

**ORDINANCE NO. ORD-2016-14**

**AN ORDINANCE TO REPEAL AND TO REENACT, WITH AMENDMENTS, THE  
ORDINANCE ESTABLISHING A LOCAL PROGRAM FOR THE PRESERVATION OF  
AGRICULTURAL LAND AND PURCHASE OF AGRICULTURAL LAND  
PRESERVATION EASEMENTS THROUGH AN INSTALLMENT PURCHASE  
PROGRAM**

RECITALS

The Board of County Commissioners of Washington County, Maryland (the "County") currently has an active agricultural land preservation program.

The County wishes to supplement its existing local program to encourage the preservation of agricultural land and to protect and preserve farming.

The County is an active participant in the Maryland Agricultural Land Preservation Program with over 13,300 acres under easement or under contract for easement settlement and another 17,652 acres covered by district agreements under a County program.

It is important to protect the agricultural viability of areas of the County where many farms are already under easement by assisting owners who wish to preserve the land for permanent agricultural use.

The Maryland Agricultural Land Preservation Program does not provide adequate certainty of easement purchase to prevent farms, whose preservation in agricultural activity is desired, from being subdivided into residential lots or otherwise developed.

The County has utilized several other programs in addition to the Maryland Agricultural Land Preservation Program in order to permanently preserve more than 28,000 total acres of agricultural land towards the County goal of 50,000 permanently protected acres of land.

The County would like to accelerate the acquisition of land preservation easements before development options are considered and purchase these easements at present value.

The County would like to provide unique financial and tax advantages to farmers in order to successfully compete with developers.

The County is authorized to enter into installment purchase agreements to acquire development rights on lands located within its boundaries.

On November 1, 2005, the County adopted an ordinance entitled "An Ordinance Establishing a Local Program for the Preservation of Agricultural Land and Purchase of Agricultural Land Preservation Easements through an Installment Purchase Program" (the "Ordinance"), effective November 1, 2005.

The Washington County Department of Planning and Zoning has requested that certain amendments be made to the text of the Ordinance.

The County believes it to be in the best interests of the citizens of the County for the Ordinance to be repealed and reenacted with amendments.

The County held a public hearing for the purpose of taking testimony on the proposed amendments on July 12, 2016, pursuant to public notice duly given.

Public comment was received, reviewed, and considered concerning the proposed amendments.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED that the ordinance entitled "An Ordinance Establishing a Local Program for the Preservation of Agricultural Land and Purchase of Agricultural Land Preservation Easements through an Installment Purchase Program" adopted and effective November 1, 2005, is hereby repealed; and

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of County Commissioners of Washington County, Maryland, that the attached ordinance entitled "Ordinance Establishing a Local Program for the Preservation of Agricultural Land and Purchase of Agricultural Land Preservation Easements through an Installment Purchase Program" is hereby approved and adopted to read as follows:

Adopted this 12<sup>th</sup> day of July, 2016.

Effective this 12<sup>th</sup> day of July, 2016.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
OF WASHINGTON COUNTY, MARYLAND

Vicki C. Lumm  
Vicki C. Lumm, Clerk

BY: Terry L. Baker (SEAL)  
Terry L. Baker, President

Approved as to form and  
legal sufficiency:

John M. Martirano  
John M. Martirano  
County Attorney

Mail to:  
Office of the County Attorney  
100 W. Washington St., Room 202  
Hagerstown, MD 21740

**ORDINANCE**

**ESTABLISHING A LOCAL PROGRAM FOR THE  
PRESERVATION OF AGRICULTURAL LAND  
AND  
PURCHASE OF AGRICULTURAL LAND PRESERVATION EASEMENTS  
THROUGH AN  
INSTALLMENT PURCHASE PROGRAM**

**Repealed and Reenacted with Amendments  
Adopted and effective July 12, 2016**

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## ARTICLE 1 PURPOSE

- 1.1 There is hereby created in Washington County (the “County”) an installment purchase program for the purpose of accelerating land preservation easement purchases and providing an additional attractive land preservation program for the agricultural landowners and citizens of the County. This ordinance is created with the further purpose to preserve productive agricultural land and woodland which provides for the continued production of food and fiber for the citizens of the County and protects farmland/open space from the impacts from development.

## ARTICLE 2 QUALIFYING CRITERIA

### 2.1 **SOIL CRITERIA.**

Properties for which a landowner has made application for approval under the Washington County Agricultural Land Preservation Installment Purchase Program (the “Program”) must meet one of the following criteria:

- A. Minimum of 50% class I, II and III soils;
- B. Minimum of 50% woodland groups I and II; or
- C. A combination of farmland and woodland with a minimum of 60% Class I, II and III soils and woodland groups I and II.

### 2.2 **SIZE CRITERIA.**

The minimum size for farms entering the Program shall be fifty (50) acres except; however, farms with fewer than fifty (50) acres may enroll in the program if contiguous to a property of fifty (50) acres or greater which is already under easement in the program or in conjunction with other applications for properties which in combination meet or exceed fifty (50) acres.

### 2.3 **LOCATIONAL CRITERIA.**

Farms considered for an easement under the Program shall be located in a No Planned Service designation in the adopted Water and Sewerage Plan. The Board of County Commissioners (the “Commissioners”) may approve a property for easement purchase within a water and sewer service area upon a specific finding that the land has extraordinary agricultural capability, is of significant size, and has the potential to be part of a larger area of contiguous preserved land. Before an application may be forwarded to the Commissioners, the Agricultural Land Preservation Advisory Board (the “Ag Board”) shall make a recommendation.

**2.4 OTHER CRITERIA.**

Farms applying for sale of a development rights easement under the Program must have further subdivision rights under the provisions of the Zoning Ordinance.

**SECTION 3 APPLICATION FOR SALE OF DEVELOPMENT RIGHTS**

**3.1 ELIGIBILITY.**

An owner of agricultural land which meets the minimum qualifications may make application to sell to the County an agricultural preservation easement on the entire contiguous acreage of the land, with payment for entire acreage less one (1) acre per existing dwelling located on the subject property.

**3.2 APPLICATION.**

The application shall be made on a form provided by the County and be accompanied by a plat or map of the property at a scale of no smaller than one inch equals six hundred (600) feet. Each application shall also include a certificate that a soil conservation plan approved by the Soil Conservation District for the property has been made or revised within the last ten years from the date of the application. Applications for easement sale under this Program shall be accepted by the Department of Planning and Zoning with a deadline of July 1 of the coinciding Maryland Agricultural Land Preservation Program (MALPP) Cycle. All applications shall be forwarded to the Ag Board for review. The Commissioners upon a recommendation from the Ag Board may limit the number of applications to be considered based on available funding and the timing to process the applications and make settlement.

**3.3 APPLICATION REVIEW.**

Each application shall be reviewed according to the Program Ranking System and ranked from highest score to lowest. The Ag Board's recommendation and ranking shall be forwarded to the Commissioners for approval. Offers to purchase agricultural preservation easements shall be made to the highest ranked farm first with the following offers made in descending order according to the ranking system. The County may modify this procedure if adequate funding is not available for the next property owner in line who would have received an offer if funds were available.

**SECTION 4 RANKING**

4.1 The Ag Board shall establish a ranking system for the Program which shall, at a minimum, consider soil productivity, development threats and pressures, contribution to a mass of preserved land and good soil conservation practices and stewardship. The

Program Ranking System shall be forwarded to the Commissioners for approval. The Program Ranking System may be amended or revised from time to time.

### **SECTION 5 VALUATION OF THE EASEMENT**

- 5.1 The County will use the Maryland Agricultural Land Preservation Program's (MALPP) method of establishing easement values. Appraisals will be used for determining fair market values and the MALPP agricultural formula will be used to determine the agricultural values. The easement values will be calculated by subtracting the agricultural values from fair market values.

### **ARTICLE 6 METHOD OF PAYMENT**

6.1 **PAYMENT.**

Payment shall be made by installment purchase agreements with payments extending over ten (10) years and interest accruing on the outstanding value of the easement at a rate to be determined by the Commissioners. Each year, a landowner shall be paid ten percent (10%) of the value of the easement as set forth in the IPA (the "Easement Payment"). The first payment will occur at the time of the settlement of the easement. With the second and each succeeding Easement Payment, accrued interest on the amount of the easement then outstanding shall be paid.

6.2 **SETTLEMENT.**

Settlement shall be made by the County after approval by the Commissioners.

### **ARTICLE 7 RECORDING OF THE EASEMENT.**

- 7.1 Once all necessary documents have been properly signed, a deed of easement, restricting, in perpetuity, future development on the property, shall be recorded in the County land records. The form of the deed of easement shall be approved by the Commissioners upon a recommendation of the Ag Board and the Office of the County Attorney.

### **ARTICLE 8 AGRICULTURAL PRESERVATION EASEMENT.**

- 8.1 Upon establishment of an agricultural preservation easement, a landowner agrees to the following conditions:

- (1) To maintain the land in agricultural use or properly managed so that it is available for continued agricultural use from the date that the easement is recorded in the land records of the County.
- (2) To implement and maintain a Soil and Water Conservation Plan as prepared by the Soil Conservation District. Such plan shall be kept on file in the offices of the

Department of Planning and Zoning and the office of the Soil Conservation District.

- (3) That the easement agreement creates an encumbrance upon the land, and binds future owners, heirs, successors and assigns and precludes the subdivision and utilization of the land principally for uses such as residential, institutional, commercial or industrial except as contained within this ordinance or the deed of easement approved by the Commissioners. Any agricultural uses currently permitted would be allowed to continue under this agreement. The easement agreement shall not provide for public access to any privately owned land.
- (4) In addition to any other requirements, the construction of new buildings or structures on the land, other than farm buildings, is contingent upon the written application to and approval by the Department of Planning and Zoning, subject to review by, and recommendation of, the Ag Board.

## **ARTICLE 9 ADDITIONS TO EXISTING EASEMENTS**

### **9.1 PROCESS.**

The process for adding land to existing easements shall be the same as for the initial establishment of an easement. The Ag Board shall establish a minimum size criterion for the addition of land contiguous to an existing easement.

### **9.2 TENANT HOME.**

The landowner of record at the time of easement sale may, at any time after easement sale, at any time after easement sale, request permission to maintain a tenant home in accordance with conditions established within the Zoning Ordinance for tenants actively engaged in the farming operation. This request shall be submitted to the Department of Planning of Zoning, subject to the review and recommendation of the Ag Board.

### **9.3 RESERVED LOT RIGHTS**

The Grantor, at the time of application, must choose one (1) of three (3) options pertaining to reserved lot rights on their prospective easement property, and further described in sections 9.4, 9.5 and 9.6. This option is pertinent to the easement appraisal process and determining the value of the easement, and therefore must be chosen at the point of application and reflected in the subsequent Deed of Easement.

### **9.4 OWNER'S OR CHILD'S LOT.**

The Grantee, upon written application from the Grantor, shall release a lot, free of easement restrictions, only for the Grantor who originally conveyed the easement, for the purpose of constructing a dwelling house for the use only of that Grantor or the Grantor's child, subject to the following conditions:



- (1) The total number of lots allowed to be released under this section may not exceed:
  - a. one (1) lot if the size of the easement property is twenty (20) acres or more, but fewer than seventy (70) acres;
  - b. two (2) lots if the size of the easement property is seventy (70) acres or more, but fewer than one hundred twenty (120) acres; or
  - c. three (3) lots if the size of the easement property is one hundred twenty (120) acres or more provided that the resulting density on the land does not exceed the density allowed under zoning of the property before the Grantee purchased the easement. The right reserved to the Grantor under this subsection belongs only to the Grantor who originally conveyed the easement and may be exercised only by the Grantor named in the easement document, and is extinguished upon the death of the Grantor [or in the case of an entity Grantor, “upon the death of the Grantor’s currently existing partners, shareholders, members, or beneficiaries as applicable] or a transfer of one hundred percent (100%) of the Grantor’s interest in the property [or in the case of an entity Grantor, “or a transfer of a one hundred percent (100%) partnership interest, shareholder interest, member interest, or beneficiary interest by the Grantor’s currently existing partners, shareholders, members, or beneficiaries];
- (2) The Grantor shall pay the Grantee for any acreage released at the price per acre that the Grantee paid the Grantor for the easement, provided that the Ag Board has the right to approve the size, location and configuration of the parcel(s) so released from the easement; it being the intent that the agricultural use of the land not be impaired by said partitions;
- (3) Before any release from the easement, the Grantor, and/or the Grantor’s child, if applicable, shall agree, in writing, not to divide further any portion of the land allowed to be released; and the written agreement shall be recorded among the land records where the land is located and shall run with the land and bind all future owners;
- (4) If the land was in an agricultural preservation district prior to the conveyance of the easement and the County released, free of the district’s restrictions, a lot for the purpose of constructing a dwelling house, the Grantee shall not release an additional lot, free of easement restrictions, for the Grantor, for the same purpose. For each lot that the Grantor had excluded from the district’s restrictions, the number of lots that the Grantor otherwise would be entitled to have released under this Section 9.4 is reduced by one (1).
- (5) Regardless of the number of agricultural districts or easements encumbering land owned by the Grantor herein, if the Grantee released a lot for the purpose of constructing a dwelling house for the use of the Grantor or Grantor’s child, under a separate agricultural district or easement, the Grantee shall not release easement

restrictions for the Grantor or Grantor's child, an additional lot on the land for the same purpose; for each lot that the Grantor or Grantor's child had excluded from another district's or easement's restrictions for this purpose, the number of lots that the Grantor or Grantor's child otherwise would be entitled to have released under this Section 9.4 is reduced by one (1).

- (6) Subject to the requirements and conditions of this Section 9.3, the Grantors agree that they [or in the case of an entity owner, that its partners, shareholder members, or beneficiaries as applicable] are not individually eligible to the release of a Grantor's lot, but collectively are eligible to the release of only one (1) Grantor's lot with the approval of all title owners at the time of the request. The Grantor's lot may be used as a residence by the Grantor [or in the case of an entity owner, its partners, shareholders, members, or beneficiaries as applicable]. The Grantor further agrees that the eligibility to have a child's lot released, as provided by this Section 9.4, is restricted and limited to a child only of the individuals named in the easement document.

#### 9.5 **UNRESTRICTED LOT.**

The Grantor, or subsequent owner, has the right to apply at any time for the release of one (1) unrestricted lot from the easement, to be retained by the Grantor or subsequent owner, or conveyed to anyone, to construct one (1) residential dwelling, subject to the following conditions:

- (1) The resulting density on the property shall be less than the density permitted under zoning of the property prior to the County purchasing the easement;
- (2) The Grantor shall pay the Grantee for an acreage released at the price per acre that the Grantee paid the Grantor for the easement, provided that the Ag Board has the right to approve the size, location and configuration of the parcel so released from the easement; it being the intent that the agricultural use of the land not be impaired by said partition;
- (3) The Grantor or subsequent landowner shall agree not to further subdivide for residential purposes any acreage allowed to be released, and the written agreement to that effect between the parties shall be recorded among the Land Records where the property is located and shall run with the land and shall bind all future landowners.

#### 9.6 **WAIVED LOT RIGHTS.**

The Grantor, at the time of application, may elect to waive all rights to future division of the property. This option runs with the land, affecting both the grantor and any subsequent landowner.

**ARTICLE 10 USES OF LAND UNDER AGRICULTURAL PRESERVATION  
EASEMENT**

**10.1 OTHER PERMITTED USES.**

Property under agricultural preservation easement shall be maintained in agricultural use. A landowner may request accessory and compatible commercial uses to an agricultural use of the property as permitted under the Zoning Ordinance, provided that such use does not affect the agricultural integrity of the property, minimizes the use of productive agricultural land, and fulfills the purpose and intent of the agricultural preservation easement.

**10.2 REQUEST FOR OTHER USES.**

Such a request shall be submitted to the Department of Planning and Zoning and decided by the Ag Board which shall make specific findings in each request as to the appropriateness of such use and the impact on the agricultural use of the property. Decisions of the Ag Board may be appealed, within thirty (30) days, *de novo* to the Board of Appeals upon payment of any applicable filing or advertisement fees.

**10.3 COMPATIBILITY.**

Accessory and compatible commercial uses must conform to existing regulations and ordinances.