

**18.08.070 Transfer of Residential Development Rights**

The ordinance codified in this Chapter shall be known and may be cited as the “Agricultural Lands Preservation Program” of the City of Morgan Hill.

**18.85.020 Purpose**

The City of Morgan Hill has determined that small-scale agriculture is viable in the Morgan Hill Sphere of Influence (SOI) if land use tools are used effectively to protect an adequate agricultural land use supply. Establishing land use policies and an implementation program to preserve agricultural lands will help to preserve open space, provide access to locally grown foods, promote sustainable food production, contribute to a unique cultural environment within Morgan Hill, and address regional land use planning policy objectives. For Morgan Hill, an effective agricultural preservation program will need to focus upon the use of agricultural land use easements supported by agricultural preservation land use policies.

The Morgan Hill Agricultural Lands Preservation Program is intended to promote continued and viable agricultural activities in and around Morgan Hill through a comprehensive set of land use policies and implementation activities that together accomplish the following:

1. Preserve open space agricultural lands and agricultural activity within the Morgan Hill Sphere of Influence.
2. Promote the viability of small-scale agriculture through the preservation of agricultural land and the implementation of supporting General Plan policies.
3. Identify the combination of tools, techniques, mechanisms, and funding sources that form the best agricultural/open space land preservation program for the City of Morgan Hill.
4. Establish CEQA mitigation procedures to mitigate the loss of agricultural lands.
5. Focus land preservation in the City’s Southeast Quadrant

**18.85.030 Definitions**

The following terms when used in this chapter shall have the following respective meanings:

**A. Agricultural Land**

For “Agricultural Land” that requires off-setting preservation/mitigation

under this Agricultural Lands Preservation Program, Agricultural Land is defined as land that is depicted on the 2010 map of the Farmland Mapping and Monitoring Program (FMMP) of the California Department of Conservation as Prime Farmland, Farmland of Statewide Importance, Unique Farmland, and Farmland of Local Importance and that was not subsequently developed for non-Agricultural Use prior to August 1, 2014 or subsequently developed per the provisions of this Ordinance. Lands identified as Grazing Land are not subject to the offsetting preservation/mitigation requirements set forth in this Policy.

**B. Agricultural Conservation Easement**

An Agricultural Conservation Easement is a specific type of easement whose purpose is to enable the encumbered property to remain in productive Agricultural Use by preventing any use or activity that would diminish or impair the agriculturally productive capacity. Therefore, the terms of an agricultural- conservation easement restrict the use of the encumbered property to agriculture, while prohibiting development, subdivision, and commercial use of the property other than as agriculture. Agricultural conservation easements are perpetual, running with the land so that their terms are binding on all future fee-title owners of the property.

**C. Agricultural Mitigation Land**

Agricultural Land (as defined above) that is encumbered by an Agricultural Conservation Easement or other farmland conservation mechanism acceptable to the City. If the Agricultural Land is also being used to meet Open Agricultural Land preservation goals, the easement or other mechanism must ensure that at least 90% of any property being used as Agricultural Mitigation Land remain as open space free of structures or other impervious surfaces so that it retains its value as Agricultural Land under the FMMP criteria. Uses allowed on Agricultural Mitigation Land shall be consistent with the Agricultural Use described below and pertaining land use regulations, and as further defined in the applicable Agricultural Conservation Easement or other farmland conservation mechanism.

**D. Agricultural Priority Area**

The Agricultural Priority Area is an area within the SEQ that has been identified within the Agricultural Lands Preservation Program as a priority location to preserve and encourage the long-term viability of agriculture and Open Agricultural Lands, recognizing both the vital contributions agriculture makes to the economy and quality of life within the county and the community preference for maintenance of open space areas. By designating this area, the Program identifies those lands within the Morgan Hill SOI most suitable for agricultural production and related uses. Designating the Agricultural Priority Area provides stability for ongoing agricultural operations and supports new uses necessary to

support a viable local agriculture industry. The Agricultural Priority Area is also intended to retain in open space uses any lands that are not being actively farmed until agricultural activities resume on those lands.

### **E. Agricultural Use**

Agricultural Use is defined as the use of the land for agricultural purposes, including crops, or crop trees, including floriculture, horticulture, viticulture, crops grown within greenhouses or other buildings, vineyards, crop harvesting, raising of animals (including apiaries, aviaries, dairying, pasturage, and fish farms), and grazing, and including necessary accessory uses for packing, processing, treating or storing of produce, and consistent with the governing jurisdiction's pertaining land use regulations. Qualifying Agricultural Use activities may include:

1. **Agricultural Processing:** Processing facilities for the handling, processing, packing, packaging, storing and shipping of agricultural commodities grown primarily in Santa Clara County. Does not include processing of meat, poultry, or animal products (butcheries), nor timber or wood processing. Does not include routine harvesting and handling activities incidental to agriculture.
2. **Agriculturally Related Entertainment & Commercial Uses:** Visitor-oriented services, sales and attractions with an agricultural theme that are conducted in conjunction with on-site Agricultural Uses. Such uses include but are not limited to food and retail sales, tasting rooms, reception facilities, outdoor entertainment areas.
3. **Agricultural Research:** Establishments for experimental greenhouse and field growing of agricultural commodities, landscaping and seeds, including experimental use of herbicides, pesticides and other agricultural practices. Agricultural research excludes experiments involving livestock and other animals.
4. **Dairy:** Establishments where cows or goats are maintained for the production of milk or other dairy products for commercial distribution or sale.
5. **Feed Lot:** Establishments primarily engaged in the fattening of livestock in a confined area.
6. **Field Research:** Research activities, field studies and educational activities (e.g., student field research) that are dependent on a natural, open setting. Examples include biological, geological or atmospheric studies.
7. **Mushroom Farm:** Establishments primarily used for the cultivation

and subsequent distribution and sale of mushrooms.

8. Nursery: an area where agricultural products are grown for transplanting, for use of stock for building and grafting, or for sale on the premises. Nurseries may include sale and cultivation of ornamental trees, shrubs, and plants, and incidental sale or rental of garden and landscape materials and equipment.

9. Poultry and Egg Farms: Establishments where fowl are raised or kept in confined areas or facilities for the purpose of commercial distribution or sale of birds or eggs.

10. Wildlife Refuge: undeveloped land kept as natural habitat for the purpose of supporting a species or multiple species of wildlife.

11. Wineries: Facilities for the production of wine from fruit or fruit juices through fermentation that are subject to Type 02 licenses by the California Department of Alcoholic Beverage Control. Wineries shall be entitled to all uses and activities provided under the Type 02 license. Wineries may also include related storage, blending and bottling activities, as well as administrative offices, marketing, tours, public tasting, wholesale and retail sales of wine, and ancillary distilling of wine to produce brandy or similar distilled spirits. Wineries may include outdoor areas for picnics, gatherings and other activities incidental to wine-tasting. Incidental sale of marketing products and accessories related to the winery's brand identity, wine drinking, food pairing, local agriculture and local history is also permitted.

12. Ancillary Uses: Uses conducted subordinate to the primary Agricultural Use being conducted upon a property and which do not occupy in total more than 10% of the property, including:

- a) Direct sales of locally produced agricultural products.
- b) One dwelling of persons regularly employed on the premises for farming or domestic duties;
- c) Ancillary private garages and other structures for parking and storage of equipment, private stables, and other accessory buildings;
- d) Quarters, accommodations or areas for transient labor, such as labor cabins or camps.

#### **F. Agricultural Preservation In-lieu Fee**

A fee paid to the City of Morgan Hill which will be credited to the City's Open Space Fund or other City fund created for the purpose of acquiring Agricultural Mitigation Land or transferred to a Qualifying Entity and used by

either agency solely for the purpose of acquiring Agricultural Conservation Easements. The Program provides for an in-lieu fee in order to allow the utilization of funding from multiple sources and to maximize the City's ability to preserve open space Agricultural Lands within the Agricultural Priority Area.

#### **G. Agricultural Lands Preservation Program Surcharge Fee**

A fee paid to the City of Morgan Hill which will be credited to the City's Open Space Fund or other City fund created for the purpose of acquiring Agricultural Mitigation Land or transferred to a Qualifying Entity and used by either agency for the purpose of administering the Agricultural Lands Preservation Program and/or to cover ongoing management and monitoring of the easements. The Surcharge fee is either incorporated into the overall In-lieu Fee for projects that make use of this option, or charged directly to projects which independently establish an Agricultural Conservation Easement.

#### **H. Open Agricultural Land**

Open Agricultural Land is defined as Agricultural Land that is at least 90% free of buildings, structures or other impervious surface and therefore available for planting of outdoor crops, grazing, or other Agricultural Use. The City may make use of open space funding sources to acquire Agricultural Conservation Easements where that Easement specifies that the encumbered property be maintained as Open Agricultural Land.

#### **18.85.040 Applicability**

The provisions of this chapter shall apply to all new development/activities under the jurisdiction of the City of Morgan Hill, including both private development and public development projects that directly result in the conversion of Agricultural Land (as defined above) will be required to mitigate loss of Agricultural Land per the provisions of this Policy. This includes projects within the existing City boundaries as well as projects that propose annexation into Morgan Hill. Projects which have received discretionary land use approval prior to the adoption August 1, 2014, including completion of the CEQA process, are not subject to this Policy unless specifically required as mitigation or a condition of project approval.

#### **18.85.050 Mitigation Ratio**

A minimum of one (1) acre of Agricultural Land (1:1 mitigation ratio) shall be preserved for each acre of Agricultural Land changed to a non-agricultural use. The required acreage of area to be protected through an Agricultural Conservation Easement or agricultural preservation in-lieu fee will depend on the measurement of affected area as defined below.

#### **18.85.060 "Stay Ahead" Provision**

Conservation easements will be established at least at a 1:1 mitigation ratio in

advance of the development of Agricultural Lands. Development occurs with either the issuance of Grading Permit or Building Permits that would result in the loss of Agricultural Land. To meet this provision the City may utilize existing open space funding to establish Agricultural Conservation Easements, or individual projects may establish such easements in advance of development activity.

#### **18.85.070 Measurement of Affected Area**

Areas subject to agricultural mitigation requirements will be the developed footprint for properties with a General Plan land use designation of Open Space, Public Facilities, or Sports Recreation/Leisure. Areas proposed to be so reserved shall have an aggregated area of at least 10 acres in size to qualify for exclusion from the developed footprint calculation. For the remaining land use designations of residential, commercial, and industrial, the entire site will be used for calculating the required mitigation. Disturbed footprint will include irrigated fields for proposed sports fields or facilities.

#### **18.85.080 Mitigation Mechanism**

Conversion of Agricultural Land will require off-setting acquisition and/or dedication of Agricultural Conservation Easements over approved Agricultural Mitigation Land, or payment to the City of the Agricultural Preservation In-lieu Fee, to support agricultural preservation. In addition to land acquisition/dedication, or payment of the Agricultural Preservation In-lieu Fee, in either case developers are also required to pay an Agricultural Lands Preservation Program Surcharge Fee (on a per acre basis) to cover administrative costs and ongoing management and monitoring of the easements.

#### **18.85.090 Eligible Mitigation Lands**

In order to meet the goals of this Ordinance, lands proposed to be used as agricultural mitigation shall conform to the above definitions for Agricultural Mitigation Land and/or Open Agricultural Land and shall meet the following criteria:

- a) Agricultural conservation easements resulting from this program shall be acquired from willing sellers only; eminent domain will not be used to acquire lands for conservation;
- b) The property is of adequate size, configuration and location to be viable for continued Agricultural Use;
- c) The land shall have access to an adequate water supply to maintain the purposes of the easement, i.e., to irrigate farmland if the converted farmland is irrigated or capable of irrigation. The water supply shall be sufficient to support ongoing Agricultural Uses, and the water rights on the Agricultural Mitigation Land shall be protected in the Agricultural Conservation Easement;

- d) Other considerations for appropriate conserved Agricultural Lands include: soil type, parcel size, existing irrigation supplies, strong agricultural production history, proximity to agricultural infrastructure, proximity to the first point of processing, uses on surrounding lands, and proximity to urban areas now and into the foreseeable future;
- e) The mitigation land shall be located within Santa Clara County; and
- f) The mitigation land may not overlap with land being acquired as habitat mitigation by the Santa Clara Valley Habitat Agency.

#### **18.85.100 Ineligible Mitigation Lands**

A property is ineligible to serve as agricultural mitigation if any of the circumstances below apply:

- a) The property is currently encumbered by a conservation, flood, or other type of easement or deed restriction that legally or practicably prevents converting the property to a nonagricultural use; or
- b) The property is currently under public ownership and will remain so in the future, except to the extent it is included within a mitigation bank that may subsequently be established by the City or other public agency; or
- c) The property is subject to conditions that practicably prevent utilizing the property for a viable Agricultural Use.

#### **18.85.110 Agricultural Priority Area**

Dedications inside the Morgan Hill Sphere of Influence (SOI) will be strongly encouraged within the Southeast Quadrant (SEQ) as the first priority. The City has identified an Agricultural Priority Area within the SEQ as the City's first priority for conservation. The City's secondary priority is the preservation of other rural County Agricultural Lands within the Morgan Hill SOI. Dedications outside the SOI are less desirable and must be inside Santa Clara County as described under 'Eligible Mitigation Lands' above. The Agricultural Priority Area encompasses approximately 650 acres of land.

#### **18.85.120 Responsibility for Easement Acquisition**

- a) In cases where the mitigation fee is paid, the City of Morgan Hill will either take on responsibility for acquiring the easement or transfer the In-lieu Fee and accompanying responsibility to a Qualifying Entity.
- b) Developments requiring less than 10 acres of agricultural mitigation are required to pay the Agricultural Preservation In-lieu Fee on a per acre basis except that acquisition of Agricultural Conservation Easements of less than 10 acres may be allowed when located immediately adjacent to an existing Agricultural Conservation Easement area that when combined, exceeds 10 acres in size.
- c) Developers may independently establish an Agricultural Conservation Easement on Eligible Mitigation Lands within the County. In such cases, the

developer will be required to pay all acquisition costs, the costs of establishing the easement, and the Agricultural Lands Preservation Program Surcharge Fee.

**18.85.130 Management and Monitoring Fee**

The developer shall pay a one-time per acre fee (Agricultural Lands Preservation Program Surcharge Fee) to cover the average cost administration of the program.

**18.85.140 Implementing Entity**

The City will hold the easements and collect management and monitoring fees until an alternative implementing entity (Qualifying Entity), such as a nonprofit conservation organization or agricultural consultant, has been identified.

**18.85.150 Mitigation Timing and Implementation**

Agricultural mitigation will be required prior to the acceptance of a final parcel or subdivision map or prior to issuance of a building permit or grading permit that results in physical development involving the conversion of Agricultural Lands, whichever occurs first.

**18.85.160 Planned Developments / Development Agreements**

Developers may provide agricultural mitigation through a planned development project that consolidates existing development rights onto a portion of the property so that the remaining undeveloped portion is then reserved for agricultural use. Such an approach may be used within the SEQ or within other areas of the City's SOI in which Agricultural Lands are present. Such a project must be governed by a development agreement. This method of mitigation will only be considered if it results in an equal or greater agricultural benefit as would have resulted from the mitigation measures described above. Factors that may be considered include, but are not limited to: (1) the number, size, and location of permissible clustered home sites; (2) the amount of land dedicated for agricultural conservation; (3) the location of agricultural land in relation to the Agricultural Priority Area and contiguity with existing and already conserved agricultural land; and (4) commitments to actively farm agricultural land within the development agreement area. The developer will be required to enter into a development agreement with the City specifying the terms of the agreement and the extraordinary benefits accruing to the City

**18.85.170 Funding for Easements**

Given the City's policy objective of agricultural land preservation within the Morgan Hill Sphere of Influence and within the Southeast Quadrant in particular, it is anticipated that the City will need to use multiple funding sources to support the acquisition of easements within the desired area. In addition to use of money obtain through grants and other contributions, the City will use open space funds collected through administration of its Residential Development Control System (RDCS) to supplement the acquisition of

conservation easements.

**18.85.180 Clustering of Development**

The City may work with land owners or developers through the land use entitlement process to preserve agricultural lands by allowing a clustering of existing development rights onto a portion of a site so that a large portion of the site may be preserved for agricultural use. The City should allow such alternate methods of agricultural mitigation through Planned Development Zoning and/or a Development Agreement so that it will result in equal or greater agricultural benefit than would result from standard mitigation requirements. At a minimum, mitigation shall still be required at a ratio of 1:1, but may allow flexibility with respect to timing and location. Also, an Agricultural Conservation Easement shall be recorded over the Agricultural Mitigation Lands subject to the Planned Development Zoning and/or Development Agreement.