

City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Ken MacNab, Planning and Building Manager
DATE: September 6, 2011
SUBJECT: "Right-to-Farm" Ordinance

APPROVAL FOR FORWARDING:


Richard D. Spittler, City Manager

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2 **ISSUE:** Discussion of a recommendation from the Planning Commission to
3 direct preparation of a "right-to-farm" ordinance.
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5 **RECOMMENDATION:** Discuss and provide direction to staff.
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7 **BACKGROUND:** At their regularly scheduled meeting on August 10, 2011, the
8 Planning Commission considered a suggestion from Commissioner Moye to
9 recommend that the City Council direct preparation of a "right-to-farm" ordinance.
10 Commissioner Moye's suggestion follows recent comments from members of the
11 community requesting that such an ordinance be prepared. The Planning
12 Commission unanimously passed a motion recommending that the City Council
13 consider preparation of a right-to-farm ordinance. The Planning Commission also
14 suggested that a community-based process be used to develop the ordinance.
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16 **DISCUSSION:** Right-to-farm ordinances in California were first developed in the
17 early 1980's in response to problems created by the encroachment of urban
18 growth into agricultural areas. They were developed as a tool to protect farmers
19 who use accepted and standard farming practices against nuisance suits, even if
20 the farming practices harm or bother adjacent property owners or the general
21 public.
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23 There are two key provisions in a right-to-farm ordinance. The first is a
24 notification requirement that requires buyers/developers of property located
25 adjacent to or near a working farm be notified about the possible negative
26 impacts of agricultural activities (e.g., dust, odors, spray, noise, etc.). Such
27 notification can happen when there is a transfer in ownership of real property or
28 as part of the land use entitlement process.

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30 The second key provision is the inclusion of language in local regulating codes
31 that would prohibit the jurisdiction from making a nuisance finding on agricultural
32 activities if the agricultural activity in question is being conducted in conformance
33 with established farming practices.

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35 While right-to-farm ordinances serve a number of important purposes (disclosure,
36 education, articulation of community values) and can be effective in resolving
37 small complaints, they do not fully protect a farmer from being sued. It is also
38 important to note that right-to-farm ordinances are not a substitute for good land
39 use planning. The development review and land use planning processes remain
40 necessary tools for the community to address the relationship and impact of uses
41 in urban-agricultural interface areas.

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43 Attached for informational purposes only (not necessarily as a suggested
44 example) is a copy of the County's right-to-farm ordinance.

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46 **FISCAL IMPACT:** Preparation of a right-to-farm ordinance will require the
47 commitment of staffing resources from the Planning and Building Department
48 and consultation with the City Attorney's office. After adoption no direct costs to
49 the City are anticipated.

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51 **ATTACHMENTS:**

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53 1. Napa County Right-to-Farm Ordinance.

Napa County, California, Code of Ordinances >> Title 2 - ADMINISTRATION AND PERSONNEL >>
Chapter 2.94 - AGRICULTURE AND RIGHT TO FARM >>

Chapter 2.94 - AGRICULTURE AND RIGHT TO FARM

Sections:

- 2.94.010 - Definitions.
- 2.94.020 - Right to farm—Conditions.
- 2.94.030 - Disclosure prior to transfer of real property.
- 2.94.040 - Conditions of approval of entitlements for use.

2.94.010 - Definitions.

Unless the context otherwise requires, the following definitions govern the construction of this chapter:

"Adjacent land" means land located within one mile of the exterior boundaries of a parcel that qualifies as agricultural land.

"Agriculture" shall have the same meaning as "agriculture" as defined in Section 18.08.040 of this code.

"Agricultural land" means real property located within the boundaries of Napa County which falls into one or more of the following categories:

1. Is designated on the county general plan as agricultural resource (AR), agriculture, watershed and open space (AWOS), or rural residential (RR) and is included in a zoning district that is primarily or substantially devoted to agricultural uses including, but not limited to, the following zoning districts: agricultural preserve (AP), agricultural watershed (AW), residential country (RC), timber preserve (TP);
2. Is included in an overlay zoning district that is devoted primarily to agriculture;
3. Is designated in the general plan for an urban use but has been zoned AW or AP as an interim zone to maximize the economic use of the land for agricultural purposes while retaining the land in large parcel sizes pending eventual permanent development for urban use;
4. While not presently zoned or designated on the general plan for primarily agricultural use, the land contains an existing agricultural operation of a type that would be obvious to an uninformed observer after a physical inspection of the property, and that operation began at a time when such use was lawful.

"Agricultural operation" means all operations necessary to conduct agriculture as defined in Section 18.08.040 of this code and shall include, but not be limited to, preparation, tillage, and maintenance of the soil or other growing medium, the production, irrigation, frost protection, cultivation, growing, raising, breeding, harvesting, or processing of any living organism having value as an agricultural commodity or product, and any commercial practices performed incident to or in conjunction with such operations on the site where the agricultural product is being produced, including preparation for market, delivery to storage or to market, or to carriers for transportation to market.

"Transfer" means and includes, but is not limited to, the following: sale, exchange, installment, land sale contract, lease with option to purchase, any other option to purchase, or ground lease coupled with improvements, or residential stock cooperative improved with dwelling units.

(Ord. 973 § 3 (part), 1990: prior code § 7500)

2.94.020 - Right to farm—Conditions.

No existing or future agricultural activity, operation or facility, or any of its appurtenances, conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality, shall be or become a nuisance, public or private, due to any changed condition in or about the county, after the same has been in operation for more than three years if it was not a nuisance at the time it began. Provided, however, that such agricultural operations must comply with all provisions of this code and further provided that the provisions of

this section shall not apply whenever a nuisance results from the negligent or improper operation of any agricultural operation.

(Ord. 973 § 3 (part), 1990: prior code § 7501)

2.94.030 - Disclosure prior to transfer of real property.

No person shall transfer agricultural land or one or more parcels adjacent to agricultural land until the following disclosure in the form required by subparagraph (b) of Civil Code Section 1102.6(a) is made in writing to the transferee and a copy of the text of Section 18.08.040 of this code in effect at the time of the transfer is provided to the transferee. The disclosure shall include a copy of the then-current text of Section 18.08.040 of this code and a statement containing substantially the following language:

Napa County has determined that the highest and best use for agricultural land as defined below is to develop or preserve said lands for the purposes of agricultural operations and it will not consider the inconveniences or discomforts arising from agricultural operations to be a nuisance if such operations are legal, consistent with accepted customs and standards and operated in a non-negligent manner.

If property you own or are purchasing or may purchase in the future is located close to agricultural lands or within agricultural lands, you may be subject to inconveniences or discomfort arising from agricultural operations. Such discomfort or inconveniences may include, but are not limited to: noise, odors, dust, chemicals, smoke, insects, operation of machinery during any 24-hour period, aircraft operation, and storage and disposal of manure. One or more of the inconveniences described above may occur even in the case of an agricultural operation which is in conformance with existing laws and regulations and locally accepted customs and standards. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in a county with a strong rural character and a healthy agricultural sector.

For purposes of this notification:

(a) "Agricultural Land" means real property located within the boundaries of Napa County which falls into one or more of the following categories:

(1) Is designated on the Napa County General Plan as Agricultural Resource (AR), Agriculture, Watershed and Open Space (AWOS), or Rural Residential (RR) and is included in a zoning district that is primarily or substantially devoted to agricultural uses, including but not limited to the following zoning districts: Agricultural Preserve (AP), Agricultural Watershed (AW), Residential Country (RC), and Timber Preserve (TP);

(2) Is included in an overlay zoning district that is devoted primarily to agriculture;

(3) Is designated in the General Plan for an urban use but has been zoned AW or AP as an interim zone to maximize the economic use of the land while retaining the land in large parcel sizes pending eventual permanent development for urban use;

(4) While not presently zoned or designated on the General Plan for primary or substantial agricultural use, the land contains an existing agricultural operation of a type that would be obvious to an uninformed observer after a physical inspection of the property, and that operation began at a time when such use was permissible.

(b) "Agricultural Operation" means all operations necessary to conduct agriculture as defined in Section 18.08.040 of the Napa County Code, as such may be amended from time to time and shall include, but not be limited to, preparation, tillage, and maintenance of the soil or other growing medium, the production, irrigation, frost protection, cultivation, growing, raising, breeding, harvesting, or processing of any living organism having value as an agricultural commodity or product, and any commercial practices performed incident to or in conjunction with such operations on the site where the agricultural product is being produced, including preparation for market, delivery to storage or to market, or to carriers for transportation to market.

(Ord. 973 § 3 (part), 1990: prior code § 7502)

2.94.040 - Conditions of approval of entitlements for use.

No public official, board, commission, or agency of the county shall issue a permit, lease, license, certificate, or other entitlement for use of a parcel which is adjacent to agricultural land until the owner(s) of the property have signed a statement acknowledging that they are aware of the "right to farm" policy of the county and have been provided with a copy of a statement containing substantially the disclosure set forth in Section 2.94.030 of this chapter.

(Ord. 973 § 3 (part), 1990: prior code § 7503)