

BOARD OF COUNTY COMMISSIONERS OF UINTAH COUNTY, UTAH

**ORDINANCE NO. 05-17-2010 01
AGRICULTURAL AND INDUSTRIAL PROTECTION AREAS**

**AN ORDINANCE AMENDING TITLE 17, "ZONING" CHAPTER 17.132
"AGRICULTURAL PROTECTION AREA" IN THE UINTAH COUNTY CODE;**

Section 1. Purpose of Ordinance. The purpose of this ordinance is to Amend Title 17 "Zoning" Chapter 17.132 "Agricultural Protection Area" of the Uintah County Code.

Section 2. Authority for Ordinance. Section 17-27a-102, et seq., of the Utah Code Annotated (1953, as amended) which expressly mandates that the legislative body of each Utah County may enact land use ordinances.

Section 3. Modification. The Uintah County Code, Title 17, Chapter 17.132 "Agricultural Protection Area" is hereby amended as follows, to wit:

Chapter 17.132- Agricultural and Industrial Protection Areas

Sections:

17.132.010 - Definitions.

17.132.020 - Establishment of agriculture and industrial protection areas advisory board.

17.132.030 - Proposal and approval of agriculture and Industrial protection areas.

17.132.010 - 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 agriculture protection area advisory board created by this chapter.

"Agriculture production" means production for commercial purposes of crops, livestock, and livestock products. "Agriculture production" includes the processing or retail marketing of any crops, livestock, and livestock products when more than fifty (50) percent of the processed or merchandised products are produced by the farm operator.

"Agriculture protection area" means a geographic area within the unincorporated part of Uintah County 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 protection contained in Chapter 41, Title 17, Utah Code Annotated, 1953 as amended.

"Applicable legislative body" means: (1) the board of Uintah County commissioners if the land included in or proposed to be included in an agriculture protection area is within the unincorporated part of Uintah County; or (2) the legislative body of the city or town if the land included in or proposed to be included in an agriculture protection area is within the boundaries of a city or town.

"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(19)(d), 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.

"Industrial protection area" means a geographic area within the unincorporated part of Uintah County 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 protection contained in Chapter 41, Title 17, Utah Code Annotated, 1953 as amended.

"Planning commission" means the Uintah County planning commission, a township planning commission, or a planning commission of a city or town.

"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.

17.132.020 - Establishment of agriculture **or industrial protection area advisory board.**

A. Designation. There is created an agriculture protection area advisory board consisting of five members appointed by the Uintah County commission from the Uintah County Conservation District Board of Supervisors. ~~The members shall serve without salary, but may be reimbursed for mileage or other actual expenses incurred.~~

B. . Designation. There is created an industrial protection area advisory board consisting of five members appointed by the Uintah County commission from the Uintah County Conservation District Board of Supervisors.

C. The members shall serve without salary, but may be reimbursed for mileage or other actual expenses incurred.

D. Duties. Each advisory board shall:

1. Evaluate proposals for the establishment of agriculture **or industrial** protection areas and make recommendations to the applicable legislative body about whether or not the proposal should be accepted;
2. Provide expert advice to the planning commission and to the applicable legislative body about:
 - a. The desirability of the proposal;
 - b. The nature of agricultural production **or industrial use, as the case may be**, within the proposed area;
 - c. The relation of agricultural production **or industrial use, as the case may be**, in the area to Uintah County as a whole;
 - d. Which agriculture production **or industrial use** should be allowed within the agriculture protection area **or industrial protection area, respectively; and**
 - e. The minimum number of continuous acres that must be included in an agriculture **or industrial** protection area; and
3. Perform all other duties as required by this chapter.

17.132.030 - Proposal and approval of agriculture **or industrial protection areas.**

A. Proposal for creation of agriculture **or industrial** protection areas.

1. A proposal to create an agriculture **or industrial** protection area or an amendment to an existing agriculture **or industrial** protection area within the unincorporated part of the county may be filed with

the county commission by completing the standard forms adopted by the county commission and by filing said forms in the building, planning and zoning office of the county.

2. a. To be accepted for processing by the county commission, a proposal under subsection A1 of this section 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 **or used for industrial purposes within the proposed industrial protection area.**
 - b. For the purpose of subsection (A)(2)(a) of this section, the owners of real property shall be determined by the records of the county recorder.
3. The clerk/secretary of the county commission, or other person designated by the county commission to receive and process proposals, shall accept and process such forms only if they are properly completed and accompanied by the filing fee in ~~the amount of two hundred fifty dollars (\$250.00).~~ **accordance with the Uintah County Fee Schedule.**
4. The proposal shall contain the following information:
 - a. The boundaries of the land proposed to become part of an agriculture **or industrial** protection area;
 - b. Any limits on the types of agriculture production **or industrial purpose** to be allowed within the agriculture **or industrial** protection area; and
 - c. For each parcel of land:
 - i. The names of the owners of record of the land proposed to be included within the agriculture **or industrial** protection area,
 - ii. The tax parcel number or account number identifying each parcel, and
 - iii. The number of acres of each parcel.
5. An agriculture **or industrial** protection area may include within its boundaries land used for a roadway, dwelling site, park, or other nonagricultural **or nonindustrial** use, if that land constitutes a minority of the total acreage within the agriculture **or industrial** protection area.

B. Area Requirements. In accordance with Section 17-41-301, Utah Code Annotated, 1953, as amended, the minimum number of continuous acres that must be included in an agriculture **or industrial** protection area within the unincorporated part of the county is established as twenty (20) acres. A variance to the minimum acreage requirement may be given for land which is used in intensive livestock operations, ~~or in~~ fruit production, or **intensive industrial use**. A variance may also be given if the acreage is contiguous to an existing agriculture **or industrial** protection area or contiguous to an existing or proposed agriculture **or industrial** protection area that is not within the unincorporated part of the county. A variance shall only be approved by the county commission, upon recommendation from the advisory board and the planning commission. 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.

C. Notice Requirements.

1. The county commission shall provide notice of the proposal for an agriculture **or industrial** protection area within the unincorporated part of the county by:
 - a. Publishing notice in a newspaper having general circulation within the proposed agriculture protection area; **and**
 - b. Posting notice at five public places designated by the county commission, 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 an agricultural or industrial protection area.**
2. The notice shall contain:
 - a. A statement that a proposal for the creation of an agriculture **or industrial** protection area has been filed with the county commission;
 - b. A statement that the proposal will be open to public inspection in the planning and zoning office of the county;
 - c. A statement that any person or entity affected by establishment of the area may, within fifteen (15) days of the date of the notice, file with the county commission written objections to the proposal or a written request to modify the proposal to exclude land from or add land to the proposed agriculture **or industrial** protection area **as the case may be**;
 - d. A statement that the county commission will submit the proposal to the advisory board and to the planning commission for review and recommendations; and
 - e. A statement that the county commission will hold a public hearing to discuss and hear public comment on:
 - i. The proposal to create the agriculture **or industrial** protection area,
 - ii. The recommendations of the advisory board and planning commission, and
 - iii. Any requests for modification of the proposal and any objections to the proposal.

- f. A statement indicating the date, time, and place of the public hearing.
 3. Any person wishing to modify the proposal for the creation of the agriculture **or industrial** protection area shall, within fifteen (15) days after the date of the notice, file a written request for modification of the proposal, which identifies specifically the land that should be added to or removed from the proposal.
 4. Any person wishing to object to the proposal for the creation of the agriculture **or industrial** protection area shall, within fifteen (15) days after the date of the notice, file a written objection to the creation of the agriculture **or industrial** protection area.
- D. Review of Proposal.
1. After fifteen (15) days from the date of the notice, the county commission 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.
 2. Within forty-five (45) days after receipt of the proposal, the advisory board shall submit a written report to the county commission that:
 - a. Recommends any modifications to the land to be included in the proposed agriculture **or industrial** protection area;
 - b. Analyzes and evaluates the proposal by applying the criteria contained in subsection F of **this** section **17.132.030**;
 - c. Analyzes and evaluates any objections to the proposal; and
 - d. Includes a recommendation to the county commission **either** to accept, accept and modify, or reject the proposal.
 3. Within forty-five (45) days after receipt of the proposal, the planning commission shall submit a written report to the county commission that:
 - a. Analyzes and evaluates the effect of the creation of the proposed area on the county's planning policies and objectives;
 - b. Analyzes and evaluates the proposal by applying the criteria contained in subsection F of **this** section **17.132.030**;
 - c. Recommends any modifications to the land to be included in the proposed agriculture **or industrial** protection area;
 - d. Analyzes and evaluates any objections to the proposal; and
 - e. Includes a recommendation to the county commission **either** to accept, accept and modify, or reject the proposal.
 4. The county commission shall consider a failure of the planning commission or advisory board to submit a written report within the forty-five (45) days under subsections (D)(2) and (D)(3) of this section as a recommendation of that committee to approve the proposal as submitted.
- E. Public Hearing.
1. After receipt of the written reports from the advisory board and planning commission, or after the forty-five (45) days has expired, whichever is earlier, the county commission shall:
 - a. Schedule a public hearing;
 - b. Provide notice of the public hearing by:
 - i. Publishing notice in a newspaper having general circulation within the area proposed for inclusion within the agriculture **or industrial** protection area, and
 - ii. Posting notice at five public places, designated by the county commission within or near the proposed agriculture **or industrial** protection area; and
 - iii. **Mailing written notice to each owner of land within 1,000 feet of the land proposed for inclusion within an agricultural or industrial protection area.**
 - c. Ensure that the notice includes:
 - i. The time, date, and place of the public hearing on the proposal,
 - ii. A description of the proposed agriculture **or industrial** protection area,
 - iii. Any proposed modifications to the proposed agriculture **or industrial** protection area,
 - iv. A summary of the recommendations of the advisory board and planning commission, and
 - v. 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.
 2. The county commission shall:
 - a. Convene the public hearing at the time, date, and place specified in the notice; and
 - b. Take verbal or written testimony from interested persons.
 3. Within one hundred twenty (120) days of the submission of the proposal, the county commission shall approve, modify and approve, or reject the proposal.
 4. The creation of an agriculture **or industrial** protection area is effective at the earlier of:
 - a. The county commission's approval of a proposal or modified proposal; or

- b. One hundred twenty (120) days after submission of a proposal complying with subsection (A)(3) of this section, if the county commission has failed to approve or reject the proposal within that time.
 5. In order to give constructive notice of the existence of the agriculture **or industrial** protection area to all persons who have, may acquire, or may seek to acquire an interest in land in or adjacent to the agriculture **or industrial** protection area, within ten (10) days of the creation of an agriculture **or industrial** protection area, the county commission shall file an executed document containing a legal description of the agriculture **or industrial** protection area with:
 - a. The county recorder; and
 - b. The planning commission.
 6. Within ten (10) days of the recording of the agriculture protection area, the county commission shall:
 - a. Send written notification to the commissioner of agriculture and food that the agriculture protection area has been created, and include in said notification the following:
 - i. The number of landowners owning land within the agriculture protection area;
 - ii. The total acreage of the area;
 - iii. The date of approval of the area; and
 - iv. The date of recording.
 7. Failure by the county commission to record the notice required under subsection (E)(5) of this section does not invalidate the creation of an agriculture protection area.
 8. The county commission may consider the cost of recording notice under subsection (E)(5) of this section and the cost of sending notification under subsection (E)(6) of this section in establishing a fee under subsection A of this section.
- F. Evaluation Criteria.
1. In evaluating a proposal and in determining whether or not to create or recommend the creation of an agriculture **or Industrial protection area**, the advisory board, planning commission, and county commission shall apply the following criteria:
 - a. Whether or not the land is currently being used for agriculture production **or an industrial use, as the case may be;**
 - b. Whether or not the land is zoned for agriculture use **or industrial use, as the case may be;**
 - c. Whether or not the land is viable for agricultural production **or industrial use, as the case may be;**
 - d. The extent and nature of existing or proposed farm improvements **or the extent and nature of existing or proposed improvements to or expansion of the industrial use;** and
 - e.
 - i. In the case of an agricultural protection area, anticipated trends in agricultural and technological conditions; or
 - ii. **In the case of an Industrial protection area, anticipated trends in technological conditions applicable to the industrial use of the land in question.**
- G. Adding Land to an Agriculture Protection Area **or Industrial Protection Area.**
1. Any owner may add land to an existing agriculture protection area within the unincorporated part of the county by:
 - a. Filing a proposal with the county commission; and
 - b. Obtaining the approval of the county commission for the addition of the land to the area.
 2. The county commission shall comply with the provisions for creating an agriculture protection area **or industrial protection area, as the case may be**, in determining whether or not to accept the proposal.
- H. Removing Land from an Agriculture **or Industrial** Protection Area.
1. Any owner may remove land from an agriculture protection area **or industrial protection area** within the unincorporated part of the county by filing a petition for removal of the land from the agriculture protection area **or industrial protection area, respectively**, with the county commission.
 2. The county commission shall:
 - a. Grant the petition for removal of land from an agriculture protection area **or industrial protection area, as the case may be**, even if removal of the land would result in an agriculture protection area **or industrial protection area** of less than the number of acres established by the county commission as the minimum under subsection B of this section; and
 - b. In order 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 **or industrial protection area** and the land removed from the agriculture protection area **or industrial protection area**, file a legal description of the revised boundaries of the agriculture protection area **or industrial protection area** with the county recorder and the planning commission.
 3. The remaining land in the agriculture protection area **or industrial protection area** is still an agriculture protection area **or industrial protection area, respectively.**
 4. When a municipality annexes any land that is part of an agriculture protection area **or industrial protection area** the county commission shall, within thirty (30) days after the land is annexed, review

the feasibility of that land remaining in the agriculture protection area **or industrial protection area** according to the procedures and requirements of subsection I of this section.

a. If appropriate, the county commission shall remove the annexed land from the agriculture protection area **or industrial protection area**.

I. Review of Agriculture Protection Areas **and Industrial Protection Areas**.

1. The county commission shall review any agriculture protection area **or industrial protection area** created under the authority of this chapter in the twentieth calendar year after it is created.
2. In the twentieth year, the county commission shall:
 - a. Request the planning commission and advisory board to submit recommendations about whether the agriculture protection area **or industrial protection area, as the case may be**, should be continued, modified, or terminated;
 - b. At least one hundred twenty (120) days before the end of the calendar year, hold a public hearing to discuss whether the agriculture protection area **or industrial protection area, as the case may be**, should be continued, modified, or terminated;
 - c. Give notice of the hearing using the same procedure required by subsection C of this section; and
 - d. After the public hearing, continue, modify, or terminate the agriculture protection area.
3. If the county commission modifies or terminates the agriculture protection area **or industrial protection area**, it shall file an executed document containing the legal description of the agriculture protection area **or industrial protection area, respectively**, with the county recorder.
4. If the county commission fails to affirmatively continue, modify, or terminate the agriculture protection area **or industrial protection area, as the case may be**, in the twentieth calendar year, the agriculture protection area is considered to be reauthorized for another twenty (20) years.

Section 4. Effective Date. This ordinance shall take effect, fifteen (15) days after enactment, and after depositing of a copy in the Clerk-Auditor’s Office and publication in a newspaper having general circulation in the County, as required by Utah Code Annotated section 17-53-208.

ENACTED this the seventeenth (17th) day of May, 2010.

IN WITNESS THEREOF:

DARLENE BURNS, Chair

Darlene Burns	_____ Aye	_____ Nay	_____ Abstain	_____ Absent
Michael McKee	_____ Aye	_____ Nay	_____ Abstain	_____ Absent
Mark Raymond	_____ Aye	_____ Nay	_____ Abstain	_____ Absent

ATTEST:

REVIEWED:

MICHAEL W. WILKINS
Clerk-Auditor

JOHN H. GOTHARD
Deputy County Attorney