



CITY OF WHEATLAND

CITY COUNCIL MEETING STAFF REPORT

August 10, 2021

SUBJECT: City Council consideration to introduce the ordinance to add Chapter 18.62 to the Wheatland Municipal Code relating to Right-to-Farm, and waive the first reading.

PREPARED BY: Tim Raney, Community Development Director

Recommendation

Staff recommends the City Council hold the public hearing on the proposed ordinance, and upon close of the public hearing, introduce and waive the first reading of the proposed ordinance adding Chapter 18.62 to the Wheatland Municipal Code relating to Right-to-Farm (see Attachment 1).

Background

In 2014, the City of Wheatland annexed the Johnson Rancho and Hop Farm properties, which currently includes more than 1,500 acres of active agriculture land. Active agricultural land is typically located within unincorporated county land and not within incorporated cities. As a result, the City of Wheatland currently has limited adopted policies, standards, and guidelines related to agricultural production. As the city continues to urbanize and develop, staff has identified the importance of developing additional policies, standards, and guidelines to support agricultural production within the city.

On June 11, 2019, the Wheatland City Council appointed two city council members, two planning commissioners, two local agriculture producers, and a local business owner to an Ad-Hoc Committee for the preparation of the Citywide Agricultural Production Standards project.

The City of Wheatland held five Ad-Hoc Committee meetings from January 23, 2020 to February 16, 2021.

1. January 23, 2020
2. February 18, 2020
3. October 1, 2020
4. December 15, 2020
5. February 16, 2021

The five Ad-Hoc Committee meetings provided an opportunity for discussion and input from the general public and the committee members to prepare the proposed Right-to-Farm Ordinance. All five public meetings were publicly noticed per the city's standard noticing practices.

A Right-to-Farm Ordinance is a common strategy available to local governments utilized to protect farmers from nuisance lawsuits and provide incentives to landowners to maintain their lands in agricultural uses. Agriculture producers who are experiencing rural residential development in their area often worry about the conflicts with non-agriculture uses that may not appreciate the noise, smells, and dust associated with normal agricultural activities. While informal and formal legal confrontations between agriculture producers and non-agriculture uses have been rare in the City of Wheatland, it is important that the city provide legal protection to farmers as a means to protect agricultural land from urbanization and reduce the fears of local farmers.

Right-to-Farm communities afford certain protections to agriculture producers in case of routine land use conflicts such as noise or odor. These nuisance complaints are kept from litigation and run through a non-punitive hearing process by which consensus can be reached between all parties. Right-to-Farm community residents are informed of a community's status prior to purchase of a property.

Although Right-to-Farm Ordinances fall within the regular regulatory powers of county and city governments, the local measures were first created in 1981 by the passage of a State statute (Sect. 3482.5 of the California Civil Code) that declares a farm in operation for more than three years is not to be considered a nuisance due to changed conditions (urbanization) in the area. In 1989, the legislature went further by allowing counties and cities to require relators to disclose to property buyers' particular conditions of the property, including the possible negative impacts of nearby farming (Civil Code Section 1102.6a). The California Farm Bureau prepared a model Right-To-Farm Ordinance at that time, and most counties and cities have since followed the model language in adopting their own ordinances. Thus, most county and city Right-to-Farm Ordinances have similar contents. The purpose and intent of the Right-to-Farm Ordinance is to protect agricultural land uses and designations identified on zoning maps from conflicts with nonagricultural land uses that may result in financial hardship to agricultural operators or termination of farmers' operations.

Discussion

Staff worked with the selected Ad-Hoc Committee members and created the proposed Right-to-Farm Ordinance by using the model prepared by the California Farm Bureau and modifying it specifically for the City of Wheatland.

The proposed Right-to-Farm Ordinance would provide a level of protection and importance for the existing agricultural productions within the city and ensure the continued use of agriculture amongst future development. The proposed Right-to-Farm Ordinance includes the following sections as seen in Attachment 1:

- Purpose and Intent;
- Definitions;
- Nuisance;
- Land Use Entitlement Right-to-Farm Restrictions;
- Notification to Transferees; and

- Grievance Procedures.

The proposed ordinance is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines section 15305, Minor Alterations in Land Use Limitations.

On July 6, 2021, staff presented the proposed Right-to-Farm Ordinance to the Wheatland Planning Commission. Staff received several comments from the public and Wheatland City Councilmember Pamela Shelton, who was appointed to the Agricultural Standards Project Ad-Hoc Committee, regarding the proposed ordinance's relationship to agritourism and the Bishop Pumpkin Farm in the City of Wheatland. Planning staff explained that the purpose and intent of the proposed Right-to-Farm Ordinance is to protect agricultural land uses, promote a good neighbor policy between agricultural operations and residents, and promote ongoing communication between agricultural operators and residents near agricultural activities.

After planning commission discussion, the Wheatland Planning Commission voted to recommend city council adoption of the proposed Right-to-Farm Ordinance.

Fiscal Impact

None.

Attachments

1. Draft ordinance adding Chapter 18.62 to the Wheatland Municipal Code relating to Right-to-Farm.

ORDINANCE NO. 482

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF WHEATLAND, CALIFORNIA,
ADDING NEW CHAPTER 18.62 TO
THE WHEATLAND MUNICIPAL CODE
RELATING TO RIGHT-TO-FARM**

The Wheatland City Council does ordain as follows:

SECTION 1. Purpose and Authority. The purpose of this ordinance is to add Chapter 18.62 to the Wheatland Municipal Code pertaining to the city's right-to-farm to protect agricultural land uses. This ordinance is adopted pursuant to Government Code section 65850, Civil Code sections 3482.5 and 3482.6, and other applicable law.

SECTION 2. Findings.

The Wheatland City Council finds and determines as follows:

- A. The Wheatland City Council and Wheatland Planning Commission are responsible for administering zoning provisions within the city's boundaries as well as implementing the city's General Plan as provided for in Title 18 of the Wheatland Municipal Code.
- B. Agricultural land forms the boundaries of the incorporated areas of the city, and surrounds and borders other land use designations, including residential. Where non-agricultural land uses are adjacent to or near agricultural areas, agricultural operations frequently can be the subject of nuisance complaints, which can discourage investments in farm improvements and other infrastructure.
- C. California Civil Code Sections 3482.5 and 3482.6, "The State Right To Farm Act", identifies agricultural activity conducted in conformance with reasonable standards and practice as not a nuisance.
- D. The city's General Plan outlines the goal of developing and supporting a city right-to-farm ordinance, especially as it relates to noise emanating from the agricultural operations adjacent to urban uses.
- E. On _____, 2021 the Wheatland City Council held a duly noticed public meeting concerning the adoption of a proposed ordinance to carry out the State Right To Farm Act ("proposed Right-to-Farm Ordinance").
- F. The proposed Right-to-Farm Ordinance is consistent with the policies of the City of Wheatland General Plan and with the Wheatland Municipal Code.
- E. The Wheatland City Council finds it necessary to pass and implement the proposed Right-to-Farm Ordinance in order to protect the economic base of the city by preventing incompatible land uses from encroaching upon existing agricultural operations, and that it will promote and protect the public health, safety, comfort, morals, convenience and general welfare of the residents within the city.

SECTION 3. Additions and Amendments.

A. New Chapter 18.62 shall be added to Title 18 of the Wheatland Municipal Code to read as follows:

Chapter 18.62

RIGHT-TO-FARM

Sections:

- 18.62.010 Purpose and Intent.
- 18.62.020 Definitions.
- 18.62.030 Nuisance.
- 18.62.040 Land Use Entitlement Right-to-Farm Restrictions.
- 18.62.050 Notification to Transferees.
- 18.62.060 Grievance Procedures.

18.62.010 Purpose and intent.

A. The purpose of this chapter is to:

1. Protect agricultural land uses and designations identified on the zoning map from conflicts with nonagricultural land uses that may result in financial hardship to agricultural operators or the termination of their operation;
2. Promote a good neighbor policy between agricultural operations and residents by advising purchasers and residents of property adjacent to or near agricultural operations of the inherent potential inconveniences associated with such purchase or residence including, but not limited to, the sounds, odors, dust and chemicals that may accompany agricultural operations, so that such purchasers and residents will be aware of such inconveniences, any applicable remedies, and the city's procedures regarding the Right-to-Farm ordinance;
3. Encourage the use of dispute resolution to amicably resolve any complaints about agricultural operations; and
4. Promote ongoing communication between agricultural operators and residents of property near agricultural operations and understanding by residents of typical agricultural practices.

B. It is the intent of the city that existing commercial agricultural operations shall not be or become a nuisance due to any changed condition resulting from those operations when conducted in a reasonable manner. It is also the city's intent that, to the extent any provision of this Chapter is inconsistent with the State Right to Farm Act, the terms of the State Right to Farm Act shall govern.

18.62.020 Definitions.

For the purpose of this chapter, certain words and terms used herein, or which may be hereafter used are defined as set forth in this section.

"Agricultural Land" means land areas of the City of Wheatland specifically zoned containing the Agricultural Combining District or any other zoned land as defined by

the City of Wheatland zoning ordinance where the land use on the land within the city limits is agricultural.

“Agricultural Operations” means any agricultural activity, operation, or facility including, but not limited to, the following:

1. The cultivation and tillage of the soil;
2. Dairying;
3. The production, irrigation, frost protection, cultivation, growing, harvesting, and processing of any commercial agricultural commodity, including timber, viticulture, apiculture, horticulture, or arboriculture;
4. The raising of livestock, fur-bearing animals, fish, or poultry for commercial purposes or otherwise;
5. Agricultural spoils (not waste) areas;
6. Public or private stables, corrals, and riding academies;
7. Any practices performed by a farmer or on a farm as incidental to or in conjunction with the above-described activities, facilities and operations, including the following: the legal application of pesticides, herbicides, fungicides, rodenticides and fertilizers; use of farm equipment; storage of farm equipment; storage and preparation of agricultural products for market, and delivery of such products to storage, market, or to carriers for transportation to market; and

“Agricultural Processing Facilities or Operations”, in accordance with Civil Code Section 3482.6, means any agricultural processing activity, operation, facility, or appurtenance thereof, including, but not limited to, the following:

1. The canning or freezing of agricultural products;
2. The processing of dairy products;
3. The production and bottling of beer, wine, cider, and/or spirits;
4. The processing of meat and/or egg products;
5. The drying of fruits and/or grains;
6. The packing and cooling of fruits and/or vegetables;
7. The storage, warehousing, or processing of any agricultural products for wholesale or retail markets; and
8. Excluding all marijuana production operations.

18.62.030 Nuisance.

In accordance with the provisions of Civil Code Section 3482.5, no present or future agricultural operation, conducted or maintained on agricultural land for commercial purposes, and in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality, shall be or become a nuisance, public or private, pursuant to Section 3479 et seq. of the California Civil Code, due to any changed conditions in or about the locality, after it has been in operation for more than three years, if it was not a nuisance when it began.

18.62.040 Land Use Entitlement Right-to-Farm restrictions.

As a condition of approval of a discretionary development permit, including, but not limited to, tentative subdivision and parcel maps, use permits, and rezoning, pre-zoning, and planned developments, relating to property located within 2,000 feet of agricultural land, agricultural operations or agricultural processing facilities or operations, the city shall require every transferor of such property to, upon transfer, insert the restriction recited below in the deed or other instrument transferring any right, title or interest in the property to a transferee.

RIGHT TO FARM RESTRICTION

The City of Wheatland and Yuba County permit operation of properly conducted agricultural operations within the city and the county.

You are hereby notified that the property you are acquiring an interest in is located within 2,000 feet of agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful agricultural or agricultural processing facilities operations. Discomfort and inconvenience may include, but is not limited to, noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents, and/or the operation of machinery (including aircraft) during any 24-hour period.

One or more of the inconveniences described above may occur as a result of agricultural operations which are in compliance with existing laws and regulations and accepted customs and standards. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in an area with a strong rural character and an active agricultural sector.

Lawful ground rig or aerial application of pesticides, herbicides, fungicides, rodenticides and fertilizers occurs in farming operations. Should you be concerned about spraying, you may contact the Yuba County Agricultural Commissioner.

The City of Wheatland Right-to-Farm Ordinance does not exempt farmers, agricultural processors or others from compliance with the law. Should a farmer, agricultural processor or other person not comply with appropriate federal, State, or local laws, legal recourse may be possible by, among other ways, contacting the appropriate agency.

This Right-to-Farm Restriction shall be included in all subsequent deeds and leases for this property until such time as the property is not located within 2,000 feet of agricultural land or agricultural operations as defined by Chapter 18.62 of the Wheatland Municipal Code.

The failure to include the restriction required by this section in any deed or instrument shall not invalidate any transfer.

18.62.050 Notification to transferees.

Every transferor of property defined as Agricultural Land as provided for in Section 18.62.020 of the Wheatland Municipal Code shall, upon transfer, also provide to any transferee the notice to farm recited below in writing. The notice of Right-to-Farm may be contained in any form of agreement or contract; however, the notice need be given only once in any transaction.

NOTICE OF RIGHT TO FARM

The City of Wheatland and Yuba County permit operation of properly conducted agricultural operations within the city and the county.

You are hereby notified that the property you are acquiring an interest in is located within 2,000 feet of agricultural land, agricultural operations or agricultural processing facilities or operations. You may be subject to inconvenience or discomfort from lawful agricultural or agricultural processing facilities operations. Discomfort and inconvenience may include, but is not limited to, noise, odors, fumes, dust, smoke, burning, vibrations, insects, rodents and/or the operation of machinery (including aircraft) during any 24-hour period.

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The City of Wheatland Right-to-Farm Ordinance does not exempt farmers, agricultural processors or others from compliance with law. Should a farmer, agricultural processor or other person not comply with appropriate federal, State, or local laws, legal recourse may be possible by, among other ways, contacting the appropriate agency.

This notification is given in compliance with the City of Wheatland Municipal Code Chapter 18.62. By initialing below, you are acknowledging receipt of this notification.

Transferor's Initials

Transferee's Initials

The failure to give the notice required by this section shall not invalidate any transfer.

18.62.060 Grievance procedures.

- A. Resolution of Disputes. It is the intent of the city that any dispute and/or controversy that arises regarding any inconveniences or discomforts occasioned by agricultural or agricultural processing operations or facilities should be settled by informal negotiation of the parties involved as discussed above. Any such dispute or controversy that cannot be settled by the informal negotiation of the parties involved should be submitted to a private mediator, a community mediation service, or another agency which provides dispute resolution services prior to the filing of any court action. The city shall have no responsibility for taking part in, or subsidizing any costs of, such process or processes.

SECTION 4. Exemption from CEQA. The proposed Right-to-Farm Ordinance is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines section 15305, Minor Alterations in Land Use Limitations.

SECTION 5. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is held by a court of competent jurisdiction to be invalid or unconstitutional, that portion shall be deemed a separate, distinct and independent provision, and the holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 6. Effective Date. This ordinance shall take effect and be enforced thirty (30) days from and after the date of its adoption.

SECTION 7 Posting. Within fifteen (15) days from the date of passage of this ordinance, the City Clerk shall post a copy of it in at least three public places in the city.

* * * * *

I HEREBY CERTIFY that the foregoing ordinance was introduced and adopted at a regular meeting of the Wheatland City Council, held on the 10th day of August 2021, and passed and adopted at a regular meeting thereof, held on the ____ of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor of the City of Wheatland

ATTEST:

City Clerk of the City of Wheatland