NAPA COUNTY BOARD OF SUPERVISORS

Board Agenda Letter

TO: Board of Supervisors
FROM: Tracy Cleveland for Humberto Izquierdo - Agricultural Commissioner
Agricultural Commissioner
REPORT BY: Jaspreet Faller, Staff Services Analyst II - 253-4973
SUBJECT: Adoption of a Resolution Providing Customs and Standards for Propane Cannons and other Audible Frightening Devices

RECOMMENDATION
Agricultural Commissioner/Sealer of Weights and Measures requests adoption of a resolution adopting a policy interpretation on "proper and accepted customs and standards" for operations of propane cannons and other audible frightening devices used within Napa County agricultural lands.

EXECUTIVE SUMMARY
On September 18, 2018, the Board of Supervisors directed staff to work with County, industry, and community partners in the creation and ultimate adoption of accepted customs and standards for propane cannons and other audible frightening devices (Devices) used within Napa County commercial vineyards and agricultural lands.

Currently, Napa County Code of Ordinances, 2.94.020 - Right To Farm, allows agricultural operations to utilize accepted commercial farming practices used in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality. When agricultural operations are conducted pursuant to the accepted customs and standards for that activity, these farming practices shall not be deemed a nuisance. Napa County does not currently have defined proper and accepted customs and standards related to operation of the Devices.

County staff, in collaboration with the community and industry partners, have worked to develop customs and standards that are indicative of common farming practices associated with the use of the Devices, that do not infringe on the Right to Farm ordinance, that allow these tools to be used in a manner that helps protect agricultural crops from damage by birds and other pests, and that allow code enforcement staff to enforce improper use of devices that is negligent or a nuisance to the surrounding community.
County staff went before the Planning Commission on February 6, 2019 with the draft customs and standards in order to inform the Commission on progress in developing the standards and to receive community and Commission input. The Commission asked questions and made some suggestions for potential changes to the proposed standards.

On March 8, 2019, Agricultural Commissioner's Office staff and Code Compliance staff from the Department of Planning, Building and Environmental Services hosted a community meeting to review the draft customs and standards related to the Devices. The community provided several recommendations on additions to the drafts standards.

Since March 8, County staff have continued to revise the draft customs and standards based upon community input and have posted and circulated updated versions of the draft standards on the Agricultural Commissioner's website and via e-mail to interested stakeholders.

PROCEDURAL REQUIREMENTS

1. Staff reports.
2. Public comments.
3. Motion, second, discussion and vote on the item.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: General Rule. It can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable. [See Guidelines For the Implementation of the California Environmental Quality Act, 14 CCR 15061(b)(3)].

It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. [See Class 8 ("Actions by Regulatory Agencies for Protection of the Environment") which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15308.]

BACKGROUND AND DISCUSSION

A study published by Elsevier in 2013 estimated the total loss to the wine grape crop in California due to damage caused by birds at $49 million. Birds not only eat the grapes, but in the process they damage the fruit, resulting in greater susceptibility to other pests and pathogens, as well as reduced product quality.

The study also indicated that of the several bird deterrents available, the one most widely used by California wine grape farmers at that time was auditory scare devices (propane cannons, alarms, guns), followed by visual scare devices (balloons, lasers), netting, lethal shooting, predators (falcons, nest boxes), chemical repellants, and trapping.
Enforcement

Over the past three years, the Ag Commissioner’s Office has received 30 complaints regarding propane cannons, ranging from 7 to 15 complaints annually, with a significant increase this past year. The Sheriff’s Department and the Department of Planning, Building and Environmental Services (PBES) also receive several bird cannon complaints each year.

The use of propane cannons are protected under Chapter 2.94 of the County Code, also referred to as the Right to Farm Ordinance. The following sections are relevant:

Section 2.94.020

No existing or future 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 or become a nuisance, public or private, due to any changed condition in or about the county, after the same has been in operation for more than three years if it was not a nuisance at the time it began. Provided, however, that such agricultural operations must comply with all provisions of this code and further provided that the provisions of this section shall not apply whenever a nuisance results from the negligent or improper operation of any agricultural operation.

As indicated above, agricultural operations that are carried out in a negligent or improper manner are not subject to protection from being determined a nuisance.

Section 2.94.030 (in part)

If property you own or are purchasing or may purchase in the future is located close to agricultural lands or within agricultural lands, you may be subject to inconveniences or discomfort arising from agricultural operations. Such discomfort or inconveniences may include, but are not limited to: noise, odors, dust, chemicals, smoke, insects, operation of machinery during any 24-hour period, aircraft operation, and storage and disposal of manure. One or more of the inconveniences described above may occur even in the case of an agricultural operation which is in conformance with existing laws and regulations and locally accepted customs and standards. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in a county with a strong rural character and a healthy agricultural sector.

Two items of note in the above citation: (1) the Right to Farm Ordinance clearly includes the operation of agricultural machinery, even at night; and (2) the protection of the Right to Farm Ordinance is only extended to agricultural operations that comply with “locally accepted customs and standards.”

Napa County has not adopted customs and standards concerning the use of bird cannons. In the absence of such guidance, the only avenue for enforcement would be in attempting to prove that operators were using the devices in a negligent manner. Any action to enforce against a public nuisance would require solid evidence including acoustical data/measurements, and evidence of unreasonable time of usage or frequency, etc. that is sufficient to include in sworn declarations. Propane cannons, while they can be aggravating to nearby residents, generally do not create loud enough sounds to violate the County noise ordinance. As a result, pursuing a public nuisance action can be expensive and time-consuming for staff, with a low likelihood of success.

Approaches in Other Counties
The vast majority of counties in California do not regulate the use of propane cannons. However, a number of them have the same issues with noise complaints.

Staff is aware of at least six counties that have adopted customs and standards for operation of propane cannons (e.g., guidelines, best management practices), including El Dorado, Stanislaus, San Luis Obispo, Sonoma, San Joaquin, and Tulare.

The proposed guidelines expand upon and refine the language within the Right to Farm ordinance to specify what constitutes “locally accepted customs and standards” as they relate to the use of bird cannons and other audible frightening devices (Devices). Farmers who do not follow these customs and standards do not enjoy the protection of the Right to Farm Ordinance and may be determined a nuisance for purposes of code enforcement.

Public Outreach

In preparing the draft customs and standards, staff have worked internally with multiple County departments which have provided feedback and comments on several iterations of the draft guidelines.

In addition, staff sought input from the agricultural industry groups and individual growers to help identify and define customs and standards (practices) followed by "similar agricultural operations in the same locality." Industry groups included Napa Valley Grapegrowers, Napa County Winegrowers, Napa County Farm Bureau, and Napa Valley Vintners. Industry groups provided suggestions and participated in community meetings.

On February 6, 2019, staff went before the Planning Commission to receive input, to inform and educate the Planning Commission, and to provide an additional opportunity for the community to speak at public comment.

On the evening of March 8, 2019, a community meeting was held in south Napa to gather additional input and feedback on the proposed draft customs and standards. Interested members of the community attended and spoke, providing feedback on potential changes to the draft and additional items that should be considered and defined in the guidelines. Many of these recommendations were incorporated into the draft guidelines being considered today.

Recommendation

Staff recommends the adoption of the attached resolution (see Attachment A). The resolution will adopt the County's policy interpretation regarding proper and accepted customs and standards for the operation of propane cannons and any other audible frightening devices. Adopted policy interpretation will allow Code Enforcement staff the ability to issue a citation as a nuisance for failure to comply with the defined customs and standards.

SUPPORTING DOCUMENTS

A. Resolution

CEO Recommendation: Approve

Reviewed By: Leigh Sharp