

AN INTERIM ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, ESTABLISHING STANDARDS AND PROCESSES FOR THE VOLUNTARY CONSTRUCTION OF FENCING FOR THE PROTECTION OF AGRICULTURAL CROPS IN THE UNINCORPORATED AREA OF MONTEREY COUNTY

County Counsel Summary

Food safety is of paramount local, state, national and international importance. One means of improving food safety is to minimize the opportunity for the intrusion of wildlife into the agricultural fields in the County. Current County ordinances allow fences up to six feet in height on property lines without a building permit and require building permits and establish setbacks from property lines for fences greater than six feet in height. To control intrusion of wildlife more effectively pending development of more permanent regulations, this Ordinance establishes interim regulations to allow construction of fencing of up to eight feet in height on property lines in the agriculturally-zoned areas of the County. This is an urgency Ordinance to protect public health and safety and requires a four-fifths vote of the Board of Supervisors for adoption. This Ordinance takes effect immediately upon adoption.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. FINDINGS AND DECLARATIONS

A. Pursuant to Article XI of the California Constitution, the County of Monterey may adopt and enforce ordinances and regulations to protect and promote the public health, safety, and welfare of its citizens.

B. A health emergency in 2006 stemming from contamination of spinach brought to light the potential for food safety to be affected by the intrusion of wildlife into agricultural fields. To provide better immediate protection of agricultural fields pending further study of regulations to remove potential hazards to food safety, agricultural operations need the immediate ability to fence the perimeter of fields to prevent wildlife from entering the fields.

C. While this ordinance is intended to prevent potential hazards to food safety from the intrusion of wildlife into agricultural fields, it is also recognized that wildlife and natural habitats are an important resource of the County and State. Review and further refinement of this ordinance shall include evaluations of measures to reduce and avoid potential adverse effects to wildlife.

D. Fences of only six feet in height are only minimally effective in controlling the intrusion of wildlife into the fields. Fencing of eight feet in height is proven to be a more effective barrier. This ordinance establishes interim regulations and standards for the voluntary construction of fencing up to eight feet in height in the agriculturally zoned areas of the County to reduce the potential for wildlife intrusion into agricultural fields.

E. County ordinances require building permits and establish setbacks from property lines for fences greater than six feet in height. In some cases fences may need to be greater than six feet to adequately protect the fields. Under current County ordinances, fences greater than six feet are required to maintain property line setbacks consistent with the requirements for detached, non-habitable accessory structures and are subject to a building permit. Those requirements may delay or deter the installation of the fencing. Certain areas, particularly along the Salinas River,

are subject to regulations from the State of California pertaining to development in the riparian corridor and other environmentally sensitive areas.

F. After discussion with California State Department of Fish and Game and the agricultural community, the County has developed criteria that, if met, will allow for fences in excess of six feet but not exceeding eight feet in height to be installed without meeting current County requirements for building setbacks.

G. In view of the foregoing, it is necessary for the County to further study the potential impacts of wild animals on food safety and to consider appropriate permanent regulations to facilitate installation of fencing to control intrusion of wildlife into agricultural fields. During the development of these regulations, there is an immediate need to protect agricultural fields and the public health and safety by allowing fencing in excess of six feet in height without property line setbacks. By enacting these interim regulations, the County is assuring to the greatest extent possible that the County's ordinances regulating fences will not impede the timely construction of fencing that may be necessary to protect agricultural crops from wildlife. Due to the need to implement these provisions during this growing season to reduce the safety risk to lettuce, leafy greens and other food products and thereby better assure the public's health and safety, it is necessary to adopt this ordinance on urgency, emergency basis. Specifically:

1. The growing season in Monterey County for lettuce and leafy greens is from the end of December through mid-October. In order to afford immediate protection to crops during the current growing season, it is necessary to put in place these interim regulations, pending development of permanent regulations.
2. There are five primary species of concern for food safety: wild pigs, deer, cattle, goats and sheep.
3. Under the Revised Commodity Specific Food Safety Guidelines for the Production and Harvest of Lettuce and Leafy Greens (dated April 18, 2007) administered by the California Department of Food and Agriculture ("the Agreement"), shippers or handlers are required to conduct risk assessments of ranches prior to having growers plant and harvest specific lots on their respective ranches. The risk assessments take into account location of production and environmental risks including the potential for animal intrusion. Corrective action and recommendations to fence off fields are included in the safety recommendations of the Agreement. Evidence of animal intrusion results in a series of requirements, including discing down the affected crops.
4. Shippers and handlers and their customers have written into their own Good Agricultural Practices (GAPs) for growers to consider buffers and fences as a method of excluding wildlife and cattle from their ranches used to produce lettuce and leafy greens.

H. Pursuant to Government Code section 25123, the Board of Supervisors may, by a four-fifths vote, adopt an urgency ordinance to take effect immediately for the immediate preservation of the public peace, health, or safety if the ordinance contains a declaration of facts constituting the urgency. Government Code section 65858 also permits the Board of Supervisors to adopt by a four-fifths vote an interim ordinance as an urgency measure to protect the public safety, health, and welfare prohibiting uses that may be in conflict with zoning regulations that are under study. Specific actions necessary to prevent or mitigate an emergency are statutorily exempt from environmental review under the California Environmental Quality Act.

I. There is a current and immediate threat to the public health, safety, and welfare requiring adoption of this urgency ordinance and without adoption of this ordinance, approval of building permits in compliance with existing ordinances would result in a threat to public health, safety, and welfare. Approval of interim regulations for fences greater than six feet in height,

while the Board of Supervisors study and consider more permanent regulations to alleviate potential hazards to food safety, is essential to protection of the public health, safety, and welfare.

SECTION 2. APPLICABILITY

A. The provisions of this interim ordinance shall be applicable in the following zoning districts in the unincorporated area of Monterey County:

1. Farmlands (F)
2. Coastal Agricultural Preservation (CAP/CZ)
3. Agricultural Conservation (AC/CZ)

B. The provisions of this ordinance shall also apply to lands zoned Permanent Grazing (PG) and Rural Grazing (RG) where lettuce and leafy greens are grown.

C. Where the provisions of this interim Ordinance may conflict with other County regulations, the provisions of this Ordinance shall prevail.

SECTION 3. REGULATIONS

A. Allowed use: Fences not exceeding eight feet in height that meet the standards set forth in Subsection C below are an allowed use in all of the zoning districts listed in Subsection 2.A above.

B. Building permit required: Fences between six and eight feet in height shall meet the standards set forth in Subsection C below. All such fences shall require building permits, which shall be issued ministerially subject only to the standards of Subsection C below.

C. Standards:

1. Fences shall not exceed eight feet in height at any point as measured from the ground to the top of the fence material, not including fence posts. Fences adjacent to roadways shall be constructed in accordance with the standards in the Highway Design Manual for sight distance.
2. Fence material shall be of an open material of wire mesh, wire strands or both.
3. Fences shall not be constructed in the floodway unless certification by a registered civil engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the 100-year flood discharge. "Floodway" as used herein shall mean the floodway delineated by the Federal Emergency Management Agency.
4. Fences up to eight feet in height must comply with state and federal law, including but not limited to state and federal regulations that pertain to protection of river and stream zones, wildlife, and special status species. Applicants for fences of up to eight feet in height shall be responsible for ensuring that all such fences comply with state and federal law, including state and federal regulations that pertain to protection of river and stream zones, wildlife, and special status species. This interim ordinance does not exempt applicants from compliance with such requirements as may be imposed by other public agencies.
5. Fences shall include at least one appropriately designed and located wildlife exit gate. Design standards shall be provided by the Monterey County Planning Department. Advisory materials on effective fence design may be provided to the County by the Department of Fish and Game.

SECTION 4. ENFORCEMENT

The provisions of this ordinance shall be enforced pursuant to Section 1.20 of the Monterey County Code.

SECTION 5. SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 6. ACTIONS HELD IN ABEYANCE.

If any person, firm, or corporation violates the terms of this Ordinance and any legal or equitable action is authorized either by the Board of Supervisors, County Counsel, or District Attorney, or is in fact filed by said agencies for said violation, no other action shall be taken on any application filed by or on behalf of said person, firm, or corporation, until the litigation or administrative proceeding or special proceeding has been fully and finally resolved.

SECTION 7. EFFECTIVE DATE

Pursuant to Section 1 of this Ordinance, the Board declares that this Ordinance is necessary as an emergency measure for preserving the public health and safety. This Ordinance shall take effect immediately for the reasons set forth in the findings and declarations and shall expire 45 days thereafter unless extended pursuant to law.

SECTION 8. PUBLIC HEARING

The Board hereby sets, and the Clerk to the Board shall notice, a public hearing for Board consideration of an extension of this Ordinance or a modification or amendment to this Ordinance for July 31, 2007 or as soon thereafter as practical, in the Board Chambers of the County.

PASSED AND ADOPTED this 10th day of July 2007 by the following vote:

AYES:

NOES:

ABSENT:

David Potter, Chair,
Monterey County Board of Supervisors

ATTEST:

LEW BAUMAN
Clerk of the Board

By _____
Deputy

APPROVED AS TO FORM:

LEROY W. BLANKENSHIP
Assistant County Counsel