposed use as an accessory use, a Market or Community-Supported Farm cannot be accessory to a single family dwelling. *See id.* § 14-604(1)(c)(.3) (“Accessory uses and structures must: \* \* \* be customarily found in association with the principal use or principal structure.”). In no sense of the word “customarily” can it be said that sale or distribution of crops, “not incidental in nature,” is a customary use in association with a single family dwelling.

Moreover, to the extent [REDACTED] disagrees with any of the foregoing, the Zoning Code gives him a right to appeal L&I’s determination to the Zoning Board to either challenge the legal conclusion or to seek a variance. *See id.* § 14-303(8), (15). [REDACTED] however, chose not to appeal. The denial to [REDACTED] of permission to use his property to engage in farm sales, therefore, is both fully supported by the Zoning Code; and, moreover, [REDACTED] forfeited any right he has under the Code to challenge that determination.

As for [REDACTED] complaint regarding parking on the street in front of his property, City Council yesterday passed, by a vote of 17-0, Bill No. 190609, which prohibits parking at all times on the [REDACTED]. This is a plain vanilla parking ordinance; City Council passes dozens of bills of precisely this type, every year, based on Council’s determination of community needs regarding safety, traffic flow, congestion, and other relevant considerations. Such ordinances are well within Council’s statutory authority, as provided by the City’s Home Rule Charter at § 5-500(d), which provides: “The [Streets] Department shall make such regulations governing traffic and parking on City streets . . . as shall be authorized by statute or ordinance.” (Emphasis added.) [REDACTED] has no particular claim of right to the parking spaces abutting his property, and certainly no claim of right to allow the public to use such spaces, particularly in light of Council’s legislative judgment that the public interest is better served by prohibiting parking in such spaces.

With that important background in mind, I will now address the requirements of ACRE, the relevant portion of which is set forth in one sentence: “A local government unit shall not adopt nor enforce an unauthorized local ordinance.” 3 Pa. C.S. § 313 (West). An “unauthorized local ordinance” is, in turn, defined as:

An ordinance enacted or enforced by a local government unit which does any of the following:

- (1) Prohibits or limits a normal agricultural operation unless the local government unit:
  - (i) has expressed or implied authority under State law to adopt the ordinance; and
  - (ii) is not prohibited or preempted under State law from adopting the ordinance.
- (2) Restricts or limits the ownership structure of a normal agricultural operation.

3 Pa. C.S. § 312. Finally, and critically, a “normal agricultural operation” is defined, in relevant part, as “[t]he activities, practices, equipment and procedures that farmers adopt, use or engage in the production and *preparation for market* of poultry, livestock and their products and in the production, harvesting and *preparation for market* or use of agricultural, agronomic, horticultural, silvicultural and aquacultural crops and commodities.” 3 P.S. § 952 (emphasis added). *See also* 3 Pa. C.S. § 312, for cross-reference.

Two salient points stand out from the foregoing definitions:

1. The only restriction placed on the City with respect to agricultural operations relates to any prohibition placed by the City on activities relating to farming production and *preparation for market*. Nothing in the foregoing restricts the City in any manner from imposing any prohibitions on the actual marketing activities themselves. And, critically, L&I has not in any way restricted [REDACTED] from engaging in *farming* activities on his property. L&I has only prohibited from engaging in *the sale of his crops from his property*. That sales activity is not protected in any way by ACRE.

2. Moreover, ACRE expressly exempts from its restrictions any ordinance for which the City has “express or implied authority under State law” to adopt, and which is not preempted. The City of Philadelphia has full and complete powers of home rule, fully equal to that of the General Assembly, except where we have expressly been preempted. *See* 53 P.S. § 13131. I am unaware of any preemption with respect to either the Zoning Code provisions at issue here or our powers regarding parking on City streets.

In conclusion, therefore, nothing in ACRE suggests any limitations on the restrictions about which [REDACTED] complains. Please don’t hesitate to reach out to me if you have any further questions on this matter.

[REDACTED]

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