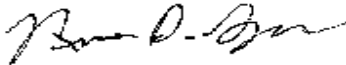


City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Lynn Goldberg, Planning and Building Director
DATE: October 1, 2013
SUBJECT: "Right to Farm" Ordinance

APPROVAL FOR FORWARDING:



Richard D. Spitler, City Manager

1 **ISSUE**

2 Consideration of an amendment to the Calistoga Municipal Code adding protection for
 3 farmers who use accepted and standard farming practices against nuisance suits and
 4 requiring disclosure about the potential inconveniences and discomforts associated with
 5 agricultural operations.

6 **RECOMMENDATION**

7 Introduce the Ordinance (Attachment 1) and waive its first reading.

8 **BACKGROUND**

9 "Right-to-farm" ordinances in California were first adopted in the early 1980s in
 10 response to problems created by the encroachment of urban growth into agricultural
 11 areas. They were developed as a tool to protect farmers who use accepted and
 12 standard farming practices against nuisance suits, even if the farming practices harm or
 13 bother adjacent property owners or the general public. Many jurisdictions have adopted
 14 these types of regulations, including Napa County.

15 At its May 7, 2013 meeting, the City Council reviewed a preliminary draft "right-to-farm"
 16 ordinance and directed its review by the Planning Commission.

17 **DISCUSSION**

18 There are two key provisions in a right-to-farm ordinance. The first is a notification
 19 requirement that requires buyers/developers of property located adjacent to or near
 20 agricultural activities to be notified about their possible negative impacts (e.g., dust,
 21 odors, spray, noise). Such notification can happen when there is a transfer in ownership
 22 of real property or as part of the land use entitlement process.

23 The second key provision is the inclusion of language in local regulating codes that
24 prohibits the jurisdiction from making a nuisance finding on agricultural activities if the
25 agricultural activity in question is being conducted in conformance with established
26 farming practices.

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

34 The draft ordinance includes the key provisions described above and is based, in part,
35 on other similar regulations, including the California Agricultural Protection Act and the
36 Napa County right-to-farm provisions.

37 The following opportunities for disclosure – in addition to the transfer of property – are
38 included in the draft ordinance:

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

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

56 General Plan Consistency

57 The Calistoga General Plan allows crop production, vineyards, light agricultural
58 structures and wineries on lands designated “Rural Residential,” and anticipates that
59 farming will remain a major land use on these properties.

60 The proposed ordinance is consistent with the following provisions of the Open Space
61 and Conservation Element that reflect the City’s intent to promote and protect

62 agricultural uses, and would fulfill an action calling for the adoption of a right-to-farm
63 ordinance.

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

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

69 *Policy P2 The City shall encourage the continued agricultural*
70 *use of lands within the Planning Area that are*
71 *currently being farmed.*

72 *Objective OSC-3.2 Encourage agricultural production through City*
73 *policies and regulations.*

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

75 *◆ Advise purchasers and users of property near*
76 *agricultural operations of the inherent potential*
77 *problems.*

78 *◆ Prevent existing farms operating according to*
79 *accepted agricultural practices from being unfairly*
80 *judged to be a public nuisance or unacceptable*
81 *use.*

82 It should be noted that the purpose and intent portion of the ordinance stipulates that
83 the right-to-farm provisions do not prohibit the conversion of agricultural operations to
84 other uses allowed by the General Plan.

85 **PUBLIC COMMENTS**

86 Comments on the draft ordinance were provided by nine attendees of a City-sponsored
87 community meeting. Several of the comments received at the meeting were
88 incorporated into the final draft. Other suggestion not incorporated include the following:

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

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

98 • Provide for the referral of complaints associated with the ordinance's
99 implementation to the County Agricultural Commissioner. Staff believes that this
100 is beyond the scope of the ordinance, which is simply intended to provide the

101 circumstances under which the City may determine an agricultural operation to
102 be a nuisance, as well as the City's staffing resources. However, City staff may
103 consult with the Commissioner if guidance is necessary in determining whether
104 an operation is being conducted in accordance with "proper and accepted
105 customs and standards."

- 106 • Require the plaintiff in a nuisance suit to pay the defendant's attorney fees if the
107 plaintiff loses the case. Staff believes that this stipulation is appropriate for the
108 judge in the case, based on its facts.

109 Napa Valley Grapegrowers has submitted a letter in support of the proposed ordinance
110 (Attachment 4).

111 **ENVIRONMENTAL REVIEW**

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

121 **PLANNING COMMISSION REVIEW**

122 The Commission considered the draft ordinance at a public hearing on August 14, 2013,
123 and after discussion and public comments, recommended that the Council approve the
124 attached ordinance.

125 **FISCAL IMPACT**

126 The City will incur costs associated with the mailing of advisories about the new
127 regulations to companies involved in the transfer of property (such as local realty and
128 title offices) and operators of visitor accommodations. There will also be a cost of
129 copying acknowledgement forms for property owners obtaining a building permit for the
130 construction of a residence or commercial building.

ATTACHMENTS

1. Draft Right-to-Farm Ordinance
2. Planning Commission Resolution 2013-23
3. Excerpt from Planning Commission Minutes of August 14, 2013
4. Napa Valley Grapegrowers letter dated June 20, 2013