

## Introduction

As a member of the Mayor's Ad-Hoc Bona Fide Farming, Agricultural, Recreational, and Natural Resources Land Use Committee, I appreciate the effort and time dedicated to preparing the final report. However, while the report is well intended, I believe it has deficiencies that should be addressed prior to adoption of the committee's recommendations by the City Council.

The final vote by the Bona Fide Agricultural, Recreational, and Natural Resources Land Use Ad-Hoc Committee approved the inclusion of a dissenting opinion as part of the report packet submitted to the Council.

My concerns may be paraphrased as follows:

1. The report lacks clearly defined criteria for determining what constitutes a bona fide farming, agricultural, recreational, or natural resource use. The report seeks to create a checklist of information that all applicants may or may not be responsible for producing, creating ambiguity for applicants and staff.
2. The report seems to contain critical misinterpretations of existing ordinances as well as a redefinition of existing ordinances, which could lead to significant legal and policy complications for the city.
3. The report includes recommendations that reach beyond the scope of work defined in **Order 123-09162024**, as approved by the City Council.

These deficiencies undermine the report's utility, potentially burden staff, and place the city at risk of legal challenges. I respectfully argue that these potentially serious negative outcomes necessitate further revision of the Committee's report before it is considered further by the City Council.

## Criteria vs List of Documents

The committee's charge was to create criteria. The committee created a list of documents that collectively miss the charge and have significant issues.

- The report states that the "planning director or their designee may request the following documents and information or other information..." This is not criteria. **The use of "may" is non-binding so there is no requirement that they be handed in. It also creates a substantive due process issue because an applicant does not know ahead of time what they are actually responsible to provide for information.**
- The list of documents includes items but with no definition as to what is to be included therein. For example:
  - Is a soil quality analysis based on current State and City data or a formal soil analysis by a certified individual.
  - How is site plan defined in this context? Throughout the ordinance, site plan has many meanings. What is the definition here? It needs to be up front and transparent.

- The list also includes subjective items including the amount of time to be spent. **Is staff qualified to determine what is and is not the “right” amount of time for every single type of use under this ordinance?**
- The list includes items that are not necessary if there is no intention of building a house. You cannot require more from a "bona fide farm" than other farms just because there will be a house now. **That creates two sets of standards for the same use and probably is not legally defensible.**

**Recommendation:** The committee should first establish clear, measurable criteria for bona fide uses. These criteria should define what constitutes "legitimate" activity in each category (e.g., farming, recreation). Once these are identified, the report can target specific information necessary to demonstrate compliance with those criteria.

## Misinterpretation and Redefinition of Ordinances

The report contains multiple instances where existing ordinances are misinterpreted or redefined. Notably:

- The report misrepresents the requirements under Section 60-145(a)(1). It claims that determining a bona fide farming, agricultural, recreational, or natural resource use must first involve the designation of a principal use for the parcel. However, the ordinance itself does not require a house to be accessory to the principal use of the parcel, only that it be accessory to the use for which a plan is approved. Several uses may coexist on the same parcel.
- The report itself suggests that in order to demonstrate their use is “bona fide”, the applicant must also demonstrate all other requirements of the ordinance. This is not how the ordinance is written. It is possible to determine that a use would be bona fide, while finding that the house is not accessory, there is insufficient space for well or subsurface waste, etc, etc.
- Attempting to redefine ordinances and definitions in a policy document risks creating conflicts between policy and law. This not only undermines the integrity of the policy but also exposes the city to potential legal challenges.

**Recommendation:** The report must remain within the bounds of the existing ordinances. If changes to the ordinance language are deemed necessary, those changes should be pursued through the appropriate legislative process, not embedded within the report.

## Charge

The committee was tasked with developing criteria to determine whether a business or land use constitutes a bona fide farming, agricultural, recreational, or natural resource use. This charge implies:

- Recognizing and working within existing definitions in the city’s ordinances (e.g., **major recreational use** and **agricultural use**).
- Providing staff with practical tools to assess whether activities align with those definitions.

Instead, the report seems to create new interpretations that stretch beyond the ordinance's language. For example:

- Equating "bona fide" with subsets of activity undermines the clarity of existing definitions and introduces subjective criteria. Staff should focus on verifying whether activities meet the operational criteria in existing definitions, not on making broad interpretive leaps.
- The report states that the purpose of the committee includes the development of a review process. **The charge does not include a review process.**

**Recommendation:** The report must focus on achieving the directive set forth in **Order 123-09162024**, as approved by the City Council. If additional work needs to be done to help clarify ordinance, that work should be done through the appropriate process.

### Criteria Example

The criteria would have to be different for types of plan. So that's really six possible different definitions of "bona fide", or really it could be three (one for each "use plan" with addendums for the "business plan" associated with that use).

Below is an example for the farm use and plan. **The criteria rethinks the list of documents into a finite list that can be referenced to the applicant and used in support of findings of fact.**

#### **Farm Use Criteria:**

1. The use described meets the definitions of farm within Auburn's ordinance.
2. The use described is an allowable use under either subsection (a), permitted uses, or subsection (b), special exception uses within the AGRP zone.
3. The use, as described, is feasible given the topography, soil types present, and other physical characteristics of the parcel or portion of the parcel identified for use within the applicant's Farm Use plan.
4. The applicant has reasonably demonstrated they have the financial ability to implement their plan.
5. The applicant has reasonably demonstrated they have the capacity to carry out the operations described in their Farm Use Plan.
6. The farm use plan identifies 1yr, 3yr, and 5yr goals for achieving full build out of the plan.
7. The Farm Use Plan identifies strategies for continued use of the parcel and identifies possible strategies for continued operation of the primary uses outlined in the plan as well for mitigating factors that may necessitate a change in the plan.

#### **Farm Business Plan Criteria:**

1. The applicant demonstrates they meet all Farm Use criteria.
2. The applicant identifies either current need or future need for their agricultural product.

3. The applicant identifies specific production goals, either described as a monetary income or production volume for their product.
4. The applicant demonstrates that upon full implementation of their Farm Business Plan, the farm will produce sufficient food stuffs to feed a family of three.