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TO: Board of Supervisors' Unincorporated Services Committee
FROM: Liz McElligott, Assistant Planning Director
DATE: June 25, 2014
SUBJECT: Summary of AB 551, Ting: Urban Agriculture Incentive Zones

BACKGROUND

AB 551 was signed by Governor Brown in September of 2013, and went into effect on January 1, 2014. The purpose of the legislation is to support urban agriculture by increasing the amount of land available for agricultural activities and to provide stability for urban farmers by ensuring that land will be committed to agriculture for a period of years. In addition, the law provides the opportunity to improve the appearance of vacant, blighted properties by putting the land into agricultural production. AB 551 authorizes cities and counties to designate urban agriculture incentive zones within their jurisdictions and enter into contracts with the owners of vacant property within the designated zones. In exchange for agreeing to limit the use of the property to agriculture for the term of the contract, the property owner would benefit from a reduction in property taxes on the parcel. Participation in the program is entirely voluntary for both the County and the private property owner. Attachment A includes a brief summary of AB 551 and steps that would be necessary to implement it. The full text of the legislation is provided in Attachment B.

AB 551 defines "urban" as "...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." The urban unincorporated area of Alameda County, which includes the communities of Ashland, Castro Valley, Cherryland, Fairview, and San Lorenzo, is part of the Census defined San Francisco-Oakland Urban Area, which meets this threshold. The map in Attachment C shows the boundary of the Urban Area in the Castro Valley and Fairview vicinity.

DISCUSSION

Implementation Process

In order to implement AB 551, the County would need to establish by ordinance one or more Urban Agriculture Incentive Zones. The County could designate one large zone that includes the entire urban unincorporated area or several smaller zones in any configuration desired to include communities or portions of communities interested in participating in the program. Property owners within these zones would be eligible to enter into enforceable contracts with the County for the use of vacant lands for small-scale agricultural use.

The County would also adopt rules and regulations consistent with the County's zoning and other ordinances, for the implementation and administration of the Urban Agriculture Incentive Zones and contracts related to the zones. The legislation dictates some contract

requirements; for example, the initial contract term must be at least five years, the property under contract must be at least one-tenth of an acre but not more than three acres, and the entire property must be dedicated to commercial or non-commercial agricultural use. Also, if the landowner requests cancellation of the contract prior to expiration, the legislation requires that the County impose a fee equal to the cumulative value of the tax benefit received during the duration of the contract, unless the County makes a determination that the cancellation was caused by extenuating circumstances despite the good faith effort by the landowner.

Impact on Property Tax Assessments

Property subject to a contract under AB 551 would be valued for assessment at the rate based on the average per-acre value of irrigated cropland in California, as most recently published by the National Agricultural Statistics Service of the USDA. The current rate posted by the State Board of Equalization is \$12,500 per acre. Depending on the current assessed value of the property, the property tax savings over the term of the contract could be substantial. Attachment A includes examples of potential property tax savings for two vacant parcels with residential zoning in Cherryland. Staff anticipates that only a small number of property owners will choose to enter into contracts, resulting in only minimal revenue losses to the County.

Community Input to Date

Members of the public attending the Eden Area Livability Initiative Agriculture and Environment Working Group meetings expressed an interest in implementing this program as a means to increase the amount of land available for urban agriculture and to improve the appearance of blighted properties. On May 19, 2014, staff presented a summary of the legislation to the Castro Valley Municipal Advisory Council (MAC). MAC members indicated that, while they have no objection to implementation of the program in other unincorporated communities, they believe that Castro Valley lacks vacant sites that would be appropriate for urban agriculture. In addition, they expressed concern that the presence of urban agricultural activities on properties in the commercial areas of Castro Valley might deter future commercial development. After hearing presentations on AB 551, community members present at the June 5, 2014 District 4 Agricultural Committee meeting and the June 10, 2014 Cherryland Community Association meeting indicated support for the program.

NEXT STEPS

Staff requests that your Committee review the attached summary of the legislation, hear the presentation by staff, take public testimony, and provide comments on the proposed implementation of the legislation within the unincorporated County. If your committee wishes to direct staff to do so, we will begin to prepare a draft ordinance and engage the public in a discussion of appropriate areas to be included in the incentive zones, as well as restrictions that should apply to the properties under contract.

ATTACHMENTS

- Attachment A - Summary of AB 551, Ting: Urban Agriculture Incentive Zones
- Attachment B - AB 551, Ting: Urban Agriculture Incentive Zones
- Attachment C - Map showing the boundary of the San Francisco/Oakland Urban Area in the Castro Valley Area

Attachment A
SUMMARY OF AB 551, TING: URBAN AGRICULTURE INCENTIVE ZONES.

County Actions Necessary to Initiate Program

- Hold a public hearing.
- Establish by ordinance an Urban Agriculture Incentive Zone 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.
- Adopt rules and regulations consistent with the 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.

Contract Terms Required by Legislation

- The County may impose a fee on contracting landowners for the reasonable costs of implementing and administering contracts.
- If a landowner requests cancellation of the contract prior to expiration, the County shall impose a fee equal to the cumulative value of the tax benefit received during the duration of the contract, unless the County makes a determination that the cancellation was caused by extenuating circumstances despite the good faith effort by the landowner.
- The 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. Contracts shall include, but not be limited to, all of the following provisions:
 - An initial term of not less than five years.
 - A restriction on property that is at least 0.10 acres, and not more than three acres.
 - A requirement that the entire property subject to the contract be dedicated toward commercial or noncommercial agricultural use.
 - A prohibition against any dwellings on the property while under contract.
 - A notification that if a landowner cancels a contract, the County is required to assess a cancellation fee, as stated above.
- The contract shall not prohibit the use of structures that support agricultural activity, including, but not limited to, toolsheds, greenhouses, produce stands, and instructional space.
- If the contract includes a prohibition on the use of pesticide or fertilizers on properties under contract, the contract shall permit those pesticides or fertilizers allowed by the United States Department of Agriculture's National Organic Program.
- The 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.
- Land subject to contract for an urban agricultural incentive zone shall be valued for assessment at the rate based on the average per-acre value of irrigated cropland in California, as most recently published by the National Agricultural Statistics Service of the USDA. The current rate posted by State Board of Equalization is \$12,500 per acre.

Other Provisions in Legislation

- The 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.
- The 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 Williamson Act contract.

Examples of Potential Property Tax Savings under AB 551 Contract

Parcel 1 - Vacant 0.38 Acre Parcel with Residential Zoning			Parcel 2 - Vacant 0.20 Acre Parcel with Residential Zoning		
Parcel Information	Current	AB 551 Contract	Parcel Information	Current	AB 551 Contract
Assessed Value	\$60,031.00*	\$4,750.00**	Assessed Value	\$110,000.00*	\$2,500.00**
Annual Tax Rate	1.0853%*	1.0853%	Annual Tax Rate	1.0853%*	1.0853%
Annual Property Taxes***	\$651.50*	\$51.55	Annual Property Taxes***	\$1,193.82*	\$27.13
Potential Annual Property Tax Savings		\$599.95	Potential Annual Property Tax Savings		\$1,166.69
Tax Savings over 5-year contract term		\$2,999.75	Tax Savings over 5-year contract term		\$5,833.45
*Source: County Assessor's Records			*Source: County Assessor's Records		
**Based on assessed value of \$12,500 per acre			**Based on assessed value of \$12,500 per acre		
***Does not include fixed assessments.			***Does not include fixed assessments.		

Program Elements to be Determined by the County

- Process for approving contracts (could use existing Williamson Act process as model)
- Additional contract terms:
 - Criteria for determining appropriate agricultural uses?
 - Timeline to have ag uses in place?
 - Parcel coverage requirements?
- Process for monitoring and enforcing contracts
- Process for terminating contract for non-compliance
- Process for transferring contract to new owner or terminating contract if property is sold
- Additional contract terms (such as requiring proof of access to water)?
- Any changes to existing county ordinances?

Ongoing County Costs Related to Implementing AB 551

- Loss of property tax revenue
- Staff time for processing contract applications
- Staff time for monitoring and enforcement
- Staff time for assessor's staff to annually adjust assessments of properties under contract

Relevant Sections of the County General Ordinance Code

- Title 5 – Animals
 - Chapter 5.12 Animal Fanciers Permit
- Title 6 – Health and Safety
 - Chapter 6.44 Hazardous Weeds and Rubbish
 - Chapter 6.64 Rural and Urban Residential and Non-residential Property Nuisances
 - Chapter 6.65 Unincorporated Alameda County Real Property Nuisances
- Title 17 – Zoning
 - Field crops, orchards and gardens are permitted uses in all residential zones. (Chapters 17.08, 17.10, 17.12, 17.14, 17.16, and 17.17)
 - Toolsheds and other structures related to the agricultural use would need to comply with requirements for accessory uses. (Chapter 17.52 General Requirements, Sections 17.52.180 -17.52.320)

Attachment B

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.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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.

Attachment C

Map showing the boundary of the San Francisco/Oakland Urban Area in the Castro Valley Area

