



# Monterey County

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## Board Report

Legistar File Number: ORD 14-023

October 28, 2014

**Introduced:** 10/15/2014

**Current Status:** Agenda Ready

**Version:** 1

**Matter Type:** Ordinance

Consider adoption of an ordinance amending Chapter 16.40, commonly known as the "Right to Farm" ordinance, of the Monterey County Code in order to increase the protection of agricultural operations from nuisance claims, with the goal of promoting the long-term protection of agricultural lands in Monterey County.

(Right-to-Farm ordinance - REF130040, County-wide; exempt under CEQA)

### RECOMMENDATION:

It is recommended that the Board of Supervisors adopt an ordinance (Attachment B) amending Chapter 16.40, commonly known as the "Right to Farm" ordinance, of the Monterey County Code in order to increase the protection of agricultural operations from nuisance claims, with the goal of promoting the long-term protection of agricultural lands in Monterey County.

### SUMMARY:

On October 14, 2014, the Monterey County Board of Supervisors introduced, waived reading and set October 28, 2014 at 1:30 p.m. as the date and time to consider adoption of the Right to Farm ordinance. One clerical correction has been made to the ordinance since introduction: in Section 7 of the ordinance, the subheading of Section 16.40.040.B has been corrected from "Notice to Building Permit Applicants" to "Notice to Construction Permit Applicants."

On August 27, 2014, the Monterey Planning Commission recommended the Board of Supervisors adopt the draft Right-to-Farm ordinance (see Attachment D for Planning Commission Resolution). The proposed ordinance (Attachment B) would apply in both the inland and coastal areas of the County, as does the existing Chapter 16.40.

The proposed ordinance is intended to reduce conflicts at the agricultural/urban boundary by educating residents, especially newcomers, as to the realities of living near modern agricultural operations. The theory is if residents are advised that dust, noise, spray and odors are typical accompaniments to agricultural practices, residents will be less likely to complain or go to court over such annoyances, thereby reducing the risk to the agriculture industry. It is important to note, however, that this ordinance does not prevent farmers from being sued over agricultural practices, even those that are accepted customs and standards.

The proposed ordinance would amend Monterey County Code Chapter 16.40, which is entitled "Protection of Agricultural Activities" and is commonly referred to as the "Right-to-Farm" ordinance. The proposed ordinance would reinstate a disclosure section that was repealed in 1994. In staff's opinion, this disclosure would be the primary approach toward strengthening

the Right-to-Farm chapter. The proposed ordinance includes two types of disclosure: notification through real property sales and notification through building permit applications. The ordinance also changes the resolution dispute process to be administered by the Agricultural Commissioner instead of a Board-appointed committee.

DISCUSSION:

In the inland area, the ordinance implements 2010 Monterey County General Plan Policy AG-1.9, which reads as follows:

*“Agricultural operations in accord with all applicable laws and regulations and consistent with properly accepted customs and practices shall be given increased protection from nuisance claims through strengthening the County’s “Right-to-Farm” ordinance. Said ordinance shall establish the strongest, most effective possible noticing requirements to make property owners located near agricultural operations aware of potential conditions that are accepted practices within Monterey County.”*

Applying this ordinance in the coastal zone is also appropriate because Chapter 16.40 currently applies countywide, and the ordinance is consistent with the Coastal Act and the County’s certified Local Coastal Program. The Coastal Act requires that the maximum amount of prime agricultural land be maintained in production to assure the protection of the area’s economy. Currently, the majority of the County’s coastal Land Use Plans have agricultural protection policies such as the North County Land Use Plan (LUP 2.6.1), the Big Sur Land Use Plan (LUP 3.6.1), and the Carmel Land Use Plan (LUP 2.6.2). Coastal Commission certification of this ordinance is not required because Chapter 16.40 is not part of the County’s Local Coastal Program.

The proposed ordinance underwent several changes as a result of discussions with other County departments that could be affected by disclosure requirements, such as the County Treasurer-Tax Collector and the RMA-Building Department. The last change to the ordinance occurred when the draft ordinance was heard by the Planning Commission on June 25, 2014. The Planning Commission continued the hearing to August 27, 2014 to allow for revisions to the ordinance to clarify the dispute resolution process. Staff revised the ordinance per Planning Commission direction and presented the revised draft ordinance to the Agricultural Advisory Committee (AAC) on July 24, 2014. The AAC recommended approval of the revised ordinance by a vote of 10-0 (2 absent members), and on August 27, 2014, the Planning Commission recommended approval of the ordinance as revised. The ordinance, as revised through the process described above, is attached to this staff report as Attachment B and presented to the Board for adoption.

For further discussion, see Attachment A.

CEQA

The proposed ordinance is not a project under the California Environmental Quality Act (CEQA) per CEQA Guidelines Sections 15060(c) (3) and 15378 (b)(5) because the ordinance is an organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment.

OTHER AGENCY INVOLVEMENT:

The following agencies have reviewed the ordinance, have comments, and/or have recommended conditions:

Agricultural Commissioner  
Agricultural Advisory Committee

County Counsel has approved the ordinance as to form.

On August 27, 2014, the Monterey County Planning Commission recommended approval of the ordinance by a vote of 9-0, 1 absent. (Attachment D).

FINANCING:

Funding for staff time associated with this project is included in the FY14-15 Adopted Budget for RMA - Planning.

Prepared by: Nadia Amador, Associate Planner ext. 5114 *NA*  
Approved by: Mike Novo, Director, RMA-Planning, ext. 5192 *MN*  
Carl Holm, Acting Director Resource Management Agency *CH*

This report was reviewed by Jacqueline R. Onciano.

cc: Front Counter Copy; Planning Commission (10); Fire Protection Districts; RMA-Public Works Department; Parks Department; Environmental Health Bureau; Water Resources Agency; Agricultural Commissioner, Attn: Christina McGinnis; Monterey County Sheriff; Monterey County Treasurer-Tax Collector; Office of the County Counsel; California Coastal Commission; Monterey County Association of Realtors; Title Companies located in Monterey County: Chicago Title Co. (3 offices), First American Title Insurance (3 offices), Old Republic Title Company (3 offices); Legal Offices listed as Affiliates by the Monterey County Association of Realtors: Philip Daunt, Paul D. Gullion, Horan/Lloyd, Lombardo & Associates, Mallery & Demaria, Rossi, Hamerslough, Reischl & Chuck; Natural Hazard Disclosures consultants listed as Affiliates by the Monterey County Association of Realtors: JCP-LGS Disclosures, Property I.D., Natural Hazard; Jacqueline Onciano, RMA Services Manager; Nadia Amador, Project Planner; Molly Erickson, The Open Monterey Project; Amy White, LandWatch; Planning File  
REF130040.

The following attachments on file with the Clerk of the Board:

Attachment A Discussion  
Attachment B Draft ordinance  
Attachment C Draft ordinance (redline) showing changes from current County Code  
Attachment D Planning Commission Resolution No. 14-037, August 27, 2014