

# Legal Tools for



# in Baltimore City

1st Edition



BY

*Community Law Center, Inc.*



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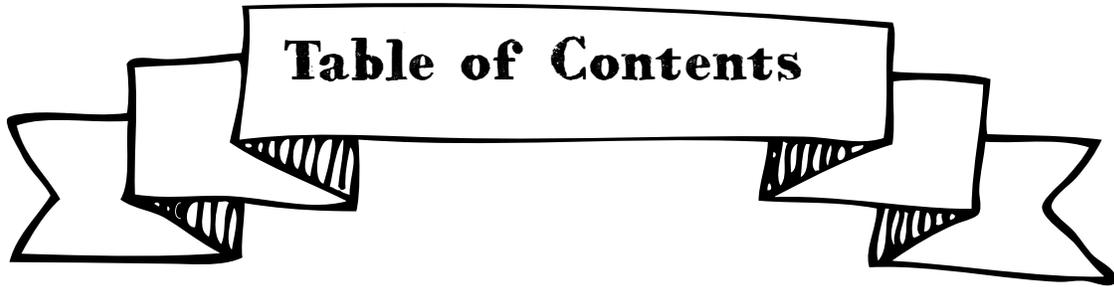
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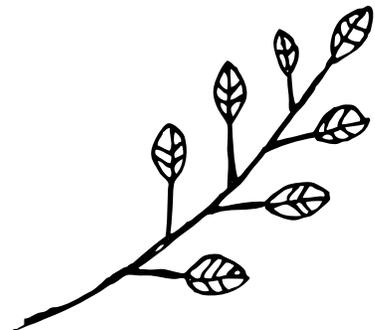
Since 1986, Community Law Center, Inc. has been Baltimore's only legal services organization dedicated solely to strengthening neighborhoods and nonprofits. Community Law Center, a nonprofit law firm, provides legal services to community and nonprofit organizations throughout Maryland to promote stronger nonprofits and more vibrant neighborhoods. Community Law Center seeks partnerships with many organizations, professionals, and agencies, including, but not limited to, community organizers, nonprofit housing developers, urban planners, educators, and law enforcement agencies, to realize each client's strategic goals.

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Community Law Center, a nonprofit law firm, provides legal services to community and nonprofit organizations throughout Maryland to promote stronger nonprofits and more vibrant neighborhoods.

Community Law Center has worked with and represented a wide and diverse array of Maryland's community organizations and nonprofits in its nearly 30 years of operation. In recent years, Community Law Center has become increasingly involved in assisting community greening, food justice, and urban agriculture projects throughout Baltimore City.

As urban agriculture continues to grow in Baltimore City, it is important that groups intending to start urban agriculture projects are familiar with the legal tools available to them. This manual is designed to educate individuals that either currently operate or intend to create an urban agriculture project in Baltimore City. Topics covered include choosing an organizational structure for the project, gaining legal access to land and complying with regulatory restrictions on the land, accessing water for the project, complying with laws regarding keeping animals in the city, distributing produce and farm products, protecting the project from liability, and hiring employees to work on the project.

For more information about operating nonprofits in Maryland and revitalizing communities in Baltimore City, please refer to Community Law Center's other publications: **The Community Association's Guide to the Development Process in Baltimore City** addresses the city's development process, zoning issues (including hearings and appeals), and community benefits agreements; **Strengthening Baltimore's Neighborhoods: A Legal Handbook for Community Associations** takes a deeper look at how to structure a community association and how the organization can take on nuisance properties and problem liquor establishments; finally, **How to Start a Nonprofit Organization in Maryland** provides guidance on how to start and maintain a nonprofit organization in Maryland.

This manual is meant to point out legal concerns that may arise when operating an urban agriculture project in Baltimore City. This manual is meant to be an evolving document and will change over time. The sample documents and information provided may not be appropriate or adequate for every situation. Therefore, Community Law Center recommends that project organizers seek legal counsel for advice and representation pertaining to their specific legal concerns.

Community Law Center may be able to assist with the types of legal issues raised here by assigning attorneys to represent nonprofit urban agriculture projects without charge. Community Law Center cannot provide legal assistance to urban agriculture projects organized for-profit. Nonprofit urban agriculture project organizers should contact Community Law Center as soon as possible (via [mail@communitylaw.org](mailto:mail@communitylaw.org) or 410-366-0922) when legal issues arise so that Community Law Center staff can evaluate the requests for legal services and assign attorneys accordingly.

# Chapter 1

## Getting Started

When getting started, founders of an urban agriculture or community garden project should consider:

- Who will be involved in the project?
- Who will make decisions about the project?
- Where will the project take place?
- Who owns the land?
- What are the restrictions on the land?
- What structures must be built to accommodate the project?
- Does the project require any special permission, permits, or licenses?

Determining who will be involved in the project leads to deciding how those individuals will be organized. Is this a group of neighbors? A community organization? A nonprofit? A business? Before answering these structural questions, the group should be sure that everyone agrees on the project's purpose.

### Mission Statement

To avoid future conflict, it is important for founders to identify, and agree upon, the purpose of the urban agriculture project before taking any further steps. A mission statement is a unifying tool that ensures all founders are on the same page. This statement should consist of one or two sentences that encapsulate the purposes and goals of the project. Writing a mission statement that everyone can agree upon will direct the project and serve as a guiding principle for decision-making.

### Choosing an Entity Structure

Once the founders of the project have decided on a common mission, the decision about which entity structure supports the goals of the organization should become clearer. Founders may choose to organize as a nonprofit organization or as a for-profit business entity to protect themselves from liability. Particularly if the project will require entering into contracts and land use agreements, founders may not wish to take on that personal liability.

Because a corporate entity takes time and money to set up and maintain, it may not make sense to create one for a short-term project. However, some project founders may already know a nonprofit, business, or community association willing to take on an agricultural project. If this is the case, creating a new entity may not be required. If the project will operate as part of an existing nonprofit, the entity should consider whether the agricultural project fits within its mission and structure.

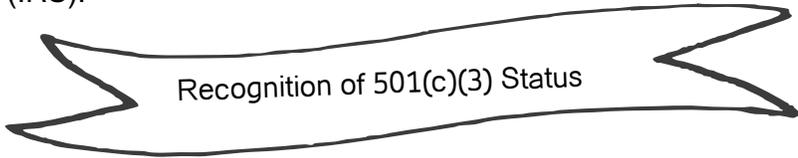
## Nonprofit/Nonstock Corporations

If the agricultural project will be structured to create revenue, the founders need to decide if the revenue will go back into an organization that serves a charitable purpose or whether that revenue will profit an individual or group. A charitable purpose can include many kinds of public benefits, including education, environmental protection, neighborhood revitalization, or provide relief or services to the poor, elderly, or sick. If the project is designed to be charitable, and there is not an existing charitable organization interested in taking on the project, then creating a nonprofit entity may be the best option.

In Maryland, the corporate structure designed for nonprofits is called a nonstock corporation. Organizing a nonstock corporation requires that the organization be governed by a Board of Directors. There is no “owner” of a nonprofit and no one person has full control or decision-making power. Because Board Members should not be compensated for their work on the Board of a nonstock corporation, it is important that all Board Members share in the mission of the organization and are willing to serve on a volunteer basis.

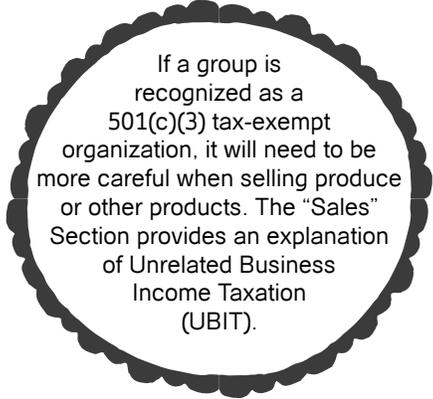
Organizing as a nonprofit provides many valuable benefits. Nonprofit organizations are afforded liability protection under the state law. Nonprofits may also be able to obtain tax benefits, including income tax exemption, State of Maryland Sales & Use Tax Exemption, and real property tax exemption.

Organizing as a nonstock corporation does not automatically grant the organization tax exemption. To become tax-exempt, the organization must take the next step to apply for recognition of tax-exemption from the Internal Revenue Service (IRS).



Recognition of 501(c)(3) Status

There are many benefits of being recognized as a 501(c)(3) tax-exempt organization. 501(c)(3) organizations are often eligible to apply for a wider variety of grants, and individual donations can be deducted on the donor's taxes.



If a group is recognized as a 501(c)(3) tax-exempt organization, it will need to be more careful when selling produce or other products. The “Sales” Section provides an explanation of Unrelated Business Income Taxation (UBIT).

In order to be recognized as a 501(c)(3) tax-exempt nonprofit by the IRS, the organization must operate to serve the public benefit, not for the benefit of private individuals. This means that the agriculture project must contribute to the well-being of the community at large, not just to those involved or those within a specific group. For example, a community-supported agriculture project (CSA) or a community garden would not necessarily qualify as serving the “public benefit” because they are primarily created to benefit those involved.

Not every nonprofit will approach the organizational tasks, incorporation process, and tax-exemption application the same way. When organizing a nonprofit, founders may reach out to Community Law Center to take advantage of the many resources available to new nonprofit organizations. Community Law Center can assign an attorney to provide advice tailored to the specific needs and circumstances of each nonprofit organization. Community Law Center also hosts a number of nonprofit trainings and workshops throughout the year. For more detailed information about the process of creating a nonprofit entity, please refer to Community Law Center's “How to Start a Nonprofit Organization in Maryland” manual.

## Fiscal Sponsorship

If an agriculture project does not require the formation of an entirely new 501(c)(3) nonprofit organization, another option is to identify an existing nonprofit to serve as a fiscal sponsor. A fiscal sponsor is generally an existing nonprofit that chooses to “sponsor” a temporary project that furthers its charitable mission. In most fiscal sponsorship agreements, the sponsor (a 501(c)(3) tax-exempt nonprofit) accepts donations or a grant for a project that it oversees. The sponsor then provides those funds to the organizers of the temporary project. Generally, the sponsor takes some percentage of the donations to offset administrative expenses it incurs in processing donations and overseeing the project. The sponsor must maintain control of the project, as the IRS has a strict prohibition on “pass-through” relationships. This means that the project organizers may need to sacrifice some amount of power to the sponsor. Projects are often best served by a fiscal sponsor with a similar mission to its own. Fiscal sponsorship agreements should be a signed contract between the sponsor and the project that is tailored to the needs of the project and clearly identifies the responsibilities of each party.

Agricultural project founders interested in pursuing a fiscal sponsorship relationship should seek legal counsel during this process, and Community Law Center can help project organizers to access legal representation.

## For-Profit Entities

If the project’s purpose is to create revenue for the owners and/or farmers, a for-profit model may be more appropriate. This will always be the case when the project will have an “owner” or “owners” who will control and personally benefit from the organization. There are a number of ways to organize a small business, including as a sole proprietor, a partnership, a corporation, or a limited liability company (LLC). If an individual is engaged in a business operation but has not taken any steps to incorporate, he or she will be considered a sole proprietor by the State of Maryland. In the same way, if the business operation is conducted by more than one individual and it has not incorporated, it will likely be considered a partnership by default.

See the chart at the end of this chapter for additional information about corporate entities. Persons interested in more information about choosing a business entity structure may visit the Department of Business and Economic Development’s [www.ChooseMaryland.org](http://www.ChooseMaryland.org) website or consult with an attorney.

## Benefit Corporations

In April 2010, Maryland became the first state to create a corporate form that allows entrepreneurs to consider the well-being of employees, communities, and the environment - in addition to the interests of shareholders - when making business decisions. This kind of corporate entity is called a Benefit Corporation. Like a corporation, a benefit corporation provides liability protection and allows the owner(s) to sell shares of the business to build capital. A Benefit Corporation includes in its Charter a secondary purpose, beyond creating profit and returning dividends to shareholders, that is charitable in nature. Benefit Corporations may be organized for the benefit of the general public or for the specific benefit of a group or the environment. This structure may be an appropriate choice for an urban agriculture for-profit project. Again, it is best to consult with an attorney when choosing a corporate structure and organizing a new entity.

The following chart highlights some differences between basic for-profit entity structures:

Sole Proprietor	Partnership	Corporation	Benefit Corporation	LLC
Default, no filing required	Default, no filing required	Incorporate with SDAT	Incorporate with SDAT	Organize with SDAT
	Create a partnership agreement to clarify authority and responsibility in the partnership	File Articles of Incorporation	File Articles of Incorporation	File Articles of Organization and create operating agreement
Assets are held in sole owner's name	Assets are held in each partner's name	The profits go back into the business and then are distributed to shareholders	Profits go back into the business and then are distributed to shareholders	Each member in an LLC may receive the profits from the share of the business (s)he owns
Profits are taxed directly on the sole owner's personal income tax returns	Profits are taxed directly on each partner's personal income tax returns	Corporations file their own income tax returns and pay tax on profits	Corporations file their own income tax returns and pay tax on profits	Profits are taxed as income to each member
The sole owner may be personally responsible for the liabilities of the business	Each partner may be responsible for the full liabilities of the business	The owners' personal assets are protected from the business' liabilities	The owners' personal assets are protected from the business' liabilities	The members' personal assets are protected from the business' liabilities

# Chapter 2

## Land Access & Use Restrictions



Many important legal questions arise at the initial phase of a garden or farm project involving the project's access to the land it is using. If the project does not have legal access to the land, the entire project could be in jeopardy from the start. Not only may this restrict access to funding, but all of the investments in the land could be lost at any time. In addition, the use of the land may constitute trespass. Trespass may result in civil and/or criminal sanctions against the trespassers. To gain legal access to the land, the individual or organization must obtain authorization from its owner to enter onto the land and use it for a garden or urban agriculture project.

Often, aspiring gardeners or community farming organizations have already identified the land that they hope to use for their urban agriculture project. This, for example, could be an empty lot in the neighborhood, underutilized parkland, or a designated community garden. However, without outright land ownership, the community gardeners must acquire the rights to enter and use the land. Those who do own the land, either the City or a private owner, must confer the rights to enter and use the land to others.

### Accessing Private Properties

To avoid trespass charges, compensation claims, and loss of all the time and money put into starting the project, project organizers should ensure that permission to use the land has been obtained.

Before licensing, leasing, or purchasing land, those involved with the project should make sure the property is properly zoned for the planned use of the land.

### Identifying the Property Owner

Once the urban agriculture project organizers have identified a piece of land appropriate for the project, the first step will be to identify the property's owner.

In Maryland, the ownership of real property is a matter of public record. The Maryland State Department of Assessments and Taxation (SDAT) maintains records on every parcel of real property for the entire state. SDAT has the property owner's name and address for the person who most recently acquired the property and recorded the deed, except when the property's ownership has changed so recently that the change has not yet been recorded by the Land Records office.

SDAT's website address is [www.dat.state.md.us](http://www.dat.state.md.us). The home page contains links to the various searches the site offers. To identify the owner of property in Baltimore City, a researcher should:

- Click the "Real Property Data Search" link;
- Click on the pull-down menu and select "Baltimore City;"
- Click on the next pull-down menu on the same page and select "Street Address;"
- Click the "Continue" button to proceed to the next page;
- Enter the street number in the blank field requesting "Street Number;"
- Enter the street name in the blank field requesting "Street Name;" and
- Click on the "Next" button.

The resulting page should be SDAT's assessment information on the property. It displays the name and mailing address of the owner of record (which may be different from the property address, if the owner does not actually reside at the property) as well as value information and recent sales of the property.

If the real property data search shows that the current owner of the property is a business entity, project organizers may wish to navigate back to the SDAT home page for a search for information about the business, following these steps:

- Click the "Business Data Search" link;
- Click the "Business Entity Information" link;
- Click on the pull-down menu and select "Name;"
- Enter the business entity name (as listed on the real property data sheet) in the blank field;
- If more than one entity is listed on the resulting page, select the one that matches the name from the real property data sheet; and
- Click on "General Info." to obtain information about the entity.

The resulting pages should be SDAT's business entity information. The entity's mailing address will be listed, as well as contact information for the entity's resident agent (the individual who is responsible for accepting documents on behalf of the entity). In addition to contact information, the website may provide some entity formation documents. Any available documents about an entity may include names of individuals who may be possible contacts for the property in question. All of the information found on the website is printable, including many of the documents filed with SDAT.

If the property owner is not available through SDAT, researchers can also try using: <http://cityservices.baltimorecity.gov/realproperty/>

- Type in the address of the property;
- Click "Search;" and
- The property owner's name and address should be provided; Click on "Select" for more information, including "Real Property Tax information."



Community Law Center's "Strengthening Baltimore's Neighborhoods" manual includes additional resources for identifying property owners and their contact information. It is important to ensure that the project has legal access to the land being used because it will provide stability and assurance that the project will not be forced to move.

### Contacting the Property Owner

Once the owner of a property has been identified, urban agriculture project organizers should contact the owner to ask permission to use the property for the proposed project. In the absence of a phone number or email address, neither of which are typically listed on public documents, sending a letter to the entity or individual at their mailing address is a good starting point. Make sure to keep a record of this letter and, if it is returned undelivered, keep the returned, unopened letter for proof of mailing. If the property is in particular need of cleaning up, include a photograph of the lot in your letter. If the property owner responds, granting permission to use the property, this letter may possibly serve as a license (see below).

### The Right to Enter the Land and the Right to Plant on the Land

The broadest set of property rights come from owning the land itself. Ownership allows the landowner the absolute right to enter the land and use it for any lawful purpose. Ownership also gives the landowner the right to decide who can enter the land and when, and what they can do on the land.

Private landowners, even absentee landowners, are often unwilling to allow others to use their land, especially for free. However, if a private landowner is willing to make arrangements to allow for the use of his or her land, the following options may be available: lease; license; or easement.

### Lease

A lease is a contract that allows certain individuals and/or organizations to use land for a particular purpose. It will be important when laying out the terms of a lease that the renters (the urban agriculture project organizers or organization) are specific about their intentions for the land. The lease will include the cost, terms, and duration of the agreement as well as any renewal options.

A lease gives the renters the right to use the land. This is a relatively secure agreement because the landowner cannot change his or her mind about the agreement unless the renters do not fulfill the terms of the contract or the duration of the lease term ends.



## License

A license is written permission to enter onto another person's land. Licenses can be as general or specific as the landowner chooses. For example, a license can allow a particular community group to use the property for agricultural projects generally, or it can allow a group to enter onto the land for the purpose of planting vegetables but exclude all other agricultural projects.

Licenses can be terminated at any time by the landowner, so this option is not as secure as a lease. It does, however, protect urban farmers from any claims of trespass, so long as they are operating within the limits of the license.

## Easement

An easement allows for the use of land without owning it or developing it. Typically, an easement is a right of way. For example, urban farmers can arrange an easement with neighbors for permission to cross their yard to access an urban garden.

Easements are often arranged if (1) there is no other way for urban farmers to access the garden plot or (2) if farmers have been crossing the neighbor's property for so long that it is implied that they have permission to do so.

City lots are licensed "as is." If there is any dangerous or unfavorable environmental condition on the leased property, the City of Baltimore bears no responsibility for the removal or abatement of hazardous conditions. It will also be the responsibility of the lessee to either import clean soil or remediate contaminated soil as needed.

## Accessing City-Owned Properties

If, in a property owner search, the results show that Baltimore City owns the property in question, there are three options to gain permission to use the lot: lease, license, or purchase. Purchasing land is the most long-term and secure way to access property. However, if an urban agriculture project does not have the resources or the interest to purchase land right away, Baltimore City operates a number of programs that allow individuals and community groups to use City-owned land for urban agriculture.

## Homegrown Baltimore: Urban Agriculture Land Leasing Initiative

In order to help community organizations gain access to city-owned vacant lots, the Departments of Planning and Housing and Community Development have developed a leasing initiative that allows community groups to lease lots from the City for \$100 per year for a lease period of five years, with a potential extension of an additional five years.

To be considered for the Homegrown Baltimore Initiative, applicant groups must include at least one person (employee or partner) with a minimum of one year of successful experience in agricultural production. Applicants must have no forfeitures or liens filed against them within the last three years (exception: mechanic's liens), and any outstanding code violations against properties owned by the applicants should be identified and explained in the application. Applicants may not have had any loans in default within the last five years and may not have declared bankruptcy within the last three years.

## Power in Dirt Initiative (Adopt-A-Lot Program)

The Adopt-A-Lot Program allows community members to use city-owned vacant lots. This license option is not available for every vacant lot. The City must be the property owner and not have a plan to use or sell the property. For more information about the Adopt-A-Lot Program and to access the application form, visit [www.baltimorehousing.org/vtov.adopt](http://www.baltimorehousing.org/vtov.adopt).

Once approved for the Adopt-A-Lot Program, applicants can then apply for the Water Access Program, under which the City Department of Water has agreed to provide an entire season of water for the growing season (March-November) for \$120. To apply, applicants fill out the form and send a \$120 check to the Director of Finance. A city employee then surveys the land to determine whether it is eligible for the program. If water is not readily available for the lot, the \$120 check is returned, and the applicants will have to find an alternate water source.

## City Farms Program

The City Farms Program, administered through the Baltimore City Department of Recreation and Parks, offers garden plots for rent in city parks. The program is open to anyone, even those with little or no gardening experience. On-site garden managers provide guidance for those with less experience. Plots are sunny, fenced-in, and approximately 150 square feet and rent for \$30 - \$50 per year. To apply for a plot, applicants must also pay a one-time application fee of \$10. Gardeners with the City Farms Program have access to city water April through October, as well as some gardening equipment and compost.

## Acquiring Land

If an urban agriculture project is intended to be long-term and is supported by stable income, organizers may decide that the best option is to purchase the land in question. Purchasing a property is the most secure way to ensure the future rights to the land and to allow for more substantial investment in the property.

However, urban agriculture project organizers should know that property ownership also imposes a new set of obligations. For example, as the property owners, a nonprofit or community group will need to provide liability insurance on the property. The property owner will also have to pay real property tax for the property. If the project is run by a nonprofit organization and the use of the land is considered charitable, it may be able to apply for a real property tax exemption from the state; otherwise it will be responsible for paying real property taxes on the property. This remains untested in the realm of urban agriculture. As of the date of this publication, Baltimore City is considering an urban agriculture property tax credit, which would reduce the property tax burden for for-profits as well as nonprofits.

Purchasing a property can occur in the traditional sense: an individual or organization buys a property from a private owner directly. However, there are a number of other methods to acquire ownership of a property in Baltimore City.

## Land Trusts

A community land trust is an organization that holds ownership of a property for the benefit of another. There are some land trust organizations in Baltimore City focused on preserving land for the creation of open space and urban agriculture projects including Baltimore Green Space.

Each Trust has its own criteria for a property to be eligible for land trust protection. In general, land trusts require the following:

1. **Ownership and Maintenance:** the request for preservation must be made by the owner and proposed manager of the project and those who will be involved in maintaining the property.
2. **Capacity for Long-Term Management:** the community group should be able to demonstrate how it will have sufficient leadership and volunteers to operate, maintain, and fund the open space.
3. **Community Use:** the intention for the space must serve the community, either through recreation, food production, education, aesthetics, gathering space, etc.
4. **Environmental Risks:** the proposed use of the property should match any environmental risks present.

One of the benefits of placing a neighborhood property under the stewardship of a community land trust is that the lot will be preserved in the long term. Often, greening initiatives are expected to be temporary; however, transferring a community space into a land trust is permanent.

## Vacants to Value Program

If a property is city-owned, it may be purchased directly from the City. A map of available properties can be found on Baltimore Housing's website: <http://www.vacantstovalue.org/Explore.aspx#target> When considering an application to purchase land through Vacants to Value, the City will take into account planned development in the area and the applicants' capacity to complete that development (i.e. the plans for the urban agriculture project and the ability of the applicants' to create a successful urban agriculture project).

## Side Yard Acquisition

Baltimore Housing also has a program for purchasing a vacant lot adjacent to a property-owner's existing property. This is known as the Side Yard Program. If a property owner has a vacant property adjacent to his or her own that might be used for an urban agriculture project, the Side Yard Program may be a good option. Persons interested in learning more about acquiring a side yard property should contact Baltimore Housing's Land Resources Division at 410-396-4111.

## Adverse Possession

While this option is only used in exceptional circumstances, adverse possession (also known as “squatter’s rights”) may be another way of gaining a property interest in land. Under the following circumstances, a trespasser can come onto land, use it as his or her own, and then gain legal ownership of it:

1. The possession must be hostile, meaning that the true property owner did not give permission for the use of the land;
2. The use must be actual, meaning that the trespasser physically occupied the land;
3. The use must be open and notorious, meaning that the trespasser’s occupation was visible to passersby and known within the community; and
4. The possession was exclusive and continuous for a period of 20 years.

If all of the above conditions are met continuously for the 20 year period, the trespasser can then file a court action to gain legal ownership of the property.

Community Law Center can provide legal assistance for any nonprofit urban agriculture projects interested in acquiring land from either the City or a private owner. Feel free to contact Community Law Center for more information.

## Planning and Zoning

Before committing to a piece of property for an urban agriculture project, it is also important to consider what kinds of activities are permissible on that parcel. In order to legally maintain an agricultural project, it is essential to check the zoning regulations that apply to the neighborhood.

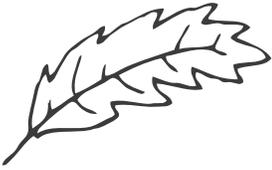
Community Law Center’s “Guide to the Development Process in Baltimore City” includes more detailed information about zoning terms, processes, and hearings before the Board.

### Finding a Property’s Zoning Designation

To determine how a particular property is zoned, visit: <http://cityview.baltimorecity.gov/> for the Baltimore CityView website. Type in the address of the property in question and select Property Information from the drop-down list under Find. After selecting Property Information, another box will appear. Choose Zoning from this drop-down list. This will provide a map, including the zoning designation of the property.

### Using a Residential Property for an Urban Agriculture Project

If the land is zoned as a Residential District agricultural projects, including nurseries, are likely considered “permitted uses” as long as no retail sales are made on the premises AND the project does not create any offensive dust or odor (agricultural use is not a permitted use in the R-5, R-6, R-7, and R-8 districts). Land zoned as R-1, R-2, R-3, and R-4 all allow agricultural activities as “permitted use.” A “permitted use” means that project organizers do not have to seek zoning permission to create a garden on the property, as long as it is in accordance with other laws and regulations.



## The Proposed Zoning Code Rewrite

At the time of this handbook's publication (June 2015), the City Council was in the process of reviewing a new zoning code for the City of Baltimore (no date for a final vote has been set). Once it has been adopted, this handbook will be updated. However, it is important to note that the proposed rewrite includes two provisions under which community groups may be able to characterize their agricultural projects, if adopted by the City Council: community-managed open spaces (CMOS) and urban agriculture.

Under the proposed code, the CMOS designation is more flexible than Urban Agriculture. According to the proposed regulation, a CMOS is any open space area that is cared for by more than one household and that is used for:

- Growing fruits, flowers, vegetables, or ornamental plants, or
- A community gathering space for recreation.

People with agriculture projects on CMOS are also permitted to keep livestock, as long as doing so is in accordance with all Baltimore City Health Department and Maryland Department of Agriculture regulations.

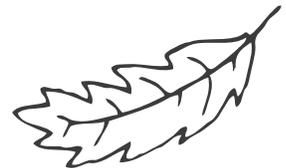
Under the proposed Zoning Code, CMOS may have:

- Livestock (only in accordance with Baltimore City Health Department and Maryland Department of Agriculture regulations);
- Cultivation of plants for human consumption (ONLY if measures are taken to test and, if necessary, remediate the soil in accordance with Department of Planning Guidelines); and
- Temporary greenhouses (including high tunnels, hoop-houses, cold-frames, and similar structures intended to extend the growing season).

CMOS may *not* have:

- Playground equipment or
- Permanent structures (except as specified above).

The proposed zoning code rewrite defines "Urban Agriculture" more narrowly than CMOS property: the cultivating and processing of food for sale. If a property's use is characterized as Urban Agriculture, it will be a "conditional use" in most zoning districts of the City, meaning that the use will be subject to stricter regulations.



## Nuisance Law

Agricultural projects must carefully consider how they may impact the neighboring community. An agricultural project that creates a nuisance in the community may be subject to liability. There are two types of nuisance law: private nuisance and public nuisance.

### Private Nuisance

A private nuisance occurs when the agricultural project interferes with another person's enjoyment of his or her own land. Interference from an agricultural project may include dust or odor, vibrations, blasting, creating changes in the water table, etc.

### Public Nuisance

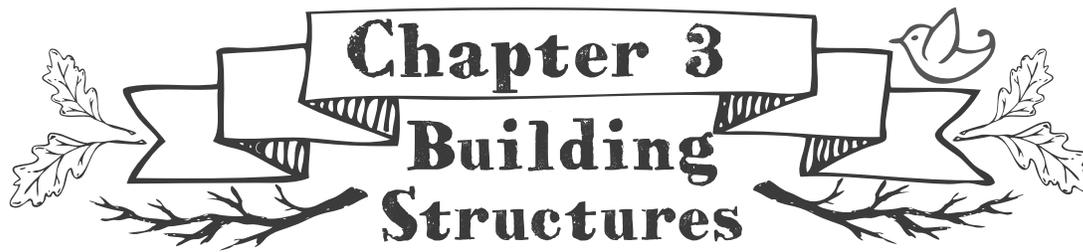
A public nuisance affects the public in general and is not limited to a specific group, such as immediate neighbors. An agricultural project with standing water that becomes a breeding ground for mosquitoes might be deemed a public nuisance. Keeping animals in unsanitary conditions can also constitute a public nuisance because it can lead to disease that may endanger the public. In order to prevent liability for public nuisance, it is important to be aware of any public health, welfare, or safety concerns that a proposed agricultural project may create.

## Noise Regulations

When working on an urban agriculture project within city limits, particularly in residential neighborhoods, it is important to remain aware of the noise created by animals, volunteers, and machines. The Baltimore City Health Code provides some guidance about noise in residential and commercial neighborhoods. In residential areas, use of power tools and power garden equipment should be limited to the hours between 7:00 am and 9:00 pm on weekdays and 10:00 am to 10:00 pm on weekends and holidays. The Code also limits the sound levels in different zones to protect the health and safety of neighbors. Consult Title 9 of the Baltimore City Health Code for more details: <http://archive.baltimorecity.gov/portals/0/charter%20and%20Codes/code/Art%2000%20-%20Health.pdf>.

If it becomes necessary to exceed the maximum permissible sound levels, an urban agriculture project may apply for a temporary exemption with the Commissioner of Health. An exemption may only be granted for a reasonable period, as determined by the Commissioner of Health, and may not exceed 30 days.

It is also important to foster an open relationship with neighbors. An urban agriculture project may become a "neighborhood nuisance," as defined by police ordinance, if neighboring residents feel disturbed by "unreasonably loud noise." If this unreasonable noise disturbs neighborhood residents on two or more occasions within a six month period, the Police Commissioner may choose to order that the noise-making activity be discontinued or the loud animal be removed or to order the closing of the premises. Police officers may also choose to issue environmental citations for neighborhood nuisances, which can cost up to \$1,000 for each offense.



## Chapter 3 Building Structures

**B**efore building any structure for an urban agriculture project, it is important to remember to look into the building and zoning codes for the structure before beginning to create it. In Baltimore City, the Baltimore Housing Office of Permits & Building Inspections enforces the City's Building Code. The Office of the Zoning Administrator ensures that construction activity and land use comply with the zoning code. Failing to comply with building codes can result in fines or the removal of the structure.

If the Permits Office allows the kind of structure proposed for a project, it can issue a building permit and perform the necessary inspections. Permit applications cost a one-time \$25 application fee in addition to the permit fee, which is assessed at the time the application is filed. Permit applications can be submitted at the One Stop Shop at 417 E. Fayette Street, Room 100. Persons interested in learning more about the permit procedure should visit [www.baltimorehousing.org/permit\\_procedure](http://www.baltimorehousing.org/permit_procedure).

### Rooftop Gardens

If urban agriculture project organizers have permission to use an existing rooftop deck, it should not be necessary to obtain any additional permission to simply use the deck for an urban agricultural project. However, new structures will almost always require a permit. Visit: <http://www.baltimorehousing.org/permits> for information about building a rooftop deck,

Rooftops may also be converted into green roofs (also known as living roofs) to reduce heating and cooling costs and reduce water run-off.

### Greenhouses

Greenhouses are considered permitted uses under the current zoning code in B-3, B-5, M-1, M-2, and M-3 zoning districts. Hobby or personal greenhouses are accessory uses in R-1 through R-10, and OR. Nonprofit or publically-owned greenhouses are permitted use in OS. As mentioned in previous sections, permitted uses do not require special permission from the City. Greenhouses may also be allowed as accessory uses. This means that, greenhouses are only permitted if the greenhouse is a lesser use than the principal structure, such as a house or a school, on the same property.

## Hoop Houses

A hoop house is a semi-permanent greenhouse that can be used to extend the growing season and to protect young plants from the environment. Hoop houses are usually made of plastic or metal tubing draped with clear plastic. Manufacturers sell kits to create hoop houses or they can be homemade.

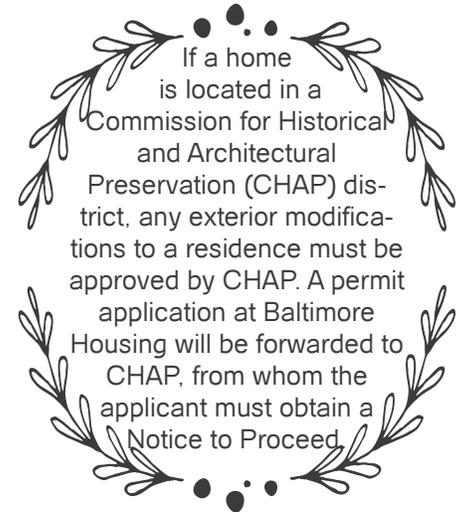
Baltimore City's Community-Managed Open Space Use Standards include hoop houses as one of the exceptions to the prohibited structures. The zoning code provides that there is no limit to the number or size of hoop houses built on community-managed open space. If a property has the space, hoop houses are generally permissible.

## Aquaculture

Baltimore City does not regulate aquaculture; however, the State of Maryland does. For more information about these Maryland regulations, visit the Maryland Department of Natural Resources website: <http://dnr2.maryland.gov/fisheries/Pages/aquaculture/index.aspx>.

## Composting

Composting is treated as permissible in all zones within city limits. Although the Baltimore City Code does not specifically address composting, Baltimore City Office of Sustainability specifically encourages city residents to compost. The Sanitation Article of the Baltimore City Code does provide some guidance for backyard composting. It defines "mixed refuse" to include food and yard waste, and requires that such refuse be kept in a receptacle that is "covered continually" and "kept as dry as practicable." If composting is not possible on site, there are a number of organizations and companies that collect compostable waste materials. Information about these companies is provided at the end of this handbook.



# Chapter 4

## Accessing Water

Any urban agriculture project will require water and most will require a lot of it. In order to create a thriving project without breaking the bank, it can be useful to use creative techniques that are both ecofriendly and save money.

Under the Adopt-a-Lot Program, Baltimore Housing allows access to water for a flat fee of \$120 per year. Applications are accepted online using the Community Managed Open Space Water Access Request form, available at [http://www.baltimorehousing.org/vtov\\_adopt](http://www.baltimorehousing.org/vtov_adopt).

### City Water

### Privately-Owned Property

Some urban agriculture projects have entered into agreements for access to fire hydrants for watering use. However, in recent years, these agreements have begun to be rescinded due to damage to the hydrants and potential injury in removing the caps. To inquire about turning on water service through a nearby water meter pit, urban agriculture projects can contact the Department of Public Works (DPW) Bureau of Water Customer Service at 410-396-5398. This office can look up the address of the property to determine whether the water account is active. However, only property owners are able to make changes in the water service to a property. If the property is vacant and remains privately owned, it is unlikely that the water service can be restored to that property. If the property owner is willing to contact DPW, water service can be restored. If the water meter account is active, DPW will not charge a fee to resume water service; it will issue a work order and send out an inspector to turn the meter on. If the account is abandoned, DPW will send an inspector to restore water service and charge a \$90.00 fee. In order to request that water service be restored at a privately owned property, a letter should be faxed from the property owner to 410-396-5531.

### City-Owned Property

As discussed in Chapter 2, the City's Adopt-A-Lot Program allows community members to use some city-owned vacant lots. Once approved for the Adopt-A-Lot Program, applicants can then apply for the Water Access Program, under which the City Department of Water has agreed to provide water for the growing season (March-November) for \$120. To apply, applicants fill out the form and send a \$120 check to the Director of Finance. A city employee then surveys the land to determine whether it is eligible for the program. If water is not readily available for the lot, the \$120 check is returned, and the applicants will have to find an alternate water source.

## Grey Water Irrigation

The use of grey water can greatly improve the sustainability of an urban agriculture project. Grey water is any wash water that is used inside of a home, other than water from a toilet. As much as 80% of wastewater generated in a home qualifies as grey water. This water can be used to provide fresh water to plants and the nutrients needed to help them grow.

The Maryland Department of the Environment has allowed Baltimore City to permit the use of grey water under certain parameters. Grey water collected in an approved container using waste from bathtubs, showers, lavatories, clothes washers, and laundry trays may be used if the waste water is filtered using an approved filter. For more information about creating a grey water recycling system, the 2012 International Plumbing Code is available at: <http://publicecodes.cyberregs.com/icod/ipc/2012/>.

## Rainwater Harvesting

Rainwater harvesting can be a great way to reduce the amount of water a project uses from the tap. Rain barrels, the most common form of rainwater harvesting, are usually situated to catch rainwater that runs off of a roof, using the gutter system that is already in place.

Use and installation of rain barrels is mostly left to the discretion of the property owner. There are some considerations to keep in mind when setting up a rain barrel. First, sitting freshwater is attractive to mosquitoes. Mosquitoes can carry diseases, so there may be ordinances forbidding keeping standing water. However, barrels can be sealed to prevent mosquito breeding. Second, water gathered from roofs may also be unfit for watering produce that is to be eaten. Although most harvested rainwater has been found to be suitable for agricultural purposes, it is important to inspect the integrity of the roof and gutter to prevent contaminants from getting into your water. Rain barrels should be cleaned in the spring and fall and should be kept empty in the winter.

Rain barrels can be purchased at hardware or home improvement stores. Some environmental organizations, such as Blue Water Baltimore, provide workshops on building and installing a barrel.

## Neighbor's Water

Perhaps a property's neighbors are willing to negotiate an agreement under which a group can use water from their property. If so, make sure the agreement is set in writing and signed by all parties involved. The agreement can be simple, but make sure that it includes the method of reimbursement to the neighbor for water used; how the fair amount of reimbursement will be calculated; what, if any, rights and responsibilities the parties will have; and how any disagreements will be resolved.



# Chapter 5

## Keeping Farm Animals

If an urban farming project wishes to keep animals, it will be important to look into the specific regulations for each animal. Goats, chickens, honey bees and other “unusual” animals that may be kept in the City are listed in the Regulations for Wild, Exotic and Hybrid Animals (last updated September 23, 2013).

The Regulations for Wild, Exotic, and Hybrid Animals also contain specific provisions for keeping animals for urban agriculture. All urban agriculture projects that include keeping animals must follow all Baltimore City Zoning regulations and the requirements of the Maryland Department of Agriculture. When considering the minimum space requirements for each animal below, the Regulations for Wild, Exotic and Hybrid Animals also include provision that allows contiguous lots being used for the same agricultural project to be considered a single lot for the purpose of calculating space requirements.

All urban agricultural groups should also remember that these regulations prohibit the slaughtering of any animals within Baltimore City.

### Honey Bees

Beekeeping is permitted in the City of Baltimore if the property owner:

1. Registers with the Maryland Department of Agriculture; and
2. Obtains a beekeeper permit from the Office of Animal Control (the permit fee is waived for beekeeping).

Hives should not be placed within five feet of a lot line unless there is a solid wall or solid fence (measuring at least five feet in height and five feet long) located at the lot line. The hive must also be inaccessible to the general public and be located so that honey bee movement to and from the hive does not unreasonably interfere with the reasonable enjoyment of the property of others, the comfort of public or domestic animals, or the use of any public right of way.

No more than two colonies and one nucleus colony are allowed for lots up to 2,500 square feet. On lots greater than 2,500 square feet, one additional colony and one nucleus colony may be kept for every additional 2,500 square feet.

## Chickens

In order to keep chickens on a lot in Baltimore City, an urban agricultural project must first:

1. Obtain a permit from the Office of Animal Control;
2. Register with the Maryland Department of Agriculture, Domestic Poultry and Exotic Bird Registration Division; and
3. Obtain all applicable zoning and building permits or authorizations prior to building or using a chicken coop or loft.

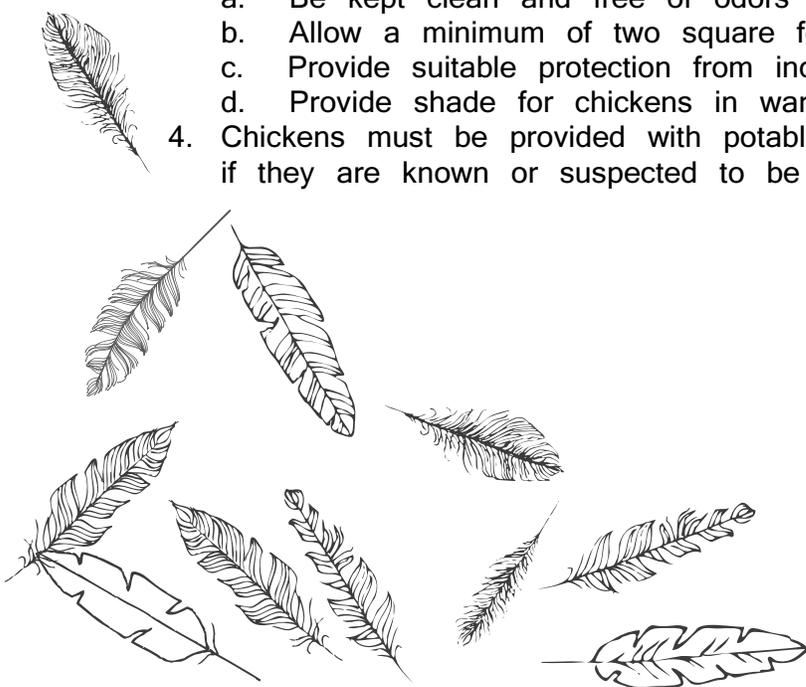
An urban farm may keep up to four chickens on a lot of 2,000 square feet. For each additional 1,000 square feet available, an urban farm may keep one more chicken, up to 10 chickens total.

If the project is a community garden or urban agricultural enterprise, organizers may keep more than 10 chickens if:

1. They apply for a permit to the Health Commissioner (approval is at the sole discretion of the Commissioner), and
2. The garden/farm includes a written management plan that discusses (a) how the chickens will be housed, (b) how waste will be managed, (c) how chickens and feed will be protected from predators and other pests, and (d) how impacts to surrounding property owners will be avoided.

All chickens should be provided with a sanitary and adequately sized coop or loft; however:

1. No coop or loft may be closer than 15 feet to any residence;
2. Each coop or loft must be moved frequently to minimize turf destruction and the build-up of manure-borne pathogens; and
3. Coops or lofts must:
  - a. Be kept clean and free of odors or materials that attract rodents;
  - b. Allow a minimum of two square feet per hen;
  - c. Provide suitable protection from inclement weather; and
  - d. Provide shade for chickens in warm weather.
4. Chickens must be provided with potable water, proper feed, and veterinary care if they are known or suspected to be sick or injured.



## Goats

In the City of Baltimore, the only permissible goats are Miniature, Dwarf, or Pygmy breeds. Urban farms may not keep a goat without first obtaining a permit from the Office of Animal Control.

Goats must be dehorned, and male goats (over the age of 6 months) must be neutered. On lots smaller than 20,000 square feet, there may be no more than two female or neutered male goats, plus any offspring up to 6 months of age. On lots larger than 20,000 square feet, an additional goat is permitted for every 5,000 square feet. The Animal Control regulations impose a maximum of six goats (over the age of 6 months) on a property.

Goats must be:

1. in a fenced yard;
2. in a yard that is properly graded, drained, and cleaned;
3. allowed at least 150 square feet of permeable space per goat; and
4. provided with fresh water at all times and adequate amounts of food.

## Rabbits

To keep rabbits in the City of Baltimore, an urban farming project must obtain a permit from the Office of Animal Control. On lots less than 1,000 square feet, one pair of breeding rabbits (total number cannot exceed 12) is permitted. If a lot is larger than 1,000 square feet, a farming project may keep two pair of breeding rabbits, although the total number of rabbits cannot exceed 24.

If keeping rabbits, the urban farming project must:

1. Provide adequate fresh water and feed;
2. Provide rabbits access to a well-constructed shelter that provides suitable protection from inclement weather; and
3. Create a sanitary and adequately-sized enclosure or pen at least 15 feet from any residence.

## Other Farming Animals

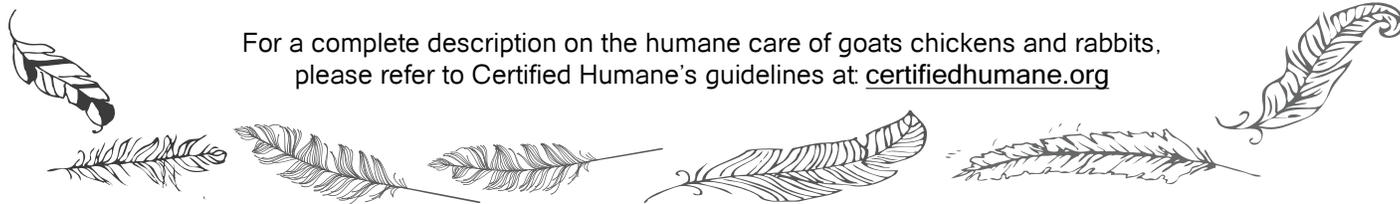
It is not permissible to keep other animals associated with farming, including, but not limited to: cattle, horses, sheep, roosters, ducks, geese, and turkeys within the City of Baltimore.

## Voluntary Standards for Humane Farming

Urban farmers can create humane environments for their livestock by following guidelines that go beyond basic legal requirements. Though there are nuanced criteria for each species of animal, there are several general rules that hold for all livestock. For instance:

- Livestock must have free access to veterinarian prescribed levels of feed each day, unless directed by a veterinarian to restrict their intake, and a written record of the feed constituents and supplements should be kept. The feed should not contain any mammalian or avian derived protein sources, with the exception of milk and milk products (and egg and egg products for chickens). Livestock should not be given non-therapeutic antibiotics or growth hormones.
- Livestock should not be exposed to toxic fumes or substances, including but not limited to creosote treated woods. The area surrounding livestock enclosures should not offer shelter to wild birds or rodents.
- A record of the number of animals per square foot of all enclosures, and their daily access to free range enclosures, should be kept and updated at all times. Adequate shelter and temperatures not causing distress must be maintained at all times.
- An Animal Health Plan should be drawn up and regularly updated in consultation with a veterinarian. It must include details of any vaccinations; information on treatments and other aspects of herd health; causes of morbidity and mortality, when known; tolerance limits on overall herd performance; and biosecurity provisions and a disease prevention program.
- Farm managers must be aware of the welfare implications of, and demonstrate proficiency in, any common farm act that can cause suffering. Examples include kidding, injection, dehorning, shearing, hoof trimming and maintenance. The same standards are also true for any equipment used in relation to the animals.

For a complete description on the humane care of goats chickens and rabbits,  
please refer to Certified Humane's guidelines at [certifiedhumane.org](http://certifiedhumane.org)



# Chapter 6

## Distributing Produce

Urban farmers may decide to sell and/or donate produce from their urban farming project. There are a number of federal and Baltimore City regulations that apply to the distribution of food. First, it is important to take into consideration the health regulations in place that restrict the sale of produce. Once it is clear that the produce is safe for public consumption and compliant with all health regulations, farmers may then consider how to make the produce available to the public. Does it make sense to operate a farm stand on the same property where the produce is grown? Will the project apply for a table at a local farmers' market? Could the project accommodate a Community Supported Agriculture (CSA) purchasing plan? It will also be important to consider any labeling and transportation requirements. The final step in this process is the sale. As an entity, is the project entitled to make a profit on sales of produce without paying Unrelated Business Income Tax (UBIT)? Who is buying the produce? How will prices be set?

### Health Regulations

If an urban agriculture project involves processing foods on a farm or in a home, the Maryland Department of Health and Mental Hygiene (DHMH) requires that the project obtain an "On Farm Home Processing License." In order to obtain this license, an applicant must (1) be a farmer, (2) sell less than \$40,000 of processed foods annually, and (3) pay \$30 for the license.

### Making Produce Available for Sale

Under the current zoning code for Baltimore City, farm stands are not recognized. However, under a proposed amendment to the Zoning Code is part of the rewrite (see Chapter 2), farm stands may be permissible on community garden property as a conditional use. This means that community gardens would be required to apply for special permission before the Board of Municipal Zoning Appeals. A hearing on the conditional use costs \$250 in hearing fees and requires that a public hearing be held to allow neighbors to protest installation of a farm stand.

To sell produce at any farmers market, it will be necessary to file a Farmers Market Vendor Application annually with the Baltimore City Health Department. The filing fee for this application varies depending on the level of risk of the product. If the product is considered "high risk," the annual fee will be \$520. If the product is considered a "moderate risk," the fee will be \$285 each year. Finally, if products for sale are only raw agricultural products that have not been processed, the produce will be considered "low risk" and the annual filing fee will be \$65. If an urban agricultural project sells produce at more than one farmers market in a given season, it need only file one Farmers Market Vendor Application per year.

## Value-Added Products

Production and sale of value-added products are governed by federal health and safety regulations and the Food and Drug Administration (FDA). The State of Maryland has adopted many of the federal regulations into state law. Additionally, the City of Baltimore may require a license or permit for goods produced and/or sold within city limits.

There is no clear set of guidelines to determine whether a product is “value-added.” However, the term generally refers to products that have been changed in their physical state or form or had their value enhanced through method of production or marketing. If a product is “value-added,” then three major areas of regulation become important: 1) labeling; 2) licensing and permits; and 3) food health and safety.

In order to sell value-added products at a farmers’ market within Maryland, farmers will be required to obtain a “Producer Mobile Farmer’s Market License.” This license is required to sell all products covered by the “On-Farm Home Processing License” as well as meat and poultry certified by the Maryland Department of Agriculture. It is not necessary to obtain a Producer Mobile Farmer’s Market License to sell eggs, non-processed fresh fruits and vegetables, non-potentially hazardous baked goods, and non-potentially hazardous jams and jellies.

The City of Baltimore has separate licensing and permitting requirements from the state. Farmers selling value-added products are considered a “food service facility” within the City of Baltimore. In order to operate as a food service facility within the City limits, producers of value-added products must obtain a license from the Baltimore Commissioner of Health.

## Labeling Requirements

Value-added products must be labeled at a minimum with the name and address of the producer, a quantity statement (count, fluid ounces, net weight, etc.), what the product is, and ingredients listed from greatest to least. The address should contain the street address, city, state, and zip code of the producer’s place of business unless the business appears in a current city directory or telephone directory.

In this case, the producer may omit the street address and only include the city, state, and zip code on labels. Labels must also be durable, conspicuous, legible, and able to remain on the package or container for the shelf life of the food.

Producers of most value-added products are not required to list nutritional information on product labels. However, to remain exempt from listing nutritional information, producers must not label the food with any nutritional claims or use other nutritional information in labeling or advertising.

Maryland also has labelling standards for honey to protect the consumer, as well as beekeepers, from inexpensive adulterated products claiming to be honey, particularly from China. The legislation can be found here: [http://mgaleg.maryland.gov/2012rs/chapters/noln/Ch\\_189\\_sb0193E.pdf](http://mgaleg.maryland.gov/2012rs/chapters/noln/Ch_189_sb0193E.pdf)



In order to sell at a Farmer’s Market in Baltimore City, farmers are required to file a Farmers Market Vendor Application even if they know they do not need a Farmers Market Vendor Permit. A farmer will not need a permit if 1) only raw agricultural products are sold directly at the farm on which they are produced, 2) only value-added products that do not require a Maryland Producer Mobile Farmers Market License are sold, or 3) a statewide Maryland Producer Mobile Farmers Market License has already been obtained.

Type of Cottage Food Industry Product	Examples	Licenses, Regulations, and Permit Requirements to Sell Products
Baked Goods (non-hazardous)	Pies, turnovers, etc. without potentially hazardous fillings (cream cheese, glaze, etc.)	No license required to sell at a Farmer's Market. Permit required if sales are over \$40,000 per year and/or sell to restaurants.
Baked Goods (potentially hazardous)	Baked goods with potentially hazardous fillings or toppings that require refrigerations (cheese, custard, glaze, etc.)	Processing license required from the Department of Health and Mental Hygiene
Honey (without added flavor)	Honey without any processing or additives	No license required. Honey is considered a raw agricultural product.
Honey (with added flavor)	Honey with any processing or additives	If sales are less than \$40,000 per year, On-Farm Processing License required. If sales are greater than \$40,000 per year, Processing License required. Both licenses can be obtained from the Department of Health and Mental Hygiene.
Jams or Jellies	Must be made with fruits that have a 4.6 pH level or lower (apples, apricots, blackberries, peaches, strawberries, etc.)	No license required to sell at a Farmer's Market. Permit required if sales are over \$40,000 per year and/or sell to restaurants.
Canned Goods (acidified)	Must be acidified to a 4.6 pH level or lower (asparagus, beets, beans, broccoli, cabbage, cucumber, pears, pumpkin, etc.)	If sales are less than \$40,000 per year, On-Farm Processing License required. If sales are greater than \$40,000 per year, Processing License required. Both licenses can be obtained from the Department of Health and Mental Hygiene.
Canned Goods (naturally acidic)	Must be made with fruits that have a 4.6 pH level or lower (apples, apricots, blackberries, cherries, grapes, peaches, etc.)	No license required if evaluation authorizes direct sale from the farm or at Farmers Market. If sales are less than \$40,000 per year, On-Farm Processing License required. If sales are greater than \$40,000 per year, Processing License required. Both licenses can be obtained from the Department of Health and Mental Hygiene.
Dairy Products	Milk, milk products, and frozen desserts	Inspection and License required by the Division of Milk Control in the Department of Health and Mental Hygiene.
Dried Products	Dried fruits and vegetables	If sales are less than \$40,000 per year, On-Farm Processing License required. If sales are greater than \$40,000 per year, Processing License required. Both licenses can be obtained from the Department of Health and Mental Hygiene.
Eggs		Register annually with the Secretary of Agriculture (no fee if less than 3,000 chickens). If sold by farmer, no license required.
Fermented Products		Processing License required from Department of Health and Mental Hygiene.
Fruit Butters	Pumpkin butter, pear butter, etc.	Processing License required from Department of Health and Mental Hygiene.

## Licenses

Check through the following kinds of licenses and different value-added products to see which licenses apply and whether these licenses require special kitchens and refrigeration requirements.

### On-Farm Home Processing License

- License issued to a farmer who makes annual sales of less than \$40,000.
- Allows some products to be prepared in home kitchen.
- Issued By: MD Department of Health and Mental Hygiene
- Cost: \$30.00

### Commercial Food Processing License

- License issued to persons processing foods with annual sales in excess of \$40,000 or who do not grow the produce themselves.
- Kitchen must meet commercial requirements.
- Issued By: MD Department of Health and Mental Hygiene
- Cost: \$400.00



### Producer Mobile Farmer's Market License

- License issued to a farmer selling at any farmers market in Maryland. Required to sell any products covered by the On-Farm Home Processing License, meat, and poultry. Meat and poultry must be certified by the Maryland Department of Agriculture in order to apply for this market license.
- Issued By: MD Department of Health and Mental Hygiene
- Cost: \$100.00
- Exception: This license is not required if the farmer obtains a license for each individual farmers market from the local health department.

### Poultry and Rabbit Processing Certification

- Certification required for all USDA exempt producers to sell poultry and rabbits within Maryland but not directly to consumers on the farm.
- Issued By: Maryland Department of Agriculture
- Cost: \$75.00

## Unrelated Business Income Tax (UBIT)

If the urban agriculture project is run by a nonprofit corporation, it may be required to pay Unrelated Business Income Tax (UBIT). If a tax-exempt project generates revenue, it will not need to pay taxes on the income, so long as the income was generated in an activity related to the organization's exempt purpose. If more than \$1,000 of income is generated through an unrelated activity, the organization will be required to file a Form 990-T and pay income taxes on the gross income generated through the unrelated activity.

Generally, an activity will be considered unrelated to an exempt organization's purpose and therefore subject to taxation if the income-generating activity is: 1) a trade or business; 2) that is regularly carried on; and 3) is not substantially related to the organization's exempt purpose. Income-generating activities such as collecting dues, fees for services, and charges may be substantially related to the organization's exempt purpose. However, activities such as selling goods that do not further the organization's exempt purpose may be subject to the Unrelated Business Income Tax (UBIT).

In the urban agricultural context, this exempt purpose may be to provide education about healthy food choices and to lessen the burdens of government. Income from the sale of fruits and vegetables at a Farmer's Market could be part of the exempt purpose and therefore may be exempt from taxation; however, sales from arts and crafts at the Farmer's Market will probably not be considered substantially related, and could trigger UBIT if the revenue exceeds \$1,000.

### Accepting Electronic Benefits (EBT)

In order to make fresh, healthy produce affordable to low-income residents of Baltimore City, farmer's markets and vendors can choose to accept Supplemental Nutrition Program (SNAP) benefits via Electronic Benefits Transfer (EBT). This means that individuals who receive food assistance benefits can use their electronic benefits cards at farmer's markets and vendor stalls. Some nonprofit organizations also choose to provide bonus dollars programs to incentivize the purchase of healthy foods.

If an urban agriculture project decides to accept SNAP benefits, called Food Supplement Program (FSP) benefits in Maryland, a farmer (or the farmer's market where the farmer sells produce) can obtain a license on the USDA SNAP webpage: <http://www.fns.usda.gov/snap/retailers-0>. An individual vendor can also register online with the Maryland Department of Agriculture to accept Women, Infants and Children (WIC) and Senior Farmer's Market Nutrition Program (FMNP) checks and WIC Fruit and Vegetable Checks (FVC) here: [http://mda.maryland.gov/maryland\\_products/pages/farmers\\_market\\_dir.aspx](http://mda.maryland.gov/maryland_products/pages/farmers_market_dir.aspx)

### Donating Extra Produce

Under a 1996 federal law known as the Bill Emerson Good Samaritan Food Donation Act, a donor will not be held legally responsible for any harm caused by foods donated "in good faith to a nonprofit organization for ultimate distribution to needy individuals." However, a donor can be held responsible for harms caused by food if the person acted with gross negligence or intentional misconduct.

The Maryland Food Bank's Farm to Food Bank Program allows local farmers to donate produce that will be provided directly to Marylanders in need while it is still fresh. Farmers can learn more about the program here: <https://www.mdfoodbank.org/our-programs/farm-to-food-bank>.

# Chapter 7

## Liability, Risk, and Insurance

Depending on who owns the land on which the urban agriculture project is located, farmers may need to consider different ways of obtaining liability insurance.

Any agreement allowing use of land (for example, the lease, license, etc.) should make clear which party is responsible for obtaining liability insurance. If the lease or license indicates that the farmers or urban agriculture organization will be liable for all activities conducted on the property, it will be the organization's responsibility to obtain liability insurance.

It is likely to be much easier for the property owner to obtain private property insurance. This insurance can protect the property owner and the organization farming the land, as lessees or licensees, from the costs of any injuries caused on site. If an organization is leasing land it will be important to check with the landowner to make sure that the agricultural project is covered by the landowner's private property insurance.

If the property owner does not wish to obtain property insurance or if the organization is unable to obtain insurance, the organization may want to consider extra precautions such as fencing the property, if permitted, posting signs around the lot limiting open hours, and warning of hazardous conditions on the property. The City does not provide liability insurance for City-owned property, but it does not require the lessees or licensees to obtain their own liability insurance either.

### Volunteer and Intern Waiver

Volunteers and interns will be discussed in more detail in the next Chapter, however, using a standard liability waiver for all farm participants is another way to provide some protection for the organization from liability for injuries caused on the property and/or to those doing work on behalf of the organization. A sample liability waiver is included at the end of this chapter.

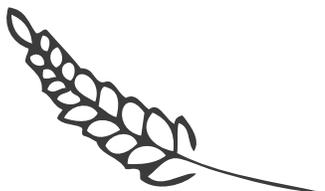
A "pre-injury release" should be used to ensure that farm participants are aware of the potential dangers and injuries that could occur within the garden plot.

A pre-injury release is made up of two provisions: an exculpatory provision and an indemnification provision. The exculpatory provision shows that the garden and the participant agree that the garden will not be responsible for injuries caused on the plot, even in the case of the organization's negligence. An indemnification provision allows a director of the organization who may be charged with some liability to shift the responsibility to the organization itself.

A release and waiver of liability should contain:

1. A provision confirming work will be provided on a volunteer basis without expectation of compensation;
2. An exculpatory provision;
3. An indemnification provision;
4. A notification provision;
5. A medical care provision;
6. An assumption of risk provision; and
7. A photographic release.

Although the exculpatory and indemnification provisions of the release may be able to protect the urban agriculture project from negligence claims, they will not protect against intentional harms or gross negligence on the part of the urban agriculture project.



**Example Community Association, Inc.**  
**Release and Waiver of Liability for Volunteers at Example Community Garden**

Thank you for volunteering with the Example Community Garden! Before you begin, we need you to know that participating in our Garden can expose you to personal injury or damage to your property. This waiver outlines our respective rights and responsibilities relating to that risk. Please read this waiver carefully and let us know if you have any questions. We can be reached at 410-123-4567 or [examplecommunitygarden@email.org](mailto:examplecommunitygarden@email.org).

***Please read carefully! This is a legal document that affects your legal rights!***

**1. Volunteer Status.**

I would like to participate in activities at Example Community Garden (the "Garden"). I understand that as a volunteer I will not be paid for my efforts.

**2. Risks of Participation.**

I understand that there are inherent risks associated with using the equipment and participating in the activities of the Garden, which may be both foreseen and unforeseen and include serious personal injury, death, or damage to my property. I understand that I may be exposed to, for example, poison ivy; insects; inclement weather; extreme temperatures; tools; the actions and negligence of employees, volunteers, and other people present at the Garden; and dangerous conditions on the land such as holes in the ground. I understand that these examples are not all-inclusive and there may be additional risks, all of which may involve serious personal injury, death, or damage to my property. I hereby agree to assume all risks associated with my participation in Garden activities.

**3. Release of Claims and Assumption of Risk.**

In exchange for the opportunity to participate in activities in the Garden, I (and my family, heirs, and personal representatives) willingly and knowingly release the Garden and its officers, owners, employees and agents from any and all liability for any personal injury or damage relating to my participation, including any such claims or causes of action caused in whole or in part by the negligence of the Garden. I (and my family, heirs, and personal representatives) agree to assume all of the risks and responsibilities of my participation. I understand that I am solely responsible for any hospital or other costs arising out of any personal injury or property damage relating to my participation in activities at the Garden and therefore indemnify the Garden and its officers, owners, employees, and agents from those costs.

**4. Medical Care Authorized.**

I am physically fit to participate in activities at the Garden. I understand that there are no medical services available on site or otherwise, and I give permission to the Garden to authorize medical treatment for me if I am unable to give authorization myself. I release the Garden and its officers, owners, employees and agents, from liability for any injury or damage that might extend from such emergency medical treatment. If any medical treatment is needed from a healthcare provider, all costs shall be my responsibility. I understand that, should there be any material change to my ability to participate in garden activities, I will notify the Garden before continuing to volunteer.

**5. Photographic Release.**

I agree to grant the Garden all right, title, and interest in any and all photographic images and video or audio recordings made by the Garden during my activities with the Garden, including, but not limited to, any royalties, proceeds, or other benefits derived from such photographs or recordings.

**I have read and understand this agreement, and I am aware that by signing it, I may be waiving certain legal rights, including the right to sue. This agreement shall be binding upon me and my heirs, legal representatives, and assigns. I warrant that I am signing this agreement freely and voluntarily without any inducements. I further agree that this waiver should be interpreted as broadly and inclusively as state law permits.**

\_\_\_\_\_  
Printed Name of Participant

\_\_\_\_\_  
Signature of Participant

\_\_\_\_\_  
Date Signed

Date received by Example Community Association, Inc.: \_\_\_\_\_

# Chapter 8

## Employment and Labor Law

Once an urban agriculture project is off the ground, it is important to consider who will work on the project. Hiring employees and soliciting donated time from volunteers are both viable options. However, the availability of these options is often limited by the structure of the project.

### Volunteers

Volunteers are very commonly used with community agriculture. A volunteer is typically an individual who provides services or performs duties for a nonprofit association or organization without receiving compensation. Volunteers are protected by the Maryland Volunteer Service Act (MVSA), the Fair Labor Standards Act (FLSA), and contract law. The FLSA does not permit individuals to volunteer for for-profit, private sector employers. However, it does permit individuals to volunteer or donate their services for public service, religious, or humanitarian objectives, for charitable or non-profit organizations. While a volunteer is not paid for his or her work, volunteers can be reimbursed for any expenses incurred on behalf of the nonprofit organization.

It may be necessary to clarify an individual's volunteer status before he or she begins work on the urban agriculture project. A standard release and waiver of liability for all volunteers, including minors, to sign may be able to help accomplish this. Volunteers under the age of 18 must have their forms completed by a parent or guardian.

### Interns: Unpaid and Paid

Although for-profit businesses may not accept the help of volunteers, it is possible for for-profits to hire unpaid or paid interns. The U.S. Department of Labor provides guidelines for the kind of work an intern must do to be work legally without pay. An intern may be able to provide services to a for-profit business without compensation if:

1. The internship provides similar training to that given in an "educational environment;"
2. The work experience benefits the intern;
3. The intern is not used in place of regular employees and instead works under the supervision of existing staff;
4. The employer should not receive an advantage from providing training to the intern;
5. The intern is not necessarily guaranteed a job at the end of the internship; and
6. The employer and intern understand that the intern will not be compensated for work completed during the course of the internship.

According to the U.S. Department of Labor, if all six of the above criteria are met, an intern will not be entitled to minimum wage and overtime compensation. For more information about each qualification, visit the U.S. Department of Labor's guidelines factsheet at [www.dol.gov/whd/regs/compliance/whdfs71.htm](http://www.dol.gov/whd/regs/compliance/whdfs71.htm).

If an intern does not meet the above criteria, he or she will be considered an employee and is entitled to at least minimum wage and overtime compensation for hours work in excess of forty hours per week.

## Contractors v. Employees

Many nonprofits start as small, volunteer-run organizations and need to build to the point where they can support staff. Before an urban agriculture project hires its first employee or contracts with an independent contractor, a nonprofit board or small business owners must be sure they are prepared to be a responsible employer able to afford to pay at least minimum wage and the employment taxes and insurance.

Many small organizations try to avoid the responsibilities of being an employer by hiring people on a contract basis and assuming that these individuals are independent contractors rather than employees. Although a worker may have agreed to work as an independent contractor, an employer-employee relationship may have been created and the worker will be considered an employee under the law.

Being classified as an "employee" entitles the worker to certain legal benefits, including minimum wage, overtime pay, unemployment benefits, and workers' compensation benefits. An independent contractor is not entitled to these protections; however, whether a worker is an employee or an independent contractor is not limited to the agreed-upon title. The determination of whether a worker is an employee or an independent contractor is complicated, but the following factors are taken into account:

1. Did the worker use his or her own means and methods of complete the work?
2. Did the employer direct the worker about how and when to complete the work?
3. Who provided the tools and facilities for the work?
4. Was there any flexibility in the work day?

The more freedom the worker had to complete the work, the more likely that he or she will be treated as an independent contractor rather than an employee. It is important to categorize workers properly. If an urban agriculture project misclassifies an employee as an independent contractor, the farm may be required to pay back wages and taxes in addition to significant fines. For more information about the difference between an employee and a contractor, visit the Maryland Department of Labor, Licensing and Regulation's website, <http://www.dllr.state.md.us/labor/wagepay/wpempindcont.shtml>.

Because of the complexity of labor and employment law, Community Law Center recommends that urban agriculture projects consult with an attorney before hiring any employees or contractors to make sure that the organization complies with employment laws.



After reading through the entirety of this book, those interested in beginning or expanding an urban agriculture project in Baltimore City should have a basic understanding of the legal tools available to help move the project forward. All projects, however, are unique. Legal advice is strongly recommended for anyone wishing to utilize these tools.

Community Law Center provides free legal representation for community organizations and nonprofits in Maryland. Community leaders are encouraged to contact Community Law Center - via [mail@communitylaw.org](mailto:mail@communitylaw.org) or by calling 410-366-0922 - with questions and to inquire about services. Applications for Legal Services, which are required for each legal issue, are available at <http://communitylaw.org/apply-for-services/>.

Additional information is available in the following Community Law Center publications:

- **How to Start a Nonprofit Organization in Maryland**
- **Strengthening Baltimore's Neighborhoods**
- **The Community Association's Guide to the Development Process in Baltimore City**

Community Law Center also offers a number of workshops on a variety of topics; workshop schedules are posted online at [www.communitylaw.org](http://www.communitylaw.org).

Community Law Center looks forward to working with you to help Baltimore become a cleaner, greener, and healthier City.



### **About Baltimore's Urban Agriculture Movement**

- Baltimore Green Map: [www.baltogreenmap.org](http://www.baltogreenmap.org)
- Baltimore Green Works: <http://baltimoregreenworks.com/>
- Baltimore Office of Sustainability: [www.baltimoresustainability.org](http://www.baltimoresustainability.org)
- Center for a Livable Future: <http://www.livablefutureblog.com/>
- Civic Works: [www.civicworks.com](http://www.civicworks.com)
- Community Law Center: <http://communitylaw.org/urbanagriculturelawproject/>
- Farm Alliance: <http://www.farmalliancebaltimore.org/>
- Living Classrooms: <https://livingclassrooms.org>
- Maryland Farm to Table: <https://www.mdfarmtotable.com/web/content/Home.aspx>

### **Accessing Land in Baltimore City**

- Adopt-A-Lot Program: [www.baltimorehousing.org/vtov\\_adopt](http://www.baltimorehousing.org/vtov_adopt)
- Baltimore Green Space: [www.baltimoregreenspace.org](http://www.baltimoregreenspace.org)
- Mt. Washington Preservation Trust: <http://www.miniarboretum.org/>
- Power in Dirt: [www.powerindirt.com](http://www.powerindirt.com)

### **Community and Neighborhood Support**

- Baltimore City Department of Recreation and Parks: <http://bcrp.baltimorecity.gov/>
- Citizens Planning & Housing Association: [www.cphabaltimore.org](http://www.cphabaltimore.org)
- Mayor's Office of Neighborhoods: <http://www.baltimorecity.gov/OfficeoftheMayor>
- Morgan State Landscape Architecture: <http://www.morgan.edu/sap/laar>
- Neighborhood Design Center: <http://ndc-md.org>

### **Compost**

- Real Food Farm: [www.realfoodfarm.org/get-involved/compost](http://www.realfoodfarm.org/get-involved/compost)
- Chesapeake Compost Works: [www.chesapeakecompost.com](http://www.chesapeakecompost.com)
- Compost Cab: [www.compostcab.com](http://www.compostcab.com)

### **Food Access**

- Baltimore Farmers Markets: <http://baltimore.org/article/baltimore-farmers-markets>

## Funding Information

- AC Trees: <http://actrees.org/what-we-do/grants-and-awards/planting-trees/>
- Baltimore Community Foundation: [www.bcf.org/](http://www.bcf.org/)
- Chesapeake Bay Trust: [www.cbtrust.org/site/c.miJPKXPCJnH/b.5457271/k.C58E/Grants.htm](http://www.cbtrust.org/site/c.miJPKXPCJnH/b.5457271/k.C58E/Grants.htm)
- Enoch Pratt Free Library: [www.prattlibrary.org/research/database/?sbj=958](http://www.prattlibrary.org/research/database/?sbj=958)
- Parks and People: <http://www.parksandpeople.org/>

## Gardening Support and Training

- Community Greening Resource Network (CGRN): [www.parksandpeople.org/greening/resource-network/](http://www.parksandpeople.org/greening/resource-network/)
- Cylburn Arboretum: <http://cylburn.org>
- Future Harvest CASA: <http://www.futureharvestcasa.org>
- Home & Garden Information Center: <http://extension.umd.edu/hgic>
- Maryland Association for Environmental & Outdoor Education: “How to Choose and Find Native Plants,” <http://maeoe.org>
- Master Gardeners: <https://extension.umd.edu/mg>
- UMD Extension: <http://extension.umd.edu/>

## Materials and Tools

- Baltimore Community Toolbank: <http://www.baltimore.toolbank.org>
- Freecycle.org: [www.freecycle.org](http://www.freecycle.org)
- The Loading Dock: [www.loadingdock.org](http://www.loadingdock.org)

## Soil Testing

- A&L Eastern Agricultural Laboratories, Inc.: <http://www.aleastern.com>
- Pennsylvania Agricultural Analytic Services: <http://www.aasl.psu.edu>
- University of Delaware Soil Testing Program: <http://ag.udel.edu/dstp/aboutus.html>
- University of Vermont: [http://pss.uvm.edu/ag\\_testing/?Page=soils.html](http://pss.uvm.edu/ag_testing/?Page=soils.html)

## Trees, Seeds, and Mulch

- Baltimore Orchard Project: [www.baltimoreorchard.org/](http://www.baltimoreorchard.org/)
- Marylanders Plant Trees: [www.trees.maryland.gov/](http://www.trees.maryland.gov/)
- Tree Baltimore: <http://treebaltimore.org>

## Water Access

- Blue Water Baltimore: <http://www.bluewaterbaltimore.org/>





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**410-366-0922**

[www.communitylaw.org](http://www.communitylaw.org)

[www.twitter.com/CommunityLawCen](https://twitter.com/CommunityLawCen)

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