

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

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 creating procedures for implementing the program; 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. _____, and the Board hereby
5 incorporates 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. Fees.

5 Sec. 53A.11. Outreach and Education.

6 Sec. 53A.12. Sunset Provision.

7 **SEC. 53A.1. PURPOSE.**

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

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

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

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

22 An Urban Agriculture Incentive Zone, pursuant to California Government Code Section 51040
23 et seq., the boundaries of which include the entirety of the City and County of San Francisco, is hereby
24 established for the City and County of San Francisco for the purpose of entering into enforceable

1 contracts with landowners, on a voluntary basis, for the use of vacant, unimproved, or blighted lands
2 for small-scale agricultural use.

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

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

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

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

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

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

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

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

1 (a) Application for a Contract: After obtaining a certificate of eligibility for the property, the
2 property owner shall submit an application for a Contract, including but not limited to the certificate of
3 eligibility, any required documentation regarding the property described in section 53A.3(b), and a
4 description of the intended agricultural use of the property including current and proposed site plans
5 and a development schedule for the property, to the Agricultural Commissioner on forms provided by
6 the Agricultural Commissioner.

7 (b) Application Deadlines. The annual deadline to submit an application to the Agricultural
8 Commissioner for a Contract shall be October 1.

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

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

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

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

23 (2) that the entire property is dedicated to agricultural use. The Agricultural
24 Commissioner shall consider whether certain site features support agricultural use of the site,
25 including but not limited to: educational space; preparation, washing, and harvest areas; storage

1 space; and vehicle access areas. These types of site features shall not preclude approval of a Contract
2 as long as the features are accessory to the agricultural use and permitted under the Planning Code on
3 the property proposed for Contract; and

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

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

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

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

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

22 (b) Assessor-Recorder Review. If the Agricultural Commissioner recommends initial approval
23 of the application, he or she shall forward the application to the Assessor-Recorder for review. Within
24 30 days of receipt, the Assessor-Recorder shall provide the Agricultural Commissioner with a report
25 estimating the yearly property tax revenue to the City under both the urban agriculture incentive zones

1 contract valuation method and under the standard valuation method and estimating the difference in
2 property tax assessments under the two valuation methods for the term of the proposed Contract. In
3 making this estimate, the Assessor-Recorder shall use the current-year Board of Equalization published
4 tax rate.

5 (c) Administrative Approval. A Contract may be approved by the Agricultural Commissioner
6 at his or her sole discretion if: (1) the proposed Contract would not result in a tax revenue loss of more
7 than \$25,000 per year or more than \$125,000 for the term of the contract, as calculated based on the
8 Assessor-Recorder's estimate; and (2) approval of the proposed Contract would not result in
9 contiguous parcels totaling five acres or more under contract at the same time. If the Agricultural
10 Commissioner disapproves an application, such decision shall be final unless the property owner files
11 an appeal with the Clerk of the Board of Supervisors within 10 days of the final action of the
12 Agricultural Commissioner.

13 (d) Board of Supervisors Approval. Any proposed Contract not meeting the tax revenue loss
14 conditions set forth in subsection (c) above for approval by the Agricultural Commission shall be
15 forwarded by the Agricultural Commissioner to the Clerk of the Board of Supervisors with a
16 recommendation. The Board of Supervisors shall conduct a public hearing to review the Agricultural
17 Commissioner's recommendation, the Assessor-Recorder's report, and any other information the Board
18 requires in order to determine whether the City should execute the proposed Contract. The Board of
19 Supervisors may approve, disapprove, or modify and approve the Contract and shall have full
20 discretion to determine whether it is in the public interest to enter into the proposed Contract.

21 (e) Following approval of the Contract by the Agricultural Commissioner or the Board of
22 Supervisors, the Agricultural Commissioner shall send written notification to the Assessor-Recorder
23 and to the property owner. The Agricultural Commissioner shall execute the approved Contract upon
24 his or her determination that the property owner has obtained all other required approvals for the
25 proposed agricultural use, including but not limited to any required change of use or conditional use

1 permit. Once executed, the property owner shall record the Contract against the property. Once the
2 Contract is recorded against the property, the Assessor-Recorder shall apply the reduced property tax
3 valuation methodology to the property at the next property tax lien date.

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

5 (a) The Contract shall set forth the agreement between the City and the property owner that as
6 long as the property owner properly conducts permitted agricultural uses on the property as set forth in
7 the Contract, the City shall comply with California Revenue and Taxation Code Article 1.5 of Chapter
8 3 of Part 2 of Division 1, commencing with Section 422.7, provided that the specific provisions of the
9 Revenue and Taxation Code are applicable to the property in question. A Contract shall contain, at a
10 minimum, the following provisions:

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

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

15 (3) Permission to allow periodic examinations of the property under Contract by the
16 Assessor-Recorder, the Department of Building Inspection, the Planning Department, the Agricultural
17 Commissioner, and the State Board of Equalization as may be necessary for tax assessment purposes
18 or to determine the property owner's compliance with the Contract and state and local law;

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

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

24 (6) That agricultural activity shall commence on the property within 30 days of the
25 recordation of the Contract;

1 (7) That the property owner must report in writing to the Agricultural Commissioner
2 any cessation of agricultural use for any reason, including but not limited to due to the loss of a tenant
3 who was conducting agricultural uses on the property, within two weeks of the cessation of activity and
4 that the property owner must resume agricultural activity within 60 days of any such cessation or face
5 cancellation of the Contract.

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

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

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

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

15 (d) The City and the property owner shall comply with all provisions of the Urban Agriculture
16 Incentive Zones Act, including amendments thereto. The Urban Agriculture Incentive Zones Act, as
17 amended from time to time, shall apply to the Contract process and shall be deemed incorporated into
18 each Contract entered into by the City.

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

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

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

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

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

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

11 (2) any specific requirements of the Contract.

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

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

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

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

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

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

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

22 (b) This request shall also include a form for the property owner to apply for an extension of
23 the Contract for an additional term of up to five years, subject to the limitations provided in Section
24 53A.12. Any such extension application shall be subject to the same requirements as an initial
25 application, as set forth above.

1 **SEC. 53A.10. FEES.**

2 (a) The Planning Department shall determine the amount of a fee necessary to compensate the
3 City for processing and administering the determinations of eligibility for a property seeking a
4 Contract. The Agricultural Commissioner, in consultation with the Assessor-Recorder, shall determine
5 the amount of a fee to pay for the time and materials required to process the application for a Contract,
6 based upon the estimated actual costs to perform the work, including the costs of the City Attorney, the
7 Agricultural Commissioner, and the Assessor-Recorder. The Agricultural Commissioner, in
8 consultation with the Assessor-Recorder, shall determine the amount of a separate fee, following
9 approval of a Contract, to pay for the actual annual cost of inspecting the property and determining
10 compliance with the Contract. In the event that the costs of processing the application are lower than
11 the estimates, such differences shall be refunded to the applicant. Failure to pay any fees, including but
12 not limited to recordation fees to the Assessor-Recorder, shall be grounds for cancelling the Contract.

13 (b) The combined total of the eligibility determination fee and application fee shall not exceed
14 \$250; however, this amount may be adjusted for inflation based on the Consumer Price Index. The
15 amount of the annual inspection fee shall not exceed \$250 annually; however, this amount may be
16 adjusted for inflation based on the Consumer Price Index. Any fee payable to the Assessor-Recorder to
17 record the contract shall not be counted toward these limitations.

18 **SEC. 53A.11. OUTREACH AND EDUCATION.**

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

24 **SEC. 53A.12. SUNSET PROVISION.**

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

6
7 Section 5. Effective Date. This ordinance shall become effective 30 days after
8 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
9 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
10 of Supervisors overrides the Mayor's veto of the ordinance.

11
12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14 By: _____
15 MARLENA G. BYRNE
 Deputy City Attorney

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