



A Tradition of Stewardship  
A Commitment to Service

Agricultural Commissioner/Sealer of Weights & Measures

1710 Soscol Avenue  
Suite 3  
Napa, CA 94559-1311  
www.countyofnapa.org

Planning Commission Mtg.

FEB 06 2019

Agenda Item # 8A

Main: (707) 253-4357  
Fax: (707) 253-4881

Gregory R. Clark  
Agricultural Commissioner/  
Sealer of Weights & Measures

**COMPLAINT: 18-0801-JB1**

How received: X ☐ Telephone ☐ Verbal ☐ Written

Date: 08/01/18 Time: 7:30 AM  
Complainant's Name: Jen Leslie  
Phone #: 707-583-4371

Address: 1930 N. Kelly Road, Napa

**NATURE OF COMPLAINT:**

The office staff relayed a telephone message from Jen Leslie to me. I called her back, and Leslie told me the following in summary: "My neighbor (Eleodoro Hernandez) has started the bird cannons again this morning. He started about 7:30 am. I think there are 5 of them, firing at 15 to 20 second intervals. One is very close to the house. The animals are terrified. I already have hearing damage from last year when a cannon went off at my fence line as I was walking by. Last year, the cannons went off all day and night. He has already netted the grapes. I understand the right to farm ordinance, but this is just harassment."

**FIELD REPORT:**

The site where the bird cannons are located is site 3C-1, a 5 acre vineyard on the Hernandez, Eleodoro Operator I.D. #2801039. Hernandez has been the subject of complaints to the Napa Agricultural Commissioner's Office by Leslie and other neighbors for over two years. The Commissioner, Greg Clark, has personally visited Hernandez at this site, and written a letter on 9/8/2017 to urge moderation in the use of the bird cannons in close proximity to neighboring residential properties.

I went to 1930 N. Kelly Road, and parked at the gate to Leslie's property. I took a video with my County issued iPad over Leslie's gate to document the sound and the firing intervals of the bird cannons. The firing interval, when spread between the cannons, was measured as follows: initial blast of the closest cannon to Leslie's house, followed by a blast less than 2 seconds later, followed by a blast 33 seconds later, followed by a blast 13 seconds later, followed by a blast from the closest cannon again, at the 1-minute mark. Although I could not see the cannons in the vines from over the fence, I could determine by hearing and then measuring on a mapping program (Google Earth), that the closest cannon was roughly 100 feet from Leslie's house. I could see that some of the animals, including 2 of the dogs and some goats on Leslie's property, and some horses on another neighbor's property, were affected by the blasts.

4 blasts/min  
240 blasts/hr  
2 420 blasts 112.5 min

I could hear someone working on Hernandez' side of the fence near Leslie's gate where I had parked. I stood in the bed of my truck to speak to the person, and saw that it was Hernandez. He recognized me as an Inspector from a previous contact regarding possible pesticide run-off from site 3C-1 downslope onto Leslie's property. He said he had just started using the cannons this morning, and that there were 3 of them throughout the field. I asked where the closest one was. He pointed to the vines very close to where we were standing. He said he had distributed the others throughout the vineyard for greatest effect. I asked him if he felt he needed the cannons so early in the season, since all of his grapes were netted. He said the birds can damage the grapes even through the nets, and that the cannons were necessary. I watched about 8 birds line up on the fence line, and then fly off when the cannon went off.

I asked Hernandez to attempt to find a balance between protecting his crop and protecting his neighbors and their animals from harm, since all parties have a right to the use of their property. He said that he was operating under the "right to farm" ordinance, and would continue to do so. He said that he had made efforts to be considerate by placing the "shade cloth" type barrier along his fence line to prevent pesticide from drifting onto Leslie's property when he did applications. Pointing to the corner of his property, less than 100 feet from Leslie's house, he said that he had the right to place a couple of wind machines in his vineyard and run them all night if he wanted to, but didn't.

I received a telephone the same day from Leslie's neighbor, Lee Acree, at 1920 N. Kelly Road, telephone 707- 815 -1124. He told me in summary: "I have lived here 40 years, and this has been going on about 3 years (bird cannons). I am dismayed by the bird cannons." I told Acree that I would include his statement in the complaint.

On 8/10/18, Mr. Acree came into our office saying he had additional information to tell us. He recounted how his family's first altercation with Hernandez went back to when Hernandez first obtained the property at N. Kelly Road, and described a lawsuit over a gate Hernandez had installed on the driveway easement for the parcels owned by Acree and Leslie. I explained that these civil complaints could not affect the issue of the bird cannons, and that I could not include any details from them in this complaint. Acree said he understood.

#### **DETERMINATION:**

Because there are no enforceable "best practices" or standards defined for the use of bird cannons for the County of Napa, Hernandez' use of these devices cannot be regulated by the Napa Agricultural Commissioner's Office, and remains within the realm of a civil complaint.

**Report prepared by:** Jen Borgen

**Date:** 8/2 - 8/10/18





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## **COMPLAINT: 17-0712-TS1**

How received: ☐ Telephone ☐ Verbal ☐ Written

Date: 07/12/17

Time: 9:30 AM

Complainant's Name: Jen Leslie

Phone #: 707-583-4371

Address: 1930 N. Kelly Road, Napa

## **NATURE OF COMPLAINT:**

At approximately 9:30 AM on Wednesday July 12, 2017 I received a phone call as inspector on duty from Jen Leslie. Ms. Leslie called to complain about bird cannons being used at the vineyard property located next door to her at 1960 N. Kelly Road. Ms. Leslie stated in summary: The bird cannons started yesterday and are very loud. There are four cannons on the property and one of them is very close to my property. I have animals including baby goats that are frightened and affected by the noise. I purchased this property last year and am aware of the "Right to Farm Ordinance" but this seems excessive and unproductive. Is there anything that can be done to stop or reduce this?

I talked with her about the use of bird cannons to protect the grapes and we discussed the Napa County Right to Farm Ordinance and its conditions. I told her that I would do some additional investigation and call her back.

## **FIELD REPORT:**

My research identified the vineyard in question as site 3C-1 on the Hernandez, Eleodoro Op ID (#2801039). Several other similar complaints were on file for this same vineyard for excessive bird cannon noise in previous years.

At approximately 10:40 AM I received a second complaint from a different neighbor about the bird cannons at this same property. (See COMPLAINT: 17-0712-TS2)

At approximately 11:30 AM I called and spoke to the owner/operator of this vineyard, Eleodoro Hernandez, about the two complaints that our office received today. Mr. Hernandez state in summary: I am aware of the Right to Farm Ordinance and my rights to use bird cannons in this way. I am following the law. People from your office and the sheriff's office came out here last year and nothing has changed. The Ordinance and my practices have not changed. I am using the cannons from 8am to 6pm, firing about every 2 minutes. I will continue using them for about 1 month depending on the birds. I am also using netting to protect my crop, but this is not enough to keep the birds away.

I asked if he was already having problems with birds this early in the season and he said yes he was. I

asked if there was anything else he could do to help mitigate the concerns of his neighbors and he said he would consider it.

At approximately 12:00 PM I called Ms. Leslie back and reviewed my conversation with Mr. Hernandez. I told her that as long as Mr. Hernandez was adhering to the stipulations within the Right to Farm Ordinance there was not much our office could do at this time. I told her that county noise ordinances are enforced by Napa County Code Enforcement and if he operated outside of the Right to Farm Ordinance they would be the enforcement agency. Ms. Leslie thanked me, said she worked for OSHA and that she understood the limitations with the current regulations. She said she was going to talk to her other neighbors who are also concerned and contact the County Board of Supervisors to try to get the right to farm ordinance changed so that bird cannons would have clear and specific limitations such as those she found online in some other counties.

On Friday July 14, 2017 at approximately 1:30 PM Napa County Agricultural Commissioner Greg Clark and wine grape industry representative Jim Lincoln visited Eleodoro Hernandez at his site on North Kelly Road to discuss his use of propane cannons to protect his winegrapes and scare birds away. Mr. Clark stated in summary: There seemed to be less noise than when I had been there the day before, but the cannons were firing. Eleodoro showed us his property, explained his past issues with neighbors (easement, graveling a shared road, litigation). He also showed us that his fruit is just starting to ripen and birds are starting to test the fruit as evidenced by berries on the ground under the vines. He stated that he wants to be a good neighbor, but also wants to protect his crop. He runs the cannons all day long. As a result, the birds become habituated to the noise and it is ineffective, in addition to upsetting neighbor(s). Jim and I told him that birds generally only feed in the morning and late afternoon as they come and go from their roosting/resting and drinking/feeding sites elsewhere. As a result, we told him proper and accepted industry practice is to fire the cannons from around 7-9am and 4-7pm when the birds actually, generally enter vineyard. Also, he was told to relocate the cannons regularly around the vineyard. Eleodoro said he would try this.

On Tuesday July 18, 2017 at approximately 9:00 AM Jen Leslie called me and stated in summary: The bird cannons at Mr. Hernandez' site have not changed since my initial call. One cannon faces my property and is affecting my hearing. I measured the sound at 117 decibels. This goes beyond a nuisance and is affecting my health and that of some of my neighbors. We recently bought this property but cannot live there continuously as long as this noise continues.

We reviewed the Napa County "Right to Farm Ordinance" again and the various county agencies that could possibly help, including Code Enforcement and Public Health. Ms. Leslie said that she understands our department's regulatory limitations, but she just wanted to keep us informed. I was not in the office on Friday 7/14/17 and did not know about the onsite meeting with Mr. Hernandez at the time of this call, but learned about it a short time later.

On Tuesday July 18, 2017 at approximately 10:00 AM I called Ms. Leslie back to let her know about the meeting Mr. Clark and Mr. Lincoln had with Mr. Hernandez, and that our office was continuing our efforts to find a mutually agreeable solution. Ms. Leslie said she appreciated all that the Ag Dept. was trying to do to help and that she was going to continue her efforts to try and get the right to farm ordinance changed to limit the use of bird cannons in situations like hers.

On Friday July 21, 2017 at approximately 1:30 PM I drove out to 1930 North Kelly Road to observe the current mid-day operation of Mr. Hernandez's bird cannons. I parked at the driveway and gate entrance to 1930 North Kelly Road at the south end of the Hernandez Vineyard (Op ID 2801039, Site 3C-1). I could hear several bird cannons firing on that property. After a few minutes observing the area and timing the firing intervals (approx. 1.5 minutes) I set up my county issued iPad pointing north into the vineyard to record the sounds as they occurred. The video starts at 1:47 PM. Each cannon was firing at approximately 1.5 minute intervals. The



one closest to the complainant's house can be heard clearly at the beginning and end of the video. As I was leaving the property I spoke to a young woman working at a business within hearing range of the vineyard. I could still hear the cannons firing from that location. I identified myself and asked her if she could hear the popping sounds nearby. She declined to give her name and asked that she not be identified in my report to avoid conflict with the people living in the area, but she confirmed that she could hear the cannons fire every day, all day long from the time she arrives for work until approximately 6:45 PM. I asked if they ever stop or change frequency during the day. She said she is there all day long, five days a week and they do not change or stop until 6:45 PM.

On Tuesday August 1, 2017 at approximately 9:00 AM Jen Leslie called and left a voice mail and asked me to call her back. At approximately 12:00 PM I called and spoke to Ms. Leslie who stated in summary: The bird cannons at Mr. Hernandez' site continue to fire all day long and have now started firing at night as well. Last night the cannon next to my house fired one round every two hours at 11pm, 1am, 3am, 5am and 7am. Mr. Hernandez does not live there so he is not bothered by this noise but we wake up with every blast. When he is there working on the site he turns the volume down so it won't bother him. I have called County Code Enforcement and they have gone out there. Mr. Hernandez will temporarily turn the volume down and point the cannons away from my house, but in a short time they are back to where they were and the volume is back up. My hearing is being affected. I am also trying to raise goats on my property but the noise is traumatizing and injuring them. I want you to know the current status of this problem and I am looking for some way to change this.

I told Ms. Leslie that her case is still open and active within our office. I told her that our staff, including the Commissioner and Assistant Commissioner, have been making phone calls, onsite visits and meetings with various parties to try and find a workable solution. Ms. Leslie stated in summary: I understand that your office and code enforcement is limited by the right to farm ordinance but I should have a right to farm as well. I do not believe Mr. Hernandez' actions are about birds and it may take legal action on my part to stop this harassment.

On Tuesday August 1, 2017 at approximately 9:45 PM Agricultural Commissioner Greg Clark went out again to the Hernandez site on North Kelly Road to assess the current operation of the bird cannons. During the 1.5 hours he was there he did not hear any cannons firing.

On Monday August 7, 2017 at approximately 8:30 AM Jen Leslie called and left a voice mail message for Agricultural Commissioner Greg Clark. Ms. Leslie stated in summary: The bird cannons at Mr. Hernandez' site are pointed directly at my house again. He has installed black fencing between our properties but the cannons continue to fire. I have to wear ear protection to go outside and feed my chickens, rabbits, goats and dogs. I am sure I have ear damage from the noise. I guess I will need to hire an attorney and sue Mr. Hernandez, the cannon manufactures and others.

Mr. Clark called Ms. Leslie and reviewed her complaint with her. He also gave her his cell phone number so she could contact him directly.

On Tuesday August 8, 2017, Mr. Clark received an email from David Giudice, Code Compliance/Process Improvement Manager with the Napa County Department of Planning, Building & Environmental Services regarding the "North Kelly Bird Cannons." Mr. Giudice stated that one of his inspectors "went out to the property unannounced to determine if the bird cannons had been moved. Cannons remained in the same locations as before and one had been removed (only two cannons remain). He has netted the vines and has reduced the frequency of the cannons. In a follow up visit with the owner this afternoon he told us he plans to harvest within the next two weeks."

On Friday August 11, 2017, Mr. Clark again went out to the Hernandez site on North Kelly Road to assess the current firing status of the cannons. At that time one cannon was firing.

On Saturday August 12, 2017, Ms. Leslie left a voice mail message on Mr. Clark's cell phone. Ms. Leslie stated in summary: The bird cannons continue to fire and now someone has cut the bolts holding my driveway gate. The Sheriffs' office has been out several times to investigate and I have now hired an attorney. I just wanted to keep you informed.

On Tuesday August 15, 2017 the Napa Valley Register posted an article on their website about Mr. Hernandez's use of bird cannons on North Kelly Road entitled: "Noise from vineyard cannons riles neighbors in Carneros". [http://napavalleyregister.com/news/local/noise-from-vineyard-cannons-riles-neighbors-in-carneros/article\\_7d9f8659-d379-5516-8cda-66fbf9b5d2fb.html](http://napavalleyregister.com/news/local/noise-from-vineyard-cannons-riles-neighbors-in-carneros/article_7d9f8659-d379-5516-8cda-66fbf9b5d2fb.html)

### **DETERMINATION:**

At the present time Mr. Hernandez appears to be utilizing his bird cannons within the parameters allowed by the Napa County Right to Farm Ordinance. Our office continues to investigate and work with all parties to find a workable solution.

**Report prepared by: Terry Samansky**

**Date: 8/16/17**





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Gregory R. Clark  
Agricultural Commissioner/  
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September 8, 2017

Eleodoro Hernandez  
229 South Jefferson Street  
Napa, CA 94558

Dear Mr. Hernandez,

This letter is in regards to your vineyard property located at 1960 North Kelly Road, Napa CA 94558. As you are aware, over the past month and a half our office has received repeated and numerous noise and nuisance complaints from neighboring properties regarding the excessive use of bird cannons at this location. This is the second year in a row that complaints and concerns have been expressed about your use of propane cannons being used for bird control.

While the Napa County Agriculture and Right to Farm Ordinance (Napa County Code of Ordinances, Chapter 2.94) generally allows the use of such devices as part of commercial agricultural operations, Section 2.94.020 requires that such operations be conducted or maintained "in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality". This code section goes on to say, "the provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any agricultural operation."

Allegations have been made that your bird cannons have at times been located and firing within a few yards of, and directed towards, your neighbors' occupied residences. In addition, complaints have been filed that your cannons have been allowed to fire at frequent intervals all day long, and occasionally overnight. If true, these types of practices would fall outside of "proper and accepted customs and standards" and could be considered as "negligent or improper operation of any agricultural operation."

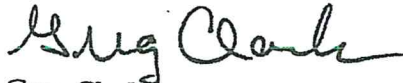
Our office is dedicated to balancing the needs of growers to manage bird pests while minimizing the impact of these devices to residential neighbors and surrounding properties. As such, I am asking you to re-evaluate how you currently use bird cannons and ensure your practices reflect standard industry practices. In addition, I am directing you to cease any activity related to the use of bird cannons inconsistent with common and accepted industry practices, such as allowing the devices to fire at night or be directed at neighboring residences and properties.



Given the continued and frequent numbers of complaints, the County is considering adoption of an ordinance that would place restrictions and limits on how bird cannons are used. Please do not jeopardize your right and the rights of other winegrape growers to use bird cannons in an unregulated manner.

Please feel free to contact my office if you have any questions or concerns.

Sincerely,



Greg Clark

Cc: Belia Ramos, Chairwoman, Napa County Board of Supervisors

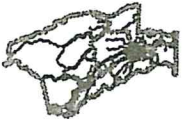




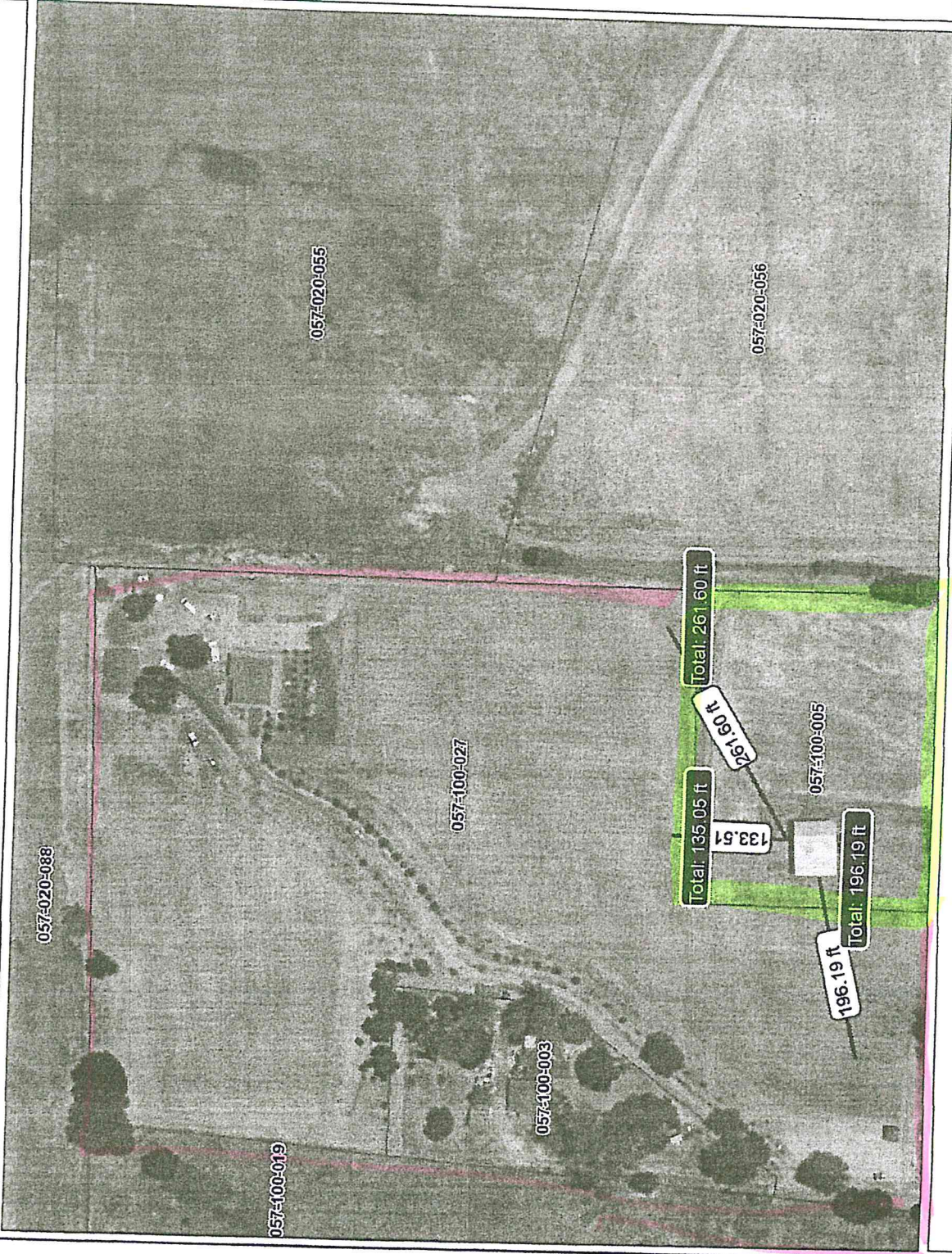


Agricultural Consulting  
& Conservation Service, Inc.

# 1960 N. Kelly Road: Current Bird Cannon Locations



- Legend**
- ☐ Parcels
  - ☐ County Boundary



Disclaimer: This map was prepared for informational purposes only.  
No liability is assumed for the accuracy of the data delineated hereon.

This map was printed on 8/17/2018

376.2 0 188.08 376.2 Feet

**Notes**  
Approximate cannon locations and distance  
from 1930 N. Kelly Road residence, 8/16/18



## Solano County

### CHAPTER 2.2 AGRICULTURAL LANDS AND OPERATIONS

#### 2.2-70 Noise making devices



- (a) For purposes of this section, "noise making device" means a gas cannon, scare gun, automatic exploder, or any similar device used to frighten birds or other wildlife away from an agricultural crop.
- (b) The use of a noise making device is prohibited and constitutes a nuisance except under the following conditions:
- (1) It may only be used for the protection of an agricultural crop susceptible to bird or other wildlife damage.
  - (2) It shall not be operated more than eleven (11) times per hour, and only from one-half (1/2) hour after sunrise to one-half (1/2) hour before sunset.
  - (3) No more than one (1) noise making device shall be allowed for every five (5) acres of land in production with a crop susceptible to bird or other wildlife damage.
  - (4) A noise making device within fifty (50') feet of the property line must be relocated at least two hundred (200') feet every four (4) days. A noise making device placed in the center of the property or the center of the crop to be protected does not have to be relocated.
  - (5) A noise making device shall not be directed towards any residence unless the residence is more than four hundred (400) yards from the device. For residences less than four hundred (400) yards from the device, the noise making device must rotate automatically and have a sound baffle erected between the residence and the noise making device. The baffle shall be mounted no more than five (5) feet from the noise making device.
- (c) Operating a noise making device in a manner inconsistent with the requirements of this section shall result in a written warning issued by the agricultural commissioner, sheriff, or other authorized representative of the county for the first violation. Each subsequent violation is an infraction punishable as provided by Government Code Section 25132.
- (Ord. No. 1761, §2)