

APPENDIX J. - AGRICULTURAL RESERVE PROGRAM

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Sec. 1. - Title.

This Ordinance shall be known as the "Agricultural Lands Preservation Ordinance of the City of Virginia Beach."

Sec. 2. - Purpose.

The purpose of this Ordinance is to promote and encourage the preservation of farmland in the rural southern portion of the City, where agricultural uses predominate, by means which are voluntary, rather than regulatory. The preservation of farmland will promote and enhance agriculture as an important industry which contributes to the maintenance of a diverse and healthy local economy. In addition, the preservation of farmland will:

- (a) Preserve the rural character of the southern portion of the City;
- (b) Conserve and protect environmentally sensitive lands, waters and other resources;
- (c) Reduce and defer the need for major urban infrastructure improvements in the southern portion of the City and the expenditure of public funds for such improvements;
- (d) Preserve open space; and
- (e) Assist in shaping the character, direction and timing of community development.

Sec. 3. - Findings.

Agriculture is an integral component of the City's economy. Agriculture, tourism and the military are the three major industries in Virginia Beach, and maintaining the continued vitality of all three is necessary in order to achieve and preserve a balanced tax base and a diverse, healthy economy benefitting all of the citizens of the City.

Agriculture is more, however, than just an important facet of the City's economy. It is an equally

important part of the City's cultural heritage, having existed, and flourished, in Virginia Beach for more than three centuries. Just as agriculture contributes to the diversity of the City's economy, so does it contribute to the diversity of the City's character.

Notwithstanding the economic and cultural importance of agriculture, its continued viability in Virginia Beach is unsure. The amount of farmland within the City, both north and south of the Green Line, has dwindled from approximately fifty-one thousand (51,000) acres in 1982 to about thirty thousand (30,000) acres in 1993. More farmland is converted to residential and other nonagricultural uses every year. Because of the fundamental incompatibility between agricultural and residential uses, as more and more farmland is converted to residential subdivisions, farmers are often forced to alter or cease certain practices, to the detriment of their businesses, or are discouraged from making investments in farm improvements, or both. The result is the decline of agriculture.

As the Comprehensive Plan recognizes, effective and affirmative agricultural preservation strategies must be implemented. Agricultural preservation is an important economic, environmental, land use, and cultural issue.

(Ord. No. 2585, 6-6-00)

Sec. 4. - Definitions.

(a) *Accessory use* means a use which is clearly incidental to, and customarily found in connection with, the principal use of the same parcel or group of contiguous parcels under common ownership and operated as an agricultural enterprise.

(b) *Agricultural land preservation easement* or *preservation easement* means a nonpossessory interest in land, perpetual in duration, pursuant to which the exercise of development rights on the subject property is restricted in accordance with the provisions of such easement.

(c) *Agricultural support service* means a commercial operation upon which the agricultural industry generally depends. The term includes, but is not limited to, suppliers of fertilizer, seed and plant protection products, equipment dealers and large-scale buyers of farm products.

(d) *Agricultural use* means the bona fide production of crops, animal or fowl, including, but not limited to, the production of fruits, vegetables, honey, grains, meat, poultry and dairy products; the raising of livestock and poultry; and the production and harvest of products from horticultural, silvicultural or aquacultural activity. The term also includes (i) the repair, expansion or replacement of no more than one bona fide dwelling occupied by the landowner or tenant as of the date of application for entry in the agricultural reserve program and no more than one freestanding mobile home, as permitted by section 19-19 of the City Code; (ii) accessory or conditional uses directly related to agricultural activities conducted on the same property, including the sale of agricultural products permitted by section 401(b) of the City Zoning Ordinance and dog kennels, riding academies, horses for hire or boarding of horses allowed under section 401(a) of the City Zoning Ordinance; (iii) recreational and amusement activities allowed under section 401(c) of the City Zoning Ordinance; and (iv) septic tanks and drainfields approved by the health department and which cannot be located within an area not encumbered by an agricultural land preservation easement. The term does not include the processing of agricultural, silvicultural, horticultural or aquacultural products, except as an accessory use.

(e) *Animal unit*, as used in the farmland ranking system, means a unit of measurement equal to one thousand (1,000) pounds of live body weight of livestock.

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- (f) *Batch* means a grouping of contiguous parcels for purposes of making application for the sale of development rights.
- (g) *City attorney* means the city attorney or his designee.
- (h) *City manager* means the city manager or his designee.
- (i) *Commission* means the agricultural advisory commission.
- (j) *Development right* means the right to develop property for any use other than an agricultural use. The term includes, but is not limited to, the right to develop property for any commercial, industrial or residential use except as expressly permitted by this Ordinance.
- (k) *Director* means the director of the department of agriculture or his designee.
- (l) *Farmland ranking system or system* means the formula by which applications for the sale of development rights are ranked in order of priority of acquisition of such rights.
- (m) *High-value crops* means crops which require intensive management and greater than normal inputs. Examples include, but are not limited to, strawberries, blackberries, sweet corn, sweet potatoes, tomatoes, lima beans, green beans, pumpkins, watermelons, cantaloupes and Christmas trees.
- (n) *Landowner* means the equitable owner of the fee simple title to a parcel of land or, with respect to a parcel not encumbered by a deed of trust or mortgage, the legal owner of such title. Where more than one person or entity is the legal or equitable owner, the term refers to all such persons jointly.
- (o) *Parcel* means a lot or tract of land, lawfully recorded in the clerk's office of the circuit court of the City of Virginia Beach.
- (p) *Program* means the agricultural reserve program established by this Ordinance.
- (q) *Significant timber harvest* means a merchantable harvest for the commercial market. The term does not include minor harvests for such things as firewood, poles, posts, blind material or greenery.

(Ord. No. 2585, 6-6-00; Ord. No. 2825, 6-1-04)

Sec. 5. - Agricultural reserve program.

There is hereby established the agricultural reserve program of the City of Virginia Beach, which shall be a program by which the City acquires, in accordance with the provisions of this Ordinance and to the extent of available funding, the development rights on eligible parcels of farmland in the areas of the City described in section 6. The acquisition of development rights shall be accomplished by the purchase of agricultural land preservation easements upon such parcels. In conjunction with the program, the city manager is hereby authorized and directed to establish, subject to the approval of the city council and applicable requirements of law, methods of payment for such easements, including, but not limited to, incurring long-term obligations in the nature of installment purchase agreements pursuant to which the City pays to the landowner interest only on an annual basis for a period of years and principal at the expiration of such period.

Sec. 6. - Applicability.

The agricultural reserve program shall apply in that portion of the city delineated on the map entitled

"Area of Applicability, Agricultural Reserve Program," dated February 2005, which map has been exhibited to the City Council and is on file in the department of agriculture, except in those areas under the ownership or control of the United States of America or the Commonwealth of Virginia, or an agency or instrumentality thereof.

Nothing in this ordinance shall be construed as a limitation upon the City's authority to acquire land or public purposes other than those set forth in this Ordinance.

(Ord. No. 2585, 6-6-00; Ord. No. 2863, 2-8-05)

Sec. 7. - Eligibility criteria.

Preservation easements may be purchased only upon property meeting all of the following criteria:

- (a) The property shall be no less than ten (10) acres in area, or be included in a batch in which the combined area of contiguous property is no less than ten (10) acres in area.
- (b) The property shall be wholly located within a residential zoning district, an AG-1 or AG-1 Agricultural District or a P-1 Preservation District, or any combination of such zoning districts;
- (c) The property shall be capable of being subdivided or developed for nonagricultural uses without the approval of the city council;
- (d) The property shall be located within that portion of the city described in section 6;
- (e) The property shall not contain any land required to be reserved or set aside for open space, recreation or similar purposes pursuant to the provisions of a conditional use permit, conditional zoning agreement, subdivision variance, or other action by the city council, or any ordinance or regulation;
- (f) No uses or structures, other than those permitted by preservation easements, shall be located upon the property; and
- (g) No portion of the property shall contain any of the following soil types:
 - (1) Back Bay Mucky Peat;
 - (2) Dorovan Mucky Peat;
 - (3) Nawney Silt Loam; or
 - (4) Pamlico Mucky Peat, Ponged.

(Ord. No. 2585, 6-6-00)

Sec. 8. - Application; evaluation.

(a) Applications to sell development rights shall be on a form prescribed by the director and shall be signed by the landowner and submitted to the director. The director may require supporting documentation, including deeds, surveys or other legal instruments, to be submitted with the application. A landowner may submit an application for each parcel or may submit a single application for more than one contiguous parcel. Applications for batched parcels shall follow the same procedure, but shall be signed by all landowners.

(b) The director shall review each application to determine whether the eligibility criteria set forth in section 7 are met and all required information is provided, and shall notify the landowner of his determination. Incomplete or otherwise deficient applications shall be rejected and returned to the landowner with a statement of reasons for the rejection.

(c) In the event a parcel, or portion thereof, fails to meet the eligibility criteria set forth in section 7, such parcel, or portion thereof, shall not be considered for inclusion in the program. In the event the ineligibility of a parcel, or portion thereof, renders the remaining property which is the subject of the application ineligible, none of the property shall be considered for inclusion.

(d) In the event available funding is insufficient to purchase the development rights on all properties which are the subject of pending applications under this ordinance, the director shall evaluate each application, using the criteria of the farmland ranking system set forth in section 12, and shall ascertain all necessary facts and information for ranking the priority of acquisition of the lands included in the application. In performing such evaluation, the director may request the assistance of such other city departments and agencies as may be appropriate and beneficial. The evaluation shall include a recommendation for the number of farmland ranking system points to be assigned to the application. No later than ninety (90) days after receipt of the completed application, he shall forward a copy of the evaluation to each member of the commission and to the city manager and the landowner.

(e) The submission of an application shall not be deemed to constitute a binding contractual offer to convey any interest in the landowner's property, but shall be revocable at will by the landowner prior to the execution of an installment purchase agreement, without penalty.

(Ord. No. 2585, 6-6-00)

Sec. 9. - Review of applications by commission.

(a) In the event available funding is insufficient to purchase the development rights on all properties which are the subject of pending applications, the commission shall, at a regular or special meeting called for such purpose, review applications and evaluations provided by the director and shall make a determination of farmland ranking system points to be assigned to each application. Its determination shall be final and unappealable. In the event of disagreement among the members of the commission as to the number of points to be assigned to a given application, each member shall state the number of points he believes should be assigned and the average number of points so obtained, rounded upwards to the nearest point, shall constitute the action of the commission. The secretary of the commission shall promptly transmit a report of the commission's action to the city manager.

(b) All discussion and deliberation concerning the evaluation of applications and assigning of points shall be conducted in open session, notwithstanding any contrary provision of the Virginia Freedom of Information Act.

(c) No member of the commission shall be disqualified from selling the development rights on any parcel in which he has a financial interest by reason of his membership, but such transactions shall be governed by the Virginia State and Local Government Conflict of Interests Act.

(Ord. No. 2585, 6-6-00)

Sec. 10. - Procedure for acquisition of development rights.

(a) The city manager shall ascertain the value of the development rights of the property, which value

shall be equal to the difference between the fair market value of the property without encumbrance by a preservation easement and the fair market value of the property so encumbered. The city manager is hereby authorized, but not required, to contract with qualified appraisers in ascertaining the value of the development rights.

(b) The city manager shall communicate to the landowner, or the designee of the landowner, in writing, an offer to purchase the development rights of the subject property. Prior to communicating any such offer, however, the city manager may seek the approval of the city council therefor. Such offer shall be in an amount determined by the city manager to represent the value of such development rights and shall be subject to available funding, the approval of the city council, and such other terms and conditions as the city manager may deem appropriate. It shall also be conditioned upon the absence of any defects in title or other restrictions or encumbrances which may, in the opinion of the city attorney, adversely affect the city's interests in accomplishing the purposes of this ordinance.

(c) In the event the offer is accepted by the landowner, the city manager shall place the matter before the city council for approval. The city council may approve the purchase of development rights only with respect to such applications for which there is available funding, in a priority determined by points assigned under the farmland ranking system, and only upon finding that the proposed terms and conditions of purchase, including the purchase price and manner of payment, are fair and reasonable and in furtherance of the purposes of this ordinance. In the event there is sufficient available funding for the purchase of only a portion of the property included in an application, the landowner shall be given the opportunity to submit a revised application including a lesser amount of property.

(d) Consideration of applications which are the subject of an agreement of purchase, but for which there is insufficient available funding in the then-current fiscal year, shall be deferred to the next fiscal year or until such other time as available funding is sufficient unless the landowner withdraws the application. No preference shall be given to such applications except as indicated by the farmland ranking system.

(e) Within ten (10) days after the acquisition of a preservation easement, the planning director shall cause to be made on the official zoning map a notation of such acquisition and the date thereof.

(Ord. No. 2585, 6-6-00)

Sec. 11. - Nature of rights acquired; repurchases; exchanges.

(a) No interest in land other than a perpetual agricultural land preservation easement shall be acquired by the city pursuant to the provisions of this Ordinance, and no such interest shall be acquired by the exercise of the power of eminent domain. The acquisition of a preservation easement by the city shall not confer upon the public any right of entry or access, or any other rights, express or implied.

(b) The acquisition of a preservation easement by the city shall extinguish the right of the landowner to develop the property for any use other than:

(1) An agricultural use, as defined in section 4; and

(2) Upon proper subdivision of the property, one (1) single-family dwelling on each building site reserved for such purposes in the preservation easement and accessory uses as allowed by Section 401(b) of the City Zoning Ordinance. Lots so subdivided shall, to the extent possible, contain no more than three (3) acres of land encumbered by the preservation easement.

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(c) Upon the expiration of twenty-five (25) years from the date on which a preservation easement is recorded, the landowner or successor in interest to the property which is subject to the easement may petition the city council to repurchase the development rights and thereby extinguish the agricultural lands preservation easement on such property. The city council may, by vote of no less than three-fourths ($\frac{3}{4}$) of all of its members, and in accordance with all other procedural requirements then governing the sale of municipal interests in land, authorize the repurchase of such development rights by the petitioning party at the then-current fair market value of such development rights and upon such other terms and conditions as may be fair and reasonable. Any such repurchase of development rights shall be subject to the provisions of subsection (d) or (d1), as the case may be.

(d) Where no state or federal funds were used by the city in connection with the acquisition of the preservation easement that is the subject of the repurchase petition, no repurchase of development rights shall be authorized unless other preservation easements of (i) at least equal fair market value, (ii) of greater value as permanent open space, and (iii) of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as the property which is the subject of the petition are substituted. No such substitution, however, shall be required if the city council determines by ordinance that:

- (1) The repurchase of such development rights is essential to the orderly development and growth of the city and in accordance with the Comprehensive Plan then in effect; and
- (2) The property that is the subject of the repurchase is no longer needed for open-space purposes, and the substitution of other real property is not feasible.

(d1) Where state or federal funds were used by the city in connection with the acquisition of the preservation easement that is the subject of the repurchase petition, no repurchase of development rights shall be authorized unless:

- (1) The city council determines by ordinance that the repurchase of such development rights is essential to the orderly development and growth of the city and in accordance with the Comprehensive Plan then in effect; and
- (2) Other preservation easements or open-space lands of (i) at least equal fair market value, (ii) greater value as permanent open space and (iii) of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as the subject property are acquired by the city.

(e) Notwithstanding any other provision of this section, at any time after a preservation easement on a parcel has been acquired, the landowner may petition the city council for the extinguishment of such easement in exchange for the conveyance to the city of a preservation easement on a different portion of the landowner's property meeting all of the eligibility criteria set forth in section 7. The city council shall approve such exchange upon a finding that:

- (1) The acquisition of the proposed preservation easement in lieu of the existing easement does not adversely affect the City's interests in accomplishing the purposes of this Ordinance;
- (2) The proposed easement area meets all of the eligibility requirements set forth in section 7 of this Ordinance; and
- (3) The exchange complies with the requirements of subsection (d).

(f) The consideration for any acquisition of a preservation easement pursuant to subsection (e) shall consist solely of the extinguishment of the existing preservation easement.

(Ord. No. 2585, 6-6-00; Ord. No. 2825, 6-1-04; Ord. No. 3035, 6-24-08; Ord. No. 3064, 1-27-09)

Sec. 12. - Farmland ranking system.

(a) The farmland ranking system is hereby adopted. The system shall be the sole means by which the priority of acquisition of development rights under the program is determined when available funding is insufficient to purchase the development rights on all available property which is the subject of applications for the sale of such rights. The number of farmland ranking system points assigned to property shall not be used in determining the value of development rights or the amount of any offer to purchase such rights.

(b) There shall be five (5) categories of criteria for evaluation under the system. In each such category, certain factors descriptive of the characteristics of property sought to be included in the agricultural reserve program are included. Each factor is assigned a numerical weight signifying its importance relative to all other factors in that category. Each factor is also stratified into a range of possible point values ranging from zero (0) to ten (10). To determine the total points assigned to such property, the values for all five (5) categories are added. Property having the highest total scores shall rank highest in priority of acquisition. The maximum total score is one hundred (100) points. The categories, with their respective factors and weights, are as follows:

(1) Quality of the farmland (productivity capability) constitutes thirty-five (35) percent of the number of points in the system. Factors and weights are as follows:

A. Size of farm (Weight = 10)

100 acres or more	10
60 to 99 acres	7
20 to 59 acres	4
10 to 19 acres	2
Less than 10 acres	0

B. Soils—Percentage in United States Department of Agriculture Natural Resources Conservation Service Land Capability Classification System Land Capability Class 1, 2E, 2W, 3W, and 4W undrained (Weight = 10)

80% or more	10
60 to 79%	8
40 to 59%	6
20 to 39%	3
Less than 20%	0

C. Percentage of farm in cropland or pasture (Weight = 8)

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80% or more	10
60 to 79%	7
40 to 59%	4
20 to 39%	2
Less than 20%	0

D. On-farm agricultural infrastructure and improvements (Weight = 8)

Unique regional services	10
Headquarters farm	9
Good farm buildings	7
Adequate farm buildings	3

No farm buildings	0
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E. Percentage of farm in high-value crops (Weight = 6)

80% or more	10
60 to 79%	7
40 to 59%	5
20 to 39%	3
Less than 20%	0

F. Amount of animal units produced on the farm (Weight = 6)

250 animal units or more	10
150 to 249 animal units	8
75 to 149 animal units	5
25 to 74 animal units	3
Less than 25 animal units	0

(2) Circumstances supporting agriculture constitutes twenty-five (25) percent of the number of points in the system. Factors and weights are as follows:

A. Number of nonfarm rural residences within one-half mile of the farm (Weight = 10)

0 to 3 dwelling units	10
4 to 7 dwelling units	8
8 to 12 dwelling units	5

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13 to 18 dwelling units	3
More than 18 units	0

B. Proximity of parcel to other farms with agricultural reserve program or other perpetual easements (Weight = 10)

Contiguous	10
Within ¼ mile	8
Within ½ mile	5
Within 1 mile	3
Greater than 1 mile	0

C. Proximity to significant or unique agricultural support services (Weight = 10)

Contiguous	10
Within 1 mile	8
Within 2 miles	5
Within 3 miles	3
Greater than 3 miles	0

D. Batch application with contiguous parcels (Weight = 10)

Contiguous	10
Not contiguous	0

(3) Likelihood of conversion to nonfarm use (development pressure) constitutes twenty (20) percent of the number of points in the system. Factors and weights are as follows:

A. Urgency of circumstances favoring conversions (Weight = 10)

Farm subject to potential forced sale	10
Farm subject to estate settlement sale	8
Farm actively marketed for voluntary sale	6
Other	0

B. Farm suitability for residential conversion—Percentage of well or moderately well-drained soils on the farm (Weight = 6)

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80% or more	10
60 to 79%	8
40 to 59%	6
20 to 39%	3
Less than 20%	0

C. Percentage of farm offered to agricultural reserve program (Weight = 10)

90% or greater	10
70 to 89%	6
Less than 70%	0

D. Amount of public road contiguous to farm (Weight = 10)

1,000 linear feet or more	10
600 to 999 feet	8
300 to 599 feet	7
100 to 299 feet	4
Less than 100 feet	0

E. Aesthetic value of forest on the farm (Weight = 8)

No significant timber harvest within 20 years	10
Significant timber harvest within 10 to 20 years	4
Significant timber harvest within 5 to 10 years	2
Significant timber harvest within 5 years, land cut over within 10 years and not reforested, or land cut over within 5 years and not reforested	0

(4) Environmental quality constitutes fifteen (15) percent of the number of points in the system. Factors and weights are as follows:

A. Percentage of farm in upland forest (excluding swamp) (Weight = 10)

80% or more	10
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60 to 79%	8
40 to 59%	6
20 to 39%	3
Less than 20%	0

B. Proximity to areas identified as having high environmental value, such as state or federal parks, areas within the Back Bay National Wildlife Refuge designated expansion boundary, exemplary wetlands, critical areas and endangered species habitat, as shown in "A Natural Areas Inventory of the City of Virginia Beach", Natural Heritage Technical Report 93-14 (Weight = 10)

Contiguous	10
Within ½ mile	8
Within 1 mile	5
Within 1½ miles	2
Greater than 1½ miles	0

C. Proximity of farm to perennial stream or waterway (Weight = 10)

Farm either includes or is adjacent to perennial waterway	10
All other	0

(5) Historic, scenic, and application frequency constitutes five (5) percent of the number of points in the system. Factors and weights are as follows:

A. Proximity to historic or cultural features (Weight = 6)

On-farm exceptional features favorable to preservation, as noted in the Reconnaissance Architectural Survey Report, City of Virginia Beach	10
Exceptional features favorable to preservation within ¼ mile	8
Exceptional features within ½ mile	7
Exceptional features further than ½ mile	0

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B. Frequency of application submittal (Weight = 10)

Third or more time	10
Second time	5
First time	0

(Ord. No. 2585, 6-6-00)