

---

*In-person participation by the public will be permitted. In addition, remote public participation is available in the following ways:*

*Submit a written public comment prior to the meeting: Public comments submitted to [cityclerk@atwater.org](mailto:cityclerk@atwater.org) by 1:00 p.m. on the day of the meeting will be distributed to the City Council, and made part of the official minutes but will not be read out loud during the meeting.*

*Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Persons requesting accommodation should contact the City in advance of the meeting, and as soon as possible, at (209) 357-6241.*

## **NOTICE OF SPECIAL MEETING CITY COUNCIL OF THE CITY OF ATWATER**

NOTICE IS HEREBY GIVEN that a special meeting of the City Council of the City of Atwater will be held on **Monday, January 22, 2024 at 4:30 PM**, or as soon thereafter as may be held. This meeting will be held in the City Council Chambers located at the Atwater Civic Center, 750 Bellevue Road, Atwater, California.

### **AGENDA**

#### **SPECIAL MEETING CALL TO ORDER:**

#### **PLEDGE OF ALLEGIANCE:**

#### **ROLL CALL:**

**Ambriz** \_\_\_\_, **Button** \_\_\_\_, **Cale** \_\_\_\_, **Raymond** \_\_\_\_, **Nelson** \_\_\_\_



**PUBLIC COMMENT:** Pursuant to Government Code Section 54954.3, residents wishing to address the City Council regarding **only the items on the agenda may do so when the item is read for consideration**. You may state your name and address for the record; however, it is not required. Please limit comments to three (3) minutes or less. Under the provisions of the California Government Code, the City Council may not discuss or take action on any item that is not on the agenda.

#### **APPEAL HEARING:**

- 1. Appeal of Permit Denial of Michael loane's Application for an Animal Permit for the property located at 1521 Fruitland Avenue**

**Staff's Recommendation:** That the City Council conduct a public hearing, consider the appeal of the Permit Denial regarding Michael loane's Application for an Animal Permit for the property located at 1521 Fruitland

Avenue, and grant or deny the appeal.

**ADJOURNMENT:**

Dated this 19<sup>th</sup> day of January 2024.



---

Mike Nelson, Mayor

pc: Mayor and City Council Members  
Atwater Signal/Merced Sun Star  
Atwater Times  
City of Atwater Website



# ANIMAL PERMIT APPLICATION

*please use mailing address*

Permit Holder: Michael IOANE, owner farmer

Address: (1521 Fruitland Ave) [REDACTED]

Phone Number: [REDACTED]

Type of Animal(s): see Attached LTR - made part of this application

Number of animals requesting (must comply with Atwater Municipal Codes): see attached LTR

Address where animal(s) will be kept: 1521 Fruitland Av

Phone Number of premises: see above

Date of Application: 7/1/23

**NOTE: Prior to issuance of all permits the property will be inspected by Animal Control and/or Code Enforcement. Final approval for a permit is made by the Chief of Police and may be revoked at any time.**

ALL permits are valid for (1) one year from date of issuance.

FEE FOR PERMIT \$20.00 PER ANIMAL

SIGNATURE: [REDACTED]

DATE: 7/1/23

.....  
**FOR DEPARTMENT USE ONLY**

APPROVED

DENIED

BY: *Michael Ioane* DATE: 8-2-23



# City of Atwater

## Police Department

Michael Salvador, Chief of Police

750 Bellevue Road  
Atwater, CA 95301  
Phone: (209) 357-6384  
Fax: (209) 358-5256  
E-Mail: [police@atwater.org](mailto:police@atwater.org)

August 2, 2023

Michael Ioane  
[REDACTED]

Re: Animal Permit Application, 1521 Fruitland Ave.

Dear Mr. Ioane,

Thank you for your domestic animal permit application received by this agency on 7-3-2023. The applicant address, 1521 Fruitland Ave., is within the City of Atwater and comes under the jurisdiction of the Atwater Municipal Code. The following is the controlling code section for your request:

### CHAPTER 6.04 DOMESTIC ANIMAL PERMITS

#### 6.04.010 Required when.

No person shall keep or maintain within this City for a longer period than may be necessary for shipment, reloading, or transportation of the same and, in such event for not longer than 48 hours, any goat, rabbit, sheep, mule, donkey, cow, horse, turkey, chicken, duck, goose or other domestic animal or fowl unless a permit so to do has been first obtained from the Police Department by the person so keeping or maintaining such domestic fowl or animal.

A. The number of animals shall be limited to one pig, goat, sheep, or calf. Chickens, ducks, geese, turkeys or other domestic fowl and rabbits shall be limited to six in number. No roosters shall be allowed to be kept or maintained within the confines of the City limits of the City of Atwater.

B. Any horse, mule, donkey, or cow, or combination thereof shall be kept in the City limits only on properties of one-half acre or more in size.

C. The permit to keep said animals shall be obtained from the Police Department at an annual charge of \$25.00.

(Prior Code § 5-2.201; Ord. CS 705, 1993)

#### 6.04.020 Issuance by the Police Department—Regulations.

A permit to keep or maintain such domestic fowls or animals shall be issued by the Police Department upon application for the same but only upon the following terms or conditions:

- A. That such permit shall not be transferable;
- B. That the applicant shall comply with all such and whatever health and sanitation rules or regulations as the City or any duly constituted or appointed agent, agency or department may from time to time prescribe;
- C. That such permit may be revoked by the Chief of Police at any time for failure of the applicant to keep or maintain any such domestic fowl or animal in a clean and sanitary manner or so as not to be offensive to the public or to interfere with the peace and quiet of any person; provided, that no such permit shall be revoked except upon notice of at least five days and, if requested by the owner or holder of such permit, after a hearing before the Council;
- D. Such permit shall specify the land or premises for or in connection with which the same is issued and shall not be operative or of any force or effect except as to the location or premises therein specified;
- E. No permit shall be issued until an inspection of the property and facilities where the domestic fowl or animals are to be kept or maintained has been completed. This inspection will be accomplished by the Departments Animal Control/Community Service Officer.
- F. Further inspections of the property and facilities will be made upon receipt of complaints of violations of any of the rules and regulations set forth in this chapter.

In reviewing your request and as part of the application process, the Animal Control Unit inspected the property on 7-6-2023, as is required by the section above, and found the following:

1. 14 head of cattle on the property
2. Property is zoned R-1 (low density residential)
3. The property is approximately 3 acres.
4. No active domestic animal permit
5. No business license for cattle sale or processing

Unfortunately the number of cows on the property is over the statutory limit of one as described in the municipal code. The property is large enough to qualify for the keeping of a single cow, with the appropriate permit, for non-commercial use like a 4H or FFA project. Your property, including its easement, is in the City of Atwater so zoning ordinances are also applicable. The property's zoning also precludes the commercial use of the property as a farm or other farm-like activities. (Atwater Municipal Code Chapter 17.16)

In your application, you state that you are mitigating your waste products by disking them into the ground. Your application also states that your property borders a Merced Irrigation District Canal. There is no evidence of compliance with California Water Code sections 13260 and 13264. Your mitigation actions could subject you to legal action from the California Water Board.

I do appreciate that you may have owned the property prior to its annexation into the city and that similar activities are going on in the adjacent parcel. Unfortunately that parcel is in the county, and

we have no jurisdiction. I also appreciate that you may have conducted this business activity undetected for years without enforcement action from the City.

The Police Department have received complaints from your neighbors regarding dust and odors emanating from your property. We have advised your neighbors of the permit application. We now have a documented letter of opposition to the permit by your neighbors. This now forces a response from the City to obtain compliance with the Municipal Code.

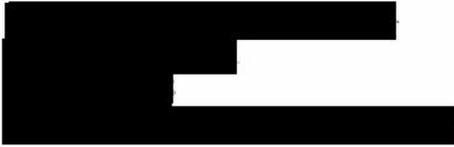
After reviewing all the documentation gathered in response to your application, I am denying your permit application. I am also requesting that you bring the property into compliance with the municipal code by September 5, 2023. Once in compliance, the Department will entertain a new permit application for the keeping of no more than one cow on the property at any one time.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Salvador". The signature is cursive and somewhat stylized.

Michael Salvador  
Chief of Police

Michael Ioane



**Date:** October 29, 2023

City of Atwater  
Attn: Kory J. Billings, City Clerk  
750 Bellevue Road  
Atwater, CA 95301

**Re: NOTICE OF APPEAL** - Administrative Appeal 1521 Fruitland Avenue, APN 150-130-022 Denial of Lawful Non-Conforming Use for Agriculture, Farming, and Livestock Permit, Chief Salvador Denial dated 8/2/2023.

**To:** City Clerk And Chief Michael Salvador,

I am hereby filing a formal Notice of Appeal contesting Chief Michael Salvador's decision to deny my "current" Lawful Non-Conforming use of 1521 Fruitland Avenue, Atwater, CA 95301, for agricultural, farming, and livestock activities, particularly the rearing of meat cows, through the rejection of an animal permit, as evidenced in the Denial **Exhibit 1**.

My Appeal is grounded on several issues:

**(A)** The property in question has historically operated as a family farm, accommodating various animals, and cultivating diverse fruits and nuts since before 1972, constituting its current lawful non-conforming status, as stipulated in the City of Atwater Ordinance Chapter 17.78 - NONCONFORMING USES, 17.78 - Existing uses.

**(B)** The property is in compliance with Ordinance Chapter 6.04 Domestic Animal Permit, specifically 6.04.010 B, which states that "Any horse, mule, donkey, or combination thereof shall be kept in the City limits only on properties of one-half acre or more in size." The Chief's denial, dated 8/2/2023 and marked as **Exhibit 1**, wrongly interprets this phrase to allow only one cow. However, the ordinance clearly states that you can have four (4) Cows, Horses, mules, or donkeys or one of each on half an acre or more. I own 3 acres, which allows me to have 24 cows while still adhering to the current ordinance, even considering my lawful non-conforming use. However, I only have 12 Cows, half the legal amount. The Ordinance is clear, *sub section B*. states: "Any horse, mule, donkey, cow or combination thereof shall be kept in the City limits only on properties of one-half acre or more in size." **You cannot have a combination of one, the statute is clear that you can have four (4)** Cows or four (4) Horses, or four (4) mules or four (4) donkeys or one of each on half an acre or more. *(If the land was subdivided into 6 - 1/2 Acre lots, each of those 1/2 Acre lots would be authorized to house 4 Cows)*. That is 24 Cows, as stated above. I only have 12 Cows and I do not intend to have 24 Cows, although under the Ordinance I am clearly authorized to do so. To the extent the ordinance is ambiguous, vague, or left to varying interpretations, the ordinance would be constitutionally unenforceable as to me or the property, (This is why in all my communication, I have suggested we resolve this matter in a reasonable and amicably manner).

**(C)** A complaint to the California Water Board, ostensibly initiated by a singular neighbor, resulted in Agent Gilberto Corral's investigation, validating compliance with California's standards provided cattle weight does not exceed 6000 lbs. I have requested a copy of the investigative report via the Public Records Act Request, as

of today the report has not been furnished, although promised to me. An extension is requested to obtain the report and supplement the Notice of Appeal.

(D) Building Permits were issued between 1971 and 1974, either by the City of Atwater or County of Merced, to build horse corrals and a barn for housing horses used both commercially and personally. The property, acquired as a functional small farm, has sustained various livestock for commercial and 4-H purposes since 1972. I have sought copies of these building permits from both the City of Atwater and the County of Merced, in accordance with the California Public Records Act, "PRA" pending their receipt, thus requesting an extension so that I may supplement this Notice of Appeal.

(E) The CALIFORNIA CIVIL CODE § 3482.5, "THE RIGHT TO FARM ACT," expressly authorizes continued usage of the property as a small family farm, supporting commercial activities and 4-H projects, referenced in **Exhibit 2**, CALIFORNIA CIVIL CODE § 3482.5, "THE RIGHT TO FARM ACT."

(F) The relevant Agency refused to furnish specific documents integral to the Chief's decision-making process. I specifically requested "The documented letters of opposition to the permit by neighbors," as alluded to in Chief Michael Salvador's letter dated August 2, 2023, which I've attached as **Exhibit 1**. These documents were crucial to the Chief's denial of the permit. The Chief based his decision not on the original complaint received by the animal control center but rather on "the documented letter(s) of opposition to the permit." This form of opposition constitutes public records and should be disclosed as mandated by law. The neighbor did not merely express dissatisfaction with cow manure; they actively filed public opposition to the permit process, which falls under the purview of the Public Records Act and should not have been withheld, particularly as it serves as the sole basis for the Chief's denial. Access to this information would assist Council and myself better understand the nature of the complaint, (*it's a matter of fundamental due process, I should be allowed to address all "documented opposition letters."*) In the event of non-disclosure, the entire matter should be dismissed, considering the property's lawful non-conforming use and the assertion of compliance with the city ordinance regarding the permissible number of cows on a 3-acre plot. Should the opposition party or their correspondence remain undisclosed, the matter becomes moot and should be resolved accordingly. I intend to file a separate appeal to obtain disclosure under the Public Records Act for the "documented letter(s) of opposition," which the Chief exclusively relied upon for his decision. Only upon review of these documents can the validity and significance of the opposition letters cited by the Chief in his denial letter dated August 2, 2023, **Exhibit 1**, be properly assessed. Additionally, I incorporate as set-forth in full my original animal permit application, its attachments, dated July 1, and July 2 of 2023, and my reconsideration request dated August 12, 2023, **Exhibit 3**.

(G) The official Police Reports affirm that minimal to no odors were detected on my property. Contrarily, the adjacent property on the left, occupied by goats (a count of 40), with less land space than mine, was found to emit noticeable odors, disseminating onto my property, and affecting several neighbors. Notably, goats are known to produce a more distinctive odor compared to meat cows. I refer you to the Animal Control Police Reports of July 6, 2023, and July 2, 2023, which are included and accounted for in this appeal, **Exhibit 4**. Despite living on the premises and regularly using the property, I have personally detected no discernible odor from the cows. They generate no dust, and their manure, minimal in quantity, serves as beneficial natural compost. Moreover, proactive measures, such as frequent plowing of fields and the deliberate planting of fast-growing redwood trees, substantial willow hedges, and additional eucalyptus trees along the fence line adjacent to the neighbors on the right, have been implemented. These initiatives were specifically undertaken to mitigate any potential odors and reduce dust from our routine weed abatement activities. I emphasize that all these

measures were adopted to accommodate the neighbors, who were aware, upon moving in, of the presence of a 3-acre farm and the scheduled weed abatement and coexistence with farm animals.

**(H)** Apart from legal grounds, I contend that allowing the continual lawful non-conforming use of the property for agricultural farming is beneficial to the community. Furthermore, given the property's context in a farming community, unique considerations prevail. As substantiated in the record, there is only one complaint, while I have six neighbors adjacent to my property on the right side, only one has filed a documented letter(s) of opposition. If other opposition exists, I have the right to know its source.

**CONCLUSION:**

In conclusion, I am requesting that my lawful non-conforming use of the property be allowed to continue. If a permit is deemed necessary, I am willing to pay the appropriate fee, but I also request a reasonable, flexible approach that accommodates fluctuations in the number and type of animals. Additionally, I propose that the City Council consider waiving the permitting process and fee due to the property's longstanding lawful non-conforming use and the historical issuance of building permits for cow and horse corrals, on the subject property. Please refer to my original animal permit application, its attachments, dated July 1, and July 2 of 2023, and my reconsideration request dated August 12, 2023, for suggested options to resolve the issue, **Exhibit 3**.

**REQUEST FOR EXTENSION:** I kindly request an extension of time to provide additional documents and further supplement to this Notice of Appeal. This extension is necessary as I await responses to my Public Records Act Requests from various departments and agencies, including Planning Dept., Zoning, City of Atwater, Building Department Building Permits, City Atwater, County of Merced, California Water Board Inspection Report, USDA Agricultural ID Documents, County of Merced Operator's permit, and MID documented farming activity since 1972.

Respectfully submitted,

By:

Michael Ioane Jr. Owner of the Subject Property

A black rectangular redaction box covering the signature of Michael Ioane Jr.

