

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS

ACTION AGENDA SUMMARY

DEPT: Agricultural Commissioner *David Bernacchi*

BOARD AGENDA # B-9

Urgent Routine

AGENDA DATE July 15, 2014

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval to Introduce and Waive the First Reading of an Ordinance Adding Chapter 9.48 to the Stanislaus County Ordinance Code Concerning the Purchase and Sale of Walnuts

STAFF RECOMMENDATIONS:

Introduce and waive the first reading of an ordinance adding Chapter 9.48 to the Stanislaus County Ordinance Code concerning the purchase and sale of walnuts.

FISCAL IMPACT:

In Fiscal Year 2013-2014, the Agricultural Commissioner spent approximately \$10,000 conducting surveillance and inspections in an attempt to deter walnut theft. If this ordinance is approved, it is anticipated that a similar amount will be required for the initial year the ordinance is in place, registering and verifying small walnut growers. It is projected that subsequent years will see a reduction in the amount of time required to be spent by the Agricultural Commissioner in this effort. There are no fees associated with this ordinance.

BOARD ACTION AS FOLLOWS:

No. 2014-383

On motion of Supervisor De Martini, Seconded by Supervisor Chiesa and approved by the following vote.

Ayes: Supervisors: O'Brien, Chiesa, Withrow, Monteith, and Chairman De Martini

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION: INTRODUCED AND WAIVED THE FIRST READING OF ORDINANCE C.S. 1152

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No. ORD-55-S-12

Approval to Introduce and Waive the First Reading of an Ordinance Adding Chapter 9.48 to the Stanislaus County Ordinance Code Concerning the Purchase and Sale of Walnuts

DISCUSSION:

Background/History

Within Stanislaus County, the walnut industry ranks 5th in farm gate value at \$213.6 million and supports thousands of jobs. The easy access, value per nut (approximately \$0.06/nut), lack of traceability, and the ability to buy and consolidate small lots make walnuts a targeted commodity among thieves. The theft of walnuts from orchards has been an ongoing concern and the current high price being offered for walnuts heightens the fear that walnut theft will increase during the upcoming season. A survey conducted by the Agricultural Commissioner in 2013 found that 46% of the respondents had seen evidence of possible theft on their property and 59% felt that a walnut theft ordinance would be effective in preventing walnut theft.

In January of 2014, the Chairman of the Board directed the Agricultural Commissioner to work with the Agricultural Advisory Board to draft an ordinance to address the increasing problem of walnut theft. The Agricultural Advisory Board formed a subcommittee with representatives from the walnut industry, law enforcement, Agricultural Advisory Board members and County staff to draft an ordinance. A public night meeting was held on May 21, 2014 to discuss the ordinance with the general public and members of the walnut industry. Approximately 30 people were in attendance and all were in support of the ordinance with a few stating they felt it did not go far enough. On June 2, 2014 the Agricultural Advisory Board approved a draft ordinance and recommended approval by the Board of Supervisors.

Five counties in California: Butte, Glen, Kings, Tehama, and Tulare, currently have adopted ordinances aimed at deterring the theft of walnuts. Members of the walnut industry, as well as agricultural officials in those counties, have stated that they feel the ordinances are having a positive effect in preventing the theft of walnuts. The key components of these ordinances are the establishment of a walnut buying period, outside of which walnuts may not be purchased by non-processing buying operations, and a requirement of proof of ownership for walnuts in a person's possession.

The Ordinance

The proposed Stanislaus County ordinance (Attachment 1) will require that any person, unless exempted, who buys, sells, or possesses raw, unprocessed walnuts for commercial purposes obtain and maintain a proof of ownership certificate approved by the Agricultural Commissioner. Existing state law requires a proof of ownership if a person is in possession of over 25 pounds of produce. This ordinance expands upon that requirement by requiring additional information on the proof of ownership document. Small growers who produce less than 2,000 pounds of walnuts per year will be required to obtain a verified small growers certificate if they are moving nuts into the trade channels. Growers can use other documents such as a Restricted Materials Permit or a certified producer certificate for proof of ownership. The ordinance will exempt walnuts transported directly by a grower from the location where the walnuts are grown to a commercial packing or processing facility.

Approval to Introduce and Waive the First Reading of an Ordinance Adding Chapter 9.48 to the Stanislaus County Ordinance Code Concerning the Purchase and Sale of Walnuts

The proposed Stanislaus County ordinance will also establish a walnut buying period that will commence after commercial harvesting is complete and end on April 30th the following year. This is the only time non-processing walnut buying operations may purchase walnuts. The walnut buying period will be declared by the Agricultural Commissioner after consulting members of the walnut industry.

The ordinance provides that any person violating the provisions of the ordinance may be subject to civil penalties levied by the Agricultural Commissioner and/or a misdemeanor violation. Any person charged with a violation shall receive notice of the nature of the violation and be granted an opportunity to be heard and present evidence on their behalf prior to the fine being levied.

POLICY ISSUES:

Approval of this action supports the Board of Supervisors' priority of A Strong Agricultural Economy/Heritage by deterring the theft of walnuts.

STAFFING IMPACT:

The Agricultural Commissioner's office will have the primary responsibility for implementation, oversight and enforcement of this ordinance.

CONTACT:

Milton O'Haire, Agricultural Commissioner

Telephone: (209) 525-4730

ORDINANCE NO. C.S. _____

PURCHASE AND SALE OF WALNUTS

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS, STATE OF CALIFORNIA ORDAINS AS FOLLOWS:

Section 1. Chapter 9.48 of the Stanislaus County Code is added to read as follows:

9.48.010 Short Title

The ordinance codified in this Chapter may be cited as the “Stanislaus County Purchase and Sale of Walnuts Ordinance.”

9.48.020 Authority, Purpose, and Intent

In Chapter 8 of Part 1 of Division 1 of the Food and Agricultural Code, commencing with section 851, the legislature established minimal requirements concerning agriculture theft prevention. This Chapter is adopted pursuant to Article XI, Section 7 of the California Constitution, which authorizes the county to exercise the police power of the state by adopting regulations promoting the public health, public safety, and the general welfare of its citizens, and pursuant to Food and Agricultural Code section 866. In this Chapter Stanislaus County establishes additional requirements regarding the transportation and identification of the walnuts, including establishing a walnut buying period. It is the purpose and intent of this Chapter to establish a means of verifying ownership of walnuts in order to prevent and deter theft and to provide a means for local enforcement of the laws and regulations pertaining to the purchase and sale of walnuts.

9.48.030 Definitions

Except where the context otherwise requires, the following definitions shall govern the construction of this Chapter:

- A. "Agricultural Commissioner" means the Agricultural Commissioner of Stanislaus County and designated representatives.
- B. "Buyer" means an individual or entity engaged in the purchase of walnuts, and who is licensed to engage in such business by the State.

- C. "Gleaning" means the process through which nuts, such as walnuts, remaining on the ground following the grower's completion of the harvest are gathered.
- D. "Grower" means the person who has personally, or through the employment of others, grown and harvested walnuts.
- E. "Non-processing walnut buying operation" means any buyer of walnuts that have not been dried or processed and who does not have on-site processing.
- F. "Person" means any individual, firm, partnership, joint venture, corporation or other entity who possesses, buys, transports or sells walnuts as a principal or as an agent of another.
- G. "Proof of ownership" means:
 - 1. If the possessor of the walnuts is the grower of the walnuts, proof that the walnuts were grown by that grower. Proof of ownership in this context shall mean documents or information sufficient to verify that the possessor is the grower of the walnuts.
 - 2. If the possessor is a verified small grower, proof of ownership shall mean a small grower's certificate.
 - 3. If the possessor of the walnuts is someone other than the grower, a completed proof of ownership certificate in a form approved by the agricultural commissioner. The certificate utilized for this purpose shall be signed by the possessor of the walnuts and signed by the person who sold the walnuts to the person in possession.
- H. "Seller" means a person who sells or provides or attempts to sell or provide walnuts to a buyer or other person.
- I. "Verified small grower" means any grower who grows and harvests less than two thousand pounds of in-shell walnuts annually, and obtains a small grower's certificate issued by the agricultural commissioner.
- J. "Walnut buying period" means the period commencing the day after the date declared by the agricultural commissioner, after consultation with members of the walnut industry, to be the end of the harvest of walnuts. During this period non-processing walnut buying operations within Stanislaus County may lawfully purchase and receive walnuts that have not been dried or processed. Such period shall be proclaimed by the agricultural commissioner seventy-two hours in

advance by press release and posted on the County website, and shall last until April 30 of the following calendar year.

- K. "Walnuts" means walnuts, of the English (*Juglans regia*) varieties grown in California, of any quantity, in a raw and unprocessed form.

9.48.040 Proof of Ownership Certificates, Inspection, Registration and Retention

- A. Every person who buys, sells, or possesses raw and/or unprocessed walnuts for commercial purposes, shall obtain and maintain proof of ownership, unless exempted in section 9.48.120. Proof of ownership shall be in the form of a proof of ownership certificate, small grower's certificate or other permit, order or certificate as approved by the agricultural commissioner.
- B. The buyer is responsible for making sure all the requisite information on the applicable certificate is obtained and the certificate is complete. The proof of ownership certificate or small grower's certificate shall not be valid as proof of ownership unless signed by both the person in possession of the walnuts and by the person from whom the possessor obtained the walnuts.
- C. Any person in possession of walnuts as a result of gleaning, undertaken with the permission of the grower, and who intends to sell the walnuts for commercial purposes, shall have a proof of ownership certificate(s).
- D. The proof of ownership certificate forms or small grower's certificate shall be issued directly to growers by the agricultural commissioner. Any grower who sells or otherwise transfers possession of any walnuts for commercial purposes to a gleaner or a buyer shall complete and sign a proof of ownership certificate and deliver it to the gleaner or the buyer at the time of transfer of possession to that gleaner or that buyer. The grower shall keep a copy of each proof of ownership certificate delivered to a gleaner or to a buyer for two years. The original proof of ownership certificate shall accompany the walnuts to which it pertains, while the walnuts are in any person's possession, while being transported, and until ultimately sold to a processor. Proof of ownership certificates will be used only to establish ownership for the prevention and deterrence of theft of walnuts.
- E. Upon probable cause to believe that walnuts are in the unlawful possession of any person, the agricultural commissioner or any peace officer may inspect the walnuts and request that the proof of ownership be provided. The possessor of the walnuts shall permit inspection of the walnuts and the corresponding proof of

ownership certificate(s), or alternative proof. If the possessor is the grower of the walnuts, or their employee or agent, such person shall provide information sufficient to verify that fact.

- F. To facilitate inspection by the agricultural commissioner, non-processing walnut buying operations shall register with the agricultural commissioner. These buyers shall keep all walnuts purchased or possessed for commercial purposes at an authorized location and/or facility, until transported for resale or processing. The buyers required to register with the agricultural commissioner shall designate a processor(s), to which sales will be made.
- G. Following any sale of the walnuts by the buyer to the designated processor, the proof of ownership certificate(s), or alternative written proof, and any records pertaining to the resale of the walnuts to which the proof of ownership certificate(s) apply, shall be retained by the buyer for a period of two (2) years from the date of such sale.

9.48.050 Falsification of Proof of Ownership

It is unlawful for any person to knowingly falsify, or cause the falsification of, any proof of ownership certificate(s) or other document presented as evidence of a person's proof of ownership of any walnuts.

9.48.060 Walnut Buying Period

Walnuts that have not been dried or processed shall not be sold to, provided to, purchased by, or received by a non-processing walnut buying operation except during the walnut buying period established by the agricultural commissioner in accordance with this Chapter.

9.48.070 Walnut Buying Period—Exception for verified small growers

- A. Any grower who grows and harvests less than two thousand pounds of in-shell walnuts annually, shall request that the agricultural commissioner inspect their growing premises, and issue a small grower's certificate verifying that the grower grows and harvests less than two thousand pounds of in-shell walnuts annually. Such certificate shall be valid for one year.
- B. Notwithstanding section 9.48.060, verified small growers may sell walnuts that they have grown and harvested, not to exceed the amount specified in that year's small grower's certificate, which is issued by the agricultural commissioner, at any time with a small grower's certificate.

9.48.080 Vehicle Inspection of Walnuts

Any peace officer may, upon having probable cause to believe that a person is in unlawful possession of walnuts, stop and search and inspect the walnuts and request proof of ownership. If an agricultural commissioner has probable cause to believe that any walnuts are unlawfully possessed, he or she may request a peace officer to stop a vehicle for inspection.

9.48.090 Seizure and Retention of Seized Walnuts

Upon reasonable belief that a person is in unlawful possession of walnuts in violation of this Chapter, the walnuts, or any portion of which are reasonably determined to be unlawfully possessed, may be seized and held by the agricultural commissioner or any peace officer. The seized walnuts shall be held at such place and in such manner as is reasonable under the circumstances, and until disposed of as provided in section 9.48.110. The agricultural commissioner or peace officer shall record the date and place of seizure, information pertaining to the person from whom the walnuts were seized; and, to the extent practical, the quantity, type, condition and other information pertaining to the walnuts.

9.48.100 Investigation to Ascertain Ownership

The agricultural commissioner or any peace officer may investigate to ascertain the ownership of any walnuts that have been held pursuant to this Chapter. If the lawful owner is identified and located the walnuts shall be released to the owner or agent. The agricultural commissioner may require reasonable payment, not to exceed the value of the walnuts, to cover costs incurred for storage of the walnuts.

9.48.110 Disposition of the Seized Walnuts

- A. If for any reason the walnuts cannot be released to the rightful owner within 48 hours after coming into the custody of the agricultural commissioner, the agricultural commissioner may sell the walnuts by public auction or by private sale, at fair market value to a commercial packer or processor of the walnuts. Prior to any such sale the agricultural commissioner shall determine that the sale of the seized walnuts will not impair the prosecution of any person who is or may be charged with a crime related to these walnuts.

- B. All of the proceeds derived from the sale of the seized walnuts shall be held by the agricultural commissioner for a period of not less than six months. During this time the lawful owner of the walnuts must submit satisfactory proof of ownership to obtain possession of the proceeds. The agricultural commissioner

may require payment by the owner, of an amount sufficient to cover the costs incurred for the storage and sale of the walnuts. This amount shall not exceed the value of the walnuts. If after a period of not less than six months, no demand is made or satisfactory proof of ownership is not supplied, the agricultural commissioner shall deposit the proceeds of the sale of the seized walnuts in the general fund of the County.

- C. If the seized walnuts remain unsold after being offered for sale pursuant to this section, the agricultural commissioner may donate the walnuts to a nonprofit organization.
- D. If the seized walnuts are unfit for human consumption, the agricultural commissioner may destroy them.

9.48.120 Exemptions

This Chapter shall not apply to the following:

- A. In-shell walnuts transported directly by a grower or the grower's agent from the farm or ranch where the walnuts are grown to a commercial packing or processing facility, provided that the possessor shall provide proof of ownership upon request by the agricultural commissioner or any law enforcement officer.
- B. Walnuts that are in possession of any person as a result of gleaning undertaken with the permission of the grower and are not to be sold for commercial purposes.
- C. Walnuts transported and accompanied by a valid permit, disposal order, or certificate issued by the agricultural commissioner for any reason other than to comply with this Chapter.

Notwithstanding the exemptions provided in this section, the agricultural commissioner and any peace officer may inspect any containment/possession of walnuts as provided in this Chapter, and may require that sufficient information be provided to permit verification that an exemption applies in the particular circumstances.

9.48.130 Violations

Any person violating any of the provisions of this Chapter may be found guilty of a misdemeanor, which shall be punishable as provided in Chapter 1.36 of this County Code. This punishment is separate and independent from any other punishment or penalty provided for under any other law or regulation, including forfeiture.

9.48.140 Civil Penalties and Remedies

Food and Agricultural Code section 885 provides that in lieu of pursuing a civil prosecution, the agricultural commissioner may levy a civil penalty against any person violating the provisions of this Chapter. The civil penalty for each violation shall be, for a first violation, a fine of not more than five hundred dollars (\$500). For a second or subsequent violation, the fine shall be not less than one hundred dollars (\$100), nor more than one thousand dollars (\$1,000). Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be given an opportunity to be heard. This shall include the right to review the evidence and a right to present evidence on his or her own behalf.

Subdivision (e) of section 43003 shall apply to any fine levied pursuant to this section for purposes appealing the initial hearing. Subdivision (f) of section 43003 shall apply to any decision where a fine is levied and judgment to be entered.

9.48.150 Cumulative Remedies

All remedies provided for herein are cumulative and not exclusive, and are in addition to any other remedy or penalty provided by law.”

Section 2. This Ordinance shall take effect thirty (30) days from and after the date of its passage and before the expiration of fifteen (15) days after its passage it shall be published once with the names of the members voting for and against the same, in the Modesto Bee, a newspaper published in the County of Stanislaus, State of California.

Upon motion of Supervisor _____, seconded by Supervisor _____, the foregoing ordinance was passed and adopted at a regular meeting of the Board of Supervisors of the County of Stanislaus, State of California, this _____ day of _____, 2014, by the following called vote:

AYES: Supervisors:

NOES: Supervisors:

ABSENT: Supervisors:

Jim De Martini, Chairman of the Board of Supervisors of the County of Stanislaus, State of California

ATTEST:

CHRISTINE FERRARO TALLMAN,
Clerk of the Board of Supervisors of the
County of Stanislaus, State of California

By _____
Elizabeth A. King
Assistant Clerk

APPROVED AS TO FORM:
JOHN P. DOERING
COUNTY COUNSEL

By *Deirdre McGrath*
Deirdre McGrath
Deputy County Counsel

STANISLAUS COUNTY ORDINANCE C.S. 1152

NOTICE IS HEREBY GIVEN that on July 29, 2014, at 9:00 a.m., or as soon thereafter as the matter may be heard, the Stanislaus County Board of Supervisors will meet in the Basement Chambers, 1010 10th St., Modesto, CA, to consider the adoption and the waiving of the second reading of Ordinance C.S. 1152.

Ordinance C.S. 1152 adds Chapter 9.48 to the Stanislaus County Code concerning the purchase and sale of walnuts. This ordinance strengthens the requirements of proof of ownership already required in sections 861-866 of the California Food and Agriculture Code. These provisions include:

1. Any person selling unprocessed "English Walnuts" in quantities of 2,000 pounds or less must provide proof of ownership in a form approved by the Agricultural Commissioner.
2. Proof of ownership for growers of less than 2,000 pounds of walnuts may be: a Small Growers Certificate provided by the Commissioner, certified producer's certificate, pesticide use permit or other such legal documents.
3. Non-processing buyers may only purchase walnuts during the walnut buying period and must register with the Agricultural Commissioner.
4. The walnut buying period shall be annually declared by the Agricultural Commissioner after consultation with industry and will run from the declared end of harvest to April 30 of the following year.
5. Growers of walnuts in excess of 2,000 pounds whose nuts are shipped directly to a processor, or gleaners who gather walnuts which will not enter into commerce are exempted from this ordinance.
6. Anyone found in violation of this ordinance would be guilty of a misdemeanor, or subject to an administrative penalty levied by the Agricultural Commissioner.

ADDITIONAL NOTICE IS GIVEN that this Ordinance will take effect thirty (30) days from and after the date of its passage.

NOTICE IS FURTHER GIVEN that a full copy of the proposed ordinance is available for review in the Clerk of the Board Office, 1010 10th Street, Suite 6700, Modesto, CA. For further information, contact Milton O'Haire, Agricultural Commissioner, at 209-525-4730, or at 3800 Cornucopia Way, Ste B, Modesto, CA.

BY ORDER OF THE BOARD OF SUPERVISORS

DATED: July 15, 2014

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk
of the Board of Supervisors
of the County of Stanislaus,
State of California

BY:

A handwritten signature in black ink, appearing to read "Pam Villarreal", is written over a solid horizontal line.

Pam Villarreal, Deputy Clerk of the Board



Stanislaus County Purchase and Sale of Walnuts Ordinance

July 15, 2014



Background

- Walnut Theft
- 2013 Survey
- Chairman of BOS Directive
- Agricultural Advisory Board



Ordinance

- Establishes a better system for tracking the purchase of small lots of walnuts
- Enhances existing FAC requirements (Proof of Ownership)



- All must have a Proof of Ownership approved by Ag Commissioner
- Non-Processing Walnut Buyers: “Accumulators” must register with the Agricultural Commissioner, set-up in approved locations, state which processor they sell to



- Small Growers < 2,000 lbs. (30 trees) must obtain a small grower's certificate if nuts will enter trade channels, e.g. through gleaner, accumulator
- Walnut Buying Period: restricts the purchase of walnuts by non-processing buyers to after harvest



- Exempts growers that take walnuts directly to a processor
- Exempts nuts in possession of gleaners not sold in commercial trade



- Violations/Civil Penalties
- No fees
- Estimated implementation costs:
\$10,000
- No additional staff requested
- Staff Recommendation



Questions?

**DECLARATION OF PUBLICATION
(C.C.P. S2015.5)**

**COUNTY OF STANISLAUS
STATE OF CALIFORNIA**

I am a citizen of the United States and a resident Of the County aforesaid; I am over the age of Eighteen years, and not a party to or interested In the above entitle matter. I am a printer and Principal clerk of the publisher of THE MODESTO BEE, printed in the City of MODESTO, County of STANISLAUS, State of California, daily, for which said newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of STANISLAUS, State of California, Under the date of February 25, 1951, Action No. 46453; that the notice of which the annexed is a printed copy, has been published in each issue there of on the following dates, to wit:

Jul 22, 2014

STANISLAUS COUNTY
ORDINANCE C.S. 1152
NOTICE IS HEREBY GIVEN that on July 29, 2014, at 9:00 a.m., or as soon thereafter as the matter may be heard, the Stanislaus County Board of Supervisors will meet in the Basement Chambers, 1010 10th St., Modesto, CA, to consider the adoption and the waiving of the second reading of Ordinance C.S. 1152. Ordinance C.S. 1152 adds Chapter 9.48 to the Stanislaus County Code concerning the purchase and sale of walnuts. This ordinance strengthens the requirements of proof of ownership already required in sections 861-866 of the California Food and Agriculture Code. These provisions include:
1. Any person selling unprocessed "English Walnuts" in quantities of 2,000 pounds or less must provide proof of ownership in a form approved by the Agricultural Commissioner.
2. Proof of ownership for growers of less than 2,000 pounds of walnuts may be: a Small Growers Certificate provided by the Commissioner, certified producers certificate, pesticide use permit or other such legal documents.
3. Non-processing buyers may only purchase walnuts during the walnut buying period and must register with the Agricultural Commissioner.
4. The walnut buying period shall be annually declared by the Agricultural Commissioner after consultation with industry and will run from the declared end of harvest to April 30 of the following year.
5. Growers of walnuts in excess of 2,000 pounds whose nuts are shipped directly to a processor, or gleaners who gather walnuts which will not enter into commerce are exempted from this ordinance.
6. Anyone found in violation of this ordinance would be guilty of a misdemeanor, or subject to an administrative penalty levied by the Agricultural Commissioner.
ADDITIONAL NOTICE IS GIVEN that this Ordinance will take effect thirty (30) days from and after the date of its passage. NOTICE IS FURTHER GIVEN that a full copy of the proposed ordinance is available for review in the Clerk of the Board Office, 1010 10th Street, Suite 6700, Modesto, CA. For further information, contact Milton O'Haire, Agricultural Commissioner, at 209-525-4730, or at 3800 Cornucopia Way, Ste B, Modesto, CA. BY ORDER OF THE BOARD OF SUPERVISORS. DATED: July 15, 2014.
ATTEST: CHRISTINE FERRARO TALLMAN, Clerk of the Board of Supervisors of the County of Stanislaus, State of California. BY: Pam Villarreal, Deputy Clerk of the Board
Pub Dates Jul 22, 2014

I certify (or declare) under penalty of perjury That the foregoing is true and correct and that This declaration was executed at

MODESTO, California on

July 22nd, 2014

(By Electronic Facsimile Signature)

Cynthia A. Villarreal