



**ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT**

STAFF REPORT

TO Members of the Alameda County Planning Commission
HEARING DATE November 8, 2021
RE Draft Ordinance to Establish Urban Agriculture Incentive Zones

GENERAL INFORMATION

In 2014 and 2016-2017, staff presented an overview of AB 551, Ting: The Urban Agriculture Incentive Zones Act, which went into effect on January 1, 2014 to various community meetings in unincorporated Alameda County, including the Castro Valley MAC, Fairview MAC, San Lorenzo Village Homes Association, Cherryland Community Association, Ashland Community Association, EALI Agriculture and Environment Working Group, District 4 Agriculture Committee, and the Board of Supervisors' Unincorporated Services Committee. Since that time, other projects have taken priority and the proposed ordinance giving effect to the program has not been adopted. Staff is resuming implementation of the Urban Agriculture Incentive Zone program and requests any comments from your Commission on the proposal.

The purpose of AB 551 is to support urban agriculture by increasing the amount of land available for agricultural activities and to provide stability for urban farmers by ensuring that land will be committed to agriculture for a period of years. The legislation authorizes cities and counties to designate Urban Agriculture Incentive Zones within their jurisdictions and enter into contracts with the owners of vacant property within the designated zones. In exchange for agreeing to limit the use of the property to agriculture for the term of the contract, the property owner would benefit from a reduction in property taxes on the parcel. Participation in the program is entirely voluntary for both the County and the private property owner.

To implement AB 551, the County must adopt an ordinance establishing one or more Urban Agriculture Incentive Zones, as well as regulations consistent with the County's zoning and other ordinances, for administration of AB 551 contracts. A draft ordinance to implement the program in the urban unincorporated area is attached.

STAFF RECOMMENDATION

Staff requests your Commission review the draft ordinance, hear the staff presentation, take public testimony, and provide comments on the proposed ordinance.

STAFF ANALYSIS

In order to implement AB 551, the County needs to establish by ordinance one or more Urban Agriculture Incentive Zones. The County could designate one large zone that includes the entire urban unincorporated area or several smaller zones in any configuration desired to include communities or portions of communities interested in participating in the program. Property owners within these zones would be eligible to enter into enforceable contracts with the County for the use of vacant parcels for small-scale agricultural use.

Under the proposed ordinance, agricultural uses would be allowed in the urban area only where such uses are already permitted by zoning. The County Zoning Ordinance allows “field crops, orchards and gardens” as primary uses in all residential zones (Chapters 17.08, 17.10, 17.12, 17.14, 17.16, and 17.17), so the owner of a parcel in a residential zoning district would be eligible to enter into a contract if all other requirements are met. Agriculture-related uses are not permitted in commercial zones, so owners of parcels in commercial zoning districts would not be eligible to enter into contracts.

Staff presented information regarding AB 551 at a series of community meetings in 2014 and 2016 at which residents of Ashland, Cherryland, Fairview, and San Lorenzo expressed interest in being included in an Urban Agriculture Incentive Zone. Based on the outcomes of these meetings, the draft ordinance would establish two Incentive Zones. Urban Agriculture Incentive Zone 1 would include the communities of Ashland, Cherryland, and San Lorenzo as delineated in the Eden Area General Plan. Urban Agriculture Incentive Zone 2 would include the portion of Fairview that is located within the Urban Growth Boundary.

If Castro Valley wishes to participate in the program, the draft ordinance would be amended to establish one Urban Agriculture Incentive Zone that would include the entire unincorporated urban area, which comprises the communities of Ashland, Cherryland, San Lorenzo, Fairview, and the Castro Valley urban area. Staff is seeking input from the Castro Valley MAC to determine if the MAC supports inclusion of Castro Valley in the project or not.

If an unincorporated area lies within the sphere of influence of a city, AB 551 requires that the County obtain the consent of the city before an Urban Agriculture Incentive Zone can be established in that area. Therefore, the County requires the consent of the Hayward City Council before Cherryland and Fairview can be included in an Urban Agriculture Incentive Zone. The San Leandro City Council already adopted a resolution agreeing to allow Ashland to be included in an Urban Agriculture Incentive Zone. Staff is following up with the City of Hayward to seek to obtain the necessary resolution for Cherryland and Fairview.

Other Ordinance Provisions

The proposed ordinance also includes rules and regulations consistent with the County’s zoning and other ordinances, for the implementation and administration of the Urban Agriculture Incentive Zones and the related contracts. AB 551 dictates some contract requirements; for example, the initial contract term must be at least five years, the property under contract must be at least one-tenth of an acre (4,356 sf) but not more than three acres, and the entire property must be dedicated to commercial or non-commercial agricultural use. Also, if the landowner requests cancellation of the contract prior to expiration, the legislation requires that the County impose a fee equal to the cumulative value of the tax benefit received during the duration of the contract, unless the County makes a determination that the cancellation was caused by extenuating circumstances despite the good faith effort by the landowner. In addition to the state mandated requirements, the draft ordinance creates application and contract approval processes; and includes site inspection requirements.

Property subject to contract under AB 551 would be valued for assessment at the rate based on the average per-acre value of irrigated cropland in California, as most recently published by the National Agricultural Statistics Service of the USDA. The current rate posted by the State Board of Equalization is \$15,200 per acre for 2021 and \$16,300 per acre for 2022. Depending on the current assessed value of the property, the property tax savings over the term of the contract could be substantial. Staff anticipates that only a small number of property owners will choose to enter into contracts, resulting in only minimal revenue losses to the County.

CONCLUSION

The County proposes to establish Urban Agriculture Incentive Zones to create opportunities and tax incentives for properties in urban unincorporated Alameda County to be used for urban agriculture purposes. This is consistent with the policy support for increased urban agriculture activity included in the Ashland Cherryland Community Health and Wellness Element (CHWE), and with the strong community support in the unincorporated areas to increase the number of sites available for urban agriculture.

Over the next several months, staff will take the draft ordinance back to the relevant community meetings in the urban unincorporated areas to seek feedback and comments. Once the community meetings have been completed, appropriate revisions have been made to the draft ordinance to reflect public input, and the City of Hayward has adopted the required resolution, staff will bring the draft ordinance back to your Commission to request a recommendation before taking the draft ordinance to the Board of Supervisors for adoption. Staff anticipates that the ordinance adoption will occur within the next 6 to 12 months.

ATTACHMENT

Draft Ordinance to Implement Urban Agriculture Incentive Zones

PREPARED BY:	Sophie McGuinness, Senior Planner
REVIEWED BY:	Elizabeth McElligott, Assistant Planning Director

ORDINANCE 2018-_____

AN ORDINANCE ADDING CHAPTER ___ TO TITLE ___ OF THE GENERAL ORDINANCE CODE OF THE COUNTY OF ALAMEDA REGARDING URBAN AGRICULTURE INCENTIVE ZONES

The Board of Supervisors of the County of Alameda ordains as follows:

SECTION I

Chapter ___ is added to Title ___ of the General Ordinance Code of the County of Alameda to read as follows:

CHAPTER ___. Authorization for Urban Agriculture Contracts in County Urban Agriculture Incentive Zones.

___ - Purpose.

This ordinance establishes and regulates urban agriculture incentive zones within the county consistent with the Urban Agriculture Incentive Zones Act, which allows a county to enter into contracts with landowners wishing to use their vacant, unimproved, or blighted lands for small-scale agricultural use in exchange for the lands being taxed at an agricultural rate.

___ - Definitions.

Whenever the following terms are used in this Chapter only, they shall have the following meanings:

“Agricultural use” means farming in all its branches including, but not limited to, the cultivation and tillage of the soil, the production, cultivation, growing, and harvesting of any agricultural or horticultural products, the raising of livestock, bees, fur-bearing animals, dairy-producing animals, and poultry, agricultural education, the sale of produce through field retail stands or farms stands as defined by Article 5 (commencing with Section 47030) of Chapter 10.5 of Division 17 of the Food and Agricultural Code, and any practices performed by a farmer or on a farm as an incident to or in conjunction with farming operations. For purposes of this chapter, the term “agricultural use” does not include timber production.

“Eligible urban agriculture incentive zone property” means a privately owned lot or parcel that is not exempt from property taxation and:

- (1) is located within an established urban agriculture incentive zone;
- (2) is located within a zoning district where one or more agricultural uses as defined in this Chapter are principally or conditionally permitted uses;
- (3) is at least 0.10 acres and not more than three acres in size;
- (4) does not include any dwellings as defined in Section 17.04.010 of the County General Code; and
- (5) includes only structures that are accessory to the principal agricultural use, including, but not limited to toolsheds, greenhouses, produce stands, or instructional space, consistent with Sections 17.52.180 – 17.52.400 of the County General Code.

____.____ – Designation of County “Urban Agriculture Incentive Zones.”

- A. There are two Urban Agriculture Incentive Zones within the County, which zones shall be as shown on maps of the County kept on file with the Clerk of the Board of Supervisors and are generally described as follows:
 - (1) Urban Agriculture Incentive Zone 1 shall include the entirety of the unincorporated communities of Ashland, Cherryland, and portions of San Lorenzo.
 - (2) Urban Agriculture Incentive Zone 2 shall include that portion of the unincorporated community of Fairview, as delineated in the Fairview Area Specific Plan, that is located within the Urban Growth Boundary, as established by Measure D, Save Agriculture and Open Space Lands Initiative, 2000; and shall not include the Five Canyons Planned Development.

____.____ – Authorization and Requirements for Urban Agriculture Contracts within County Urban Agriculture Incentive Zones

- A. The Board of Supervisors may enter into contracts with owners of an eligible urban agriculture incentive zone property to restrict the use of the property subject to the contract to uses consistent with urban agriculture.
- B. The County shall impose a fee upon contracting property owners for the reasonable costs of implementing and administering contracts.
- C. Any contract entered into pursuant to this chapter shall include, but not be limited to, all of the following provisions:
 - (1) the initial term of the contract shall be at least five years;
 - (2) the property subject to the contract shall be at least 0.10 of an acre (4,356 square feet), and not more than three acres (130,680 square feet) in size;
 - (3) the entire property subject to the contract shall be dedicated to permitted commercial or noncommercial agricultural use in accordance with California Government Code Sections 51040 et seq, the County Government Code, and the contract;
 - (4) agricultural activity shall commence on the property within 30 days of the recordation of the contract;
 - (5) the property owner shall report in writing to the Planning Department any cessation of agricultural use for any reason, including but not limited to the loss of a tenant who was conducting agricultural uses on the property, within two weeks of the cessation of activity and the property owner must resume agricultural activity within 60 days of any such cessation;
 - (6) dwellings shall be prohibited on the property subject to the contract for the entire term of the contract;
 - (7) water for the agricultural activity on the property shall be provided by a metered water service connection or approved water well; and shall be used in accordance with a County approved water conservation plan that includes best practices for water conservation;
 - (8) the property owner shall allow periodic inspections of the property under contract by the County Assessor, the Public Works Agency, the Community Development Agency, and the State Board of Equalization as may be necessary for tax assessment purposes or to determine the property owner's compliance with the contract and state and local law;

- (9) the contract shall be binding upon, and shall inure to the benefit of, all successors in interest to the property owner;
- (10) if a landowner cancels a contract, the county shall assess a cancellation fee pursuant to Section _____;
- (11) the Board of Supervisors may cancel the contract, or seek enforcement of the contract in accordance with the cancellation provisions of Section _____; and
- (12) The property owner shall provide indemnification of the County for, and agreement to hold the County harmless from, any claims arising from any use of the property.

D. A contract entered into pursuant to this chapter shall not prohibit the use of structures that support agricultural activity, including, but not limited to, toolsheds, greenhouses, produce stands, and instructional space consistent with Sections 17.52.180 – 17.52.400 of the County General Code.

E. In accordance with the intent of this ordinance to benefit the public through the promotion of urban agriculture and improved accessibility to fresh locally grown produce, a contract entered into pursuant to this chapter shall require that the site be periodically open to members of the public other than the property owner or operator and their immediate families through any of the following:

- (1) agricultural education or outreach on site such as classes, workshops, or visits by school groups;
- (2) periodic distribution of agricultural products such as produce, flowers, eggs, or honey produced on site, via donation or sales; or
- (3) the site is managed as a community garden that has hours when the site is open to the general public.

F. The Planning Department shall maintain a standard form "Urban Agriculture Incentive Zones Contract" containing all required provisions specified by this chapter and state law.

G. Property subject to a contract entered into pursuant to this chapter shall be assessed pursuant to Section 422.7 of the Revenue and Taxation Code during the term of the contract.

____.____ – Application for a Contract

A. An owner, or an authorized agent of the owner, of an eligible urban agriculture incentive zone property may apply for an urban agriculture incentive zone contract. The application for a contract shall be submitted to the Planning Director on forms provided by the Planning Director. The application shall include, at a minimum:

- (1) the address and location of the property;
- (2) evidence that the property is an eligible urban agriculture incentive zone property as defined in Subsection _____;
- (3) a description of the intended agricultural use of the property including current and proposed site plans and a development schedule for the property; and
- (4) the name of the party or organization who will carry out the agricultural activities if different from the property owner

B. The annual deadline to submit an application for a contract to the Planning Director is October 2.

- C. The Planning Director shall make a determination as to whether the property is an eligible urban agriculture incentive zone property and whether the planned or existing agricultural activities conform to the requirements of this chapter. The Planning Director shall prepare and make recommendations on the contents of the contract for consideration by the Board of Supervisors.
- D. The Board of Supervisors shall, in public hearing, resolve to approve, approve with conditions, or deny the proposed contract. Should the Board of Supervisors fail to act on the proposed contract within one year of its receipt of the proposal, the proposal shall be deemed denied.
- E. As required by the County General Ordinance Code, the property owner shall also apply for and obtain any necessary permits or other approvals required to conduct the proposed agricultural uses on the property prior to execution of any approved contract. Nothing in this Chapter shall be construed as limiting the application or requirements of any and all applicable provisions of federal law, state law, and the County General Ordinance Code.

____.____.____ – **Site Inspection**

- A. Within 90 days of Contract approval the Planning Director shall conduct a site inspection to verify the property owner's conformance to the terms of the contract.
- B. During each subsequent year in which the contract is in force, the Planning Director shall conduct an annual site inspection to verify the property owner's conformance to the terms of the contract.
- C. The Planning Director's determination of conformance with the Contract shall be based on the criteria outlined in Section _____ as well as:
 - (1) evidence of plant cultivation as demonstrated by: active soil management, weeding, pruning, and other active farming and gardening techniques; and/or evidence of animal husbandry demonstrated by active bee hives, chicken coops, or other animal husbandry practices; and
 - (2) any specific requirements of the contract.

____.____.____ – **Contract Cancellation**

- A. The Board of Supervisors may cancel the contract upon finding that a property owner is in breach of one or more terms of the contract or upon failure of one or more of the conditions of the contract. The Assessor and the property owner will be notified of the County's cancellation of the contract.
- B. A property owner may cancel a contract entered into pursuant to this chapter at any time by submitting written notice to the Planning Director. Upon cancellation of the contract prior to the expiration of its term, the property owner shall record a notice of cancellation of the contract against the property.
- C. If the contract is cancelled by the County or property owner prior to the expiration of its term, the property owner shall pay to the County a cancellation fee equal to the cumulative value of the tax benefit received during the duration of the contract plus interest, as

determined by the Assessor. The Board of Supervisors may waive payment of all or a portion of the fee, if the Board determines that the cancellation was caused by extenuating circumstances despite the good faith effort by the property owner.

SECTION II

This ordinance shall take effect and be in force thirty (30) days from and after the date of passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same in the Inter-City Express, a newspaper published in the County of Alameda.

Adopted by the Board of Supervisors of the County of Alameda, State of California,
_____, 2022 by the following called vote:

AYES:
NOES:
EXCUSED:

KEITH CARSON
President of the Board of Supervisors
County of Alameda, State of California

ATTEST: ANIKA CAMPBELL-BELTON,
Clerk of the Board of Supervisors, County of Alameda

By _____

Approved as to Form:
DONNA ZIEGLER, County Counsel

By _____
HEATHER LITTLEJOHN
Deputy County Counsel