

Jesse Arreguín
Councilmember, District 4

CONSENT CALENDAR
December 3, 2013

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguin
Subject: Implementing Urban Agriculture Incentive Zones

RECOMMENDATION:

Direct the City Manager to review the recently signed law, Assembly Bill 551 (Urban Agriculture Incentive Zone Act) and develop legislation for possible implementation of an Urban Agriculture Incentive Zone in the City of Berkeley. The City Manager when providing a report back to the City Council should provide an analysis of the law and the legal requirements that have to be met, the feasibility of implementation in Berkeley, and the potential benefits and financial implications of implementing an Urban Agriculture Incentive Zone.

BACKGROUND:

Governor Jerry Brown recently signed into law Assembly Bill 551 (the Urban Agriculture Incentives Zone Act) introduced by Assembly member Phil Ting, which authorizes cities and counties under specified conditions and until January 1, 2019 to enter into voluntary contracts for a period of 5 years with landowners to use vacant, unimproved or blighted lands for small-scale agricultural use, in exchange for a lower tax assessment. The law would apply to parcels of 0.10 acres or more.

This law is based on the state Williamson Act which authorizes cities and counties to enter into 10-year contracts with owners of land devoted to agricultural use, who agree to use the land for agricultural purposes in exchange to a reassessment of the land at a tax rate equal to rural farm land.

Similar to the Williamson Act, AB 551 requires the county assessor to value property that is enforceably restricted by a contract entered into under the Urban Agriculture Incentive Zones Act to a rate equal to the average per-acre value of irrigated cropland in California.

Under AB 551 a City after a public hearing and upon approval of the Board of Supervisors of the county in which the City is located, can adopt an ordinance establishing an Urban Agriculture Incentive Zone for the purpose of entering into enforceable contracts with owners of vacant, unimproved or blighted property for small-scale agricultural use. A City can after adopting legislation establishing a UAIZ and adopt rules and regulations consistent with the City's zoning for the administration of the Urban

Agriculture Incentive Zone and for the purpose of entering into contracts with property owners under the UAIZ.

AB 551 creates incentives for the temporary re-use of vacant land for community gardens and urban farms. The City of Berkeley's Climate Action Plan (CAP) includes policies to promote urban farming to reduce green house gas emissions associated with the transport of food, as well as to promote community resiliency and improve public health. Goal 2 of the CAP Land Use Chapter states : *"Increase and enhance urban green and open space, including local food production, to improve the health and quality of life for residents, protect biodiversity, conserve natural resources, and foster walking and cycling."*

Policy 2.c of the CAP Land Use Chapter states: *"Increase access to healthy and affordable foods for the community by supporting efforts to build more complete and sustainable local food production and distribution systems."*

The implementation of UAIZs will generate more green spaces in our cities and create environmentally sustainable farms that co-exists with local eco-systems. UAIZs are a direct solution to food deserts—districts with little or no access to fresh and affordable food. In California alone, nearly one million people live in food deserts and a startling 13.5 million Americans reside in food deserts.

The lack of affordable fresh and healthy food (due to distance and/or financial capacity) is associated with high risks of obesity and malnutrition that significantly affects low-income and working class families. Access to health is a human right, and lack of open green space and fresh food is detrimental to our communities and our youth.

For these many reasons the Berkeley City Council on July 2, 2013 adopted Resolution 66,243 supporting Assembly Bill 551, the Urban Agriculture Incentive Zones Act. This item seeks to analyze implementation of the law by creating an Urban Agriculture Incentive Zone in Berkeley.

FINANCIAL IMPLICATIONS:

Unknown. Staff time involved in analyzing Assembly Bill 551, considering its feasibility in Berkeley and developing legislation for establishing an Urban Agriculture Incentive Zone (UAIZ). If the City Council adopts legislation allowing for UAIZ in Berkeley some properties who chose to take advantage of the law will be assessed at a lower tax rate, at a rate equal to rural farm land. However despite reduced real estate tax revenue to the City, the community would benefit by having local community gardens and urban farms that grow local produce, help build community, and provide healthy local food options to improve the health and wellness of the Berkeley community.

CONTACT PERSON:

Jesse Arreguin, Councilmember, District 4

981-7140

Attachments:

1. Text of Assembly Bill 551
2. Resolution No. 66,243, Supporting Assembly Bill 551

Assembly Bill No. 551

CHAPTER 406

An act to add Chapter 6.3 (commencing with Section 51040) to Part 1 of Division 1 of Title 5 of the Government Code, and to amend Section 402.1 of, and to add Section 422.7 to, the Revenue and Taxation Code, relating to local government.

[Approved by Governor September 28, 2013. Filed with Secretary of State September 28, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 551, Ting. Local government: urban agriculture incentive zones.

(1) Existing law, the Williamson Act, authorizes a city or county to enter into 10-year contracts with owners of land devoted to agricultural use, whereby the owners agree to continue using the property for that purpose, and the city or county agrees to value the land accordingly for purposes of property taxation. Existing law authorizes the parties to a Williamson Act contract to mutually agree to rescind a contract under the act in order to simultaneously enter into an open-space easement for a certain period of years.

This bill would enact the Urban Agriculture Incentive Zones Act and would authorize, under specified conditions and until January 1, 2019, a city, county, or city and county and a landowner to enter into a contract to enforceably restrict the use of vacant, unimproved, or otherwise blighted lands for small-scale production of agricultural crops and animal husbandry. The bill would require a contract entered into pursuant to these provisions to, among other things, be for a term of no less than 5 years and to enforceably restrict property that is at least 0.10 acres in size.

(2) Existing law requires the county assessor to consider, when valuing real property for property taxation purposes, the effect of any enforceable restrictions to which the use of the land may be subjected. Under existing law these restrictions include, but are not limited to, zoning, recorded contracts with governmental agencies, and various other restrictions imposed by governments.

This bill would require the county assessor to value property that is enforceably restricted by a contract entered into pursuant to the Urban Agriculture Incentive Zones Act at the rate based on the average per-acre value of irrigated cropland in California, adjusted proportionally to reflect the acreage of the property under contract, as most recently published by the National Agricultural Statistics Service of the United States Department of Agriculture. The bill would also require the State Board of Equalization to post the per-acre land value as published by the National Agricultural Statistics Service of the United States Department of Agriculture on its

Internet Web site within 30 days of publication, and to provide the rate to county assessors no later than January 1 of each assessment year.

The people of the State of California do enact as follows:

SECTION 1. Chapter 6.3 (commencing with Section 51040) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

CHAPTER 6.3. URBAN AGRICULTURE INCENTIVE ZONES

51040. This chapter shall be known, and may be cited, as the Urban Agriculture Incentive Zones Act.

51040.1. The Legislature finds and declares that it is in the public interest to promote sustainable urban farm enterprise sectors in urban centers.

The Legislature further finds and declares the small-scale, active production of marketable crops and animal husbandry, including, but not limited to, foods, flowers, and seedlings, in urban centers is consistent with, and furthers, the purposes of this act.

51040.3. For purposes of this chapter, the following terms have the following meanings:

(a) “Urban” means an area within the boundaries of an urbanized area, as that term is used by the United States Census Bureau, that includes at least 250,000 people.

(b) “Urban Agriculture Incentive Zone” means an area within a county or a city and county that is comprised of individual properties designated as urban agriculture preserves by the county or the city and county for farming purposes.

(c) “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.

51042. (a) (1) (A) A county or city and county may, after a public hearing, establish by ordinance 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.

(B) A city may, after a public hearing and approval from the board of supervisors of the county in which the city is located, establish by ordinance 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.

(2) Following the adoption of the ordinance pursuant to paragraph (1), a city, county, or city and county that has established an Urban Agriculture Incentive Zone within its boundaries may adopt rules and regulations consistent with the city, county, or city and county's zoning and other ordinances, for the implementation and administration of the Urban Agriculture Incentive Zone and of contracts related to that Urban Agriculture Incentive Zone.

(A) The city, county, or city and county may impose a fee upon contracting landowners for the reasonable costs of implementing and administering contracts.

(B) The city, county, or city and county shall impose a fee equal to the cumulative value of the tax benefit received during the duration of the contract upon landowners for cancellation of any contract prior to the expiration of the contract, unless the city, county, or city and county makes a determination that the cancellation was caused by extenuating circumstances despite the good faith effort by the landowner.

(b) Following the adoption of the ordinance as required by subdivision (a), a city, county, or a city and county may enter into a contract with a landowner to enforceably restrict the use of the land subject to the contract to uses consistent with urban agriculture. Any contract entered into pursuant to this chapter shall include, but is not limited to, all of the following provisions:

(1) An initial term of not less than five years.

(2) A restriction on property that is at least 0.10 acres, and not more than three acres.

(3) A requirement that the entire property subject to the contract shall be dedicated toward commercial or noncommercial agricultural use.

(4) A prohibition against any dwellings on the property while under contract.

(5) A notification that if a landowner cancels a contract, a city, county, or city and county is required to assess a cancellation fee, pursuant to subparagraph (B) of paragraph (2) of subdivision (a).

(c) 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.

(d) A contract entered into pursuant to this chapter that includes a prohibition on the use of pesticide or fertilizers on properties under contract shall permit those pesticides or fertilizers allowed by the United States Department of Agriculture's National Organic Program.

(e) A city, county, or city and county shall not enter into a new contract, or renew an existing contract pursuant to this chapter after January 1, 2019. Any contract entered into pursuant to this chapter on or before January 1, 2019, shall be valid and enforceable for the duration of the contract.

(f) 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.

(g) A county or a city and county shall not establish an Urban Agriculture Incentive Zone within any portion of the spheres of influence of a city unless the legislative body of the city has consented to the establishment of the Urban Agriculture Incentive Zone.

(h) A city, county, or city and county shall not establish an Urban Agriculture Incentive Zone in any area that is currently subject to, or has been subject to within the previous three years, a contract pursuant to the Williamson Act (Article 1 (commencing with Section 51200) of Chapter 7 of Part 1 of Division 1 of Title 5).

SEC. 2. Section 402.1 of the Revenue and Taxation Code is amended to read:

402.1. (a) In the assessment of land, the assessor shall consider the effect upon value of any enforceable restrictions to which the use of the land may be subjected. These restrictions shall include, but are not limited to, all of the following:

(1) Zoning.

(2) Recorded contracts with governmental agencies other than those provided in Sections 422, 422.5, and 422.7.

(3) Permit authority of, and permits issued by, governmental agencies exercising land use powers concurrently with local governments, including the California Coastal Commission and regional coastal commissions, the San Francisco Bay Conservation and Development Commission, and the Tahoe Regional Planning Agency.

(4) Development controls of a local government in accordance with any local coastal program certified pursuant to Division 20 (commencing with Section 30000) of the Public Resources Code.

(5) Development controls of a local government in accordance with a local protection program, or any component thereof, certified pursuant to Division 19 (commencing with Section 29000) of the Public Resources Code.

(6) Environmental constraints applied to the use of land pursuant to provisions of statutes.

(7) Hazardous waste land use restriction pursuant to Section 25240 of the Health and Safety Code.

(8) A recorded conservation, trail, or scenic easement, as described in Section 815.1 of the Civil Code, that is granted in favor of a public agency, or in favor of a nonprofit corporation organized pursuant to Section 501(c)(3) of the Internal Revenue Code that has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use.

(9) A solar-use easement pursuant to Chapter 6.9 (commencing with Section 51190) of Part 1 of Division 1 of Title 5 of the Government Code.

(b) There is a rebuttable presumption that restrictions will not be removed or substantially modified in the predictable future and that they will

substantially equate the value of the land to the value attributable to the legally permissible use or uses.

(c) Grounds for rebutting the presumption may include, but are not necessarily limited to, the past history of like use restrictions in the jurisdiction in question and the similarity of sales prices for restricted and unrestricted land. The possible expiration of a restriction at a time certain shall not be conclusive evidence of the future removal or modification of the restriction unless there is no opportunity or likelihood of the continuation or renewal of the restriction, or unless a necessary party to the restriction has indicated an intent to permit its expiration at that time.

(d) In assessing land with respect to which the presumption is un rebutted, the assessor shall not consider sales of otherwise comparable land not similarly restricted as to use as indicative of value of land under restriction, unless the restrictions have a demonstrably minimal effect upon value.

(e) In assessing land under an enforceable use restriction wherein the presumption of no predictable removal or substantial modification of the restriction has been rebutted, but where the restriction nevertheless retains some future life and has some effect on present value, the assessor may consider, in addition to all other legally permissible information, representative sales of comparable lands that are not under restriction but upon which natural limitations have substantially the same effect as restrictions.

(f) For the purposes of this section the following definitions apply:

(1) “Comparable lands” are lands that are similar to the land being valued in respect to legally permissible uses and physical attributes.

(2) “Representative sales information” is information from sales of a sufficient number of comparable lands to give an accurate indication of the full cash value of the land being valued.

(g) It is hereby declared that the purpose and intent of the Legislature in enacting this section is to provide for a method of determining whether a sufficient amount of representative sales information is available for land under use restriction in order to ensure the accurate assessment of that land. It is also hereby declared that the further purpose and intent of the Legislature in enacting this section and Section 1630 is to avoid an assessment policy which, in the absence of special circumstances, considers uses for land that legally are not available to the owner and not contemplated by government, and that these sections are necessary to implement the public policy of encouraging and maintaining effective land use planning. This statute shall not be construed as requiring the assessment of any land at a value less than as required by Section 401 or as prohibiting the use of representative comparable sales information on land under similar restrictions when this information is available.

SEC. 3. Section 422.7 is added to the Revenue and Taxation Code, to read:

422.7. (a) For purposes of this section, the term “open-space land” includes land subject to contract for an urban agricultural incentive zone, as defined in subdivision (b) of Section 51040.3 of the Government Code.

For purposes of this section, open-space land is enforceably restricted within the meaning of Section 8 of Article XIII of the California Constitution if it is subject to an urban agriculture incentive zone contract.

(b) (1) Open-space land subject to contract for an urban agricultural incentive zone pursuant to Section 52010.3 shall be valued for assessment at the rate based on the average per-acre value of irrigated cropland in California, adjusted proportionally to reflect the acreage of the property under contract, as most recently published by the National Agricultural Statistics Service of the United States Department of Agriculture.

(2) Notwithstanding the published rate, the valuation resulting from the section shall not exceed the lesser of either the valuation that would have resulted by a calculation under Section 110, or the valuation that would have resulted by a valuation under Section 110.1, as though the property was not subject to an enforceable restriction in the base year.

(c) The State Board of Equalization shall post the per-acre land value as published by the National Agricultural Statistics Service of the United States Department of Agriculture on its Internet Web site within 30 days of publication, and shall provide the rate to county assessors no later than January 1 of each assessment year.

RESOLUTION NO. 66,243–N.S.

SUPPORT OF ASSEMBLY BILL 551, ALLOWING A COUNTY OR A CITY TO ESTABLISH URBAN AGRICULTURE INCENTIVES ZONES (UAIZ) FOR THE PURPOSE OF SUPPORTING URBAN AGRICULTURE

WHEREAS, in urban spaces, unused land and vacant properties can be transformed to small scale farms and green spaces; and

WHEREAS, the implementation of UAIZs will generate more green spaces in our cities and create environmentally sustainable farms that co-exists with local eco-systems; and

WHEREAS, as one-fifth of the country's overall petroleum use is used for agriculture¹, consuming and purchasing locally grown food is shown to decrease the use and dependence on petroleum; and

WHEREAS, UAIZs are a direct solution to food deserts—districts with little or no access to fresh and affordable food. In California alone, nearly one million people live in food deserts and a startling 13.5 million Americans reside in food deserts²; and

WHEREAS, the lack of affordable fresh and healthy food (due to distance and/or financial capacity) is associated with high risks of obesity and malnutrition that targets mainly low-income and working class families³; and

WHEREAS, access to health is a human right, and lack of open green space and fresh food is detrimental to our communities and our youth; and

WHEREAS, Assembly Bill (AB) 551, authored by Assemblymember Phil Ting, would allow a county or a city to establish by ordinance an Urban Agriculture Incentive Zone for the purpose of supporting urban agriculture.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council hereby supports the Assembly Bill 551, Urban Agriculture Incentive Zones, so that vacant urban spaces can be utilized to create urban farms.

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to Senator Pro Tem Darrell Steinberg, Senator Loni Hancock, Assembly Speaker John A. Pérez, and Assemblymembers Nancy Skinner and Phil Ting.

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¹ "California Watch. "Nearly 1 million Californians Living in 'food deserts'" <<http://livinggreen.ifas.ufl.edu/food/local.html#csa>>

² University of Florida, "Locally Grown Food." <<http://livinggreen.ifas.ufl.edu/food/local.html>>

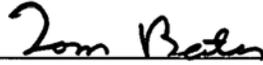
³ *ibid.*

The foregoing Resolution was adopted by the Berkeley City Council on June 25, 2013 by the following vote:

Ayes: Anderson, Arreguin, Capitelli, Maio, Moore, Wengraf, Worthington, Wozniak and Bates.

Noes: None.

Absent: None.



Tom Bates, Mayor

Attest: 

Mark Numairville, CMC, City Clerk