

CITY COUNCIL ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BRENTWOOD APPROVING THE BRENTWOOD AGRICULTURAL ENTERPRISE PROGRAM AND ADDING CHAPTER 17.730 TO THE BRENTWOOD MUNICIPAL CODE TO CONSERVE AGRICULTURAL LAND.

WHEREAS, agriculture is a historically and economically important component of the City of Brentwood; and

WHEREAS, it is the City's stated goal in the Conservation/Open Space Element of the General Plan to "preserve productive agriculture lands in Brentwood's Planning Area;" and

WHEREAS, Policy 1.14 of the Conservation/Open Space Element of the General Plan calls for the establishment of a program which secures permanent agriculture on lands designated for agriculture in the City and/or County General Plan; and

WHEREAS, Policy 1.1.5 of the Conservation/Open Space Element of the General Plan calls for the maintenance of prime agricultural lands south of the East Contra Costa Irrigation District Main Canal and east of Sellers Avenue and directing urban growth to the west and the north; and

WHEREAS, Policy 1.2.4 of the Conservation/Open Space Element of the General Plan calls for the developers inside the City to be responsible for mitigating impacts upon nearby agriculture; and

WHEREAS, Policy 1.4.1 of the Conservation/Open Space Element of the General Plan identifies the use of a density transfer program as a mechanism to investigate for agricultural preservation; and

WHEREAS, Policy 2.3.1 of the Economic Development Element of the General Plan calls for the establishment of a program to promote and maintain prime agricultural lands and locations for continued agricultural use, or agriculture supportive industries; and

WHEREAS, the City Council created an Agricultural Advisory Committee to recommend a program to protect Brentwood's agricultural land and to enhance agriculture in the vicinity of Brentwood; and

WHEREAS, the Advisory Committee held eleven publicly noticed meetings and has recommended an Agricultural Enterprise Program that includes land conservation strategies requiring the adoption of an implementing ordinance; and

WHEREAS, on October 25, 2000, the Brentwood Neighborhood Committee reviewed the draft Agricultural Enterprise Program and voted to support the report and recommend approval to the City Council; and

WHEREAS, on October 30, 2000, the Planning Commission conducted a duly noticed public hearing, considered public comments and passed Resolution 00-77 recommending approval of the proposed Agricultural Enterprise Program to the City Council; and

WHEREAS, this action has been reviewed per the California Environmental Quality Act (CEQA). Pursuant to Section 15061(a)(3) of CEQA this activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In addition, pursuant to Sections 15168(c) and 15162 of the CEQA Guidelines, the project is within the scope of development evaluated in the 1993 Brentwood General Plan Program EIR. No substantial changes have occurred to the circumstances under which that EIR was certified and no new information, which was not known and could not have been known at the time that the EIR was certified as complete, has become available relating to the environmental effects of this project. Therefore, the Program EIR for the 1993 General Plan is adequate for the approval relating to the project; and

WHEREAS, a Notice of Public Hearing was legally advertised in the Contra Costa Times on August 6, 2001, according to City policies and Government Code Section 65091; and

WHEREAS, the City Council held a public hearing on the proposed amendment on August 16, 2001, for the purpose of reviewing the Agricultural Enterprise Program Report, the draft ordinance, and the Council Agricultural Committee, Planning Commission, Neighborhood Committee and staff recommendations; and

WHEREAS, after close of the public hearing, the City Council considered all public comments received both before and during the public hearing, the presentation by City staff, the staff report, the recommendations, and all other pertinent documents and associated actions regarding the proposed Agricultural Enterprise Program and ordinance; and

WHEREAS, the City Council of the City of Brentwood makes the following finding per the Brentwood Municipal Code associated with this amendment:

This amendment is consistent with the General Plan and other applicable City plans, and is appropriate to the public interest, in that it will help implement several General Plan Policies by supporting the preservation of productive agricultural lands and the retention of the agricultural industry in the Brentwood vicinity which produces food, jobs, and a desirable quality of life and rural character which helps distinguish Brentwood from other communities within the San Francisco Bay Area region.

NOW, THEREFORE, the City Council of the City of Brentwood ordains as follows:

SECTION 1. The Brentwood Agricultural Enterprise Program Final Report, August 16, 2001 attached as Exhibit "A" is hereby adopted.

SECTION 2. The foregoing recitals and staff report are found and determined to be true and correct.

SECTION 3. Chapter 17.730 relating to Agricultural Land Conservation is hereby added to the Brentwood Municipal Code as follows:

Chapter 17.730

AGRICULTURAL LAND CONSERVATION

17.730.010	Purpose and Findings
17.730.020	Definitions
17.730.030	Agricultural Land Mitigation Requirements
17.730.040	Procedure For Establishment of Agricultural Credit
17.703.050	Eligible Lands To Satisfy Agricultural Land Mitigation Requirements
17.730.060	Requirements of Easements or Other Instruments
17.730.070	Procedure For Transfer of Agricultural Credits
17.730.080	City of Brentwood Farmland Conservation Program Advisory Committee
17.730.090	Formation of Local Land Trust
17.730.100	Monitoring
17.730.110	Violations and Enforcement
17.730.120	Precedence

17.730.010 Purpose and Findings

The purpose of this chapter is to implement the agricultural enterprise land conservation policies contained in the Brentwood General Plan with a program designed to protect and conserve agricultural 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, by working with farmers who voluntarily wish to place conservation easements on their land with fair compensation for such easements, and permitting a transfer of agricultural credits (TAC) from “agricultural donor parcels” within the TAC target area to “receiver parcels.”

The City Council finds this chapter is necessary for the following reasons: (1) to benefit the local economy and provide jobs; (2) East Contra Costa County farmland is of highly productive quality; (3) the City is surrounded by productive farmland on the north, east and south sides; (4) the continuation of agricultural operations preserves the existing landscape, environmental and aesthetic resources of the area; (5) the Brentwood General Plan sets forth policies to preserve productive farmland, including the development of a program to secure permanent agriculture on lands designated for agriculture in the City and/or county General Plan; (6) California is losing farmland at a rapid rate; (7) loss of agricultural land is consistently determined to be a significant impact under the California Environmental Quality Act (CEQA) in development projects; (8) loss of farmland to development is irreparable and agriculture is an important component of the region's economy and rural community character; and (9) losing

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.

It is the policy of the City to work cooperatively with Contra Costa County to preserve agricultural land within or adjacent to the Brentwood Planning Area and its adopted Sphere of Influence, beyond that land deemed necessary for development. It is further the policy of the City to protect and conserve agricultural land in its vicinity, especially in its Agricultural Conservation Area and Contra Costa County Core Agricultural Area south and east of the City's boundary.

17.730.020 Definitions

“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.

“Agricultural Donor Parcel” means a parcel of agricultural land from which agricultural credits are transferred

“Agricultural Enterprise Advisory Committee” means a committee appointed by the City Council to assist with the implementation of the City's Agricultural Enterprise Program and evaluate the effect of City policies on local growers and agricultural land owners.

“Agricultural Land or Farmland” for the purposes of this chapter shall mean those land areas of the County specifically designated as Agricultural Core (AC) or Agricultural Lands (AL) as defined in the Contra Costa 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 at the time of adoption of this ordinance that contain Class I, II, III or IV soils as defined by the United States Department of Agriculture Natural Resource Conservation Service.

“Agricultural Mitigation Land” means agricultural land encumbered by a farmland deed restriction, a farmland conservation easement or such other conservation mechanism acceptable to the City.

“Agricultural Operation” 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 production, 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 performed as incident to or in conjunction with such activities including preparation for market, delivery to storage or to market, or to carriers for transportation to market.

“Farmland Conservation Easement” means an easement over agricultural land for the purpose of restricting its use to agriculture. The interest granted pursuant to a farmland conservation easement is an interest in land which is less than fee simple. Farmland

conservation easements shall be permanent. However, mitigation funds should be available to fund term easements at minimum lengths to be determined by a new local land trust subject to the approval of the City.

“Farmland Deed Restriction” means a recorded deed restriction, covenant or condition which precludes the use of the agricultural land subject to the restriction for any nonagricultural purposes, use, operation or activity. The deed restriction shall provide that the land subject to the restriction will permanently remain agricultural land unless specified as a Term Easement as defined in this section.

“Qualifying Entity” 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. The following entities currently are qualifying entities: Contra Costa Land Trust, John Muir Heritage Land Trust and American Farmland Trust. Other entities may be approved by the City Council from time to time.

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

17.730.030 Agricultural Land Mitigation Requirements

In order to mitigate and offset the loss of valuable farmland resources, the City shall require agricultural land mitigation by any applicant for a subdivision or any other discretionary land use entitlement which will permanently change agricultural land over one acre in size within the City’s jurisdiction to any nonagricultural use.

Agricultural land mitigation shall be satisfied by one of the following mechanisms:

- (1) Granting a farmland conservation easement, a farmland deed restriction or other farmland conservation mechanism (including fee title purchase by the City or qualifying entity) to or for the benefit of the City and/or a qualifying entity approved by the City on lands deemed acceptable by the City. The mitigation shall be required for agricultural land that is permanently converted to an urban use, including any portion of the land used for park and recreation purposes, on a one to one land area ratio; or
- (2) By payment of an in lieu fee as established by City Council resolution, which shall be reviewed and adjusted periodically to ensure that the fee is adequate to offset the cost of purchasing farmland conservation easements on a one to one ratio. The fee shall be fixed for a twelve-month period after enactment of this ordinance. Thereafter the fee may be adjusted when deemed appropriate, but may not be increased by more than ten percent during any twelve-month period. For non-residential projects that the City Council determines are important for economic development purposes, some or all of the mitigation requirements of this chapter may be waived.

The in lieu fee, paid to the City, shall be placed in a trust account and used solely for farmland mitigation purposes. The interest from funds in this account shall also be used for farmland protection purposes. A limited portion, not to exceed five percent of the fees collected, may be used by the City or City–approved

qualifying entity for administrative costs associated with establishing, monitoring, and managing farmland conservation easements.

17.730.040 Procedure For Establishment of Transferable Agricultural Credits

Transferable agricultural credits are eligible to be allocated to the property owners of record of agricultural land within the approximately 2,160 acre portion of the established Contra Costa County Agricultural Core Area, in effect on the date of adoption of this ordinance, 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 160 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 this ordinance.

Transferable agricultural credits shall run with the land. Existing agricultural parcels in the subject area, and over an acre in size are eligible to transfer two credits for each acre of agricultural land which is placed in a permanent conservation easement. In the calculation of agricultural credits, a fraction which is 0.5 or larger shall be considered a full agricultural credit.

17.730.050 Eligible Lands To Satisfy Agricultural Land Mitigation Requirements

The following minimum criteria shall be met for a property to be eligible for placement in an agricultural conservation easement or satisfy agricultural land mitigation requirements identified within this chapter:

- The property shall have adequate water supply to support the historic agricultural use on the land. The water supply for the land shall be protected in the farmland conservation easement, the farmland deed restriction or other document evidencing the agricultural mitigation; or
- The property is of adequate size, configuration and location to be viable for continued agricultural use.

In addition, a property that meets any or all of the following criteria can be considered as agricultural mitigation land:

- The mitigation land is located along a roadway and contains unique visual values;
- The mitigation land is not strategically located for other economic development purposes;
- The mitigation land is contiguous with other areas sought for agricultural protection which comprise a minimum of 40 acres; and
- The mitigation land provides open space and wildlife habitat values.

The lands to be conserved are to be located in the following areas:

- First priority will be given to the Brentwood Agricultural Conservation Area as defined on the Brentwood General Plan Land Use Map.
- Lands to be conserved may also be located in the following areas: the Contra Costa County Agricultural Core lands as defined on the Contra Costa County General Plan Urban Limit Line Map.
- Agricultural land within the City limits that possess unique agricultural, visual, historic or other important values may also be considered.

A property is ineligible to serve as agricultural mitigation land 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.
- (2) The property is currently encumbered by a conservation easement of any nature or kind.

17.730.060 Requirements of Easements or Other Instruments

To preserve agricultural land, all owners of the land shall execute the appropriate 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.

The City or a qualifying entity approved by the City 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 qualifying entity, unless waived by the City Council.

Interests in agricultural mitigation land shall be held in trust by a qualifying entity and/or the City in perpetuity.

If judicial proceedings find 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 used to acquire interests in other agricultural mitigation land in Contra Costa County, as approved by the City and provided in this chapter.

If any qualifying entity 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.

17.730.070 Procedure For Transfer of Agricultural Credits

Agricultural credits may be transferred to any residential zone within the City. Approval by the City must be based on findings that the transfer is consistent with the General Plan and provides for the permanent conservation of the donor parcel as farmland. The transfer of agricultural credits shall be authorized as part of a development agreement

and shall be subject to all City policies, regulations and codes, including the requirement to obtain development entitlements for the receiver parcel. A development agreement application shall include both the donor and receiver parcel.

When agricultural credits are transferred from a donor site, the corresponding acreage generating the transferred credits shall be maintained as farmland subject to conditions specified in the farmland conservation easement deed restriction. Partial transfer of allocated credits for donor parcels may be allowed and any remaining credit allocation balance shall be monitored until all credits are transferred.

The number of agricultural credits which may be transferred to a receiver parcel shall not exceed the maximum density range specified in the General Plan.

The City Council may adopt rules and procedures it considers necessary to implement these provisions to facilitate the transfer of allowable development. Such rules and procedures shall be adopted by resolution.

17.730.080 City of Brentwood Agricultural Enterprise Program Advisory Committee

The City Council should consider creating an Agricultural Enterprise Advisory Committee to advise the Council on how City policy affects local growers and landowners.

17.730.090 Formation of Local Land Trust

A new local land trust should be formed pursuant to Sections 1.12, 1.13, 1.14, 1.15 and any other relevant Sections of the Agricultural Enterprise Program Final Report, dated August 16, 2001.

17.730.100 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.

17.730.110 Violations and 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 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.

17.730.120 Precedence

This chapter shall take precedence over all ordinances or parts of ordinances or resolutions or parts of resolutions in conflict herewith.

SECTION 4. This Ordinance shall take effect and be in force thirty (30) days following its adoption and, prior to the expiration of fifteen (15) days after its adoption, it shall be published once with the names of the council members voting for and against it in a newspaper of general circulation, available in the City of Brentwood.

SECTION 5. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, the holding shall not affect the validity or enforceability of the remaining provisions, and the council declares that it would have adopted each provision of this ordinance irrespective of the validity of any other provision.

SECTION 6. Any judicial review of this Ordinance shall be by writ of mandate under Code of Civil Procedure 1085. Any action or proceeding seeking to attack, review, set aside, void or annul this ordinance shall be commenced within 90 days after the adoption of this Ordinance.

SECTION 7. This Ordinance shall be published in accordance with Government Code Section 36933 by either posting or publishing the ordinance in accordance with that law. Further, the City Clerk is directed to cause Section 3 of this Ordinance to be entered in the Brentwood Municipal Code.

SECTION 8. In accordance with Government Code Section 65863.5, upon the effective date of this Ordinance, a copy shall be delivered to the County Assessor.

THIS ORDINANCE was introduced with first reading waived at a regular meeting of the Brentwood City Council on the 16th day of August, 2001, and adopted at a regular meeting of the Brentwood City Council on the 28th day of August, 2001 by the following vote:

AYES:
NOES:
ABSTENTIONS:
ABSENT:

Michael A. McPoland Sr.
Mayor

ATTEST:

Karen Diaz, CMC
City Clerk

APPROVED AS TO FORM:

Dennis Beougher, City Attorney