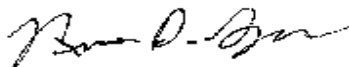


City of Calistoga Staff Report

TO: Honorable Mayor and City Council
FROM: Lynn Goldberg, Planning & Building Director
DATE: October 15, 2013
SUBJECT: **Second Reading of Ordinance No. 692 (“Right to Farm”)**

APPROVAL FOR FORWARDING



Richard D. Spitler, City Manager

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

5 **RECOMMENDATION:** Adopt Ordinance No. 692 as submitted.

6 **BACKGROUND:** On October 1, 2013, the City Council held a public hearing to
7 consider adopting an ordinance to add protection for farmers who use accepted and
8 standard farming practices against nuisance suits and require disclosure about the
9 potential inconveniences and discomforts associated with agricultural operations.

10 At the conclusion of the hearing, the City Council introduced and waived the first
11 reading of the ordinance as presented.

12 **ATTACHMENT**

13 1. Ordinance No. 692

ORDINANCE NO. 692

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA AMENDING TITLE 17 ZONING OF THE CALISTOGA MUNICIPAL CODE TO ADD CHAPTER 17.50 RIGHT TO FARM

WHEREAS, it is the policy of the City of Calistoga to preserve, protect and encourage the use of agricultural lands within and adjacent to the city for the production of food and other agricultural projects, recognizing that agriculture is an important component of the local economy and contributed to the city's unique qualities; and

WHEREAS, as urban development occurs within the city, residential, commercial and industrial land uses will locate adjacent to pre-existing agricultural activities. As a result, agricultural operations may become the subject of nuisance complaints or litigation, and could be pressured to cease or curtail operations, or may be discouraged from making improvements; and

WHEREAS, to conserve and protect the continued viability of agricultural operations, it is the intention of the City to limit the circumstances under which agricultural operations may be deemed to constitute a nuisance, consistent with the California Agricultural Protection Act (Civil Code 3482.5); and

WHEREAS, the proposed ordinance is consistent with the following provisions of the Open Space and Conservation Element of the City of Calistoga's General Plan reflect the City's intent to promote agricultural uses, and would fulfill an action calling for the adoption for a right-to-farm ordinance:

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

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

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

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

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

- ◆ Advise purchasers and users of property near agricultural operations of the inherent potential problems.*
- ◆ Prevent existing farms operating according to accepted agricultural practices from being unfairly judged to be a public nuisance or unacceptable use.; and*

WHEREAS, the Planning Commission held a duly noticed public hearing on the ordinance on August 14, 2013, and adopted Resolution PC 2013-23 forwarding a recommendation that the City Council approve the ordinance. Prior to taking action on the resolution, the Planning Commission received written and oral reports from staff and received public testimony; and

WHEREAS, the City Council of the City of Calistoga reviewed and considered this ordinance at its meeting on October 1, 2013, noticed in accordance with state and local law, and which included the written and oral staff report, proposed findings and comments received from the general public and interested agencies and parties.

NOW, THEREFORE, THE CALISTOGA CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE

Findings. The above recitals are incorporated herein as if set forth herein in full and each is relied upon independently by the City Council for its adoption of this ordinance.

SECTION TWO

Amendment. A new Chapter 17.50 entitled "Right to Farm" is hereby added to Title 17 (Zoning) of the Calistoga Municipal Code to read and provide as follows:

Chapter 17.50 Right to Farm

15.50.010 Purpose and intent

- A. It is the policy of the City of Calistoga to preserve, protect and encourage the use of agricultural lands within and adjacent to the city for the production of food and other agricultural projects, recognizing that agriculture is an important component of the local economy and contributed to the city's unique qualities.
- B. As urban development occurs within the city, residential, commercial and industrial land uses will locate adjacent to pre-existing agricultural activities. As a result, agricultural operations may become the subject of nuisance complaints or litigation, and could be pressured to cease or curtail operations, or may be discouraged from making improvements.
- C. To conserve and protect the continued viability of agricultural operations, it is the intention of the City to limit the circumstances under which agricultural operations may be deemed to constitute a nuisance, consistent with the California Agricultural Protection Act (Civil Code 3482.5).
- D. These provisions are not intended to prohibit the conversion of agricultural operations to other uses allowed by the Calistoga General Plan.

15.50.020 Definitions

For the purposes of this Chapter, the following words and phrases shall be construed as defined in this section.

- A. "Agricultural activity, operation, or facility, or appurtenances thereof" includes, but is not limited to:
1. The preparation, tillage, and maintenance of soil and other growing media;
 2. The production, cultivation, raising and breeding of any living organism having value as an agricultural commodity or product;
 3. The harvesting, processing, transporting and storage of agricultural commodities and products; and
 4. Commercial practices performed incidental to or in conjunction with such operations on the site where the agricultural product is being produced, including preparation for market, and delivery to storage, market, and carriers for transportation to market.
- B. "Transfer" means, but is not limited to, the sale, exchange or lease of property.

15.50.030 Nuisance prohibition

- A. No 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 determined to be a nuisance, public or private, after the same has been in operation for more than three years if it was not formally declared a nuisance by the City of Calistoga or County of Napa during that time, or due to any changed condition in the city.
- B. The right to farm does not protect the farm operator from operating in an illegal manner or violating any standard farming practices or regulations.

15.50.040 Disclosure requirements

- A. No person shall transfer real property within the Calistoga city limits until the following disclosure in the form required by of Civil Code Section 1102.6(a) subparagraph (b) is made in writing to the transferee and is signed by the transferee. The disclosure shall include a statement containing the following language:

The City of Calistoga recognizes and supports the right to farm property upon which agricultural activities may be legally operated, including but not limited to at any time, noise; lights, odors; fumes; dust; smoke; insects; the operation of machinery

(including aircraft); the application of fertilizers, soil amendments, seeds, herbicides, and pesticides; the storage of livestock feed and other agricultural commodities; the storage, application and disposal of manure; and the processing, transport and storage of agricultural products. The City of Calistoga has determined that inconveniences and discomforts associated with such agricultural operations and activities, conducted in a manner consistent with proper and accepted customs and standards, is not a nuisance.

- B. An owner of rental property within the Calistoga city limits shall disclose the above in writing to a tenant prior to their rental of the property.
- C. Any transferor of property within the Calistoga city limits shall insert the disclosure recited above in the deed transferring any right, title or interest in the property to the transferee.
- D. Any visitor accommodations operation established, and any visitor accommodations operation whose use permit is amended following the effective date of this Chapter, shall display an informational card in its guest rooms and/or in a conspicuous public location that recites the disclosure set forth above.
- E. Prior to the issuance of a building permit for the construction of a residence or commercial building within the Calistoga city limits, the property owner upon which the building is to be constructed shall file with the City a signed and dated acknowledgement of the disclosure set forth above.

15.50.050 Other applicable laws

This Chapter is not intended to, and shall not be construed or given effect in a manner that modifies or abridges federal law or regulation, or state law as set out in the Civil Code, Health and Safety Code, Fish and Game Code, Food and Agricultural Code, Division 7 of the Water Code, or any other applicable provision of state law relative to nuisances; instead, this Chapter is only to be utilized in the interpretation and enforcement of provisions of this Code and City regulations. Further, this article is not intended to, and shall not be construed or given effect in a manner that limits or restricts the City's authority to review and approve or disapprove proposals for agricultural operations on agricultural land in accordance with other provisions of this Code or other laws.

SECTION THREE

Environmental Review. This action has been reviewed in accordance with the California Environmental Quality Act, CEQA Guidelines Section 15061(b)(3), the "general rule" exemption. The City has determined that because it can be seen with

certainty that there is no possibility that the ordinance will have an impact on the environment, it is therefore exempt from CEQA under the general rule.

SECTION FOUR

Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this ordinance or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

SECTION FIVE

Effective Date.

THIS ORDINANCE shall take effect thirty (30) days after its passage and before the expiration of fifteen (15) days after its passage, shall be published in accordance with law, in a newspaper of general circulation published and circulated in the City of Calistoga.

THIS ORDINANCE was introduced with the first reading waived at the City of Calistoga City of Council meeting of the 1st day of October, 2013, and was passed and adopted at a regular meeting of the Calistoga City Council on the 15th day of October 2013, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Chris Canning, Mayor

ATTEST:

Kathy Flamson, Deputy City Clerk