

**CALISTOGA PLANNING COMMISSION
STAFF REPORT**

TO: Chairman Manfredi and Members of the Planning Commission
FROM: Lynn Goldberg, Planning & Building Director
MEETING DATE: August 14, 2013
SUBJECT: ZONING ORDINANCE AMENDMENT ZO 2013-3
RIGHT TO FARM ORDINANCE

1 ITEM

2 Consideration of a text amendment to the Calistoga Municipal Code, initiated by the City
3 of Calistoga, amending Title17 (Zoning) to add protection for farmers who use accepted
4 and standard farming practices against nuisance suits and require disclosure about the
5 potential inconveniences and discomforts associated with agricultural operations.

6 BACKGROUND

7 Right-to-farm ordinances in California were first adopted in the early 1980s in response
8 to problems created by the encroachment of urban growth into agricultural areas. They
9 were developed as a tool to protect farmers who use accepted and standard farming
10 practices against nuisance suits, even if the farming practices harm or bother adjacent
11 property owners or the general public.

12 There are two key provisions in a right-to-farm ordinance. The first is the inclusion of
13 language that prohibits the jurisdiction from making a nuisance finding on agricultural
14 activities if the agricultural activity in question is being conducted in conformance with
15 established farming practices.

16 The second key provision is a notification requirement that requires buyers/developers
17 of property located adjacent to or near agricultural activities be notified about their
18 possible negative impacts (e.g., dust, odors, spray, noise). Such notification can happen
19 when there is a transfer in ownership of real property or as part of the land use
20 entitlement process.

21 While right-to-farm ordinances serve a number of important purposes and can be
22 effective in resolving minor complaints, they do not fully protect a farmer from being
23 sued. It is also important to note that right-to-farm ordinances are not a substitute for
24 good land use planning. The development review and land use planning processes
25 remain necessary tools for the community to address the relationship and impact of
26 uses in urban-agricultural interface areas.

27 **DISCUSSION**

28 The draft ordinance includes the key provisions described above and is based, in part,
29 on other similar regulations, including the California Agricultural Protection Act and the
30 Napa County right-to-farm provisions (see Attachments 3 and 4).

31 The following opportunities for disclosure that are in addition to the transfer of property
32 are included in the draft ordinance:

- 33 • An owner of rental property within the Calistoga city limits is required to disclose
34 in writing to a tenant prior to their rental of the property that the City of Calistoga
35 has determined that inconveniences and discomforts associated with such
36 agricultural operations and activities, conducted in a manner consistent with
37 proper and accepted customs and standards, is not a nuisance.
- 38 • Any visitor accommodations operation established, and any visitor
39 accommodations operation whose use permit is amended, following the effective
40 date of the ordinance, must display an informational card in its guest rooms
41 and/or in a conspicuous public location that recites the disclosure.
- 42 • Prior to the issuance of a building permit for the construction of a residence or
43 commercial building within the Calistoga city limits, the property owner upon
44 which the building is to be constructed shall file with the City a signed and dated
45 acknowledgement of the disclosure.

46 Consideration was given to requiring these disclosures only for properties in proximity to
47 agricultural land. However, it was determined that most properties in the city limits are
48 located within 1,000 feet of agricultural land, and that it would be simpler to apply the
49 regulations city wide.

50 General Plan Consistency

51 The Calistoga General Plan allows crop production, vineyards, light agricultural
52 structures and wineries on lands designated "Rural Residential," and anticipates that
53 farming will remain a major land use on these properties.

54 The proposed ordinance is consistent with the following provisions of the Open Space
55 and Conservation Element that reflect the City's intent to promote agricultural uses, and
56 would fulfill an action calling for the adoption of a right-to-farm ordinance.

57 *Goal OSC-3 Protect open space important for the managed production of*
58 *resources in the Planning Area, including agriculture and*
59 *viticulture.*

60 *Objective OSC-3.1 Preserve agricultural land, a vital part of Calistoga's open*
61 *space network.*

62 *Policy P2 The City shall encourage the continued agricultural use of*
63 *lands within the Planning Area that are currently being*
64 *farmed.*

65 *Objective OSC-3.2 Encourage agricultural production through City policies and*
66 *regulations.*

67 *Action A2 Adopt a right-to-farm ordinance to:*

68 ◆ *Advise purchasers and users of property near agricultural*
69 *operations of the inherent potential problems.*

70 ◆ *Prevent existing farms operating according to accepted*
71 *agricultural practices from being unfairly judged to be a*
72 *public nuisance or unacceptable use.*

73 However, it should be noted that the purpose and intent portion of the ordinance
74 stipulates that the right-to-farm provisions do not prohibit the conversion of agricultural
75 operations to other uses allowed by the General Plan.

76 **PUBLIC COMMENTS**

77 Comments on the draft ordinance were provided by nine attendees of a City-sponsored
78 community meeting. Several of the comments were incorporated into the final draft.
79 Other comments that were suggested but not incorporated include the following:

80 • Expand the definition of “agricultural activity, operation or facility, or
81 appurtenances thereof” to include detailed activities, such as the use of smudge
82 pots, pruning and harvesting. Staff believes that the definition is broad enough to
83 encompass such activities, and recommends against attempting to include every
84 type of agricultural activity.

85 • Limit the period during which an operation could be declared to be a nuisance to
86 one year. Staff recommends a three-year period to maintain consistency with
87 state and county regulations, as well as encompass agricultural operations that
88 have a long establishment period (such as vineyards).

89 • Provide for the referral of complaints associated with the ordinance’s
90 implementation to the County Agricultural Commissioner. Staff believes that this
91 is beyond the scope of the ordinance, which is simply intended to provide the
92 circumstances under which the City may determine an agricultural operation to
93 be a nuisance, as well as the City’s staffing resources. However, City staff may
94 consult with the Commissioner if guidance is necessary in determining whether
95 an operation is being conducted in accordance with “proper and accepted
96 customs and standards.”

97 • Require the plaintiff in a nuisance suit to pay the defendant’s attorney fees if the
98 plaintiff loses the case. Staff believes that this stipulation is appropriate for the
99 judge in the case, based on its facts.

100 Napa Valley Grapegrowers has submitted a letter in support of the proposed ordinance
101 (Attachment 2).

102 **ENVIRONMENTAL REVIEW**

103 This action has been reviewed in accordance with the California Environmental Quality
104 Act. CEQA Guidelines Section 15061(b)(3), the “general rule” exemption, states that
105 where it can be seen with certainty that there is no possibility that the activity in question
106 may have a significant effect on the environment, the activity is exempt from CEQA. The
107 City has determined that the activity in question, i.e., a Municipal Code amendment
108 adding protection for farmers who use accepted and standard farming practices against
109 nuisance suits and requiring disclosure about the potential inconveniences and
110 discomforts associated with agricultural operations, will not have an impact on the
111 environment and is therefore exempt from CEQA under the general rule.

112 **RECOMMENDATION**

113 Adopt a resolution recommending to the City Council approval of an amendment to the
114 Calistoga Municipal Code, adding Municipal Code Chapter 17.50 Right to Farm.

115 **ATTACHMENTS**

- 116 1. Draft Resolution
117 2. Napa Valley Grapegrowers letter dated June 20, 2013
118 3. Napa County Agriculture and Right to Farm Regulations
119 4. San Luis Obispo County Agricultural Lands, Operations and the Right to Farm
120 Ordinance