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December 4, 2012

Board of Supervisors
County of El Dorado
330 Fair Lane
Placerville, CA 95667

Re: Consideration of a Local Food and Community Self-Governance Ordinance

Honorable Supervisors:

Recommendation:

County Counsel recommends that the Board of Supervisors consider first reading of the attached Local Food and Community Self-Governance Ordinance.

Reasons for Recommendation:

On January 24, 2012, the Board received a presentation from Pattie Chelseth, on behalf of the Food Rights Coalition, regarding a "Local Food and Community Self-Governance Ordinance." The purpose of the ordinance was to express concern over the overregulation of local food production, primarily by the federal and state governments. The Board expressed general support for the aims of the group. But, County Counsel noted some concerns with the proposed ordinance, mainly around its purported effects on the application of state and federal law within the County. The Board's formal action was to direct Supervisors Briggs and Santiago to prepare a resolution of general support to be brought back to the Board for adoption. However, from the discussion, I believe it was clear that County Counsel was authorized to work with the Food Rights Coalition and try to resolve the issues with the ordinance so that an ordinance could be considered by the Board.

Since that meeting, I have been working with Pattie Chelseth and others to see if we could agree upon the form of an ordinance which would express the sentiments of the Food Rights Coalition, while satisfying the legal concerns expressed by County Counsel. The attached ordinance is the result of that process and is presented for consideration by the Board. The ordinance places a self-imposed restriction on the ability of the County to establish licensing and inspection requirements of what are termed “family farms.” It should be noted that the definition of family farms is quite restrictive. It basically refers to farms which: (1) consist of one or more adjacent parcels which serves as the primary residence of the owner/operator of the farm; (2) sell only products produced on the farm; (3) sell only direct to patrons for home consumption, not resale; (4) all sales are made on-site (not at farmers’ markets); (5) do not use motorist oriented sales devices such as storefronts or roadside stands; and, (6) use no off-site advertisement, media advertisement or advertisement by mailers or similar means. Essentially, it means a farm which maintains only one-to-one relationships with its patrons. It does not include farms which have commercial aspects to their operations. Excluded from the definition of family farm are any farms which sell to anybody for resale.

The County commits by this ordinance not to adopt any licensing or inspection requirements for family farms. It should be noted that the County does not now have any requirements for licensing or inspection of family farms. The ordinance does not exempt family farms from zoning requirements, general licensing and inspection requirements (*e.g.* building code requirements; business license requirements); animal control requirements; general nuisance requirements; and various agricultural protections (*e.g.* vine mealybug regulations). The ordinance does not prohibit case specific inspections where there is reason to believe that a health threat exists on the property. **It should be noted that this ordinance does not purport to abrogate or negate the effectiveness of any state or federal law in the County, and County personnel will continue to carry out their functions and duties to enforce such state and federal laws.**

The ordinance also commits not to prohibit what is termed “livestock boarding.” Livestock boarding is the housing of and caring for livestock owned by another person who retains the right to all or a portion of the livestock’s produce (*e.g.* milk, eggs, wool). As with family farms, the County currently has no restrictions on livestock boarding. Again, it must be consistent with zoning and general requirements. The ordinance does not have any effect on the applicability of state or federal law in the County.

The ordinance generally states the desire of the Board of Supervisors the local food producers and processors (*i.e.* those producing food on family farms as defined by the ordinance) be allowed to conduct their activities without licensure or inspection by state agencies. The County

agrees to oppose, through lobbying and other lawful means, efforts to adopt state legislation or regulations which impose licensing or inspection requirement upon local food producers and processors. The ordinance states that the County may, but is not obligated to, challenge such legislation or regulations in court in appropriate cases.

Thus, the ordinance represents a compromise. It states a strong preference for the state not to regulate local food producers, and backs that up with a self-imposed restriction on County regulations of such activities, while not entering the arena of purporting to tell the state and federal governments what regulations they may make applicable in the County.

Fiscal Impact:

None.

Action to be Taken After Adoption:

Staff will monitor the situation and call to the Board's attention any proposed state or federal legislation impacted by this ordinance.

We would be pleased to answer any questions the Board might have.

Respectfully submitted,

Louis B. Green
County Counsel

LBG/stl

Att.

Cc: Chief Administrative Officer
Asst. Chief Administrative Officer
Dir. Of Environmental Management
Agricultural Commissioner
Dir. Of Development Services
Sheriff

S:\Bd of Supervisors\Agenda Transmittals\Local Food and Community Self-Governance Ordinance