

January 8, 2018

Mr. Mark Brnovich
Arizona Attorney General
2005 N. Central Avenue
Phoenix, AZ

Dear Attorney General Brnovich:

I am seeking your opinion on whether the city of Phoenix has the authority to impose restrictions on agricultural producers. This action by the city of Phoenix raises the issue of potential conflicts with ARS Title 3 – Agriculture.

ISSUE – Conflict between Arizona Revised Statutes and city of Phoenix Zoning Code: On-site Sales of Produce from a Community Garden

OVERVIEW: On January 25, 2013, the City of Phoenix adopted the Community Garden Policy Guidelines.

The city defines the purpose for the Policy Guidelines as:

“The checklist below was written to provide you with information related to community gardens in the city of Phoenix and will serve as a guide for the development of your Community Garden. The checklist addresses a wide range of possible improvements that you might choose to make on your community garden site. It can also guide you through the **use permit public hearing process (emphasis added)**, if you choose to request sales of produce grown on site or need to modify zoning requirements regarding development standards such as fence height and setbacks.”

The Policy Guidelines included Section H which specifically addresses the requirement for the Use Permit for “Sale of Products On-Site”.

“H. SALE OF PRODUCTS ON-SITE

- On-Site Sales
 - Requires approval of a use permit
 - Sale of produce grown on-site is allowed within 10 days of harvesting on the garden site as long as it will not hamper traffic flow or negatively impact the neighbors.
 - A food handler’s card is not required for the sale of **uncut** fruits and vegetables. Refer to Maricopa County Environmental Services website, <http://www.esd.maricopa.gov> for County regulations. It is recommended people involved with community gardening familiarize themselves with fresh produce food safety issues: <http://cals.arizona.edu/fps/>
 - Sale of value-added products (i.e. salsa made from vegetables) not permitted
 - Sale days and hours of operation will be specified and limited as part of the use permit review and approval process.
 - Additional parking may be required as part of the use permit review and approval process.
 - Sales of produce from gardens owned by the same non-profit entity are permissible.”

DISCUSSION: Section H. of the Phoenix Community Garden Policy Guidelines appears to be in conflict with the Arizona Revised Statutes, Title 3 - Agriculture.

EXCERPT: Title 3 (full copy attached)

3-562. Restrictions on sales by food producers prohibited

A. The producers of food products on agricultural lands, farms and gardens shall never under any pretext be denied or restricted the right to sell and dispose of their products...

3-563. Tax, license or fee against producers prohibited

A. No tax, license or fee shall be imposed, levied upon, demanded or collected from a producer for a sale of a food product as defined in this article...

B. A municipal ordinance which seeks to impose or subject a producer to a tax, license or fee shall be void...

QUESTIONS –

1. Regarding “Restrictions on sales of food...”

Does the city of Phoenix have the authority to restrict on-site sales by food producers?

2. Regarding “No tax, license or fee...”

Does a use permit as identified in Section H of the Community Garden Policy Guidelines fall under the definition of a license as identified in Title 3-563, ARS?

If the City has the authority to require a Use Permit for on-site sales, does the city have the authority to charge a fee for the Use Permit?

3. Regarding the “Sale of value-added products (i.e. salsa made from vegetables) not permitted”.

Does the city have the authority to prohibit sales of added-value products?

4. Regarding the definition of the term “gardens” in Section 3-561.

Is the term “gardens” inclusive of “community gardens and home gardens”?

Thank you for your guidance.

Sincerely,

A handwritten signature in black ink, appearing to read "David C. Farnsworth". The signature is stylized with a large, looped 'D' and a cursive 'F'.

Senator David C. Farnsworth
Legislative District 16