

ORDINANCE NO. 31-22

ROLL CALL

VOTING	YES	NO	ABSENT	ABSTAIN
MIKE MENDENHALL <i>Mayor (votes only in case of tie)</i>				
CHAD ARGYLE <i>Councilmember</i>	X			
STACY BECK <i>Councilmember</i>	X			
BRANDON B. GORDON <i>Councilmember</i>	X			
SHANE MARSHALL <i>Councilmember</i>	X			
KEVIN OYLER <i>Councilmember</i>	X			

I MOVE this ordinance be adopted: Councilmember Argyle

I SECOND the foregoing motion: Councilmember Gordon

ORDINANCE No. 31-22

ORDINANCE ADOPTING TITLE 15, PART 3, CHAPTER 28, OF THE SPANISH FORK MUNICIPAL CODE PERTAINING TO AGRICULTURE PROTECTION AREAS

WHEREAS Spanish Fork City ("City") recognizes the importance of preserving agricultural property where appropriate;

WHEREAS Title 17, Chapter 41, of the Utah Code allows the City Council, as the legislative body, to create agriculture protection areas;

WHEREAS the Utah Court of Appeals has held that the local legislative body has discretion whether to “approve, modify and approve, or reject” proposed agriculture protection areas, *Farley v. Utah County*, 2019 UT App 45, 440 P.3d 856 (2019);

WHEREAS a public hearing was held before the Planning Commission on July 6, 2022, after which the Planning Commission made a recommendation on the proposed ordinance to the City Council;

WHEREAS the City Council considered the Planning Commission’s recommendation and held a public hearing on July 12, 2022; and


WHEREAS the City Council finds that the proposed ordinance will further the public health, safety, and general welfare of Spanish Fork residents by allowing the creation of agriculture protection areas in appropriate areas while allowing for the exclusion of certain areas master planned for parks, road or utility corridors, and areas of commercial importance;

NOW, THEREFORE, be it ordained by the Spanish Fork City Council as follows:

Section 1. Amendment of Municipal Code. The Spanish Fork Municipal Code is hereby amended as shown in Exhibit A, attached hereto and incorporated herein, to enact a new chapter, 15.3.28, Agriculture Protection Areas.

Section 2. Effective Date. This ordinance shall be effective twenty days after passage and publication.

DATED: August 16, 2022.


MIKE MENDENHALL, Mayor

ATTEST:

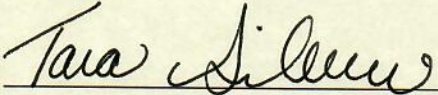

Tara Silver, City Recorder



EXHIBIT A

AMENDMENT OF THE MUNICIPAL CODE

PART 3 COMPREHENSIVE ZONING ORDINANCE

15.3.04 Purpose And Applicability

15.3.08 Administration

15.3.12 Zoning Districts

15.3.16 Zoning District Regulations

15.3.20 Overlay District Regulations

15.3.24 General Development Standards

15.3.28 Agriculture Protection Areas

15.3.28 Agriculture Protection Areas

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15.3.28.090 Adding Land to an Agriculture Protection Area

15.3.28.100 Removing Land from an Agriculture Protection Area

15.3.28.110 Review of Agriculture Protection Areas

15.3.28.120 Benefits

15.3.28.010 Definitions

For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them below:

“Advisory Board” means the Utah County Agriculture Protection Area Advisory Board.

"Agriculture production" means production for commercial purposes of crops, livestock, and livestock products and 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. Agriculture production includes Agritainment as defined in Title 15, including corn mazes, hay rides, petting zoos, farm stands, and farmer's markets.

"Agriculture protection area" means a geographic area within Spanish Fork City created under the authority of Chapter 41, Title 17, Utah Code Annotated, 1953 as amended, and of this Chapter, that is granted the specific legal protections contained in Chapter 41, Title 17, Utah Code Annotated, 1953 as amended.

"Contiguous" means touching along a common side or so close in proximity as to be separated only by the width of a road, canal, railroad track, easement, or similar right-of-way.

"Crops, livestock, and livestock products" includes: (1) land devoted to the raising of useful plants and animals with a reasonable expectation of profit, including: (A) forages and sod crops; (B) grains and feed crops; (C) livestock as defined in Subsection 59-2-102(20), Utah Code Annotated, 1953, as amended; (D) trees and fruits; or (E) vegetables, nursery, floral and ornamental stock; or (2) 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.

"Planning Commission" means the Spanish Fork Planning Commission.

"Political subdivision" means a county, city, town, school district, or special district.

"Proposal sponsors" means the owners of land in agricultural production who are sponsoring the proposal for creating an agriculture protection area.

"State agency" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

"Unincorporated" means not within a city or town.

15.3.28.020 Purpose

Spanish Fork City supports the establishment of agriculture protection areas within the limitations established by this Chapter to protect and sustain production agriculture. Furthermore, Spanish Fork City recognizes that the adoption of an agriculture protection area will not restrict a citizen's ability to file a complaint about an agriculture practice. Rather, Spanish Fork City hopes to protect agricultural land owners from civil lawsuits and criminal prosecution as long as the owner employs safe, sound, and reasonable agriculture practices.

15.3.28.030 Proposal for Creation of Agriculture Protection Area

A. A proposal to create an agriculture protection area or an amendment to an existing agriculture protection area within Spanish Fork City may be filed with the City Council by completing the standard forms adopted by the City Council and by filing said forms in the Community Development office.

B.

1. To be accepted for processing by the City Council, a proposal under Subsection (A) shall be signed by a majority in number of all owners of real property and the owners of a majority of the land area in agricultural production within the proposed agriculture protection area.
2. For the purpose of Subsection (B)(1), the owners of real property shall be determined by the records of the County Recorder.
3. The Community Development Director or designee shall accept and process such forms only if they are properly completed and accompanied by the filing fee. The filing fee is set forth in the adopted Fee Schedule.
4. The proposal shall contain the following information:
 - a. the boundaries of the land proposed to become part of an agriculture protection area;
 - b. any limits on the types of agriculture production to be allowed within the agriculture protection area; and
 - c. for each parcel of land:
 - (1) the names of the owners of record of the land proposed to be included within the agriculture protection area;
 - (2) the tax parcel number or account number identifying each parcel; and
 - (3) the number of acres of each parcel.
 - d. An agriculture protection area may include within its boundaries land used for a roadway, dwelling site, park, or other

nonagricultural use, if that land constitutes a minority of the total acreage within the agriculture protection area.

15.3.28.040 Area Requirements

- A. In accordance with Section 17-41-301, Utah Code Annotated, 1953, as amended, the minimum number of contiguous acres that must be included in an agriculture protection area within the City is hereby established as twenty (20) acres, which land must be receiving the benefits of Title 59, Chapter 2, Part 5, Farmland Assessment Act (commonly, "greenbelt").
- B. Land which is used in intensive livestock operations or in fruit production may be included in an agriculture protection area with an area less than the minimum acreage requirement. An area that is contiguous to an existing agriculture protection area or contiguous to an existing or proposed agriculture protection area that is not within the boundaries of the City may be included in an agriculture protection area with an area less than the minimum acreage requirement.
- C. Creation of an agriculture protection area shall not impair the ability of land within the area to obtain the benefits of Title 59, Chapter 2, Part 5, Farmland Assessment Act. The eligibility of land for the benefits of Title 59, Chapter 2, Part 5, Farmland Assessment Act, shall be determined exclusively by the provisions of that act, notwithstanding the land's location within an agriculture protection area.

15.3.28.050 Notice Requirements

- A. The City Council or staff shall provide notice of the proposal for an agriculture protection area within the City by:
 - 1. Posting notice on the Utah Public Notice Website created in Section 63A-16-601 of the Utah Code, as amended;
 - 2. Posting notice at five public places, within or near the proposed agriculture protection area; and
 - 3. Mailing written notice to each owner of land within 1,000 feet of the land proposed for inclusion within the agriculture protection area.
- B. The notice shall contain:
 - 1. A statement that a proposal for the creation of an agriculture protection area has been filed with the City Council;
 - 2. A statement that the proposal will be open to public inspection in the office of the City Council;

3. A statement that any person or entity affected by establishment of the area may, within 15 days of the date of the notice, file with the City Council written objections to the proposal or a written request to modify the proposal to exclude land from or add land to the proposed agriculture protection area;
 4. A statement that the City Council will submit the proposal to the Advisory Board and to the Planning Commission for review and recommendations; and
 5. A statement that the City Council will hold a public hearing to discuss and hear public comment on:
 - a. the proposal to create the agriculture protection area;
 - b. the recommendations of the Advisory Board and Planning Commission; and
 - c. any requests for modification of the proposal and any objections to the proposal; and
 6. A statement indicating the date, time, and place of the public hearing.
- C. A person wishing to modify the proposal for the creation of the agriculture protection area, within 15 days after the date of the notice, shall file a written request for modification of the proposal, which identifies specifically the land that should be added to or removed from the proposal.
- D. Any person wishing to object to the proposal for the creation of the agriculture protection area, within 15 days after the date of the notice, shall file a written objection to the creation of the agriculture protection area.

15.3.28.060 Review of Proposal

- A. After 15 days from the date of the notice, the City Council shall refer the proposal and any objections and proposed modifications to the proposal to the Advisory Board and Planning Commission for their review, comments, and recommendations.
- B. Within 45 days after receipt of the proposal, the Planning Commission shall submit a written report to the City Council that:
 1. analyzes and evaluates the effect of the creation of the proposed area on the City's planning policies and objectives;
 2. analyzes and evaluates the proposal by applying the criteria contained in Section 15.3.28.070, Evaluation Criteria.
 3. recommends any modifications to the land to be included in the proposed agriculture protection area;
 4. analyzes and evaluates any objections to the proposal; and

5. includes a recommendation to the City Council either to accept, accept and modify, or reject the proposal.
- C. Within 45 days after receipt of the proposal, the Advisory Board shall submit a written report to the City Council that:
 1. recommends any modifications to the land to be included in the proposed agriculture protection area;
 2. analyzes and evaluates the proposal by applying the criteria contained in Section 15.3.28.070, Evaluation Criteria;
 3. analyzes and evaluates any objections to the proposal; and
 4. includes a recommendation to the City Council either to accept, accept and modify, or reject the proposal.
- D. The City Council shall consider a failure of the Planning Commission or Advisory Board to submit a written report within the 45 days under Subsections (b) and (c) as a recommendation of that committee to approve the proposal as submitted.

15.3.28.070 Public Hearing

- A. After receipt of the written reports from the Advisory Board and Planning Commission, or after the 45 days has expired, whichever is earlier, the City Council shall:
 1. Schedule a public hearing;
 2. Provide notice of the public hearing by:
 - a. Posting notice on the Utah Public Notice Website created in Section 63A-16-601 of the Utah Code, as amended; and
 - b. Posting notice at five public places, within or near the proposed agriculture protection area; and
 - c. Mailing written notice to each owner of land within 1,000 feet of the land proposed for inclusion within the agriculture protection area; and
 3. Ensure that the notice includes:
 - a. the time, date, and place of the public hearing on the proposal;
 - b. a description of the proposed agriculture protection area;
 - c. any proposed modifications to the proposed agriculture protection area;
 - d. a summary of the recommendations of the Advisory Board and Planning Commission; and
 - e. a statement that interested persons may appear at the public hearing and speak in favor of or against the proposal, any

proposed modifications to the proposal, or the recommendations of the Advisory Board and Planning Commission.

B. The City Council shall:

1. convene the public hearing at the time, date, and place specified in the notice; and
2. take verbal or written testimony from interested persons.

C. Within 120 days of the submission of the proposal, the City Council shall approve, modify and approve, or reject the proposal.

D. The creation of an agriculture protection area is effective at the earlier of:

1. the City Council's approval of a proposal or modified proposal; or
2. 120 days after submission of a proposal complying with this chapter, if the City Council has failed to approve or reject the proposal within that time.

E. To give constructive notice of the existence of the agriculture protection area to all persons who have, may acquire, or may seek to acquire an interest in land in or adjacent to the agriculture protection area, within 10 days of the creation of an agriculture protection area, the City Council shall file an executed document containing a legal description of the agriculture protection area with:

1. the County Recorder; and
2. the Planning Commission.

F. Within ten days of the recording of the agriculture protection area, the City Council or designee shall send written notification to the Commissioner of Agriculture and Food that the agriculture protection area has been created, and include in the notification the following:

1. the number of landowners owning land within the agriculture protection area;
2. the total acreage of the area;
3. the date of approval of the area; and
4. the date of recording.

G. Failure by the City Council or designee to record the notice required under Subsection (e) does not invalidate the creation of an agriculture protection area.

H. The City Council may consider the cost of recording notice under Subsection (E), the cost of sending notification under Subsection (F), and all other estimated costs in establishing a fee under Subsection 15.3.28.020, Proposal for Creation of Agriculture Protection Area.

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 City Council shall apply the following criteria:

- A. Whether or not the land is currently being used for agriculture production;
- B. Whether or not the land is zoned for agriculture use;
- C. Whether or not the land is viable for agricultural production;
- D. The extent and nature of existing or proposed farm improvements;
- E. Anticipated trends in agricultural and technological conditions; and
- F. Whether the land contains land planned by the 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. Such areas may be excluded from the agriculture protection area.

No single criterion is necessary or sufficient for the establishment of an agriculture protection area. Rather, the criteria in this section are for evaluation and consideration by the Advisory Board, Planning Commission, and the City Council.

15.3.28.090 Adding Land to an Agriculture Protection Area

- A. Any owner may add land to an existing agriculture protection area within the City by:
 - 1. Filing a proposal with the City Council through the Community Development Department; and
 - 2. Obtaining the approval of the City Council for the addition of the land to the area.
- B. The City Council shall comply with the provisions for creating an agriculture protection area in determining whether or not to accept the proposal.

15.3.28.100 Removing Land from an Agriculture Protection Area

- A. An owner may remove land from an agriculture protection area within the City by filing a petition for removal of the land from the agriculture protection area with the City Council through the Community Development Department.
- B. The City Council:
 - 1. Shall grant the petition for removal of land from an agriculture protection area even if removal of the land would result in an agriculture protection area of less than the number of acres established by the City Council as the minimum under Section 15.3.28.030, Area Requirements;

2. To give constructive notice of the removal to all persons who have, may acquire, or may seek to acquire an interest in land in or adjacent to the agriculture protection area and the land removed from the agriculture protection area, shall file a legal description of the revised boundaries of the agriculture protection area with the County Recorder and the Planning Commission; and
 3. May not charge a fee in connection with a petition to remove land from an agriculture protection area.
- C. The remaining land in the agriculture protection area is still an agriculture protection area.

15.3.28.110 Review of Agriculture Protection Areas

- A. For the purposes of this Section, the term "calendar year" means the period from January 1 to December 31, inclusive.
- B. The City Council shall perform an initial review of any agriculture protection area created under the authority of this Chapter in the 20th calendar year after it is created to determine whether the agriculture protection area should be continued, modified, or terminated.
- C. To assist the City Council in its review, the City Council may:
 1. request the Planning Commission and Advisory Board to submit recommendations about whether the agriculture protection area should be continued, modified, or terminated;
 2. at least 120 days before the end of the 20th calendar year, hold a public hearing to discuss whether the agriculture protection area should be continued, modified, or terminated;
 3. give notice of the hearing using the same procedure required by Section 15.3.28.040 Notice Requirements; and
 4. after the public hearing, continue, modify, or terminate the agriculture protection area.
- D. If the City Council modifies or terminates the agriculture protection area, it shall file an executed document containing the legal description of the agriculture protection area with the County Recorder.
- E. If the City Council determines after that initial review that the agricultural protection area should be continued or otherwise fails to affirmatively continue, modify, or terminate the agriculture protection area in the 20th calendar year, then the agriculture protection area is considered to be reauthorized for another 20 years.

15.3.28.120 Benefits

- A. Property located within an approved agriculture protection area shall enjoy the benefits and protections as provided in state law, 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.
- B. Specifically, for an agriculture protection area, 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 8 unless that activity or operation bears a direct relationship to public health or safety.