

City of San José, California

COUNCIL POLICY

TITLE WILLIAMSON ACT - WAIVER OR DEFERRAL OF CANCELLATION FEES	PAGE 1 of 2	POLICY NUMBER 7-7
EFFECTIVE DATE January 9, 1979	REVISED DATE	
APPROVED BY COUNCIL ACTION		January 9, 1979, item 11c

BACKGROUND

The Williamson Act of 1965 requires imposition of a cancellation fee, when upon the landowner's request, the Council cancels a Land Conservation Contract previously established under the Act. The cancellation is permitted by law only when continued dedication of land under such agreement to agricultural use is neither necessary nor desirable for the purposes of the Act. The cancellation fee is generally equivalent to 12-1/2% of the full value of the property, considered as if there were no contract limiting its use to agricultural, recreational or open-space uses. (The fee is paid to the State's General Fund through the County Treasurer's Office.)

An exception is provided for a waiver or deferral of such fee where certain conditions exist as described in Government Code § 51283(c) as follows:

"(c) If they find that it is in the public interest to do so, the board or council may waive any such payment or any portion thereof, or may make such payment or a portion thereof contingent upon the future use made of the land and its economic return to the landowners for a period of time not to exceed the unexpired period of the contract, had it not been cancelled, provided:

- (1) The cancellation is caused by an involuntary transfer or change in the use which may be made of the land and the land is not immediately used for a purpose which produces a greater economic return to the owner; and,
- (2) The board or council has determined it is in the best interests of the program to conserve agricultural land use that such payment be either deferred or not required.
- (3) The waiver is approved by the Secretary of the Resources Agency."

PURPOSE

To state Council Policy concerning cancellation of Land Conservation Contracts and the waiver, deferral or reduction of cancellation fees imposed for such cancellations under the Williamson Act of 1965.

POLICY

It is the policy of San José that requests by landowners to cancel Land Conservation Contracts established under the Williamson Act of 1965 and petitions to waive, defer or reduce cancellation fees mandated under the Act for such cancellations shall be considered by the Council in conformance with this Policy statement and with the conditions prescribed or that may be imposed by the Secretary of the Resources Agency of the State of California.

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PROCEDURES

The City Council, upon hearing a petition to cancel a Land Conservation Contract and to waive or defer all or any portion of a cancellation fee otherwise required for cancellation of a Williamson Act contract will consider the following factors to determine if any such waiver or deferral is in order:

1. Cancellation may be deemed caused by an "involuntary transfer" where (a) the landowners have acquired the land by reason of the death of the former landowner subject to the contract, or by foreclosure sale; or (b) governmental or utility company acquisitions of other portions of the contracted land render the remaining land incapable of any economic and feasible agricultural use.
2. Cancellation may be deemed caused by an "involuntary change in use," if such change in use is not due to voluntary action of the landowner but only by reason of:
 - (a) Drought, rain, flood, pestilence, infestation or other conditions which destroy or substantially impair trees, vines, bushes, or other crops, or these and other conditions which adversely impair soil capability and vitality for production, grazing or similar uses, but only where such conditions prevent pre-existing or other agricultural uses for an extended and unreasonable period of time.
 - (b) Fire or other casualty which destroys major structures essential for plant, crop or animal production.
3. The land may be considered "not immediately suitable or immediately used for a purpose which provides a greater economic return to the owner" if:
 - (a) No portion of the land has been rezoned, or is the subject of a conditional use, planned development or other kind of governmental land use permit (other than for contracted agricultural uses), within five years precedent to petition for cancellation; and,
 - (b) The City Council determines from satisfactory evidence presented by the petitioner that no sale, lease or other agreement of use is pending whereby any such greater economic return will be derived.

The landowner or representatives thereof requesting cancellation, shall provide information to and participate in proceedings before the Council and Secretary for the Resources Agency of the State of California for approval of such waivers or deferrals.

Any waiver or deferral action by the Council shall be inoperative unless and until final action is taken by the Secretary for Resources.