



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Introduction of "Right To Farm" Ordinance
(Notice of agricultural operations affecting other property)

MEETING DATE: August 21, 1991

PREPARED BY: City Attorney

RECOMMENDED ACTION: Council consideration of attached ordinance.

BACKGROUND INFORMATION: On July 2, 1991, the City Council at a shirtsleeve session considered the first draft of a "Right To Farm" ordinance. The purpose of this type of ordinance is to discourage nuisance lawsuits against farming operations brought by other property owners or tenants. This would be accomplished by requiring notice and disclosure of agricultural operations when property is bought and/or sold. Similar ordinances are **now** in place in other cities such as Manteca and Stockton.

Such an ordinance was first proposed by the Mayor's Task Force on Measure A in its July 1987 report. That proposal was made a part of the Conservation Element (Page 7-4) of the recently adopted General Plan wherein it was stated:

"The City shall adopt a "Right To Farm" ordinance for the purpose of protecting agricultural land from nuisance suits brought by surrounding landowners."

The draft ordinance attached has been modified as suggested at the shirtsleeve session to make it clear that it would apply to all property located within the City, not just that which is adjacent to agricultural land. In retrospect, this may be the better approach since it could be difficult to otherwise determine which properties were or were not subject to the disclosure requirements.

As further directed by the City Council, the draft ordinance was provided to the Farm Bureau of San Joaquin County and to the Lodi Board of Realtors for comment. Those responses are attached. The Farm Bureau endorses the ordinance, while the real estate industry is less favorable. It was suggested by real estate broker Ben Schaffer that if the ordinance is to be adopted, it be modified to specify that it applies only to (for example)

APPROVED _____

THOMAS A. PETERSON
City Manager

recycled paper

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properties "within five hundred feet of" or "abutting" present agricultural operations.

One drawback to this latter approach is that the boundaries of its applicability would be continually changing as parcels of agricultural land develop. However, any of these approaches appear feasible.

Although the ordinance itself appears lengthy, what it actually requires is the filing of a single document. In the case of an existing house, this document would simply be included in the title package. On new construction, the document would become part of the permit file. Admittedly, this would be a somewhat greater paperwork burden than now exists.

FUNDING: Unknown at this time.



Bob McNatt
City Attorney

BM/vc

attachments



SAN JOAQUIN FARM BUREAU FEDERATION

MEETING TODAY'S PROBLEMS / PLANNING FOR TOMORROW

August 13, 1991

Bob W. McNatt
City of Lodi
P.O. Box 3006
Lodi, CA 95241

Dear Mr. McNatt:

The San Joaquin Farm Bureau supports the proposed "Right to Farm" ordinance for the city of Lodi.

Developing land in agricultural areas causes many **problems**. These projects take away from an ever shrinking supply of viable agricultural lands. In addition, they create conflict between growers and their new neighbors.

The agricultural industry should be protected from any conflicts concerning a growers "Right to Farm". This ordinance will help protect the livelihood of many area residents. With the "Right to Farm" ordinance, these growers will be able to contribute to **Lodi's economy** and help provide food for growing number of residents in your city and abroad.

The San Joaquin Farm Bureau encourages the **city** of Lodi to continue with its commitment to agriculture, and we support your "Right to Farm" ordinance.

Sincerely,


PAUL M. SANGUINETTI
President

PMS:sig

July 25, 1991

Mr. Bob Mc Natt
City Attorney
City of Lodi
221 W. Pine Street
Lodi, CA 95240

JUL 26 1991
City Attorney's Office

Re: Proposed City of Lodi right to farm ordinance

Dear Mr. Mc Natt,

This ordinance **appears** to be a step to protect sellers of real property, farmers, and **the** City of Lodi from complaints by citizens regarding farming operations near our city. I assume the city currently hasn't any liability **in** these matters. By writing **the** ordinance, are **you** sending a signal that **you** may in fact have some liability **from** which you are trying to shield yourself. Strictly **from** the view point of the city, is this a "problem" that needs solving?

Assuming you **wish** to go ahead and it is only partially successful, it would be a benefit to all parties. However the application of this ordinance deserves careful study. **To** apply this to every property in the city limits is to **create** needless paperwork, wasteful of both time and resources **when** great effort is being **made** to reduce both. I'm confident that some language can be found to accomplish the purpose without unnecessarily involving unaffected properties. **Perhaps** "properties adjacent to or abutting current agricultural zones", or "properties lying within five hundred feet of current agricultures zones", or some alternate language that you are better equipped to devise.

In an era **when** citizens feel they are "over regulated" to apply an ordinance to unaffected properties **seems** a bit much.

Sincerely,


Ben W. Schaffer
Broker Principal

BWS;ldb

ORDINANCE NO. 1519

AN ORDINANCE OF THE LODI CITY COUNCIL
ADDING CHAPTER 8.18 TO THE LODI MUNICIPAL CODE REGARDING NOTICE OF
AGRICULTURAL OPERATIONS AFFECTING OTHER PROPERTY

=====

BE IT ORDAINED BY THE LODI CITY COUNCIL AS FOLLOWS:

SECTION 1. Chapter 8.18, Notice of Agricultural Operations Affecting Other Property, is hereby added to the Lodi Municipal Code to read as follows:

Chapter 8.18

Notice of Agricultural Operations Affecting Other Property.

Sections :

- 8.18.010 Policy Statement
- 8.18.020 Definitions
- 8.18.030 Delivery of disclosure statement by transferor
- 8.18.040 Disclosure statement
- 8.18.050 Disclosure statement -- building permits
- 8.18.060 Refusal to sign disclosure statement
- 8.18.070 No limitation on other disclosure obligations
- 8.18.080 Delivery of disclosure statement
- 8.18.090 Presumption
- 8.18.100 Penalty for violation

8.18.010 Policy statement.

It is the policy of the City of Lodi to protect, preserve, and encourage the use of viable agricultural lands for the production of food and other agricultural products. When nonagricultural land uses extend into or encroach upon agricultural areas, it is likely that conflicts will arise between such land uses and the agricultural operations. These conflicts often result in an involuntary curtailment or cessation of agricultural operations, are detrimental to the local economy, and discourage investment in such agricultural operations. The purpose of this ordinance is to reduce the occurrence of conflict between agricultural and non-agricultural land uses within the City.

~~8.18.020~~ Definitions.

1. "Agricultural activity" shall mean the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural commodity including timber, viticulture, apiculture, or horticulture, the raising of livestock, fur bearing animals, fish or poultry, and any practices performed by a farmer or on a farm as incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to market, or to carriers for transportation to market.

2. "Buyer" shall mean any transferee of real property.

3. "Property" shall mean any real property located anywhere within the City Limits of Lodi.

4. "Seller" shall mean the owner and/or transferor of title to real property or seller's authorized selling agent as defined in

Business and Professions Code Section 10130 *et seq.*, or Health and Safety Code Section 18006.

8.18.030 Delivery of disclosure statement by transferor.

The transferor of any real property subject to this chapter shall deliver the disclosure statement required by this chapter to the prospective transferee as follows:

- A. In the case of a sale, as soon as practicable before transfer of title.
- B. In the case of transfer by a real property sales contract, as defined in Section 2985 of the Civil Code, as soon as practicable before execution of the contract. For the purpose of this subsection, "execution" means the making or acceptance of an offer.

With respect to any transfer subject to subsection A or B, the transferor shall indicate compliance with this chapter either on the receipt for deposit, the real property sales contract, or any addendum attached thereto, or on a separate document.

8.18.040 Disclosure statement.

The disclosure required by this chapter shall be in essentially the same form as set forth herein which shall state:

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF LODI, COUNTY OF SAN JOAQUIN, STATE OF CALIFORNIA, DESCRIBED AS _____ . THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH ORDINANCE NO. 1519 OF THE LODI MUNICIPAL CODE AS OF SEPTEMBER 4, 1991. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPALS(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

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SELLER'S INFORMATION

The seller discloses the following information with the knowledge that even though this *is* not a warranty, prospective buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property. THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AS REQUIRED BY THE CITY OF LODI, AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

1. The City of Lodi permits operation of properly conducted agricultural operations within the city limits, including those that utilize chemical fertilizers and pesticides. YOU ARE HEREBY NOTIFIED THAT THE PROPERTY YOU ARE PURCHASING MAY BE LOCATED CLOSE TO AGRICULTURAL LANDS AND OPERATIONS. YOU MAY BE SUBJECT TO INCONVENIENCE OR DISCOMFORT ARISING FROM THE LAWFUL AND PROPER USE OF AGRICULTURAL CHEMICALS AND PESTICIDES AND FROM OTHER AGRICULTURAL ACTIVITIES, INCLUDING WITHOUT LIMITATION, CULTIVATION, PLOWING, SPRAYING, IRRIGATION, PRUNING, HARVESTING, BURNING OF AGRICULTURAL WASTE PRODUCTS, PROTECTION OF CROPS AND ANIMALS FROM DEPREDATION, AND OTHER ACTIVITIES WHICH OCCASIONALLY GENERATE DUST, SMOKE, NOISE, AND ODOR. Consequently, depending on the location of your property, it may be necessary that you be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in an agriculturally active region.

2. _____

Seller certifies that the information herein is true and correct to the best of seller's knowledge as of the date signed by the seller.

Seller _____

Date _____

Seller _____

Date _____

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller _____ Date _____ Buyer _____ Date _____
Seller _____ Date _____ Buyer _____ Date _____
Agent (Broker
Representing Seller) _____ By _____ Date _____
(Associate Licensee or
Broker-Signature)

Agent (Broker
Obtaining the Offer) _____ By _____ Date _____
(Associate Licensee or
Broker-Signature)

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

8.18.050 Disclosure statement - Building permits.

Prior to issuance of a city building permit for construction of a residential building, the owner of the property upon which the building is to be constructed shall sign, date, and file with the City building department the disclosure statement set forth below:

DISCLOSURE STATEMENT - BUILDING PERMIT

The City of Lodi permits operation of properly conducted agricultural operations within the city limits, including those that utilize chemical fertilizers and pesticides. YOU ARE HEREBY NOTIFIED

THAT THE PROPERTY FOR WHICH A BUILDING PERMIT IS BEING SOUGHT MAY BE LOCATED CLOSE TO AGRICULTURAL LANDS AND OPERATIONS. YOU MAY BE SUBJECT TO INCONVENIENCE OR DISCOMFORT ARISING FROM THE LAWFUL AND PROPER USE OF AGRICULTURAL CHEMICALS AND PESTICIDES AND FROM OTHER AGRICULTURAL ACTIVITIES, INCLUDING WITHOUT LIMITATION, CULTIVATION, PLOWING, SPRAYING, IRRIGATION, PRUNING, HARVESTING, BURNING OF AGRICULTURAL WASTE PRODUCTS, PROTECTION OF CROPS AND ANIMALS FROM DEPREDATION, AND OTHER ACTIVITIES WHICH OCCASIONALLY GENERATE DUST, SMOKE, NOISE, AND ODOR. Consequently, depending on the location of your property, it may be necessary that you be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in an agriculturally active region.

I declare that I have read and understand the foregoing disclosure.

Dated: _____ (sign) _____

Print Name:

8.18.060 Refusal to sign disclosure statement.

If a buyer refuses to sign the disclosure statement set forth in Sections 8.18.040 and/or 8.18.050 above, the transferor may comply with the requirements of this chapter by delivering the statement to the buyer as provided in Section 8.18.080 and affixing and signing the following declaration to the statement:

I (insert name) have delivered a copy of the foregoing disclosure statement as required by law to (insert buyer's name) who has refused to sign.

I declare the foregoing to be true under penalty of perjury.

Dated: _____ (sign) _____

Print Name:

8.18.070 No limitation on other disclosure obligations.

The specification of items of disclosure in this chapter shall not limit or abridge any obligation for disclosure created by any other provision of law or which may exist in order to avoid fraud, misrepresentation, or deceit in the sale.

8.18.080 Delivery of disclosure statement.

Delivery of the disclosure statement required by Sections 8.18.040 and/or 8.18.050 above shall **be by** personal delivery or certified mail return receipt requested to the buyer.

8.18.090 Presumption.

Coinpliance with the provisions of this part shall create a presumption that specified agricultural activities are not a nuisance, **as provided in** Civil Code Section 3482.5.

8.18.100 Penalty for violation.

Noncompliance with any provision of this chapter shall not affect title to real property, nor prevent the recording of any document. Any person who violates any provision of this chapter **is** guilty of an infraction punishable **by** a fine not exceeding one hundred dollars (\$100.00).

SECTION 2. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 3. This ordinance shall be published one time in the "Lodi News Sentinel", a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect thirty days from and after its passage and approval.

Approved this day of

DAVID M. HINCHMAN
Mayor

Attest :

ALICE M. REIMCHE
City **Clerk**

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State of California
County of San Joaquin, ss.

I, Alice M. Reimche, City Clerk of the City of Lodi, **do** hereby certify that Ordinance No.1519 **was** introduced at a regular meeting of the City Council of the City of Lodi held August 21, 1991 and was thereafter passed, **adopted** and ordered to print at a regular meeting of said Council held _____, 1991 by the following vote:

Ayes : Council Members -
Noes : Council Members -
Absent: Council Members -
Abstain: Council Members -

I further certify that Ordinance No. 1519 was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

ALICE M. REIMCHE
City Clerk

Approved as to Form

BOBBY W. McNATT
City Attorney

ORD1519/TXTA.01V