



A Tradition of Stewardship
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Agenda Date: 2/6/2019

Agenda Placement: 8A

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission

FROM: Charlene Gallina for David Morrison - Director
Planning, Building and Environmental Services

REPORT BY: Tracy Cleveland, ASST AG COMMISS/SEALER OF W&M - 253-4357

SUBJECT: Draft-Accepted Customs and Standards for Propane Cannons and Frightening Devices

RECOMMENDATION

DRAFT- ACCEPTED CUSTOMS AND STANDARDS FOR PROPANE CANNONS AND OTHER AUDIBLE FRIGHTENING DEVICES

Request: Provide information to the Planning Commission regarding the progress of draft proper and accepted customs and standards for the operation of propane cannons and other audible frightening devices used within Napa County agricultural lands.

Staff Recommendation: Napa County Agricultural Commissioner and Director of Planning and Environmental Services (PBES) seek to inform the Planning Commission of progress on the development of proper accepted customs and standards for propane cannons and other audible frightening devices as referenced in the Napa County Right to Farm 2.94.020. Establishing accepted customs and standards will allow Code Enforcement to pursue violations not consistent with proper use.

Staff Contact: Humberto Izquierdo, Agricultural Commissioner/Sealer of Weights & Measures, (707) 253-4357 or Humberto.izquierdo@countyofnapa.org.

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 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. These farming practices shall not be deemed a nuisance as long as the agricultural operations continue to operate in a manner that is not negligent or improper (Ord. 973 § 3 (part), 1990: prior code § 7501). Napa County does not currently have defined proper and accepted customs and standards related to propane cannons and other audible frightening devices.

County staff in collaboration with industry partners and ultimately the community, is in the process of developing proper and accepted customs and standards, that are indicative of common farming practices associated with the use of propane cannons and other noise making devices, and that do not infringe on the Right to Farm ordinance, and allow these tools to be used in a manner that helps protect agricultural crops from damage by birds and other pests, while allowing code enforcement staff to enforce improper use that is negligent or a nuisance.

County staff seeks to inform the Planning Commission of the draft customs and standards.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

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. Both the Sheriff's Department and 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** (bold font added).

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** (bold font added), 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** (bold font added). 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, nor has it defined the improper or negligent use of bird cannons. In the absence of such guidance, the only other avenue for enforcement would be in treating the activity as a nuisance. 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, although 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 (e.g., guidelines, best management practices), including El Dorado, Stanislaus, San Luis Obispo, Sonoma, San Joaquin, and Tulare. These 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. 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.

Board of Supervisors Direction

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 proper and accepted customs and standards for operations of propane cannons and other audible frightening devices used within Napa County vineyards or others agricultural lands. Staff is in the process of preparing customs and standards that would clarify the terms used in the Right to Farm Ordinance as they apply to propane cannons. The Ag Commissioner intends to finalize and ultimately bring these customs and standards back for future consideration by the Board. Code enforcement staff would have the ability to issue a citation as a nuisance, any failure to comply with the customs and standards.

Public Outreach

In preparing the draft customs and standards, staff has worked internally with other county departments and collaborated with local Industry groups as well. Napa Valley Grapegrowers met with their Industry Issues Committee and submitted suggestions. The Napa Valley Vintners do not have a position on this issue. Winegrowers acknowledged receipt of the draft and Napa County Farm Bureau have not yet submitted any suggestions for the draft customs and standards.

The Ag Commissioner has established the date for an upcoming community meeting to allow for participation by neighbors, homeowners and any members of the community that would like to speak on and give input for the draft standards. Once the community has an opportunity to provide feedback, staff will once again review, make changes as necessary and present it to the Board of Supervisors for adoption.

SUPPORTING DOCUMENTS

A . Draft Standards-Cannons

Napa County Planning Commission: Approve

Reviewed By: Charlene Gallina