

***ITEM #2** Development Services requests an Ordinance Text Amendment to Title 15 (Land Use and Development) to add procedures and requirements related to agriculture protection areas. Citywide Application. Brandon Larsen (801) 852-6408 jblarsen@provo.org PLOTA20230092

Applicant: Provo City Development Services

Staff Coordinator: Brandon Larsen

ALTERNATIVE ACTIONS

1. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is June 14, 2023, at 6:00 P.M.*

2. **Recommend Denial** of the requested Ordinance Text Amendment. *This action would not be consistent with the recommendations of the Staff Report. The Planning Commission should state new findings.*

Relevant History: Provo City is currently considering the annexation of land in agricultural production near its northeast boundary. There are other properties already within the City in agricultural production. The Utah Code has established a process by which land in agricultural production can be afforded special legal protections.

Summary of Key Issues:

- The State has established a process to give land in agricultural production legal protections to keep them viable and safe from nuisance claims.
- The provisions of the Utah Code for agricultural protection areas are not repeated within this proposal. This proposal would supplement and build upon the agricultural protections allowed by the State in support of agricultural lands within the City.

Staff Recommendation: That the Planning Commission recommend approval of the proposed text amendments to the City Council.

OVERVIEW

Within the City there are many acres of land in agriculture production. The Municipal Council adopted a resolution expressing the intent to consider annexing additional land (the proposed Smith-Provo Annexation near the northeast boundary of the City) into the City that is in agricultural production. §17-41-101(2)(a), Utah Code Annotated (UCA), defines agricultural production as “production for commercial purposes of crops, livestock, and livestock products.”

The Utah Code has established a process by which land in agricultural production can be afforded additional legal protections, including protection from nuisance claims for agricultural activities or operations “using sound agricultural practices, unless that activity or operation bears a direct relationship to public health or safety” [see §17-41-403(1)(a), UCA]. To obtain these protections a landowner can seek approval of an agricultural protection area. Most of these requirements are laid out well in Title 14, Chapter 41 of the Utah Code. However, the Utah Code establishes that the agriculture protection area process should be done at the City level. The final decision on these proposals is to be made by the Municipal Council.

It appears to be appropriate to add requirements in the City Code to address agricultural protection areas, as well as address issues in the process that are left to the discretion of the legislative body (Municipal Council), such as establishing the minimum number of continuous acres included in an agricultural protection area. The proposal would also delegate the Development Services Department to accept, notice, and process these applications, rather than the Municipal Council.

This proposal would also give the Municipal Council discretion on excluding land in a proposed agricultural protection area, which land has been planned for a roadway, park, utility corridor, or commercial development, as per the official maps of the City or other political subdivision or state agency.

The proposal also sets forth specific nuisance protections for agricultural operations with sound practices. For example, operations with sound operations would be excluded from the definition of public nuisance under Title 7 or other nuisance prohibitions in the City Code, unless the activity would impact public health or safety.

The agricultural protection area application process appears to be a legislative matter, which would offer the Council broad discretion in making decisions when considering a particular application.

STAFF ANALYSIS

Section 14.020.020(2) of the City Code establishes criteria for the amendments to the zoning title as follows: **(Staff response in bold type)**

(a) Public purpose for the amendment in question.

Staff response: To support and protect agricultural operations and activities that incorporate sound practices. Agricultural operations produce crops, livestock, and livestock products that benefit the public at large.

(b) Confirmation that the public purpose is best served by the amendment in question.

Staff response: The language proposed has been reviewed by the Provo City Attorney's Office. This proposal will protect agricultural operations, which benefit the public.

(c) Compatibility of the proposed amendment with General Plan policies, goals, and objectives.

Staff response: This proposal is very much in harmony with the General Plan policies, goals, and objectives. The "Agricultural Land" paragraph of the "Fostering a More Resilient City Through Land Use" section of the Land Use Element of the General Plan states: *"Another consideration for making Provo more resilient is preserving agricultural land. Agricultural lands can play a key role in providing locally grown food. Local options are key in events that produce supply-chain disruptions."* Agricultural protection areas, or the allowance thereof, can be a powerful tool for agricultural land preservation.

(d) Consistency of the proposed amendment with the General Plan's "timing and sequencing" provisions on changes of use, insofar as they are articulated.

Staff response: There are no timing and sequencing issues related to this request.

(e) Potential of the proposed amendment to hinder or obstruct attainment of the General Plan's articulated policies.

Staff response: The proposed amendments will not hinder or obstruct attainment of any of the General Plan policies.

(f) Adverse impacts on adjacent land owners.

Staff response: The point of the agricultural protection area process is to give the City a transparent process to consider establishing new protection areas. The nature of these protection areas is to protect agricultural operations that incorporate sound practices from legal issues and nuisance claims. So, the very nature of the process is to establish areas in which agricultural operations are given a priority use status.

(g) Verification of correctness in the original zoning or General Plan for the area in question.

Staff response: Not applicable.

(h) In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.

Staff response: No such conflict exists.

CONCLUSIONS

Staff believes this proposal will help clarify and facilitate the process for those property owners with agricultural operations and activities within Provo City who are seeking protection from nuisance claims and other related legal entanglements. This proposal can be a valuable tool to protect agricultural operations within City boundaries.

ATTACHMENTS

1. Proposed Amendments

ATTACHMENT 1 – PROPOSED AMENDMENTS

Chapter 15.24
AGRICULTURE PROTECTION AREAS

Sections:

- 15.24.010 Purpose.**
- 15.24.020 Definitions.**
- 15.24.030 Agriculture Protection Area Proposals.**
- 15.24.040 Area Requirements.**
- 15.24.050 Evaluating Proposals.**
- 15.24.060 Safeguards for Land in an Agriculture Protection Area.**

15.24.010

Purpose.

This Chapter establishes procedures and requirements for agriculture protection areas in the City and are supplemental to those found in Title 17, Chapter 41, Utah Code, as amended. These provisions help protect established agriculture operations from encroachment of urban development and nuisance claims. They also safeguard important planning interests, such as road and utility corridors.

15.24.020

Definitions.

For the purpose of this Chapter, the following words and terms shall be defined, as follows:

- (1) **"Advisory board"** means:
 - (a) the agriculture protection area Advisory Board created as provided in Title 17, Chapter 41, Part 2, Utah Code, as amended.
- (2) **"Agriculture production"** means production for commercial purposes of crops, livestock, and livestock products. Agricultural production includes the processing or retail marketing of any crops, livestock, and livestock products when more than 50% of the processed or merchandised products are produced by the farm operator.
- (3) **"Agriculture protection area"** means a geographic area created under the authority of this Chapter that is granted the specific legal protections contained in this chapter.
- (4) **"Crops, livestock, and livestock products"** includes:
 - (a) land devoted to the raising of useful plants and animals with a reasonable expectation of profit, including:

- (i) forages and sod crops;
 - (ii) grains and feed crops;
 - (iii) livestock as defined in Title 59, Chapter 2, Utah Code, as amended;
 - (iv) trees and fruits; or
 - (v) vegetables, nursery, floral, and ornamental stock; or
- (b) land devoted to and meeting the requirements and qualifications for payments or other compensation under a crop-land retirement program with an agency of the state or federal government.

15.24.030

Agriculture Protection Area Proposals.

- (1) Agriculture protection area applications shall meet and be processed according to the requirements of Title 17, Chapter 41, Utah Code, as amended, as well as those requirements set forth in this Chapter.
- (2) The Municipal Council designates the Development Services Department to accept, notice, and process agriculture protection area applications only if they are properly completed and accompanied by the filing fee. The filing fee is set forth in the Provo City Consolidated Fee Schedule.
- (3) After receiving the written report from the Advisory Board and the Planning Commission, and providing proper notice, as set forth in Title 17, Chapter 41, Part 3, Utah Code, as amended, the Municipal Council shall make the final decision on all proposed agriculture protection areas.

15.24.040

Area Requirements.

- (1) In accordance with Title 17, Chapter 41, Utah Code, as amended, the minimum number of contiguous acres that must be included in an agriculture protection area within Provo City is hereby established at twenty (20) acres, which land must be receiving the benefits of Title 59, Chapter 2, Farmland Assessment Act, Utah Code, as amended (commonly called "greenbelt").
- (2) An agriculture protection area may be approved for land with a minimum contiguous area of ten (10) acres provided the land is receiving the benefits of Title 59, Chapter 2, Farmland Assessment Act, Utah Code, as amended, and if the land is:
 - (a) used in an intensive livestock operation;
 - (b) used for fruit production; or
 - (c) contiguous to an existing agriculture protection area whether within or without Provo City.

15.24.050

Evaluating Proposals.

- (1) In evaluating a proposal, and in determining whether or not to create or recommend the creation of an agriculture protection area, the Advisory Board, Planning Commission, and Municipal Council may exclude land planned by Provo City, or another political subdivision or state agency, for a roadway, park, utility corridor, or commercial development, as determined by the official maps of the City or other political subdivision or state agency.

15.24.060

Safeguards for Land in an Agriculture Protection Area.

- (1) Any agricultural activity or operation within an agriculture protection area conducted using sound agricultural practices shall be excluded from the definition or prohibition of a public nuisance under Title 7 or any other provision of the Provo City Code dealing with public nuisances, unless that activity or operation bears a direct relationship to public health or safety.
- (2) Property located within an approved agriculture protection area shall enjoy the benefits and protections as provided in the Utah Code, as such may be amended from time to time. Such benefits may include limitations on local regulations, limitations on zoning map amendments, protection from civil and criminal nuisance claims, favorable policy from state agencies, restrictions on eminent domain, and restrictions on state development projects.
- (3) (a) For any new subdivision development located in whole or in part within 300 feet of the boundary of an agriculture protection area, the owner of the development shall include the following notice on any plat filed with the County Recorder:

"Agriculture Protection Area

This property is located in the vicinity of an established agriculture protection area in which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future be conducted on property included in the agriculture protection area. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities."