

# DEPARTMENT OF AGRICULTURE/WEIGHTS & MEASURES

**Andrew F. Smith**

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## MEMORANDUM

TO: Board of Supervisors

FROM: Andrew F. Smith, Agricultural Commissioner/Sealer of Weights & Measures

DATE: May 7, 2024

RE: Impacts of Prohibition on Concentrated Animal Feeding Operations Ballot Initiative

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### Summary

The Sonoma County Department of Agriculture/Weights & Measures (AWM) has a mission to promote and protect agriculture, the health and safety of our community, environment and the economy through education and the enforcement of laws and regulations. The department functions as the local administrative body for the California Department of Food and Agriculture (CDFA), the United States Department of Agriculture (USDA), and the California Department of Pesticide Regulations (CDPR). Through cooperative agreements, contracts, and mandates the department administers numerous programs and provides services to public, agricultural, and business stakeholders in the county of Sonoma. Whenever new policies and regulations are proposed or enacted, which are intended to be administered by the department of Agriculture/Weights & Measures (AWM), it is imperative that we evaluate the impacts of that policy and its implementation with respect to current and anticipated workload. This ballot initiative to prohibit agricultural businesses defined as Concentrated Animal Feeding Operations (CAFOs) from operating in the county of Sonoma represents an unfunded mandate restricting the type of livestock agriculture that landowners may practice. It represents a completely new program that is anticipated to have ongoing expenses reaching or exceeding \$1.6 million in county general fund support. It is not eligible for current state funding mechanisms that support the programs and services administered by Agricultural Commissioners in the state. The activities and anticipated staffing impacts of each are identified hereafter.

### Activities and Impacts

The following activities and workload are identified in the text of the proposed ordinance in sections E, F G, and H respectively.

#### E. Existing CAFOs; Phase-Out Period.

1. Notwithstanding anything in this Section, **Pre-Existing CAFOs shall be deemed a nonconforming use and shall be required to register on a public database maintained by the Sonoma County Department of Agriculture, Weights and Measures.**

Identify all pre-existing CAFOs in the county: This would require AWM to locate and identify husbandry practices for nearly every livestock operation in the county unincorporated area to determine if they meet the definition of a CAFO according to the initiative definition from EPA. Anticipated to need up to 5 FTEs in the inspector classification positions in order to understand the

initial and ongoing workload over time. Consideration shall be made for the biosecurity requirement of individual facilities which require 72 hours between visits and the need to clean equipment.

Create a public-facing database: for registering identified CAFOs subject to the initiative to monitor identified CAFOs over time. It is unclear as to what type of information should be populated in this database or how it is intended to be used both during and after the phase out period identified in Section E of the initiative. The charter, build, and maintenance of a database is anticipated to cost \$50K to build, and \$20K a year to maintain.

2. **Pre-Existing CAFOs shall be given a phase-out period of no more than three (3) years from the effective date** of this Section to modify or terminate their operations such that they are no longer classified as a CAFO. **Proof of this shall be provided to the Agricultural Commissioner prior to the end of the phase-out period.** During the phase-out period, Pre-Existing CAFOs shall not increase the number of animals in confinement.

This action will require initial, regular and ongoing periodic inspections throughout the three-year phase out period, the development of forms and workflows. This is in order to identify benchmarks for the number of animals to determine CAFO status, monitor over time, and ensure ongoing compliance with the ordinance. In addition to inspection, staff will need to review ownership records to determine aggregate operations identified in section C of the initiative language.

3. **The Agricultural Commissioner or his/her designee shall inspect closed CAFOs within one month of receiving such proof of termination from a Pre-Existing CAFO to ensure that all relevant operations have ceased or been appropriately modified.**

This action will require initial (one-month), as well as follow-up inspections, documentation of compliance to ensure that “all relevant operations have ceased or been appropriately modified”. According to this statement and based on the definition provided in the initiative this would require reduction in the number of animals, reduction in the stabling or confinement and feeding or maintenance of animals for fewer than 45 days or more in any 12-month period, increase in crops, vegetation, forage growth, or post-harvest residues being sustained in the normal growing season over any portion of the lot or facility, or not being identified as a point-source of pollution by the permitting authority (Regional Water Quality Control Boards).

4. **Any Pre-Existing CAFO** taking advantage of the phase-out period mentioned in Subsection (E)(1) **shall comply with Best Management Practices set forth by the Agricultural Commissioner, which shall be developed in collaboration with a California-based humane society and/or a California-based society for the prevention of cruelty to animals.** The foregoing shall be in addition to any requirements imposed on CAFOs by County, State and Federal environmental protection agencies.

Development of a Best Management Practices (BMP) document: for publication and sharing. This is identified to be developed in consultation with an SPCA or animal welfare organization. The Department would consider trying to work with our state agency partner in CDFA. Likely would require a bidding and contracting period and associated costs. This would take approximately 6 months to complete and require at least one inspector classification to accomplish once a contracting partner is found. Additionally, it is anticipated that the SPCA or an animal welfare organization will require being paid to help develop the BMP document. This would result in additional costs to the county general fund.

5. **The Agricultural Commissioner shall establish a system to receive, investigate, and retain complaints related to this Section.**

Establishment of a system for processing and responding to complaints: This will include a workflow development for handling and responding to complaints, assigning cases to inspection staff, reporting, issuance of violations, due process proceedings. This work is assumed to require an inspector classification to monitor and respond to this complaint system and maintain a case assignment log to monitor responses. The county currently uses Accela software for permit management. The licensing for this platform is facing increases in cost for county use and total cost is unknown at this point in time.

**F. Violations.**

1. **Any person who continues to operate a Pre-Existing CAFO after the three (3) year phase-out period elapses, or who establishes or maintains a CAFO following the enactment of this Section, or who violates any other provision of this Section, shall be subject to a civil penalty of one thousand dollars (\$1,000) for the first offense, five thousand dollars (\$5,000) for the second offense, and ten thousand dollars (\$10,000) for the third and any subsequent offenses, payable to the Sonoma County General Fund.**
2. **Notwithstanding the foregoing, the Agricultural Commissioner or his/her designee may also pursue on behalf of the county any other civil or administrative penalty or remedy otherwise available for failure to comply with the requirements of this Section.**
3. **Each day, or portion thereof, during which the violation occurs shall be treated as a separate offense.**

Enforcement: Given that this ordinance is identified as resting in county zoning code, Chapter 26, is assumed that both the Ag Commissioner and the Permit Sonoma Director would have the authority to administratively enforce the ordinance. The administrative enforcement provisions contained in Chapter 1 apply by default to any code section, ordinance, rule of the county, so we would anticipate following the standard County Code Section 1-7.3 administrative abatement procedure (with the option of bypassing to litigation).

4. **Nothing herein shall impact the standing of other interested parties, or the availability of remedies under other applicable federal, state and local laws, regulations and ordinances, including the remedies afforded any person set forth in Subsection I of this Ordinance.**
5. **The availability of funds under this Section shall not restrict any obligation by the County to provide retraining and employment assistance opportunities to CAFO workers.**
6. **For the purposes of this Subsection (F), "person" includes any owner, officer, or director of a CAFO. No penalties shall be issued to individuals solely for working at a CAFO operation unless they also meet one of the foregoing criteria.**

**G. Retraining for CAFO Workers**

**The County shall provide a retraining and employment assistance program for current and former**

**CAFO workers during the phase-out period in Subsection (E)(1) and for an additional one year thereafter.** The purpose of this program is to provide individuals who worked at a CAFO at the time of this Ordinance's enactment or who worked at a CAFO at any point during the phase-out period **with the training needed to work at a legally acceptable agricultural operation or in a different job sector. This program shall be administered by the Agricultural Commissioner or his/her designee,** along with qualified experts in employment law, animal rights, farm labor, and best agricultural practices. Such experts shall provide proof of their qualifications, which shall be subject to public disclosure. **The County's obligation under this Subsection (G) to provide retraining and employment assistance to CAFO workers shall not depend on the fines and penalties collected pursuant to Subsection (F).**

Retraining for CAFO workers: Per the initiative language this program shall be administered by the Agricultural Commissioner or his/her designee. This will require a bid process and contracting with outside agencies and businesses to provide training on topics outside of the subject matter expertise of the Agricultural Commissioner or their staff in AWM. This will pull resources away from funded programs and services of the department and would require a Department Program Manager, Administrative Aide, and at least 2 Senior Office Assistants to develop and manage a training program, contracts, accounting work including at least one Accounting Tech position. This will also require language access considerations including contracts with interpretation and translation services.

The ordinance mentions an "Employment Assistance Program." This requirement is not well defined, but must serve the purpose of providing training and possibly additional resources toward enabling former CAFO workers to be employed in a different job sector. Regardless of the scope, it is outside the expertise of AWM to provide job retraining and employment assistance and so the department would need to contract with outside agencies or service providers in order to fulfill this requirement.

#### **H. Annual Report**

The **Agricultural Commissioner or his/her designee shall prepare an annual report** containing the following information: the **number of CAFOs currently operating** in unincorporated Sonoma County; the **number of CAFO termination notices received in the previous year**; the **number of CAFO termination inspections conducted in the previous year**; the **number of CAFO workers in the retraining program**; and the **amount of penalties assessed and collected in the previous year**. Such report **shall be presented to the Board of Supervisors at a duly-noticed public hearing** and posted on the Agricultural Commissioner's webpage, beginning one year after the effective date of this Section and **continuing until all CAFOs, as defined herein, have been phased out** of the County.

Preparation of a report and regular calendar board item will necessitate approximately 100 hours of staff time to prepare in addition to the lead time and the cost of getting a regular public hearing item for the Board of Supervisors' agenda.

#### **Conclusion**

This ballot initiative will create an unfunded mandate to prohibit a majority of our county's poultry and dairy livestock populations in the county according to the Coalition to End Factory Farming's report on the Proposed Prohibition of Concentrated Animal Feeding Operations and the farms they have identified. This amounts to the removal of an estimated 2.9 million animals, which would lead to significant reductions in the amount of organic milk and dairy products produced locally. Administering this ordinance and program would create a significant cost burden for the county's general fund and would require substantial increases in staffing capacity in AWM to

carry out the initiative's assigned actions. Additionally, AWM would need to contract with outside agencies and service providers to perform some of the tasks that are outside the department's areas of expertise.