



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

H-1

For the meeting of: November 14, 2014

Date: November 7, 2014

To: Board of Supervisors

From: Jeff M. Dolf, Agricultural Commissioner/Sealer of Weights & Measures

Subject: Presentation by the Agricultural Commissioner on the Development of an Enforcement Program as required by the Humboldt County Genetic Contamination Prevention Ordinance (Measure P)

RECOMMENDATION(S):

That the Board of Supervisors hear the presentation and take appropriate action, if required.

SOURCE OF FUNDING: N/A

DISCUSSION:

On November 4, 2014 the voters of Humboldt County (59% in the affirmative) approved Measure P, known as the Humboldt County Genetic Contamination Prevention Ordinance (GMO Ordinance). Per California Elections Code § 9122, Humboldt County's GMO Ordinance will become effective 10 days after the vote is declared by the Board of Supervisors.

Once in effect, the County's GMO Ordinance will prohibit any person, partnership, corporation, firm or entity from propagating, cultivating, raising or growing genetically engineered organisms in Humboldt County. Any entity already cultivating, raising or growing genetically modified organisms will have until January 1, 2016 to maintain those organisms, after which time they must be destroyed. The GMO Ordinance does exempt the purchase, sale and distribution of genetically engineered food and animal feed,

Prepared by [Signature] CAO Approval [Signature]

REVIEW:

Auditor _____ County Counsel [Signature] Personnel _____ Risk Manager _____ Other _____

TYPE OF ITEM:

- Consent
- Departmental
- Public Hearing
- Other _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor _____ Seconded by Supervisor _____

- Ayes
- Nays
- Abstain
- Absent

Per Order of the Chair

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: November 14, 2014

By: [Signature]
Kathy Hayes, Clerk of the Board

genetically engineered medical treatments for human patients, and research activities involving genetically modified organisms provided that such research is conducted under conditions that physically prevent escape of the genetically modified organism into the environment.

As directed by the GMO Ordinance, the Agricultural Commissioner shall be the official charged with enforcement of Ordinance and shall develop an enforcement program including procedures for receiving reports of violations and investigating reports that are deemed to be credible. The Commissioner shall notify any entity determined to be in violation of the Ordinance (pursuant to Humboldt County Code Section 351-12, nuisance abatement). Any entity found to be in violation of the GMO Ordinance shall have 30 days to respond and provide evidence that the entity is not in violation, or to destroy such genetically engineered organisms. Any violation of the Ordinance shall constitute a public nuisance. Any continuing violation of the GMO Ordinance shall also constitute a finding of immediate threat to public health & safety, and the Commissioner shall immediately order summary abatement as set forth in Humboldt County Code Section 351-1.2. Any cost of enforcing the provisions of the GMO Ordinance may be paid out of the revolving fund established pursuant to Humboldt County Code Section 351-31.

The Commissioner shall also submit an annual report to the Board containing a brief description of all complaints and enforcement actions taken under this Ordinance. A copy of the report shall also be posted on the Department of Agriculture's website.

FINANCIAL IMPACT:

The financial impact of enforcing the Humboldt County GMO Ordinance on the Agricultural Commissioner's budget is currently unknown.

OTHER AGENCY INVOLVEMENT:

N/A

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Board discretion

ATTACHMENTS:

Humboldt County Genetic Contamination Prevention Ordinance

THE PEOPLE OF THE COUNTY OF HUMBOLDT ORDAIN AS FOLLOWS:

Section 1 – Title

This ordinance shall be known as the Humboldt County Genetic Contamination Prevention Ordinance.

Section 2 – Findings and Purpose

- (a) The People of the County of Humboldt, desiring to protect our agricultural and natural resource industries, our natural environment, the private property rights of our citizens, and the health, safety and welfare of our people, deem it advisable and appropriate to restrict the propagation, cultivation, raising and growing of genetically engineered crops, livestock, and other organisms in the County.
- (b) Genetically engineered organisms and products are being developed with precipitous speed, and have been introduced into the marketplace before the potential risks and long-term health and environmental effects of these organisms and products have been adequately studied.
- (c) It is undeniable that genetically engineered organisms have the potential to contaminate other organisms, both cultivated and wild, through normal reproductive processes. In the case of crops and other plants, such contamination can occur at a great distance through cross-pollination. Such contamination becomes virtually certain once the introduction of genetically engineered organisms is widespread, and once it occurs is irreversible.
- (d) Many companies and markets do not accept genetically engineered food products. Therefore, the danger of contaminating and thereby reducing the value of neighboring crops by genetically engineered crops creates a serious economic threat to Humboldt County farmers. Conversely, minimizing the risk of such contamination can provide our farmers with a valuable marketing tool for their products.
- (e) Organic agriculture is a vital and growing industry in Humboldt County. As of 2011, 19% of the total value of the County's agricultural products was attributable to organic agriculture. Furthermore, the organic dairy market is growing at 9% per year nationally, and Humboldt County has made a particular niche for itself in organic dairy production. Organic farmers are prohibited from using genetically engineered products. Nevertheless, the risk of contamination can erode public confidence in organic products, significantly undermining the job-creating, economy-boosting growth of the organic market.
- (f) Contamination and potential contamination by genetically engineered crops threatens generations of seed-saving and selection of diverse, locally adapted varieties by Humboldt County farmers and gardeners. Furthermore, the ownership of many genetically engineered traits by private entities means that such contamination may create a threatening and onerous legal situation for affected farmers and gardeners, through no fault of their own.
- (g) The cultivation of genetically engineered crops to date has had a serious negative impact on the natural environment, in part because the vast majority of such crops are designed to withstand herbicide use. This has promoted indiscriminate herbicide use, causing an additional 527 million pounds of additional herbicides to be applied to our nation's farmland.
- (h) Other impacts on our natural environment from genetically engineered organisms, their production, and contamination from such are unpredictable, potentially serious, ultimately uncontrollable, and have received little study.
- (i) The impacts of the direct introduction into Humboldt County of genetically engineered organisms such as trees or fishes, or contamination by the same, would be unknowable in advance. However, such introduction or contamination would have the potential to seriously imperil local ecosystems, to threaten traditional ways of life in our rural county, and to undermine critical local industries including forestry, fisheries, and tourism.

- (j) Recognizing the serious risks inherent to the introduction and use of genetically engineered organisms, many countries and regions around the world have prohibited or strictly regulated their cultivation, use and/or importation. In the absence of such appropriate, effective regulation in California or the broader United States, many local governments in our region have acted to restrict or prohibit the growing of genetically engineered organisms within their borders. Such local governments include the Counties of Mendocino, Marin, Trinity and Santa Cruz, and the City of Arcata.
- (k) For these reasons, the People of Humboldt County find that the propagation, cultivation, raising or growing of genetically engineered organisms in the County is not consistent with proper and accepted agricultural customs and standards and constitutes a public nuisance. Furthermore, because the risk of genetic contamination or ecosystem invasion increases the longer a genetically engineered organism remains in an uncontrolled environment, the People find that the public nuisance caused by the propagation, cultivation, raising or growing of genetically engineered organisms can only be remedied by means of the summary abatement procedures set forth under Humboldt County Code Section 351-1.2, as set forth below.

Section 3 – Definitions

“Commissioner” means the Humboldt County Agricultural Commissioner.

“DNA” means deoxyribonucleic acid, the material naturally found within living cells which contains the genetic code and transmits hereditary patterns.

“Genetic engineering” means altering or amending the genetic material of an organism through the application of: (a) in vitro nucleic acid techniques, which include but are not limited to recombinant DNA techniques, direct injection of nucleic acids into cells or organelles, encapsulation, gene deletion and doubling; or (b) methods of fusing cells beyond the taxonomic family that overcome natural physiological reproductive or recombinant barriers, and that are not techniques used in traditional breeding and selection such as conjugation, transduction and hybridization.

“In vitro nucleic acid techniques” include, but are not limited to, recombinant DNA or RNA techniques that use vector systems and techniques involving the direct introduction into organisms of hereditary material prepared outside the organisms, such as micro-injection, macro-injection, chemoporation, electroporation, micro-encapsulation, and liposome fusion.

“Organism” means any biological entity capable of replication, reproduction or transferring of genetic material, exclusive of human beings and human fetuses.

“Genetically engineered organism” means an organism, or the offspring of an organism, the DNA of which has been altered or amended through genetic engineering. Such organisms are also sometimes referred to as “genetically modified organisms” or “GMOs.” For the purposes of this definition, an animal which has not itself been genetically engineered, regardless of whether such animal has been fed or injected with any food or drug that has been produced through means of genetic engineering, shall not be considered genetically engineered.

Section 4 – Prohibitions

It is unlawful for any person, partnership, corporation, firm or entity of any kind to propagate, cultivate, raise or grow genetically engineered organisms in the County. Any act in violation of this provision is declared to constitute a public nuisance.

Section 5 – Exemptions

- (a) Nothing in this Ordinance shall make it unlawful for:
- (1) any person or other legal entity in the County to purchase, sell, or distribute genetically engineered human food or animal feed;
 - (2) any licensed health care practitioner to provide any diagnosis, care or treatment to any human patient; or
 - (3) any research institutions, laboratories or manufacturing facilities in the County to conduct research involving genetically engineered organisms whose reproduction in the environment can be physically contained. Such research activities must be conducted under secure, enclosed indoor laboratory conditions, with utmost precautions to prevent release of genetically engineered organisms into the outside environment.

Section 6 – Effective Date and Transitional Period

- (a) This Ordinance shall take effect immediately upon approval by the voters of Humboldt County, except as set forth here and below.
- (b) Any person or other legal entity who is already propagating, cultivating, raising or growing genetically engineered organisms in the County on or before the date this Ordinance is approved by the voters of Humboldt County shall be permitted to maintain such organisms until January 1, 2016. As of that date, any person or other legal entity who has continued propagating, cultivating, raising or growing genetically engineered organisms in the County during this transitional period shall be required to destroy and safely dispose of, or remove completely and permanently from the County, any remaining genetically engineered organisms.
- (c) None of the provisions of this Ordinance shall be construed to permit any person or other legal entity who is not already propagating, cultivating, raising or growing genetically engineered organisms in the County to begin to do so after this Ordinance takes effect.
- (d) None of the provisions of the Ordinance shall be construed to permit any person or other legal entity who is already propagating, cultivating, raising or growing genetically engineered organisms in the County to propagate, cultivate, raise or grow any genetically engineered organisms not already living and established in the County, or otherwise to begin any new activity prohibited by Section (4) of this Ordinance, after it takes effect.

Section 7 – Enforcement

- (a) The Commissioner shall be the official charged with enforcement of this Ordinance and may exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of this Ordinance. However, the Commissioner may request enforcement assistance or advice from other County officials. The Commissioner may also request that the Board of Supervisors direct any other County department or official to enforce this Ordinance in any case or set of cases where such action may be necessary or appropriate.
- (b) The Commissioner shall create and provide for a procedure for any person to report any known or suspected violation of this Ordinance. The procedure shall include the creation of a reporting form to document the nature and location of the reported violation, the basis for the report, and contact information for the reporting party.
- (c) Upon the receipt of a report described in Section 7(b) or any other information which leads the Commissioner to believe that there may be a violation of this Ordinance, the Commissioner shall immediately notify any person or other legal entity that may be in violation of this Ordinance pursuant to Humboldt County Code Section 351-12. In determining whether such report or information justifies the commencement of enforcement proceedings, the Commissioner shall consider the difficulty which may face the filer of such report in collecting evidence to support such allegation.

- (d) Any person or other legal entity who receives such notice described in Section 7(c) of this Ordinance shall have thirty (30) days to respond to such notification with evidence that such person or entity is not in violation of this Ordinance, or to destroy such genetically engineered organisms as they are cultivating, propagating, raising or growing in violation of this Ordinance or remove them completely and permanently from the County and provide evidence of such destruction or removal. Any person or other legal entity who receives such notice described in Section 7(c) of this Ordinance may request, and the Commissioner may at his or her sole discretion approve, an additional thirty (30) days to respond to such notification should such additional time be reasonably required to gather and submit required evidence.
- (e) Upon receipt of any evidence submitted pursuant to Section 7(d), or upon the expiration of the relevant time period described in Section 7(d), whichever comes first, the Commissioner shall review such evidence and any other relevant evidence. Within fifteen (15) days of commencing such review, the Commissioner shall determine if the person or entity is in violation of this Ordinance.
- (f) Any violation of this Ordinance shall constitute a public nuisance. Any finding of continuing violation of this Ordinance by the Commissioner shall also constitute a finding of immediate threat to public health and safety, and the Commissioner shall immediately order summary abatement as set forth in Humboldt County Code Section 351-1.2 in order to destroy or permanently and completely remove any such genetically engineered organisms. Any costs of enforcing the provisions of this Ordinance may be paid out of the revolving fund(s) established pursuant to Humboldt County Code Section 351-31, and any costs recovered pursuant to Humboldt County Code Section 351-16(g) may be deposited into such fund(s).
- (g) The provisions of this Ordinance are cumulative, and nothing in this Ordinance affects any other remedies any individual or government entity may have against any person resulting from a violation of this Ordinance.
- (h) The Commissioner shall submit an annual report to the Board containing a brief description of all complaints received and enforcement actions taken under this Ordinance, if any, along with any other relevant information or analysis the Commissioner may choose, at his or her discretion, to include. A copy of such report shall be posted on the County Department of Agriculture's official website.

Section 8 – Severability

The provisions of this Ordinance are severable. If any provision of this Ordinance or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.