



## Memorandum

**TO:** RULES AND OPEN GOVERNMENT COMMITTEE      **FROM:** Councilmembers  
Raul Peralez,  
Magdalena Carrasco  
Mayor Sam Liccardo

**SUBJECT:** Urban Agriculture Incentive Zones      **DATE:** September 24, 2015

Approved \_\_\_\_\_ Date \_\_\_\_\_  
*[Signature]* *[Signature]* *9-24-15*

### RECOMMENDATION

1. Direct staff to bring forward an Urban Agriculture Incentive Zone (UAIZ) ordinance, similar to Santa Clara County Ordinance No. NS-1200.350, with exploration of the following revisions:
  - a. Include an early cancellation fee for landowners who choose to void their 5-year land use commitment and require a minimum 3-month eviction notice from the landowner to the community members utilizing the land to ensure that they have adequate time to vacate the location.
  - b. Designate any collected fees to support local urban agriculture programs and services.

### BACKGROUND

On September 28, 2013, Governor Brown approved Assembly Bill No. 551<sup>1</sup>, which authorizes a California county or a city to, after a public hearing, establish by ordinance an Urban Agriculture Incentive Zone (UAIZ) within its boundaries for the purpose of entering into voluntary enforceable contracts with landowners for the use of vacant, unimproved, or blighted lands for small-scale production of agriculture crops. A county that has established an Urban Agriculture Incentive Zone within its boundaries can adopt rules and regulations to implement and administer the Zone and contracts related to the Zone. The bill authorizes the county or city to impose a fee on contracting landowners for the reasonable costs of implementing and administering contracts and the incentive zone.

<sup>1</sup> California Assembly Bill No. 551: Local Government: Urban Agriculture Incentive Zones (2013-2014)  
[http://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB551](http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB551)

AB551 provides a tax incentive to private landowners to make more land available for urban agriculture, while at the same time enabling them to do so at a reduced cost. This does not prevent landowners from developing when they are ready to do so and it will not stop more lucrative forms of development from coming into the City.

To determine whether a parcel is eligible to be considered an UAIZ, it must meet the following requirements:

- Be at least 0.1 acre in size and no larger than 3 acres (between 4,356 and 130,680 square feet)
- Be completely dedicated toward commercial or non-commercial agricultural use, free of any dwellings and only have physical structures that support the agricultural use of the site as well as having an initial term of at least five years.

The City and County of San Francisco<sup>2</sup> and the City of Sacramento<sup>3</sup> have already passed ordinances for UAIZs that have been favorably received and San José is in a position to glean from their experiences. According to San Francisco, it takes 10 hours or less to process new applications, and most of that time goes to the County: 1-3 hours with the Assessor, 3-5 hours with the Agricultural Commission, and 1-2 hours with the Planning Department. The results of UAIZs in San Francisco have been both positive and beneficial to the surrounding communities.

Santa Clara County passed a resolution on June 9, 2015 that allows any city in Santa Clara County to create an UAIZ<sup>4</sup>. In order for the county to proceed with implementation, San Jose must authorize parcels that are both located in unincorporated Santa Clara County yet also in the sphere of influence of San José to be eligible for the incentive. Those parcels will have NO impact on the tax revenue of San José because they are in unincorporated areas. However, as the largest city in Santa Clara County, the City of San José is ripe for becoming the first to take this opportunity to simultaneously provide landowners within our incorporated city boundaries with this tax incentive and to provide opportunities to expand urban agriculture. Attachment A reflects the county's Ordinance No. NS-1200.350.

According to an investigative report from Garden to Table in December 2014<sup>5</sup>, in San José, there are at least 585 vacant parcels, 135 (23%) of which are in District 3 and 102 (17.6%) in District 5. Attachment B reflects a corresponding color-coded map of the City of San José's vacant parcels.

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<sup>2</sup> City of San Francisco's Urban Agriculture Incentive Zone Ordinance No. 184-14: July 15, 2014: <https://sfgov.legistar.com/View.ashx?M=F&ID=3213053&GUID=EFB99645-BD09-4B4E-9CDB-5EA1A685BCFA>

<sup>3</sup> City of Sacramento's Urban Agriculture Incentive Zone Ordinance No.2015-0024: August 6, 2015: <http://www.cityofsacramento.org/Community-Development/Planning/Long-Range/Urban-Agriculture/Tax%20Incentives%20for%20Urban%20Agriculture>

<sup>4</sup> Santa Clara Board of Supervisors Resolution BOS-2015-86: [http://sccgov.iqm2.com/Citizens/Detail\\_LegiFile.aspx?Frame=SplitView&MeetingID=6058&MediaPosition=13608.000&ID=76942&CssClass](http://sccgov.iqm2.com/Citizens/Detail_LegiFile.aspx?Frame=SplitView&MeetingID=6058&MediaPosition=13608.000&ID=76942&CssClass)

<sup>5</sup> Lewis, Z and Carvalho, B. (2014). Distribution of Vacant Land. In *Implementing AB551 in San Jose: Final Report* (p. 4). San Jose: Health Trust Partnership Grant.



## ANALYSIS

As San José moves further down the path of urbanization, this initiative will help us preserve and honor our agricultural roots in the Valley of Heart's Delight with many tangible benefits to the San José community.

### *Customization of the Ordinance Language for San José*

An ordinance customized to meet the needs of San José communities, however, should ensure any corresponding early cancellation fees collected should be cycled back into local urban agriculture programs and services.

Moreover, while the state legislation requires a five-year commitment to the contract term for landowners who seek to opt-in to the tax incentive, there may be circumstances in which some landowners choose to cancel their contract early for other uses. The San José ordinance should include an early cancellation fee for landowners who choose to void their 5-year land use commitment and require a minimum 3-month eviction notice from the landowner to the community members utilizing the land for urban agriculture to ensure that they have adequate time to vacate the location, collect their supplies, and identify another site if they so choose.

### *Community Benefits*

State legislation related to UAIZs is important because it provides many benefits to city residents including, but not limited to: reduction of blight associated with long-term vacant land parcels in urban areas; education about fresh, healthy food and the effort it takes to produce it; environmental benefits for the city including modeling grounds for new, energy saving, environmentally-sustainable technologies; community-building; vibrant green spaces and recreation; and a source of economic development including increased neighboring home values. One of the largest obstacles to expanding the number of Californians who enjoy these benefits of urban agriculture is access to land - both its supply and cost in urban jurisdictions.

### *Benefits to Landowners*

The change in property tax assessment for landowners of vacant lots would be significant. According to University of California Agriculture and Natural Resources Cooperative Extension,<sup>6</sup> “in 2014, this is \$12,500 per acre. The assessment will be adjusted proportionally to reflect the acreage under contract. The difference between a parcel's current property tax assessment and that under a contract will differ parcel-by-parcel... In short, entering into an UAIZ contract can lower a landowner's property tax assessment, but not raise it.”

### *Reduction in Blight and Crime*

UAIZs can be beneficial to our communities because they have the potential to turn vacant lots into active areas, thereby reducing blight and crime. Research indicates that urban agriculture has a stabilizing effect on distressed communities by putting eyes on the streets, ultimately reducing the amount of blight and crime occurring throughout these communities. According to the San José Police Department Official Crime Statistics, “in

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<sup>6</sup> UCCE Guide to Implementing the UAIZ Act: New California Law Makes It Easier for Cities and Counties to Foster Urban Agriculture, 2014: <http://ucanr.edu/sites/UrbanAg/files/190763.pdf>

2014, there were 2,456 total property crimes reported and 324 violent crimes reported.” These numbers have the potential to be drastically reduced if the number of vacant parcels throughout San José decreases and the parcels become activated by community members participating in urban agriculture.

ATTACHMENT A

ORDINANCE NO. NS-1203.123

AN ORDINANCE OF THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SANTA CLARA ADDING A NEW DIVISION 21 TO TITLE C OF  
THE ORDINANCE CODE OF THE COUNTY OF SANTA CLARA RELATING TO  
URBAN AGRICULTURE INCENTIVE ZONES

Summary

This Ordinance adds a new Division 21 to Title C of the Ordinance Code of the County of Santa Clara relating to Urban Agriculture Incentive Zones.

THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA  
ORDAINS AS FOLLOWS:

SECTION 1. Title C of the Ordinance Code of the County of Santa Clara is amended to add Division 21 to read as follows:

**Division 21—URBAN AGRICULTURE INCENTIVE ZONES**

**Chapter 1. Urban Agriculture Incentive Zones Act Contracts**

**Sec. C21-1. -Purpose and authority.**

This chapter sets forth the requirement for county urban agriculture incentive zones and contracts pursuant to the Urban Agriculture Incentive Zones Act (“Act”), Government Code § 51200 *et seq.* The Act authorizes the County to establish an Urban Agriculture Incentive Zone within its boundaries for the purpose of entering into enforceable contracts with landowners, on a voluntary basis, for the use of vacant, unimproved, or blighted lands for small-scale agricultural use. In consideration for promoting sustainable urban farm enterprise sectors in unincorporated urban areas, which promotes the public interest, the County may provide certain property tax reductions in accordance with Article 1.5 (commencing with Section 422.7) of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.

**Sec. C21-2. -Definitions.**

The following definitions apply to this chapter:

(a) All definitions in the Act, including but not limited to those in Government Code § 51040.3.

(b) *Contract* means an urban agriculture incentive zone contract entered into pursuant to the Act and this chapter.

(c) *Contracted land* means real property restricted by an urban agriculture incentive zone contract pursuant to the Act and this chapter.

(d) *Eligible property* means a privately owned parcel not exempt from property taxation and (i) located in the established Urban Agriculture Incentive Zone; (ii) is at least 0.10 acres and not more than three acres in size; (iii) does not include any dwellings; and, (iv) includes only structures that are accessory to the agricultural activity, including but not limited to, toolsheds, greenhouses, produce stands, and instructional space and consistent with the Zoning Ordinance.

**Sec. C21-3. -Relationship to other laws.**

If there are any irreconcilable conflict between any provision of this chapter and any federal or state law, the federal or state law prevails. Any provision of this chapter that is more stringent than federal or state law is intended to supplement, not conflict with, federal or state law and to apply unless a court of law conclusively determines that the provision is preempted.

**Sec. C21-4. -Establishment of Urban Agriculture Incentive Zone.**

An Urban Agriculture Incentive Zone is hereby established in accordance with the Act for those areas identified in a resolution adopted by the Board of Supervisors, provided, however, that the areas of the Urban Agriculture Incentive Zone within any portion of the spheres of influence of a city shall not be established without the consent of the city.

**Sec. C21-5. -Applications for Contracts.**

(a) A landowner of an eligible property may file an application for a contract with the Agricultural Commissioner on a form prepared by the County. An application must be accompanied by all of the following:

- (1) All applicable fees as established by resolution of the Board of Supervisors; and
- (2) A completed contract in a form prepared by County Counsel with notarized signatures of all land owners and all required attachments.

(b) The County may request additional information from the landowner during the application review process to facilitate a thorough and timely review of the application.

(c) The deadline to submit an application for a contract shall be November 1 of each calendar year.

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**Sec. C21-6. -Referral by Agricultural Commissioner.**

(a) Upon receipt of an application for a contract, the Agricultural Commissioner shall transmit a copy of the completed application to the Office of the Assessor and the Planning Office.

(b) Within 60 days of receiving a complete application, the Agricultural Commissioner will prepare a report. The Office of the Assessor and Planning Office will provide the Agricultural Commissioner with any relevant information to assist with the preparation of the report. The report will contain an analysis of whether the land meets the criteria for a contract in the Act, this chapter, and any other local ordinance and guidelines.

**Sec. C21-7. -Criteria for evaluating contract applications and appeal.**

(a) No application for a contract will be approved unless all of the following criteria are met:

- (1) The eligible property proposed for inclusion in the contract is at least 0.10 acres and not more than three acres.
- (2) The eligible property proposed for inclusion in the contract shall be dedicated toward commercial or noncommercial agricultural use, consistent with the intent of the Act.
- (3) There are no existing or permitted uses or development, including any dwelling, on the eligible property that would significantly displace or interfere with the agricultural use of the land.

(b) Any interested person may appeal the determination of the Agricultural Commissioner made pursuant to this section to the Board of Supervisors. Any such appeal must be filed within 15 days of the decision and be accompanied by payment of a fee in an amount established by resolution of the Board of Supervisors.

**Sec. C21-8. -Recording of contracts.**

The Agricultural Commissioner shall execute the contract on behalf of the County. The Agricultural Commissioner must record any executed contract with the Clerk-Recorder within 20 days after the County executes the contract and no later than December 31 of the calendar year in which it was executed.

**Sec. C21-9. -Site Inspection.**

(a) Within 90 days of contract approval, the Agricultural Commissioner shall conduct a site inspection to verify the property owner's conformance to the terms of the contract.

(b) During each subsequent year of the contract, the Agricultural Commissioner shall conduct an annual site inspection to verify the property owner's conformance to the terms of the contract. The Agricultural Commissioner shall give the landowner at least 48 hours' written notice of the inspection date, approximate time, the person(s) who will be participating in the inspection, and the reason for the inspection. When scheduling an inspection, the Agricultural Commissioner shall make a reasonable attempt to accommodate the landowner's schedule. Any such inspection shall occur during normal business hours (Monday through Friday, 8:00 am to 5:00 pm).

(c) The Agricultural Commissioner's determination of conformance with the contract shall be based on a demonstration of:

- (1) Conformance with the definition of urban agriculture pursuant to California Government Code section 51040.3(c);
- (2) Entire property dedicated to agricultural use;
- (3) Evidence of plants being cultivated 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
- (4) Any specific requirements of the contract.

**Sec. C21-10. -Contract cancellation.**

(a) If the County finds that a landowner is in material breach of the terms of the contract, the County shall notify the landowner of his or her intent to cancel the contract. The landowner may file a written appeal of this determination with the Agricultural Commissioner within 15 days of notification. If the appeal is timely filed, the Clerk of the Board of Supervisors shall calendar the appeal for hearing before the Board of Supervisors within 45 days of its filing.

(b) The cancellation shall become final within 15 days of notification if no appeal is filed or, if an appeal is filed, on the date the Board of Supervisors upholds the cancellation. Once the appeal is final, the Agricultural Commissioner shall submit written notice of the cancellation of the contract to the landowner and shall record a notice of cancellation of the contract with the Clerk-Recorder.

(c) A landowner may cancel the contract at any time by submitting written notice to the Agricultural Commissioner and upon payment of any required fee pursuant to subsection (d). The landowner shall record a notice of cancellation with the Clerk-Recorder.

(d) Upon cancellation of any contract prior to the expiration of its term, the landowner shall pay to the Tax Collector a cancellation fee equal to the cumulative value of the tax benefit received during the duration of the contract upon landowner for cancellation of any contract prior to the expiration of the contract. This fee shall include the cumulative tax owed,



including interest. The landowner may appeal payment of this fee to the Board of Supervisors either: (1) as part of any appeal of the cancellation if the cancellation is initiated by the County; or (2) through a separate appeal of the fee if the cancellation is initiated by the property owner. Any separate appeal of the fee shall be filed with the Clerk of the Board of Supervisors within 10 days of the landowner's submittal of written notification of cancellation under subsection (c) and if the appeal is timely filed, the Clerk of the Board of Supervisors shall calendar the appeal for hearing within 45 days of filing. The Board of Supervisors may waive payment of the fee, or any portion thereof, if it determines that the cancellation was caused by extenuating circumstances despite the good faith effort by the landowner to comply with the provisions of the contract.

**Sec. C21-11. -Contract extension.**

(a) Each year, but no later than October 15, the Agricultural Commissioner or designee shall send each landowner with a contract a request for confirmation that the landowner intends to continue complying with the contract; documentation of any major modification to the original application; and payment for any annual fees for the administration of the contract.

(b) This request shall also include a form for the landowner to apply for an extension of the contract for an additional term of up to five years, subject to the limitations provided in Section C21-12. Any such extension shall be subject to the same requirements as an initial application.

**Sec. C21-12. -Sunset provision.**

Pursuant to the Act, the County shall not enter into a new contract or extend an existing contract after January 1, 2019, unless the Act is amended to permit contracts after that date. Notwithstanding the foregoing, any contract entered into pursuant to the Act and this Division 21, Chapter 1 on or before January 1, 2019, shall be valid and enforceable for the duration of the contract.

**Sec. C21-13. -Fees.**

The Board of Supervisors may adopt by resolution any fees necessary to ensure that the County recovers its costs associated with administering and enforcing the Act and contracts executed thereunder. Such fees shall not exceed the amount reasonably necessary to recover the cost of providing the product or service or the cost of enforcing any law or ordinance for which the fee is levied. The fee may reflect the average cost of providing any product or service or enforcing any law or ordinance.

SECTION 2. The provisions of Division C21 shall be effective November 28, 2015.

SECTION 3. This Ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by a court to be unconstitutional or

invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof, other than the section so declared to be unconstitutional or invalid.

**PASSED AND ADOPTED** by the Board of Supervisors of the County of Santa Clara, State of California, on \_\_\_\_\_ by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
DAVE CORTESE, President  
Board of Supervisors

ATTEST:

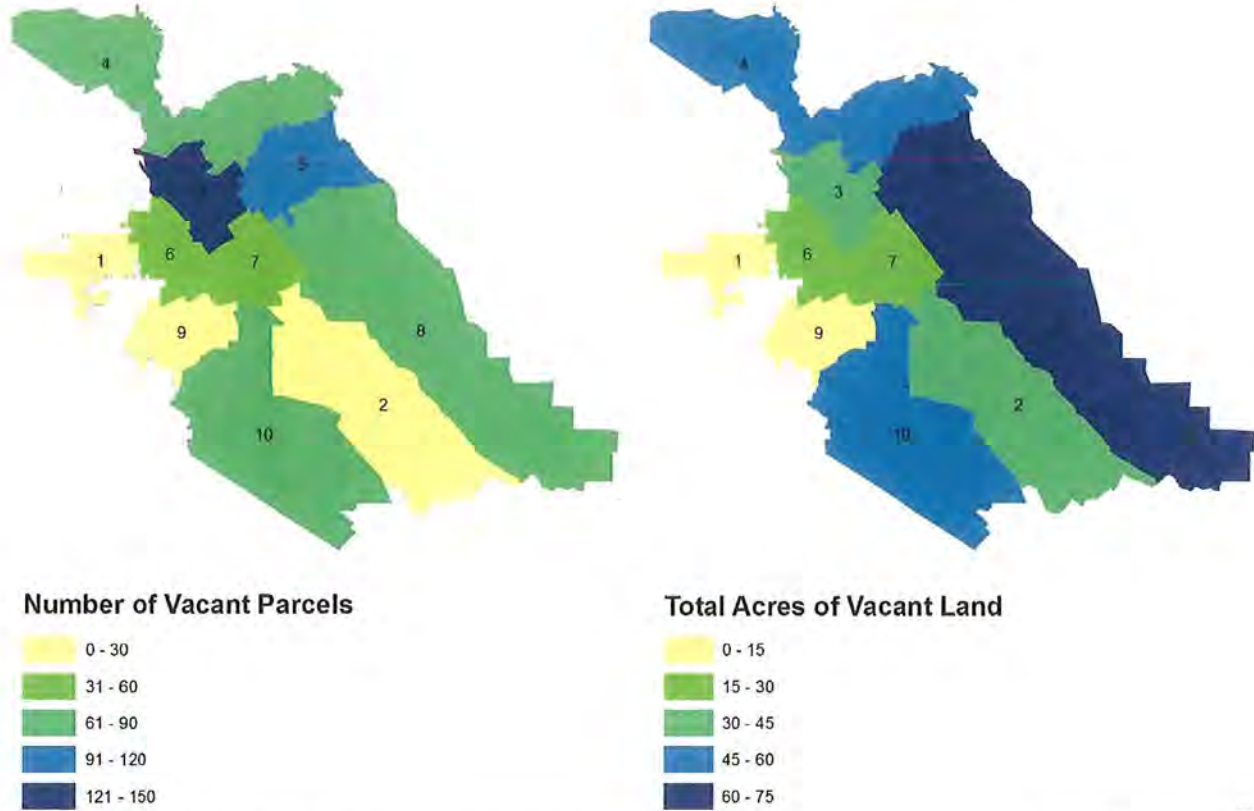
\_\_\_\_\_  
MEGAN DOYLE  
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

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MICHAEL ROSSI  
Deputy County Counsel

## ATTACHMENT B

### City of San Jose - Vacant Land by District



Data Sources: City Council Districts, City of San Jose; Vacant Land Data, First American Title



- District 3 has the most vacant parcels (135) and District 9 has the least (8).
- District 5 has the most acres of vacant parcels (72.95) while District 9 has the least amount of acres (4.05).
- Both District 1 and District 9 have low numbers of parcels and total acres of vacant land. Both district also happen to be located along the western border of the city.
- There is a total of 585 vacant parcels and 370.61 acres of vacant land included in this investigation.