

LOCAL FOOD POLICIES

FREQUENTLY ASKED QUESTIONS

October, 2011 Version



A Tradition of Stewardship
A Commitment to Service

Prepared for the Local Food Council by the Ad Hoc Local Food Policy Subcommittee in collaboration with staff of the Napa County Planning Department, Agricultural Commissioner's Office, Department of Environmental Management, City of American Canyon, City of Napa, Town of Yountville, City of St. Helena, and the City of Calistoga.

Introduction

This document is a project of Napa County's Local Food Advisory Council, and is intended to evolve over time. The first full version -- dated October 2011 -- was assembled by an ad hoc subcommittee of the Council, with assistance from a dedicated group of volunteers. Its preparation involved consultation with Napa County staff and other local agency representatives.

The objectives of this document are two-fold. First and most obviously, this document was intended as a resource to members of the community who might benefit from a compendium of local policies about growing/raising and using/selling local food products. The Council recognizes that even in a small agricultural community such as Napa County, there are multiple local agencies whose policies and regulations touch the food system. This can create confusion, and myths evolve about what can and can't be done. The Local Food Advisory Council hopes that by providing residents and businesses with the kind of information included here, myths can be dispelled and members of the community can be empowered to go local.

The second objective of this document was to foster understanding and change. By gathering and assembling the questions and answers contained in the document, its authors were hoping to identify areas where local policies and regulations were in conflict, confusing, overly restrictive, or lacking. For example, the October 2011 version of this document deals extensively with the question of what is an "approved source." Only food from an "approved source" can be sold in stores and restaurants and school cafeterias, and the County agencies charged with implementing this State law are still grappling with ways it can be implemented to promote food safety *and* minimize unnecessary paperwork and confusion.

The Local Food Advisory Council is charged with advising Napa County's Agricultural Commissioner about desired changes to local and State policies. It is our hope that readers will participate in this endeavor by suggesting changes and corrections to the information contained in this document. Please visit us on facebook at Napa Local Food Forum for upcoming information. Please visit our website at www.napalocalfood.org for more information, how to get involved, and email suggestions or comments. Also, stay tuned for changes to the information presented in this document. Newer, updated versions will be posted on the Agricultural Commissioner's website at www.countyofnapa.org as they become available.

The Local Food Advisory Council welcomes your participation and encourages your involvement in other activities of the Council aimed at improving local food access, increasing agricultural diversity, and more.

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SECTION ONE: GROWING & RAISING LOCAL FOOD

1. Can I have a personal garden?

Please do! Any property in Napa County can have a non-commercial garden regardless of which local jurisdiction you're located in. Refer to Questions number 3 for larger scale and commercial operations.

2. If I own a restaurant, can I have a garden and use the produce?

Yes, but because State law requires restaurants to purchase from an "approved source,"¹ the County's Department of Environmental Health must certify your "culinary garden"². There is an initial certification fee of approximately \$200, and the Department has prepared a factsheet and agreement (see appendices).

3. Can I have a farm, plant an orchard, or plant a vineyard?

- **Napa County:** Agriculture is a permitted use in all but a few residential areas of the County; however you will need to apply for an Erosion Control Plan if you are planting areas on greater than 5% slope. (See Napa County Code Section 18.108.)
- **City of Napa:** Properties with greater than one-half acre of land for viticulture, horticulture, or similar intensive farming require approval of an Administrative Permit for Agricultural Cultivation and Animal Keeping.
- **City of American Canyon:** Crop production includes the raising and harvesting of tree crops, row crops, vine crops, or field crops on an agricultural or commercial basis, including packing, processing and storage, but excluding canneries, and can be allowed in certain zoning districts. (See American Canyon Municipal Code Section 19.05.090 for more information.)
- **City of Calistoga:** Light agriculture is allowed in the Rural Residential zoning district. (See City of Calistoga Code Section 17.14.)
- **City of St. Helena:** There are no regulations stating what you can grow, however gardening on a large scale for profit is generally reserved for the A:20 Agriculture district (and sales/fruit stands are addressed in that zoning district, (City of St. Helena Code Section 17.20.050C), and the LR1A: 1 Acre Minimum Low Density Residential zone (City of St. Helena Code Section 17.36.030 E).
- **Town of Yountville:** Refer to Question 1 for personal uses. Agricultural uses are permitted in the Town's Agricultural (A) zoning district.

4. What if I want to be a certified Organic Grower?

The County Agricultural Commissioner registers growers who intend to represent their crop as organic (See CA Food & Ag. Code Section 46013.1.). Prior to registration, you must first submit an application to the California Department of Food and Agriculture. Contact the Ag

¹ *Approved Source* is a food that is acceptable for use in a restaurant based on a determination of conformity with applicable laws, or in the absence of applicable laws, with current public health principles and practices, and generally recognized industry standards that protect public health (California (CA) Health & Safety Code, Section 113735).

² *Culinary Garden* is an informal name for an onsite garden used by a permitted restaurant or school facility.

Commissioner's Office for more information about the process and to learn about organic certification with a third party certifier.

5. What if I want to use pesticides?

If you are a commercial grower or intend to sell your produce, the County Agricultural Commissioner will issue to you an operator identification number to buy, possess, and use pesticides for the commercial production of agricultural commodities. (See Title 3 CA Code of Regulations (3 CCR) Section 6622(b).) The Ag Commissioner's Office issues this number free of charge; call to set up an appointment.

6. Can I raise chickens on my property?

- **Napa County:** Yes, on agriculturally zoned property you can have unlimited number of chickens, however more than 100 roosters requires an administrative permit. On residentially zoned property, you may have a small number of hens as an "accessory use." See Appendix C.
- **City of Napa:** The Zoning Ordinance allows for the raising of chickens. Section 17.06.030 of the City of Napa Municipal Code allows up to six small domestic animals over the age of four months of the type generally accepted as pets, including dogs, cats, rabbits, pigeons, hens, and the like; but not including roosters, quacking ducks, geese, pea fowl, goats, sheep, hogs, apiaries, venomous reptiles, kennels, or the presence of animals for commercial purposes.
The raising of chickens for commercial purposes requires approval of an Administrative Permit for Agricultural Cultivation and Animal Keeping. (See City of Napa Municipal Code Section 17.52.050.)
- **City of American Canyon:** Yes. American Canyon Municipal Code 19.31.020(B) (1) defines permitted animals as follows: "Domestic creatures commonly sold in pet stores and kept as household pets may be kept upon any lot in any zone where the principal use upon such lot is residential, so long as animals do not constitute a nuisance and are adequately provided with food, care and sanitary facilities."
- **City of Calistoga:** Yes, if your property is located within the Rural Residential Hillside zoning district (Calistoga Municipal Code Section 17.15); only with a Use Permit in the Rural Residential zoning district (Calistoga Municipal Code Section 17.14).
- **City of St. Helena:** Yes. Chickens are permitted in residential districts as follows:
 - A-20: Agricultural - non-commercial chickens are a permitted use (St. Helena Code Section (CS): 17.20.020 C). Commercial chicken farming is a conditionally permitted use and requires a Use Permit. (CS 17.030.E)
 - LR: Low Density Residential (CS 17.32.050 E); MR: Medium Density Residential (CS 17.40.050 E); & HR: High Density Residential (CS 17.40.050 E) all permit chickens as follows: no more than twelve domestic animals total (add up all dogs, cats, bunnies, hens, etc. for a total of 12). Chickens are permitted. No roosters. No pea fowl, geese, or ducks.
- **Town of Yountville:** Hens, but not roosters, are permitted in the Town's residential zoning districts. Any chicken coop is required to comply with the Town's zoning standards for size, height, and setbacks, and may require a building permit.

7. Can I raise bees on my property?

- **Napa County:** Yes, bees are permitted as long as they are more than 300 feet from a County road and 600 feet from residences, churches, schools, public buildings, and corrals. (They are permitted within 600 feet if the affected property owner gives consent.) See Napa County Code Section 6.12.020.
- **City of Napa:** Approval of an Administrative Permit for Agricultural Cultivation and Animal Keeping is required to maintain an apiary. Apiaries may be subject to standards established in subsection 17.52.050.C of the City of Napa Municipal Code. Bees may not be kept as household pets pursuant to Section 17.06.030 of the Municipal Code.
- **City of American Canyon:** Apiaries are allowed only as provided in Napa County Section 6.12.020 (see above).
- **City of Calistoga:** Apiaries are only allowed in one specific "PD" Planned Development Zoning District (Calistoga Municipal Code Section 17.24.130(A)(2)).
- **City of St. Helena:** Yes, apiaries are permitted, however they must be registered with the City and compliant with Section 17.090 of the St. Helena Municipal Code, which provides for beekeeping.
- **Town of Yountville:** No, bees are not permitted on residential parcels.

8. Can I raise farm animals (sheep, goats, cows)?

- **Napa County:** On agriculturally zoned property, you can raise farm animals. On residentially zoned property, you may have a small number of animals as an "accessory use." See Appendix C.
- **City of Napa:** Approval of an Administrative Permit for Agricultural Cultivation and Animal Keeping is required to raise farm animals. Performance standards for the keeping of animals have been established in subsection 17.52.050.C of the City of Napa Municipal Code.
- **City of American Canyon:** *Livestock Keeping* is defined as an Accessory Use in Section 19.05.100 of the City's Municipal Code. A minimum lot area of twenty thousand square feet is required for livestock keeping in a Residential zone, at least seventy-five percent of which must be accessible to and usable by the large animal(s).
- **City of Calistoga:** You may have one horse per half acre without a Use Permit in the Rural Residential (RR) zoning district Calistoga Municipal Code Section 17.14. Light Agriculture is allowed by right in the Rural Residential Hillside (RRH) zoning district as defined in CMC Section 17.14.(B)4: one large domestic animal per half-acre however prohibits commercial sale of them unless for a student project (such as 4-H). In all other districts, farm animals are not allowed.
- **City of St. Helena:** Yes, in the A-20: Agricultural District, which provides for large livestock. There is a limit of one large livestock animal (e.g., horse, cow, mule, etc.) per ½ acre of land (City of St. Helena Code Section 17.20.020). Commercial farming (CS 17.20.030 E) is conditionally permitted and requires a Use Permit.
- **Town of Yountville:** No, farm animals are not permitted on residential parcels within the Town limits.
- **All Jurisdictions:** The Department of Environmental Management requires that food facilities that custom process animals for personal use have a special permit for doing so (such as a market that butchers an animal brought to it by a customer). Individuals can butcher their own animals for their own use, but it is not recommended.

SECTION TWO: SELLING & DONATING LOCAL FOOD

9. Can I sell produce grown on my property?

- **Napa County:** It depends if you plan to sell onsite or offsite. Napa County Code defines "Agriculture" so that it includes "sale of agricultural products grown, raised, or produced on the premises" (Napa County Code Section 18.08.040). This means that a property owner or manager may sell produce on the same parcel upon which it was grown. Agricultural production (i.e., making of wine and other value-added products) generally requires a use permit from the County Planning Commission (see Section Four); however, such products may also be sold on the same parcel upon which they were made.

The Planning Department does not regulate the off-site sale (or donation) of agricultural products to restaurants, stores, or other wholesale or retail outlets. Please consult the County's Environmental Management Department for possible restrictions (refer to Section Three).

- **City of Napa:** Home based businesses, including the sale of produce are subject to Section 17.54.240 of the City of Napa Municipal Code. Generally, home occupations may not generate customer traffic to the home, the business may not have employees other than family, the business cannot occupy more than 200 square feet of the residence, and the business may not list the residential address in any advertisement or printed material. One commercial vehicle may be kept on the premise and must be parked in the garage. Home occupations also require the filing of a Business License Tax Application through the City of Napa's Finance Department.

- **City of American Canyon:** *Crop Production* is defined as an Agricultural Use in Section 19.05.090 of the City's Municipal Code and is permitted only in the RE zoning district (minimum lot size equals one acre). Also see Chapter 19.35 of the City's Municipal Code regarding *Outdoor Sales of Seasonal Outdoor Products*.

A home-based business ("home occupation") is an accessory use of a dwelling for employment and/or business purposes that is incidental to and subordinate to the use of the dwelling unit as a residence, and that is so located and conducted that the average neighbor, under normal circumstances, would not be aware of its existence (American Canyon Municipal Code Section 19.29.020). Home occupations are subject to the regulations found in Chapter 19.29 of the City's Municipal Code.

- **City of Calistoga:** In most zoning districts you are not permitted to sell items onsite, however in the Rural Residential district (Calistoga Municipal Code Section 17.14) it may be possible to obtain a use permit for on-site sales through a formal zoning interpretation made by the City's Planning.

- **City of St. Helena:** You are permitted to garden in residential districts provided that you do not hold sales of your produce on-site. You may apply to have a Home Occupation (including a Business License) that permits sales of items grown in a garden, however sales are limited to off-site sales and office use with limited customer visits on-site. You may have up to one employee on-site; you may apply for permission to have more employees.

- **Town of Yountville:** In the A zoning district, a Use Permit is required for "commercial facilities for the processing or retail sales of agriculture products that are grown on the

premises." In the residential zoning districts, gardens may be kept for personal use, but gardens may not be kept for commercial purposes and the sale of products grown on the premises is not permitted.

- **All Jurisdictions:** Environmental Management does not have to inspect produce stands, but the Agricultural Commissioner will issue operator identification numbers/permits for growers who want to buy, possess, and use pesticides for commercial crop production. (See CA CCR Section 6622(b).)

10. Do I need a business license?

Within incorporated jurisdictions, you will need a business license. No business license is required in unincorporated Napa County.

11. Do I need a sellers permit or tax permit from the California State Board of Equalization?

The answer is generally yes if you intend to sell or lease tangible personal property that would ordinarily be subject to sales tax if sold at retail (this includes wholesalers, manufacturers and retailers) or if you will make sales for a temporary period, normally lasting no longer than 90 days at one or more locations (for example, fireworks booth, Christmas tree lots, garage sale). You are also required to get a tax account if you receive at least \$100,000 in gross receipts from business operations per calendar year or are not required to hold a seller's permit or certificate of registration for use tax (under section 6226 of the Revenue and Taxation Code). Contact the State Toll-free: 800-400-7115 if you have any questions.

12. Can I sell eggs from my chickens?

Subject to the limitations included in questions 9-11 above, you may sell whole shell eggs on your property and no permit is required. If you wish to sell to a local store or restaurant, the County Agricultural Commissioner will perform an inspection to determine grade (see 3 CCR Section 1352(a)) and provide information regarding labeling (see 3 CCR Section 1354(a-e)).

13. Can I donate food to the food bank, homeless shelter, or similar charity?

Yes, and without permit because there's an exemption in State code for "donations" from retail food facilities (CA Health & Safety Code Section 114432). The Good Samaritan Act (Public Law 104-210 Statute 3183, codified at 42 U.S.C. 12671-12673, 1990) exempts individual persons and gleaners from liability for such donations. If you have questions, please contact the Department of Environmental Management.

14. Can I sell produce grown on my property to a local restaurant or store?

Yes, but because State law requires restaurants to purchase from an "approved source," the Agricultural Commissioner must provide some form of certificate (refer to Section Three). At present, the Agricultural Commissioner is using the same process used for permits to apply pesticides. (See 3 CCR Section 6622(b).) If your garden is located on the same site as the restaurant or school to which it is providing produce, it is considered a "culinary garden" (please refer to question 2).

15. Can I sell produce grown on my property to a local school district?

The 2008 Farm Bill allows school districts to give your unprocessed or minimally processed products preference over other farms' products based on geographic proximity. However, you will probably have to participate in a bidding process. If the expected sale is "small" (under

\$100,000), a good strategy would be to ask the food service director to contact you with a "solicitation to identify the number, quality, and type of goods or services needed." If the expected sale is large, you will need to respond, with a bid proposal, to the school district's public solicitation of procurement specifications. More specific information can be found on the USDA's farm to school website, http://www.fns.usda.gov/cnd/F2S/faqs_procurement.htm also refer to Section Five and Appendix B for contact information.

16. Can I sell produce grown on my property at a local farmers' market?

Yes, but first the Agricultural Commissioner's Office will need to inspect your garden and issue you a Certified Producer's Certificate (CPC). (See 3 CCR Section 1392.4(a).) Your CPC must be posted in a conspicuous location at the farmers' market (3 CCR Section 1392.4(d). A \$60 per hour fee is associated with inspection and certification services. If you are selling food by weight, you will also need to use a "legal for trade" scale that has been certified by the Department of Weights and Measure (contact Weights and Measures for more information). The County's Department of Environmental Management inspects operational practices at certified farmers' markets to ensure cleanliness and safe food handling practices are maintained.

17. Can I sell directly to local schools?

Napa Valley has three main school districts and the requirements vary from district to district. Please refer to Appendix B for more information.

18. Can I start a Community Supported Agriculture (CSA) or other form of cooperative to sell produce?

If you want to grow and sell produce via a cooperative and have no permanent facilities for storing or handling produce, there is no permit or inspection needed from the Department of Environmental Management. The County Agricultural Commissioner can advise you regarding minimum standards for certain commodities (3 CCR Sections 1400-1474) and the use of standardized containers. (See 3 CCR Section 1380.19.)

19. Can I sell honey from my bees?

Yes. The Agricultural Commissioner can provide information regarding honey standards (see USDA Standards for Grades of Extracted Honey, Title 7, Code of Federal Regulations Sections 52.1391-1405) and honey labeling requirements. (See 3 CCR Section 1495.) The Department of Weights and Measures can provide information on selling packaged goods by weight.

20. Can I sell meat or milk from my animals?

Conceptually, yes, but there are significant regulations regarding handling and processing that must be met and which are beyond the scope of these FAQs. Please consult the County Department of Environmental Health.

SECTION THREE: PROCEDURES TO BECOMING AN 'APPROVED SOURCE'

21. Why do I have to be an approved source?

State law only allows retail food facilities to utilize food from an "approved sources". The concept is simple: food that will be used to serve the public must be protected from contamination at all stages of the process, and the approval process allows officials to "trace back" a food product to its source if a health related problem occurs.

22. How do I become an approved source?

Depending on the type of product, there are many methods for becoming an approved source. In the context of locally grown produce, since no program previously existed for many sources of produce, the Department of Environmental Management (DEM) and the Agriculture Commissioner have developed processes for becoming approved sources. Gardens associated with existing permitted retail food facilities are certified by DEM and inspected during routine health inspections (see question 2). Growers with produce not associated with an existing permitted retail food facility can be approved under various programs operated by the Ag Commissioner (see question 14). Neither of these processes is particularly difficult, time consuming, or expensive, but they ensure that produce can be traced back to the original grower should a problem occur somewhere down the line.

Contact the Ag Commissioner's Office to discuss your business intentions and they will issue you the appropriate document. For instance:

- If you intend to sell your produce at a certified farmers' market, the Ag Commissioner will issue you a Certified Producer's Certificate (see Section One).
- If you wish to become a certified organic grower, the Ag Commissioner will provide you with information about the certification process (a third-party certifier is required), and then register you once the certification process is complete (see Section One).
- If you intend to use pesticides, the Ag Commissioner will issue you an operator identification number to buy, possess, and use pesticides for the commercial production of agricultural commodities (see Section One).

It is important to note, these documents will not specifically state that you are now an "approved source," and the Agricultural Commissioner and Department of Environmental Management are currently working to develop a certificate or other documentation.

23. Is the application available online?

An "approved source" application does not exist yet. Please contact the Ag Commissioner's Office or the Department of Environmental Management to discuss your business needs and determine what license or document you need.

24. How much does it cost?

Ag Commissioner fees vary. For instance, there is no fee to obtain an operator identification number, however there is a \$60/hour fee for the inspection and issuance of Certified Producer's Certificates. Contact the Ag Commissioner's Office for details. The Department of Environmental Management charges a one-time certification fee for restaurant gardens and ongoing inspections are included in the cost of the annual health permit.

25. How much time does it take?

Each appointment time will vary. When obtaining an operator Identification number, the Ag Commissioner allows as much time as necessary to review all applicable laws and regulations surrounding pesticide use. Generally, these appointments take less than an hour. When a site inspection is required, as is the case for organic registration and CPCs, significantly more time may be required.

26. How do I inform my buyers that I am an approved source?

You can show potential buyers copies of the documentation you receive from the Department of Environmental Management or the Ag Commissioner's Office.

SECTION FOUR: VALUE ADDED

27. Can I make jams and jellies and sell them?

No food sold to the public may be processed in a residence. You must use a permitted food facility and jams/jellies processed in a commercial setting that are to be sold at room temperature must apply to the State for a food processing license and may need to have their product tested (call 916-650-6500 for more information). The Department of Weights and Measures can provide information regarding labeling requirements.

28. Can I have an agricultural processing facility on my property (e.g., a facility for olive oil pressing and bottling, a winery, or a permitted food facility for jams/jellies)?

- **Napa County:** Agriculture is a principally permitted use (i.e., it's allowed!) in most areas of the County, however agricultural processing requires a use permit from the Planning Commission. Please contact the Planning Department for assistance.
- **City of Napa:** Agricultural uses are generally not permitted in most areas of the City. Certain agricultural and processing uses are conditionally permitted within the Parks and Open Space (POS) and Agricultural Resources (AR) zoning districts and require a Use Permit from the Planning Commission. Food manufacturing and processing uses are conditionally permitted uses within the Light Industrial (LI) zoning district and as a permitted use within the Industrial Park - Area C (IP-C) zoning districts.
- **City of American Canyon:** *Crop Production* and *Wineries* are defined as Agricultural Uses in Section 19.05.090 of the City's Municipal Code and are permitted only in the RE zoning district (minimum lot size equals one acre). A winery may be conditionally permitted in the Community Commercial (CC) and Light Industrial (LI) zones. Wineries are permitted in the General Industrial zone. For more information, please contact the Community Development Department.
- **City of Calistoga:** A winery may be conditionally permitted in the Rural residential (RR), Community Commercial (CC), and Light Industrial (LI) zoning districts. Wineries are also allowed as a conditionally permitted use in a Planned Development (PD) zoning district. Processing of agricultural products not associated with the production of wine is not identified as a permitted use in any of these districts. However, it may be possible to obtain a use permit for agricultural processing of products other than wine through a formal zoning interpretation made by the City's Planning Commission.
- **City of St. Helena:** Yes, in the A: 20: Agricultural; I: Industrial; & SC: Service Commercial Districts, subject to a use permit. Use permit requirements depend upon location, level of manufacturing proposed (light, medium, heavy), and other factors as defined for each zoning district.
- **Town of Yountville:** Farms are allowed uses in the A zone, however an agricultural processing facility requires a use permit. Personal farms are allowed as accessory uses on residential parcels. A processing facility may be allowed as a home occupation with a use permit where the intensity of the use is compatible with the residential zoning district. Large-scale manufacturing or outdoor processing of agricultural products is not permitted in any residential zoning district.