

Chapter 17.730 AGRICULTURAL PRESERVATION PROGRAM

17.730.010 Purpose and Findings

A. **Purpose.** The purpose of this chapter is to implement the agricultural preservation policies contained in the Brentwood General Plan with programs designed to support preservation, and provide appropriate programs for lands located within, or adjacent to the Brentwood Planning Area or its approved sphere of influence. This includes mitigating the loss of productive agricultural lands converted for urban uses within the City by permanently protecting agricultural lands planned for agricultural use through the use of agricultural conservation easements or fee title purchase of lands and permitting a transfer of agricultural credits (TAC) from “agricultural donor parcels” within the TAC target area to “receiver parcels.” This also includes the development of programs that create incentives for the continuation of agricultural operations. It is the policy of the City that conservation easements and fee title purchase programs are important for the long term protection of agricultural lands. It is further the policy that additional incentive-based programs and measures should be taken to encourage the continuation and expansion of agricultural operations, including but not limited to, place-based marketing to increase the value of the agricultural crops grown around Brentwood, grants to fund local co-ops and marketing programs, agri-tourism and agri-business development, as well as loan programs that promote the planting of permanent crops and value-added production.

B. **Findings.** The City Council finds this chapter is necessary for the following reasons: (1) viable and active agricultural operations around the City’s urban edge provide unique visual and economic benefits to the City; (2) agricultural land around Brentwood is of highly productive quality; (3) the Brentwood General Plan sets forth policies to preserve productive agricultural lands and provide for appropriate programs; (4) loss of agricultural land is determined to be a significant impact under the California Environmental Quality Act (CEQA); and (5) loss of productive agricultural land will have a cumulatively negative impact on air quality, traffic, noise, public services demands, and aesthetics in the City and in the County of Contra Costa.

17.730.020 Definitions

- A. “Agricultural land” for the purposes of this chapter means those land areas of Contra Costa County specifically designated as Agricultural Core (AC) or Agricultural Lands (AL) as defined in the Contra Costa County General Plan; those land areas near the City designated as Agricultural Conservation (AC) as defined in the Brentwood General Plan; and/or other lands upon which agricultural activities, uses, operations or facilities exist or could exist that contain Class I, II, III or IV soils as defined by the United States Department of Agriculture Natural Resource Conservation Service.
- B. “Agricultural preservation” means those activities and programs that preserve productive agricultural lands in Brentwood’s Planning Area. These activities include programs to

secure agricultural lands, as well as agricultural enterprise programs that create incentives for the continuation of agriculture.

- C. “Agricultural enterprise” means activities and programs that encourage the continued use of agricultural lands, including, but not limited to marketing support for area farmers, and grant and loan programs that reinvest in the agricultural economy, (plantings of key crops or additional agricultural operations –wholesale and/or retail - to make farming economically feasible). The following are examples of agricultural enterprise programs:
1. Place-based marketing efforts to increase the value of products grown in the Brentwood region, such as the certification program “Brentwood Grown.”
 2. Agri-tourism programs and activities that encourage visits to the Brentwood region and benefit the local economy.
 3. Investment in value-added infrastructure programs to promote growth industries, such as wine and olive oil in Brentwood, including but not limited to:
 - a. Funding for City-sponsored tasting rooms, incubators for processing grapes and olives, and commercial kitchens.
 - b. Loan programs for the development of private facilities, such as wineries, commercial kitchens and tasting rooms.
 4. Loan programs to area farmers for the planting of permanent crops, such as orchards and vines.
 5. Marketing grants for local cooperatives and organizations.
- D. “Agricultural operations” means normal and customary farming and agricultural activities which may occur during any 24-hour period of the day. Normal and customary farming and agricultural activities include, but are not limited to, the cultivation and tillage of the soil, the irrigation, cultivation, growing, harvesting, and processing of any agricultural commodity for wholesale or retail markets, including viticulture, horticulture, the keeping and raising of livestock, fur bearing animals, fish or poultry, and any commercial agricultural practices, including value-added production of an agricultural commodity, performed as incident to or in conjunction with such activities including preparation for market, delivery to storage or to market, carriers for transportation to market, or for retail sales allowed by zoning on site.
- E. “Agricultural conservation easement” means an easement over certain agricultural lands designated in this chapter for the purpose of restricting its use to agricultural operations. The interest granted pursuant to an agricultural conservation easement is an interest in land which is less than fee simple. Agricultural conservation easements can be

permanent. However, mitigation funds should be available to fund term easements at minimum lengths to be determined by the City Council.

- F. “Fee title purchase” means a real estate transaction in which the City or a qualified entity purchases the entire property fee simple.

- G. “Receiver parcel” means a residentially zoned parcel within the city’s jurisdiction to which agricultural credits are transferred.

- H. “Transferable agricultural credit” means a potential transferable credit to construct dwelling unit(s) in a city residential zoning district, which can only be exercised when the agricultural credit has been transferred pursuant to the provisions of this section from a donor to a receiver parcel and all other legal requirements are fulfilled. (Ord. 683 § 3 (part), 2001)

- I. “Qualified land trust” means a nonprofit public benefit 501(c)3 corporation operating in Contra Costa County for the purpose of conserving and protecting land in its natural, rural or agricultural condition. All land trusts or conservation groups must be approved by the City Council or its designee to hold, administer or steward lands acquired by the City.

- J. “Qualified entity,” means any individual or group representing a property owner in the agricultural areas identified for conservation. All entities must be approved by the City Council or its designee to receive any financial benefits associated with an agricultural easement or fee title purchase transaction.

17.730.030 Agricultural Preservation Program and Requirements

A. The City shall require agricultural preservation by any applicant for a subdivision or any other discretionary land use entitlement which will permanently change agricultural land over one acre in size to any nonagricultural use. The City shall impose a condition of approval requiring the applicant to comply with this chapter.

B. Agricultural preservation shall be satisfied by one of the following mechanisms:

1. Granting an agricultural conservation easement to or for the benefit of the City and/or a qualified land trust approved by the City on agricultural land deemed acceptable by the City. The easement shall encumber the exact acreage of the proposed entitlement, including any land used for park and recreation purposes and may encumber land acquired by the City and/or qualified land trust in fee; or

2. Payment of an in-lieu fee established by City Council resolution. The fee may be adjusted annually but may not be increased by more than ten percent during any twelve-month period.

17.730.040 Eligible Land for Agricultural Conservation Easement

A. In the establishment of any agricultural conservation easement, the City shall avoid the creation of any situation in which a property owner who does not participate in the program, would have any access, utility or infrastructure easements negatively impacted, unless the nonparticipating property owner consents. In addition, any nonparticipating property owner shall not have their land unduly impacted as to present or future development potential, by the creation of nonparticipating land “islands” (where the nonparticipating land is completely surrounded by properties participating in the program), unless the nonparticipating property owner consents.

B. The following minimum criteria shall be met for a property to be eligible for placement in an agricultural conservation easement:

1. The property shall have adequate water supply to support viable agricultural use on the land. The water supply for the land shall be protected in the agricultural conservation easement;

2. The property shall be of adequate size, configuration and location to be viable for continued agricultural use; and

3. The property must meet at least one of the following criteria:

a. The property must be located along a roadway and contain unique visual values;
or

b. The property must be contiguous with other areas sought for agricultural protection which comprise a minimum of ten acres.

4. The property must be located in the following areas:

a. The Brentwood Agricultural Conservation Area as defined on the Brentwood general plan land use map, which area shall be given first priority; or

b. The Contra Costa County Agricultural Core lands as defined by the Contra Costa County General Plan; or

c. Agricultural land within the city limits that possess unique agricultural, visual, historic or other important values may also be considered.

C. A property is ineligible for an agricultural conservation easement if one or both of the two circumstances below apply:

1. The property is already subject to easements or physical conditions that legally or practicably prevent modification of the property's land use to a nonagricultural use; or
2. The property is currently encumbered by a conservation easement of any nature or kind.

17.730.040 Procedure for establishment of transferable agricultural credits.

A. Transferable agricultural credits are eligible to be allocated to the property owners of record of agricultural land within the approximately two thousand one hundred sixty acre portion of the established Contra Costa County Agricultural Core Area, that is bounded by Marsh Creek on the west, the East Contra Costa Irrigation District Main Canal on the north, Sellers Avenue on the east, and Marsh Creek Road on the south except as noted in Exhibit 1 for approximately one hundred sixty acres south of Marsh Creek Road. This area consists of donor parcels and is identified in Exhibit 1 which is hereby attached and made part of the ordinance codified in this chapter.

B. Transferable agricultural credits shall run with the land. Existing agricultural parcels in the subject area over an acre in size are eligible to transfer two credits for one acre of agricultural land which is placed in a permanent conservation easement. For parcels of land that include fractional acreage, the calculation of agricultural credits above 0.5 shall be considered a full agricultural credit (Example: Parcel size: 19.8 acres x 2 = 39.6 credits, rounded to 40 credits; Parcel size: 19.6 acres x 2 = 39.2 credits, rounded to 39 credits). (Ord. 683 § 3 (part), 2001)

17.730.050 Terms of Agricultural Conservation Easement

A. All owners of the property shall execute an agricultural conservation easement or other legal instrument. The instrument shall be in recordable form and contain an accurate legal description setting forth the description of the land. The instrument shall prohibit any activity that substantially impairs or diminishes the agricultural productivity of the land. The instrument shall protect the existing water rights and retain them with the agricultural mitigation land.

B. The City or a qualified land trust shall pay the costs of administering, monitoring and enforcing the instrument. The City shall be a named beneficiary under any instrument conveying the interest in the agricultural mitigation land to a qualified land trust, unless waived by the City Council.

C. Interests in the property shall be held in trust by a qualified land trust and/or the City.

D. If a court of law finds that the public interests described in this section of this chapter can no longer reasonably be fulfilled as to an interest acquired, the interest in the agricultural mitigation land may be extinguished through sale, and the proceeds shall be redeposited into the City's mitigation fund account, and be used to continue agricultural preservation programs as approved by the City and provided in this chapter.

E. If any qualified land trust owning an interest in agricultural mitigation land ceases to exist, the duty to hold, administer, monitor and enforce the interest shall pass to the City.

17.730.060 Use of In-Lieu Fees

The in-lieu fee paid to the City shall be placed in a separate account, and funds from this account, as well as interest earned shall be used to fund conservation easements, fee title purchases by the City, as well as the agricultural preservation and enterprise programs that are consistent with the land use designations and policies included in the City's General Plan and Municipal Code. Twenty percent of the fees collected may be used for administrative purposes and be placed in a separate account.

17.730.070 Precedence

This chapter shall take precedence over any other provision of the Brentwood Municipal Code in conflict with this chapter.

17.730.080 Monitoring

On a periodic basis the community development director shall publish a report delineating the activities undertaken pursuant to the requirements of this chapter and an assessment of these activities. The report shall list and report on the status of all lands and easements acquired under this chapter.

17.730.090 Violations; Enforcement

Any person or entity who violates any provision of this chapter shall be deemed guilty of an infraction and, upon conviction thereof, shall be punished by a fine not exceeding the maximum prescribed by law. In addition, any person or entity who violates any provision of this article shall be liable to the transferee of the property for actual damages. In an action to enforce such liability or fine, the prevailing party shall be awarded reasonable attorneys' fees.