

[Administrative Code - Urban Agriculture Incentive Zones Act Program and Procedures]

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Ordinance amending the Administrative Code, by adding Chapter 53A, creating local procedures to implement the Urban Agriculture Incentive Zones Act, including establishing the City’s Urban Agriculture Incentive Zone; and making environmental findings.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in *strikethrough italics Times New Roman font*.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. General Findings.

(a) Urban agriculture provides multiple benefits to San Franciscans. It connects City residents to the broader food system, provides green space and recreation, may save public agencies money, provides ecological benefits and green infrastructure, builds community, and offers food access, public health, and economic development potential.

(b) Two of the largest obstacles to the sustained growth of urban agriculture within San Francisco are access to land and secure land tenure.

(c) By creating an Urban Agriculture Incentive Zone and program, the City of San Francisco aims to encourage owners of private, vacant, undeveloped land to commit their land into urban agricultural use for at least five years, thereby providing public benefits to the City as well as land access and land security for City farmers and gardeners.

1 Section 2. Environmental Findings. The Planning Department has determined that the
2 actions contemplated in this ordinance comply with the California Environmental Quality Act
3 (California Public Resources Code Sections 21000 et seq.). Said determination is on file with
4 the Clerk of the Board of Supervisors in File No. 140702, and the Board hereby incorporates
5 this determination by reference and adopts it as its own.

6
7 Section 3. Findings Under the Urban Agriculture Incentive Zones Act (California
8 Government Code 51040.3(a)).

9 (a) The entire City and County of San Francisco falls within an “urbanized area”, as
10 defined by the United States Census Bureau, with a combined total population of more than
11 250,000 people.

12 (b) No land within the boundaries of the proposed Urban Agriculture Incentive Zone, as
13 described in section 53A.2 below, is currently subject to, or has been subject to within the
14 previous three years, a contract pursuant to the Williamson Act (California Government Code
15 Section 51200).

16
17 Section 4. The Administrative Code is hereby amended by adding new Chapter 53A,
18 to read as follows:

19 **CHAPTER 53A URBAN AGRICULTURE INCENTIVE ZONES ACT PROCEDURES**

20 Sec. 53A.1. Purpose.

21 Sec. 53A.2. Establishment of Urban Agriculture Incentive Zone.

22 Sec. 53A. 3. Certificate of Eligibility.

23 Sec. 53A.4. Application for a Contract.

24 Sec. 53A.5. Approval Process.

25 Sec. 53A.6. Terms of the Contract.

1 Sec. 53A.7. Site Inspection.

2 Sec. 53A.8. Contract Cancellation.

3 Sec. 53A.9. Contract Renewal and Extension.

4 Sec. 53A.10. Outreach and Education.

5 Sec. 53A.11. Sunset Provision.

6 **SEC. 53A.1. PURPOSE.**

7 (a) This Chapter 53A implements the Urban Agriculture Incentive Zones Act, California
8 Government Code Sections 51040 et seq. The Urban Agriculture Incentive Zones Act authorizes local
9 governments to enter into enforceable contracts with owners of private property for the purpose of
10 promoting the use of vacant, unimproved, or blighted lands for small-scale agricultural use. As
11 consideration for promoting the public interest in sustainable urban farm enterprise sectors in urban
12 centers, the City and County of San Francisco may provide certain property tax reductions in
13 accordance with Article 1.5 (commencing with Section 422.7) of Chapter 3 of Part 2 of Division 1 of
14 the California Revenue and Taxation Code.

15 (b) Implementation of the Urban Agriculture Incentive Zones Act will make the benefits of the
16 Act available to owners of eligible property in San Francisco.

17 (c) The benefits of the Urban Agriculture Incentive Zones Act to the individual property owners
18 and the City generally must be balanced with the cost to the City of providing the potential property tax
19 reductions set forth in the Urban Agriculture Incentive Zones Act.

20 **SEC. 53A.2. ESTABLISHMENT OF URBAN AGRICULTURE INCENTIVE ZONE.**

21 An Urban Agriculture Incentive Zone, pursuant to California Government Code Section 51040
22 et seq., the boundaries of which include the entirety of the City and County of San Francisco, is hereby
23 established for the City and County of San Francisco for the purpose of entering into enforceable
24 contracts with landowners, on a voluntary basis, for the use of vacant, unimproved, or blighted lands
25 for small-scale agricultural use.

1 **SEC. 53A.3. CERTIFICATE OF ELIGIBILITY.**

2 (a) An owner, or an authorized agent of the owner, of an eligible urban agriculture incentive
3 zone property may apply for an urban agriculture incentive zone contract (“Contract”). For purposes
4 of this Chapter 53A, "eligible urban agriculture incentive zone property" shall mean a privately owned
5 lot or parcel property that is not exempt from property taxation and:

6 (1) is located within a zoning district where Neighborhood Agricultural or Large-Scale
7 Urban Agricultural Uses as defined in Planning Code Section 102 are principally or conditionally
8 permitted uses;

9 (2) is at least 0.10 acres and not more than three acres in size;

10 (3) does not include any dwelling units; and

11 (4) includes only structures that are accessory to the agricultural activity, including
12 but not limited to toolsheds, greenhouses, produce stands, or educational space.

13 (b) Determination of Eligibility: The property owner shall seek a determination from the
14 Planning Department that the property is an eligible urban agriculture incentive zone property. The
15 property owner shall provide, at a minimum, the address and location of the property and evidence that
16 the property is an eligible urban agriculture incentive zone property as described in Subsection
17 53A.3(a). The Planning Department shall make an over-the-counter determination as to whether the
18 property is an eligible urban agriculture incentive zone property. If the property is eligible, the
19 Planning Department shall provide a certificate of eligibility to the property owner. The certificate of
20 eligibility is not a permit to commence any work or a change in use. Permits from appropriate
21 departments must be secured before work is started or use is changed.

22 **SEC. 53A.4. APPLICATION FOR A CONTRACT.**

23 (a) Application for a Contract: After obtaining a certificate of eligibility for the property, the
24 property owner shall submit an application for a Contract, including but not limited to the certificate of
25 eligibility, any required documentation regarding the property described in Section 53A.3(b), and a

1 description of the intended agricultural use of the property including current and proposed site plans
2 and a development schedule for the property, to the Agricultural Commissioner on forms provided by
3 the Agricultural Commissioner.

4 (b) Application Deadlines. For calendar year 2014, the deadline to submit an application for a
5 Contract to the Agricultural Commissioner shall be October 1. Thereafter, the deadlines to submit an
6 application for a Contract to the Agricultural Commissioner shall be March 1, June 1, and August 1.

7 (c) Additional Applications and Approvals. As required by the Planning Code or other
8 provisions of the Municipal Code, the property owner shall also apply for and obtain any necessary
9 change of use permit, conditional use permit, or other approvals required to conduct the proposed
10 agricultural uses on the property prior to execution of any approved Contract by the Agricultural
11 Commissioner. Nothing in this Chapter shall be construed as limiting the application or requirements
12 of any and all applicable provisions of state law and this Code, including but not limited to the
13 requirements of the Planning Code.

14 **SEC. 53A.5. APPROVAL PROCESS.**

15 (a) Agricultural Commissioner Review. The Agricultural Commissioner shall review the
16 Contract application within 30 days of the application deadline. The Agricultural Commissioner shall
17 determine whether the application includes either plans for or proof of existing activities that
18 demonstrate:

19 (1) conformance with the definition of urban agriculture as detailed in the Urban
20 Agriculture Incentive Zones Act (California Government Code Section 51040.3(c));

21 (2) that the entire property is dedicated to agricultural use. The Agricultural
22 Commissioner shall consider whether certain site features support agricultural use of the site,
23 including but not limited to: educational space; preparation, washing, and harvest areas; storage
24 space; and vehicle access areas. These types of site features shall not preclude approval of a Contract
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1 as long as the features are accessory to the agricultural use and permitted under the Planning Code on
2 the property proposed for Contract; and

3 (3) the site is periodically open to members of the public through any of the following:

4 (A) agricultural education or outreach on site such as classes, workshops, or
5 visits by school groups;

6 (B) periodic distribution of agricultural products(such as, for example, produce,
7 flowers, eggs, or honey) from the site, via donation or sales; or

8 (C) the site is managed as a community garden that has hours when the site is
9 open to the general public.

10 In determining that the plans or existing activities conform with the intent of the law, the
11 Agricultural Commissioner is to be guided by the City's intent that a Contract shall be used to
12 incentivize farming and gardening that has a public benefit, either through the distribution of food
13 grown on the site to members of the public other than the property owner or operator and their
14 immediate families; economic activity through the sale of the food produced on site; or education that
15 occurs from people learning from the agriculture on site. Benefits such as providing food solely for the
16 property owner or operator and their immediate families; site beautification; or provision of green
17 space for the public, shall not constitute sufficient agricultural use to be considered in conformance
18 with the intent of this ordinance.

19 (b) Assessor-Recorder Review. If the Agricultural Commissioner recommends initial approval
20 of the application, he or she shall forward the application to the Assessor-Recorder for review. Within
21 30 days of receipt, the Assessor-Recorder shall provide the Agricultural Commissioner with a report
22 estimating the yearly property tax revenue to the City under both the urban agriculture incentive zones
23 contract valuation method and under the standard valuation method and estimating the difference in
24 property tax assessments under the two valuation methods for the term of the proposed Contract. In
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1 making this estimate, the Assessor-Recorder shall use the current-year Board of Equalization published
2 tax rate.

3 (c) Agricultural Commissioner Approval. A Contract may be approved by the Agricultural
4 Commissioner at his or her sole discretion if approval of the proposed Contract would not result in: (1)
5 a tax revenue loss of more than \$25,000 per year or more than \$125,000 for the term of the contract, as
6 calculated based on the Assessor-Recorder's estimate; (2) contiguous parcels totaling five acres or
7 more under contract at the same time; or (3) an estimated combined tax revenue loss for all properties
8 under Contract greater than \$250,000 per year. If the Agricultural Commissioner disapproves an
9 application, such decision shall be final unless the property owner files an appeal with the Clerk of the
10 Board of Supervisors within 10 business days of the denial by the Agricultural Commissioner. If the
11 Agricultural Commissioner approves an application, he or she shall provide written notice of the
12 approval to the Clerk of the Board within five business days of the approval, and the Clerk of the Board
13 shall forward such notice to all members of the Board of Supervisors. In addition to information
14 regarding the specific Contract approved, such notice shall include the estimated combined tax revenue
15 loss to the City for all properties under Contract. Within 10 business days of receipt of such notice, any
16 member of the Board of Supervisors may introduce a resolution requesting Board review of the
17 approval. Approval of a Contract shall not be final until either: the time has passed for a member of
18 the Board to introduce a resolution requesting Board review without any member doing so; or, if a
19 Board member has introduced a resolution requesting review, the Board has held a hearing and
20 affirmed the Agricultural Commissioner's approval of the Contract.

21 (d) Board of Supervisors Approval. Any proposed Contract not meeting the conditions set forth
22 in subsection (c) above for approval by the Agricultural Commission shall be forwarded by the
23 Agricultural Commissioner to the Clerk of the Board of Supervisors with a recommendation. The Board
24 of Supervisors shall conduct a public hearing to review the Agricultural Commissioner's
25 recommendation, the Assessor-Recorder's report, and any other information the Board requires in

1 order to determine whether the City should execute the proposed Contract. The Board of Supervisors
2 may approve, disapprove, or modify and approve the Contract and shall have full discretion to
3 determine whether it is in the public interest to enter into the proposed Contract.

4 (e) Following final approval of the Contract by the Agricultural Commissioner or the Board of
5 Supervisors, the Agricultural Commissioner shall send written notification to the Assessor-Recorder
6 and to the property owner. The Agricultural Commissioner shall execute the approved Contract upon
7 his or her determination that the property owner has obtained all other required approvals for the
8 proposed agricultural use, including but not limited to any required change of use or conditional use
9 permit. Once executed, the property owner shall record the Contract against the property. Once the
10 Contract is recorded against the property, the Assessor-Recorder shall apply the reduced property tax
11 valuation methodology to the property at the next property tax lien date.

12 **SEC. 53A.6. TERMS OF THE CONTRACT.**

13 (a) The Contract shall set forth the agreement between the City and the property owner that as
14 long as the property owner properly conducts permitted agricultural uses on the property as set forth in
15 the Contract, the City shall comply with California Revenue and Taxation Code Article 1.5 of Chapter
16 3 of Part 2 of Division 1, commencing with Section 422.7, provided that the specific provisions of the
17 Revenue and Taxation Code are applicable to the property in question. A Contract shall contain, at a
18 minimum, the following provisions:

19 (1) The initial term of the Contract, which shall be for a minimum period of five years;

20 (2) The property owner's commitment and obligation to conduct permitted agricultural
21 uses on the property in accordance with the requirements, rules, and regulations of the Urban
22 Agriculture Incentive Zones Act, this Chapter 53A, the Planning Code, and the Contract;

23 (3) Permission to allow periodic examinations of the property under Contract by the
24 Assessor-Recorder, the Department of Building Inspection, the Department of Public Health, the
25 Planning Department, the Agricultural Commissioner, and the State Board of Equalization as may be

1 necessary for tax assessment purposes or to determine the property owner's compliance with the
2 Contract and state and local law;

3 (4) That the Contract is binding upon, and shall inure to the benefit of, all successors in
4 interest to the property owner;

5 (5) Agreement that the Agricultural Commissioner or Board of Supervisors may cancel
6 the Contract, or seek enforcement of the Contract in accordance with the cancellation provisions of
7 Section 53A.8;

8 (6) That agricultural activity shall commence on the property within 30 days of the
9 recording of the Contract;

10 (7) That the property owner must report in writing to the Agricultural Commissioner
11 any cessation of agricultural use for any reason, including but not limited to due to the loss of a tenant
12 who was conducting agricultural uses on the property, within two weeks of the cessation of activity and
13 that the property owner must resume agricultural activity within three months of any such cessation or
14 face cancellation of the Contract;

15 (8) That the property is dedicated toward commercial or noncommercial agricultural
16 use; and

17 (9) The property owner's indemnification of the City for, and agreement to hold the City
18 harmless from, any claims arising from any use of the property.

19 (b) A Contract shall not prohibit structures that support agricultural activity, including but not
20 limited to toolsheds, greenhouses, produce stands, and instructional space.

21 (c) Pursuant to the Urban Agriculture Incentive Zones Act as amended from time to time, a
22 Contract may restrict the use of pesticides and/or fertilizers as long as it permits those pesticides or
23 fertilizers allowed by the United States Department of Agriculture's National Organic Program.

24 (d) The City and the property owner shall comply with all provisions of the Urban Agriculture
25 Incentive Zones Act, including amendments thereto. The Urban Agriculture Incentive Zones Act, as

1 amended from time to time, shall apply to the Contract process and shall be deemed incorporated into
2 each Contract entered into by the City.

3 (e) The Agricultural Commissioner shall maintain a standard form "Urban Agriculture
4 Incentive Zones Contract" containing all required provisions specified by this section and state law.
5 Any modifications to the City's standard form contract made by the property owner shall be subject to
6 approval by the City Attorney prior to consideration by the Agricultural Commissioner or the Board of
7 Supervisors.

8 **SEC. 53A.7. SITE INSPECTION.**

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

11 (b) During each subsequent year in which the Contract is in force, the Agricultural
12 Commissioner shall conduct an annual site inspection to verify the property owner's conformance to
13 the terms of the Contract.

14 (c) The Agricultural Commissioner's determination of conformance with the Contract shall be
15 based on the criteria outlined in Section 53A.5(a) as well as:

16 (1) evidence of plants being cultivated as demonstrated by: active soil management,
17 weeding, pruning, and other active farming and gardening techniques; and/or evidence of animal
18 husbandry demonstrated by active bee hives, chicken coops, or other animal husbandry practices; and

19 (2) any specific requirements of the Contract.

20 **SEC. 53A.8. CONTRACT CANCELLATION.**

21 (a) If the Agricultural Commissioner finds that a property owner is in breach of the terms of the
22 Contract, the Agricultural Commissioner shall notify in writing the Assessor-Recorder, the Planning
23 Department, and the property owner of his or her intent to cancel the Contract. The property owner
24 may file a written appeal of this determination with the Clerk of the Board of Supervisors within 30
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1 days of notification. If the appeal is timely filed, the Clerk of the Board of Supervisors shall calendar
2 the appeal for hearing before the Board of Supervisors within 45 days of its filing.

3 (b) The cancellation shall become final within 30 days of notification if no appeal is filed or, if
4 an appeal is filed, on the date the Board of Supervisors upholds the cancellation. Once the appeal is
5 final, the Agricultural Commissioner shall submit written notice of the cancellation of the Contract to
6 the property owner, Assessor-Recorder, and Planning Department and shall record a notice of
7 cancellation of the Contract against the property.

8 (c) A property owner may cancel the Contract at any time by submitting written notice to the
9 Agricultural Commissioner and upon payment of any required fee pursuant to subsection (d) below.
10 The property owner shall record a notice of cancellation of the Contract against the property.

11 (d) Upon cancellation of any Contract prior to the expiration of its term, the property owner
12 shall pay to the Treasurer-Tax Collector a cancellation fee equal to the cumulative value of the tax
13 benefit received during the duration of the Contract, as determined by the Assessor-Recorder. This fee
14 shall include the cumulative tax owed, including interest. The property owner may appeal payment of
15 this fee to the Board of Supervisors either: (1) as part of any appeal of the cancellation if the
16 cancellation is initiated by the Agricultural Commission; or (2) through a separate appeal of the fee if
17 the cancellation is initiated by the property owner. Any separate appeal of the fee shall be filed with the
18 Clerk of the Board of Supervisors within 10 days of the property owner's submittal of written
19 notification of cancellation under Subsection (c) above, and, if the appeal is timely filed, the Clerk of
20 the Board of Supervisors shall calendar the appeal for hearing within 45 days of filing. The Board of
21 Supervisors may waive payment of the fee, or any portion thereof, if it determines that the cancellation
22 was caused by extenuating circumstances despite the good faith effort by the landowner to comply with
23 the provisions of the Contract.

24 **SEC. 53A.9. CONTRACT RENEWAL AND EXTENSION.**

1 (a) Each year, by no later than October 15, the Agricultural Commissioner shall send each
2 property owner with an existing Contract a request for: confirmation that the property owner intends to
3 continue conforming to the Contract; documentation of any major modifications to the original
4 application; and payment for any annual fees for the administration of the Contract.

5 (b) This request shall also include a form for the property owner to apply for an extension of
6 the Contract for an additional term of up to five years, subject to the limitations provided in Section
7 53A.11. Any such extension application shall be subject to the same requirements as an initial
8 application, as set forth above.

9 **SEC. 53A.10. OUTREACH AND EDUCATION.**

10 The Recreation and Park Department, through its Urban Agriculture Program, shall coordinate
11 efforts with the Agricultural Commissioner to engage in community outreach and education regarding
12 the Urban Agriculture Incentive Zones program and support the application and approval process. The
13 Recreation and Park Department may assign staff to assist applicants in their initial assessment of their
14 site and provide any needed technical assistance.

15 **SEC. 53A.11. SUNSET PROVISION.**

16 Pursuant to the Urban Agriculture Incentive Zones Act, the City shall not enter into a new
17 Contract or renew an existing Contract after January 1, 2019, unless the Urban Agriculture Incentive
18 Zones Act is amended to permit Contracts after that date. Notwithstanding the foregoing, any Contract
19 entered into pursuant to the Urban Agriculture Incentive Zones Act and this Chapter 53A on or before
20 January 1, 2019, shall be valid and enforceable for the duration of the Contract.

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22 Section 5. Fee Report. Within one year of the effective date of this ordinance, the
23 Agricultural Commissioner, in consultation with the Planning Department, the Assessor-
24 Recorder, and the City Attorney's Office, shall provide a report to the Board of Supervisors
25 recommending the amount of fees to be paid to administer this program. Specifically, the

1 report shall recommend the amount of three potential fees: (1) a proposed fee to pay for the
2 time and materials required for the Planning Department to make an eligibility determination;
3 (2) a proposed fee to pay for the time and materials required to process an application for a
4 Contract, based upon the estimated actual costs to perform the work, including the costs of
5 the City Attorney, the Agricultural Commissioner, and the Assessor-Recorder; and (3) a
6 proposed fee to pay for the actual annual cost of inspecting a property under Contract and
7 determining compliance with the Contract.

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9 Section 6. Effective Date. This ordinance shall become effective 30 days after
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
11 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
12 of Supervisors overrides the Mayor's veto of the ordinance.

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14 APPROVED AS TO FORM:
15 DENNIS J. HERRERA, City Attorney

16 By: _____
17 MARLENA G. BYRNE
18 Deputy City Attorney

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