

## ORDINANCE NO. 2023-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VISALIA ADOPTING ORDINANCE NO. 2023-02, A REQUEST BY THE CITY OF VISALIA TO ADOPT A NEW TITLE AND CHAPTER TO THE VISALIA MUNICIPAL CODE REFERRED TO AS TITLE 18 "AGRICULTURAL LAND PRESERVATION", CHAPTER 18.04 "AGRICULTURAL LAND PRESERVATION PROGRAM", TO CREATE AN AGRICULTURAL PRESERVATION ORDINANCE TO IMPLEMENT VISALIA GENERAL PLAN LAND USE POLICY LU-P-34. THE PROJECT APPLIES CITYWIDE TO PROPERTIES WITHIN THE URBAN GROWTH BOUNDARY TIERS II AND III ESTABLISHED BY THE VISALIA GENERAL PLAN.

**WHEREAS**, Ordinance No. 2023-02 is a request by the City of Visalia to adopt a new title and chapter to the Visalia Municipal Code referred to as Title 18 "Agricultural Land Preservation", Chapter 18.04 "Agricultural Land Preservation Program", to create an agricultural preservation ordinance to implement Visalia General Plan Land Use Policy LU-P-34. The project applies citywide to properties within the Urban Growth Boundary Tiers II and III established by the Visalia General Plan; and

**WHEREAS**, on September 19, 2022, the preparation of an Agricultural Preservation Ordinance was initiated in response to direction provided by the City Council to begin the preparation of an Agricultural Preservation Ordinance to fulfill General Plan Land Use Element Policy LU-P-34, created during the General Plan Update process in 2014 to assist with mitigating the impacts of the loss of farmland as a result of land use development under the General Plan; and

**WHEREAS**, the City Council of the City of Visalia on December 5, 2022, received a presentation and provided direction regarding a series of options for the City Council's consideration ahead of a future adoption of an Agricultural Preservation Ordinance to implement the City's Agricultural Mitigation Program as outlined in General Plan Land Use Policy LU-P-34; and

**WHEREAS**, on February 24, 2023, the Draft Agricultural Preservation Ordinance was publicly advertised for review on the City's Agricultural Preservation Ordinance website for a 32-day public comment review period; and

**WHEREAS**, on March 23, 2023, the City Council received a presentation and update on the release of the Draft Agricultural Preservation Ordinance and received input from the community on the content of the draft ordinance; and

**WHEREAS**, the City Council of the City of Visalia, after duly published notice, held a public hearing before said Council on May 1, 2023; and

**WHEREAS**, the project is exempt under the California Environmental Quality Act (CEQA) Section 15183 (Public Resources Code §21083.3).

**NOW, THEREFORE, BE IT RESOLVED** the City Council concurs that the project is exempt from further environmental review under the California Environmental Quality Act (CEQA) Guidelines Section 15183 (Public Resources Code §21083.3) and Notice of Exemption No. 2023-23 disclosed that the Agricultural Land Preservation ordinance will have no additional environmental review based upon the ordinance implementing General Plan Land Use Policy LU-P-34, uniformly on development projects that convert prime farmland and farmland of statewide importance in Urban Growth Boundary Tier II and Tier III.

**NOW, THEREFORE, BE IT RESOLVED**, the City Council of the City of Visalia approves Ordinance No. 2023-02, as shown on Attachment “A” of this Ordinance, based on the following specific findings and evidence presented:

1. That the ordinance is consistent with the Visalia General Plan as the provisions of Title 18 Agricultural Land Preservation, Chapter 18.04 Agricultural Land Preservation Program are established to implement the goals of the City of Visalia General Plan and address the conversion of prime farmland and farmland of statewide importance through the adoption of an agricultural land preservation program. The intent of the agricultural land preservation program is to establish a process for the required preservation of agricultural land through the acquisition of agricultural conservation easements or the payment of an in-lieu fee for projects subject to the provisions of this chapter.
2. That the project is exempt from further review under the California Environmental Quality Act (CEQA) Guidelines section 15061(b)(3) (common sense exemption), as the proposed master plan boundary expansion, change in land use designation, and change in zoning classification will not in and of themselves have an effect on the environment.

**ATTACHMENT "A"**

AN ORDINANCE OF THE CITY COUNCIL ADOPTING A NEW TITLE AND CHAPTER TO THE VISALIA MUNICIPAL CODE REFERRED TO AS TITLE 18 "AGRICULTURAL LAND PRESERVATION", CHAPTER 18.04 "AGRICULTURAL LAND PRESERVATION PROGRAM" AS FOLLOWS

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VISALIA:**

**Section 1:** Enact Title 18 (Agricultural Land Preservation) of the Visalia Municipal Code:

## **Visalia Municipal Code**

### **Title 18. Agricultural Land Preservation**

#### **Chapter 18.04. Agricultural Land Preservation Program**

##### **Article 1. General Provisions**

###### **Section 18.04.010 Title**

This chapter may be cited as the “Agricultural Land Preservation Program” of the City of Visalia.

###### **Section 18.04.020 Purpose and Intent**

- A. The provisions of this chapter are established to implement the goals of the City of Visalia General Plan and address the conversion of prime farmland and farmland of statewide importance through the adoption of an agricultural land preservation program. The intent of the agricultural land preservation program is to establish a process for the required preservation of agricultural land through the acquisition of agricultural conservation easements or the payment of an in-lieu fee for projects subject to the provisions of this chapter.
- B. The provisions of this chapter shall only apply to the extent that their application would not violate the constitution or laws of the United States, or of the State of California. The City of Visalia shall apply the chapter to avoid such unconstitutionality or illegality.
- C. Nothing in this chapter shall be construed to abridge or narrow the City of Visalia's police powers. The City Council retains its full power and discretion in its ability to deny a proposed conversion on the basis that the proposed conversion is inconsistent with the public health, safety, or welfare because of the loss of agricultural land or otherwise, which the City is tasked with safeguarding.

###### **Section 18.04.030 Objectives**

The objectives of this chapter are to:

- A. Protect agricultural land as a component of the regional economy in the southern San Joaquin Valley, including the City of Visalia.
- B. Preserve agricultural lands from the effects of urban encroachment.
- C. Balance the need for agricultural land conservation with other public goals for the City of Visalia, including the need for housing, commercial, industrial, and infrastructure development.

### **Section 18.04.040 Interpretation of Provisions**

- A. **Authority to Interpret.** Where uncertainty exists regarding the interpretation of any provision of this chapter or its application to a specific site, the Community Development Director (“Director”) shall have the authority and responsibility to interpret such terms, provisions, and requirements.
- B. **Record of Interpretation.** Code interpretations shall be made in writing and shall state the facts upon which the Director relied to make the determination. The Community Development Department shall keep a record of interpretations made pursuant to this chapter on file for future reference.
- C. **Applicability of Interpretation.** Code interpretations shall be applied in all future cases, provided that any interpretation may be superseded by a later interpretation when the Director determines that the earlier interpretation was in error or no longer applicable under the current circumstances.
- D. **Right to Appeal.** A code interpretation by the Community Development Director may be appealed to the City Council. The following procedure shall apply.
  - 1. The applicant or any interested person adversely affected may, upon payment of an appeal fee as may be established by resolution of the Council, appeal any interpretation of the Community Development Director by filing a notice thereof in writing with the city clerk, setting forth in detail the interpretation and the grounds upon which the appeal is based within ten (10) days after the interpretation that is the subject of the appeal. Such notice shall state specifically where it is claimed there was an error or abuse of discretion by the Director.
  - 2. Upon the filing of an appeal, the City Council shall set the matter for hearing. Such hearings shall be held within thirty (30) days after the date of filing the appeal.
  - 3. In holding the hearing on the matter, the Council may receive any and all information pertinent to the matter. Upon the close of the hearing, the Council shall vote to either confirm the decision of the Community Development Director, overturn the interpretation, or confirm the interpretation with modifications, and the Council may continue the item to the next meeting if necessary to direct staff to prepare a conforming resolution with findings, which shall be considered by the Council at the next scheduled Council meeting. In the case of a tie vote, the Community Development Director interpretation shall stand, and shall be considered final as of the date of the Council vote.

### **Section 18.04.050 Definitions**

For the purpose of this chapter, the following definitions shall apply, except where the context of this chapter otherwise expressly requires. The definition of a word or phrase shall apply to any variants of the word or phrase.

“Affordable housing” means housing with an affordable housing cost, as defined in Health and Safety Code Section 50052.5, or affordable rent, as defined in Health and Safety Code Section 50053, for households whose gross income does not exceed 120 percent of the area median income.

“Agricultural buffers” mean areas of permanent vegetation between agricultural land and urban development.

“Agricultural conservation easement” means a conservation easement executed pursuant to Civil Code section 815, et seq. for purposes of agriculture.

“Agricultural processing uses” means operations that transform, package, sort, or grade livestock or livestock products, agricultural commodities, or plant or plant products into goods that are used for the intermediate or final consumption, including goods for nonfood use.

“Conversion” means to develop land through construction or improvement of land associated with approval of a project such that the land may not be converted back to agricultural use.

“Converted land” means the area of land that would be converted as a result of project approval, as calculated in section 18.04.070(A).

“Farmland of statewide importance” is a category of farmland defined by the California Department of Conservation for purposes of the Farmland Mapping and Monitoring Program (FMMP).

“In-lieu fee” means payment in-lieu of direct acquisition of an agricultural conservation easement.

“Preserved land” means that land to be encumbered by an agricultural conservation easement, as determined in section 18.04.070(A).

“Prime farmland” is a category of farmland defined by the California Department of Conservation for purposes of the Farmland Mapping and Monitoring Program (FMMP).

“Project” means a development project requiring an approval action from the City of Visalia that would authorize the construction or operation of buildings or uses. For purposes of this chapter, project does not include annexation of land, redesignation of a planned land use, or rezone action as these actions alone do not authorize development.

“Public facility” means a facility owned or operated by a public, quasi-public, or private entity used for the production, storage, transmission, collection, or treatment of electricity, wastewater, stormwater, water, and refuse, or for the provision of general hospitals, public cemeteries, public schools or open space, including both public and private parks and trails.

“Qualified entity” means an entity qualified and approved to hold agricultural conservation easements in compliance with section 18.04.100.

“Roadways” means freeways, arterials, collectors, and local roads dedicated for public use.

“Southern San Joaquin Valley” means the portions of Madera, Fresno, Kings, Tulare, and Kern counties located within the San Joaquin Valley Air Pollution Control District boundaries.

“Sphere of influence” means the ultimate service area of an incorporated city, as established by the applicable Local Agency Formation Commission.

“Tier II” means the Tier II Urban Development Boundary as defined in the Visalia General Plan.

“Tier III” means the Tier III Urban Growth Boundary as defined in the Visalia General Plan.

## **Article 2. Program Requirements**

### **Section 18.04.060 Applicability**

- A. **Projects Subject to Program.** Projects authorized by the City that would result in the conversion of prime farmland or farmland of statewide importance are subject to the provisions of this chapter, unless exempt in accordance with subsection 18.04.060(B) or excluded in accordance with subsection 18.04.060(C).
- B. **Exemptions.** Projects subject to any of the following criteria are not subject to the provisions of this chapter.
1. **Location.** Projects, or portions thereof, located on lands that are not within the Tier II Urban Development Boundary or the Tier III Urban Growth Boundary.
  2. **Size.** Projects of 20 acres or less in gross area. The City may disallow the use of this exemption if it finds that the subject property has been subdivided into 20-acre or smaller parcels in whole or in part to avoid the preserved land obligation in accordance with this chapter.
  3. **Prior Compliance.** Projects on sites that have demonstrated compliance with the provisions of this chapter for affected acreage.
- C. **Exclusions.** Projects consistent with any of the following criteria are not subject to the provisions of this chapter and shall be excluded from the preserved land obligation as outlined in section 18.04.070(A). Such exclusions may comprise the entire project area or may be a portion of the project area acreage. Only such portion of the project area that falls within any of the following categories shall be excluded.
1. **Farmland Designation.**
    - a. Acreage not designated as prime farmland or farmland of statewide importance on the most recent Farmland Mapping and Monitoring Program (FMMP) map published by the California Department of Conservation.

- b. Acreage that may be designated as prime farmland or farmland of statewide importance on the most recent Farmland Mapping and Monitoring Program (FMMP) map published by the California Department of Conservation but meets at least one of the following standards. Documents demonstrating compliance with one or both standards shall be submitted to the Director for evaluation and determination, which may include concurrence from the Department of Conservation.
  - 1. Land Use. The land is not currently and has not been used for irrigated agricultural production for a minimum of four consecutive calendar years.
  - 2. Soils. The soil type is not listed on the Soil Candidate Listing for Prime Farmland and Farmland of Statewide Importance for Tulare County, as maintained by the Department of Conservation for purposes of the FMMP.
- 2. Project Type or Use.
  - a. Affordable housing projects that comply with State Density Bonus Law.
  - b. Agricultural processing uses.
  - c. Agricultural buffers.
  - d. Public facilities.
  - e. Roadways.

**Section 18.04.070 Preservation Requirement**

- A. **Determination of Preserved Land Obligation.** The preserved land obligation shall be calculated at a ratio of one acre of preserved land for each acre of converted land. Converted land acreage shall be calculated by determining the applicable project acreage less the acreage of exclusions.
- B. **Method of Preservation.** The preserved land obligation, as established in section 18.04.070(A), shall be preserved through acquisition of an agricultural easement in accordance with section 18.04.080, unless eligible for payment of an in-lieu fee in accordance with section 18.04.090.

### Article 3. Methods of Preservation

#### Section 18.04.080 Acquisition of Agricultural Conservation Easement

- A. **Easement Acquisition.** The applicant shall convey, or arrange for the conveyance of, an area of land meeting its preserved land obligation to a qualified entity for execution of an agricultural conservation easement thereon. This shall include the conveyance of land within an agricultural land mitigation bank. Such land shall meet all requirements for an agricultural conservation easement in accordance with this chapter.
- B. **Eligibility of Land for Easement.** The preserved land shall meet all of the following requirements to be eligible for placement in an agricultural conservation easement.
1. The preserved land shall be located in the southern San Joaquin Valley, with preference afforded to preserved land located within 10 miles of the City limits. The preserved land must be located outside any city's limits and sphere of influence.
  2. The preserved land shall be designated as prime farmland or farmland of statewide importance on the most recent published FMMP map.
  3. The preserved land shall be a minimum of 20 contiguous acres in size.
  4. The preserved land shall be zoned and planned for agricultural uses consistent with the purposes of an agricultural conservation easement.
  5. The preserved land shall have at least one verified source of water.
  6. The preserved land shall not be encumbered by any use or structure that would be incompatible with the purpose of the agricultural conservation easement. Such uses shall be deducted from the total acreage being preserved.
- C. **Terms of Easement.** The agricultural conservation easement shall be consistent with the purpose and intent of this chapter and shall include, at a minimum, the following terms.
1. The agricultural conservation easement prohibits all residential, commercial, or industrial development and any other land uses or activities that substantially impair or diminish the agricultural productive capacity of the preserved land or that are otherwise inconsistent with the conservation purposes of this chapter.
  2. The agricultural conservation easement prohibits the landowner from entering into any additional easement, servitude, or other encumbrance that could prevent or impair the potential agricultural use of the preserved land.

3. The agricultural conservation easement limits the construction of structures to those designed to facilitate agricultural use of the property, except that this division shall not prohibit replacement of an existing home that was present at the time the easement was established so long as the replacement of the home does not prevent the agricultural use of the property. Secondary dwelling units or farmworker housing may also be permitted, so long as the primary use of the property is agricultural.
4. The preserved land to be subject to the agricultural conservation easement will be either obtained from a willing seller or voluntarily conveyed by the applicant.
5. Any existing financial liens or financial encumbrances on the preserved land shall be subordinated to the agricultural conservation easement.
6. The agricultural conservation easement shall be approved by the qualified entity that will hold the easement and executed by all parties with an interest in the preserved land.
7. The agricultural conservation easement is in recordable form and contains an accurate legal description of the preserved land.
8. The agricultural conservation easement names the qualified entity as an intended beneficiary and authorizes it to enforce all terms of the easement.
9. The agricultural conservation easement recites that it is intended to satisfy the preserved land obligation imposed by this chapter and that it is subject to the requirements set forth in this chapter.
10. The agricultural conservation easement provides that if the qualified entity holding the easement ceases to exist, ownership of the easement shall pass to another qualified entity.
11. The agricultural conservation easement has been approved as to form by the City of Visalia, in accordance with section 18.04.080(D).

D. **Approval of Easement.** The City Council shall approve the form and content of all agricultural conservation easements to ensure consistency with this chapter.

1. Should the easement be consistent with a form previously approved by the City Council, the City Council may designate an authorized party to review and confirm consistency of subsequent easements prior to execution by third parties without further approval by the City Council.
2. Should the easement deviate from a form approved by the City Council, the City Council shall review and approve proposed amendments prior to execution by third parties.

- E. **Holder of Easement.** All agricultural conservation easements acquired for purposes of this chapter shall be held by a qualified entity, as determined in section 18.04.100.

**Section 18.04.090 Payment of In-Lieu Fee**

- A. **Eligibility of In-Lieu Fee Payment.** To be eligible for payment of an in-lieu fee to satisfy the preserved land obligation, either of the following standards must be met.

1. The total preserved land obligation is less than 20 acres.
2. If the total preserved land obligation is 20 acres or more, the applicant must demonstrate at least one of the following to the satisfaction of the City:
  - a. No qualified entity exists;
  - b. The applicant has met with all qualified entities and all such entities are unable or unwilling to assist with the acquisition of an agricultural conservation easement, as certified in writing to the City; or
  - c. Working with a qualified entity, the applicant has made at least one good faith offer to purchase an agricultural conservation easement, but any and all such offers have been declined by the potential seller, as certified in writing to the City.

- B. **Determination of Fee.** The in-lieu fee shall be determined on a case-by-case basis and include the following components. The applicant shall determine the amount of the in-lieu fee with supporting documentation from at least one qualified entity.

1. The purchase price of an agricultural conservation easement, which shall equal 35 percent of the average price per acre of three comparable lands, as confirmed through submittal of an appraisal report prepared by a licensed appraiser with experience in agricultural land appraisal. The appraisal shall be based on the highest and best use of the land without an agricultural conservation easement. The price per acre shall be adjusted for inflation based on an estimate of the time required to acquire the agricultural conservation easement following payment of the in-lieu fee. The price per acre shall be multiplied by the preserved land obligation to determine this component of the in-lieu fee.
2. All transaction costs associated with the acquisition of the agricultural conservation easement, which may include anticipated due diligence and administrative costs.
3. An amount sufficient to establish an endowment for the cost of monitoring, administering, and enforcing the agricultural easement in perpetuity.
4. A reasonable amount to cover additional contingencies.

5. In no event shall the in-lieu fee established pursuant to this section exceed a reasonable estimate of the total of:
  - a. The cost of acquiring and managing the agricultural conservation easement that the applicant would otherwise be required to create to satisfy its preserved land obligation under this chapter; and
  - b. The cost of administering the in-lieu fee.
- C. **Fee Approval and Remittance.** City Council shall approve the amount of the in-lieu fee established under section 18.04.090(B). Approval shall occur prior to remittance of the in-lieu fee directly from the applicant to the qualified entity.
- D. **Use of Fee.** In-lieu fees collected shall be used solely for the acquisition, administration, monitoring, and enforcement of agricultural conservation easements in accordance with this chapter and such easements shall be located within the Southern San Joaquin Valley.
- E. **Reporting Requirements.** The annual report required in section 18.04.100(D) shall include an accounting of the use and status of all in-lieu fees collected in accordance with this program.

#### **Article 4. Monitoring and Compliance**

##### **Section 18.04.100 Qualified Entity**

- A. **Requirements.** To be considered a qualified entity for purposes of holding agricultural conservation easements in accordance with this chapter, an entity must be a nonprofit public benefit corporation, operating within the state of California, that is qualified to hold conservation easements under California Civil Code section 815.3 and be approved by the City Council for the purpose of holding and managing agricultural conservation easements in accordance with section 18.04.100(B).
- B. **Approval Process.** In considering whether to approve an entity as a qualified entity for purposes of this chapter, the City Council shall consider the following criteria:
  1. Whether the entity's principal purpose includes holding and administering easements for conserving and maintaining lands in agricultural production;
  2. The extent and duration of the entity's involvement in agricultural land conservation within the southern San Joaquin Valley;
  3. Whether the entity has been accredited by the Land Trust Accreditation Commission;
  4. Whether the entity is a member in good standing of an established and widely recognized national or statewide association of land trusts; and

5. Whether the entity's easement template is consistent with the terms of this chapter.
6. Any other information or requirements the City finds relevant under given circumstances.

**C. Duties.**

1. The qualified entity shall monitor the use of all preserved land subject to agricultural conservation easements held by the entity and enforce compliance with the terms of those agricultural conservation easements.
2. If a qualified entity intends or reasonably expects to cease operations, it shall assign any agricultural conservation easements it holds to another qualified entity.

**D. Monitoring and Reporting.** The qualified entity shall submit a report to the City on or before February 1 of each year, describing the activities undertaken by the entity under this chapter for the previous calendar year. The report shall describe the status of the agricultural conservation easements for purposes of satisfying the preserved land obligations under this chapter held by the entity, including all costs associated with acquisition of agricultural conservation easements acquired in accordance with this chapter, a summary of all actions taken to enforce its agricultural conservation easements acquired in accordance with this chapter, and an accounting of the amount and use of administrative and in-lieu fees remitted to it by applicants. Confirmation of the accreditation status of the qualified entity shall also be reported. The report shall also include any other applicable reporting requirements as specified by this chapter.

**Section 18.04.110 Compliance Review**

- A. All preservation methods proposed by an applicant to comply with this chapter shall be reviewed by the Community Development Director for consistency with the terms and purposes of this chapter, except as expressly stated otherwise.
1. The City of Visalia shall not issue any permit directly authorizing or resulting in disturbance to the converted land acreage until the preserved land obligation is satisfied in accordance with this chapter. The preserved land obligation shall be satisfied when:
    - a. The approved agricultural conservation easement has been recorded; or
    - b. When the applicant has remitted the approved in-lieu fee to the qualified entity.
- B. If a court issues a judgement declaring that the purposes of this chapter and of an agricultural conservation easement can no longer be fulfilled by enforcement of that easement, the qualified entity holding that easement may extinguish the easement by selling it to the fee owner of the preserved land, if the following requirements are met:

1. Either the action was not contested and the judgement was entered pursuant to stipulation, or the City of Visalia was a party to the action and stipulated to the judgement; and
2. The qualified entity shall use the proceeds of sale to acquire an agricultural conservation easement in other preserved land in compliance with this chapter.

**Section 18.04.120 Severability**

If any portion of this chapter is held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. The City Council declares that it would have enacted this chapter and each section, division, paragraph, sentence, clause, or phrase thereof even if a portion of the chapter were declared unconstitutional.

**Section 2: Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstances, is or any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not effect the validity or enforceability of the remaining sections, subsections, subdivision, paragraphs, sentences, clauses or phrases of these Ordinances, or its application to any other person or circumstance. The City Council of the City of Visalia hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**Section 3: Construction.** The City Council intends these Ordinances to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

**Section 4: Effective Date.** These Ordinances shall take effect thirty days after its adoption.

**Section 5: Certification.** The City Clerk shall certify the passage and adoption of this Ordinance and shall cause the same to be published or posted according to law.