

*This is the text of a proposed initiative filed with the County Clerk of Sonoma County on June 21, 2004.*

## **Sonoma County Ordinance to Prevent Agricultural and Environmental Contamination from Genetically Engineered (Transgenic) Organisms.**

### **Section 1. Name.**

The name of this Ordinance shall be “The Sonoma County Ordinance to Prevent Agricultural and Environmental Contamination from Genetically Engineered (Transgenic) Organisms”.

### **Section 2. Authority.**

This Ordinance is adopted and enacted pursuant to the authority granted to the people of Sonoma County by all relevant state and federal Constitutions and laws, including, but not limited to, the following:

(a) The California Constitution, Article XI, Section 7, which states: “A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”

(b) The California Constitution, Article I, Section 1, which states: “All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy.”

(c) The California Constitution, Article II, Section 1, which states: “All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require.”

(d) The people’s historical memory of Article XII, Section 8, found in the California Constitution for almost a century, from 1879 to 1972, which stated: “...the exercise of the police power of the State shall never be so abridged or construed as to permit corporations to conduct their business in such a manner as to infringe the rights of individuals or the general well-being of the state.”

(e) The United States Constitution, and the 9<sup>th</sup> Amendment to the United States Constitution, which recognize and secure the fundamental and inalienable right of people to govern themselves.

(f) The 14<sup>th</sup> Amendment to the United States Constitution, which states: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...”

### **Section 3. Purpose and Findings.**

The People of Sonoma County, desiring to protect our agricultural heritage, our natural environment, our public health, and our inalienable constitutional rights, deem it necessary to prevent the introduction of transgenic crops, plants, seed, trees, fish, livestock, and other organisms into our county. We feel compelled to take such action for the following principal reasons:

(a) The United States government has failed to establish adequate protocols and safeguards for the research, testing, and monitoring of transgenic crops, fish, trees animals, and other organisms. None of the three federal agencies charged with protecting our agriculture, ecosystems and public health – the USDA, EPA and FDA – have required enough basic scientific review of transgenic technologies to assure no harm will occur. None of these agencies have required adequate public research or testing, peer review of industry claims of safety, or multi-generational studies of the impacts on public, environmental or agricultural health from long-term exposure to transgenic organisms.

(b) The State of California has no regulatory structure in place to monitor where or which transgenic crops are grown, or what their short or long-term impacts on public, environmental or agricultural economic health might be. Rather than assume responsibility for sorting out the opportunities from the dangers of transgenic organisms on our farms and in our foods, the State of California has solely relied on inadequate federal oversight.

(c) While it is preferable that sound agricultural and environmental policy be coordinated at the state and federal levels, in lieu of meaningful protections from either, the People of Sonoma County, with this ordinance, are assuming the responsibility of protecting the health and welfare of our people, farms, environment and economy. A decision to release transgenic organisms into our farms and ecosystems cannot be a decision made by just a few private biotechnology corporations, but must be a public decision, decided after rigorous, public scientific review and extensive public debate.

(d) The United Nations Biosafety Protocol has 85 signatory nations and became international law on September 11, 2003. This protocol, not signed by the United States, regulates the transboundary movement of transgenic organisms. At the core of this Protocol is the “Precautionary Principle”, which requires that when a new technology poses threats of serious or irreversible damage to human or

environmental health, the burden of proof is on the promoter of the technology to prove scientifically that the technology is safe, not on the public or governments to prove that the technology is unsafe. The People of Sonoma County are choosing to implement the Precautionary Principle regarding the introduction of transgenic technologies into our farms and environment.

(e) While as of 2004 there have been only four transgenic crops commercialized at a large scale (soy, cotton, canola and corn), over the next five years, according to the biotechnology industry, there will be dozens of fruits, vegetables, nut, ornamental and other transgenic crops approved for commercialization by the federal government. Many of these new transgenic varieties will be in crops which are grown in Sonoma County.

(f) We seek to prevent national and international market losses for products from Sonoma County's farms, ranches and fisheries which would likely result from genetic contamination by transgenic organisms of our fresh produce, poultry, wild caught fish, and our value-added agricultural products such as wine, dairy products, juices and processed foods. Currently, dozens of California's significant trading partners have legal bans on the planting of transgenic crops, the importation of products containing transgenic DNA or ingredients, and/or requirements that all imported products containing transgenic ingredients be labeled as such. Those countries currently include the European Union (25 countries), Japan, China, South Korea, Russia, Brazil, Mexico, Australia, Indonesia, and others.

(g) We seek to protect the right to farm, so that those farmers who choose to farm without transgenic crop varieties can do so without having their crops and seed stocks genetically contaminated by pollen or seed brought by wind, insects, birds, animals, water, trucks or farm machinery from neighboring farms with transgenic varieties. If we allow transgenic varieties of crops to be introduced into our county, those farmers who choose to not use transgenic varieties will in time, very likely suffer genetic contamination of their crops and seed stocks, and suffer loss of their markets for non-transgenic products. For the many certified organic producers in our county, such contamination may result in a loss of organic certification, and loss of premium sales for organic products.

(h) We seek to protect public and private property owners from expensive eradication and environmental clean-up associated with decontamination of their land from transgenic organisms brought by pollen, or seeds brought by wind, insects, birds, animals, water, trucks or farm machinery.

(i) We seek to protect public and private property owners from the liability associated with their land or animals becoming contaminated with transgenic

organisms, which may then become vectors to contaminate other neighbors' land or livestock through cross pollination or seed dispersal (in plants or trees) or interbreeding (in animals, insects or fish).

(j) We seek to protect the wild salmon, oyster, crab, urchin, and other ocean fisheries and ecosystems of the Pacific Ocean, from contamination by transgenic varieties being developed for private "fish farms". Because past and current "fish farms" in the US have often accidentally – and illegally – released large amounts of farmed fish into our public rivers and oceans, we must assume that new, transgenic varieties in "fish farms" will inevitably escape into our public rivers and ocean.

(k) We seek to protect the public health of the People of Sonoma County from any negative impacts by exposure to poorly tested transgenic organisms. Such exposure might occur through transgenic pollen inhaled or eaten, or to increased exposure to increasingly toxic herbicides and pesticides used to kill new "super weeds" and "super bugs" – those farm pest species which quickly evolve and developed herbicide tolerance or pesticide resistance due to continuous exposure to transgenic crops bred to express an herbicide tolerance or a pesticide.

(l) We seek to protect Sonoma County's extraordinary diversity of native ecosystems – and the plants, fish, trees, and soil flora and fauna found in them – from the possibility of irreversible genetic contamination by species-related transgenic organisms. Such "back-crossing" of transgenic DNA from a transgenic crop to a native relative of the domesticated crop has already been observed in corn, cotton and canola.

#### **Section 4. Prohibitions.**

(a) It is unlawful for any person to engage in the propagation, cultivation, raising, growing, sale or distribution of transgenic organisms in Sonoma County.

(b) It is unlawful for any corporation or other legal entity to engage in the propagation, cultivation, raising, growing, sale or distribution of transgenic organisms in Sonoma County.

(c) Any act in violation of paragraph (a) or (b) of Section 4 of this Ordinance is declared to constitute an imminent endangerment of agricultural health and environmental health and as such is declared a public nuisance.

(d) It is beyond the authority of the governments of the United States or the State of California, or any of their agencies, to deny the right of the people of Sonoma County to prevent Agricultural and Environmental contamination from transgenic organisms.

**Section 5. Exemptions.**

(a) Nothing in this Ordinance shall make it unlawful for a person or other legal entity in Sonoma County to purchase, sell, distribute or use human food or animal feed which contains transgenic ingredients (eg: with transgenic corn, soy or cotton seed, or their derivatives).

(b) Nothing in this Ordinance shall make it unlawful for state or federally licensed medical or agricultural research institutions, medical or agricultural laboratories or medical or agricultural manufacturing facilities in Sonoma County to conduct licensed medical or agricultural research or production involving transgenic organisms whose reproduction in the environment can be physically contained (following USDA protocols and guidelines at the BSL-3-Ag containment level or greater as outlined in USDA Departmental Manual No. 9610-001).

(c) Any person or other legal entity seeking to use transgenic organisms under the exemption allowed in paragraph (b) shall provide the Agricultural Commissioner with proof of compliance with BSL-3-Ag containment level practices or greater.

**Section 6. Definitions.**

(a) "Transgenic organism" means an organism whose DNA is modified by transgenic manipulation. Such organisms are sometimes referred to as "genetically engineered organisms" ("GE organisms") or "genetically modified organisms" ("GMOs").

(b) "Transgenic manipulation" means the extraction of DNA from an organism (the "donor organism") followed by its introduction into the same or a different organism (the "recipient organism") in such a manner that the introduced DNA can be transmitted through the reproduction of the recipient organism. "Transgenic manipulation" does include methods utilized to reduce the viability or fertility of the recipient organism as a means of "biological containment", including but not limited to so-called "genetic use restriction technologies" or "terminator technology". "Transgenic manipulation" does not include traditional breeding, conjugation, traditional fermentation (such as in the making of beer, wine, bread and yogurt), hybridization, in-vitro fertilization, or tissue culture.

(c) "DNA" means deoxyribonucleic acid.

(d) "Organism" means any living thing.

(e) "Physically contained" means following USDA protocols and guidelines at the BSL-3-Ag Containment Level or greater as outlined in USDA Departmental

Manual No. 9610-001: "USDA Security Policies and Procedures for Biosafety Level-3 Facilities".

(f) "Agricultural Commissioner" means the Agricultural Commissioner of Sonoma County.

(g) "Person" means a human being.

(h) "Legal entity" means a corporation, limited liability company, partnership, sole proprietorship, firm, club, government agency, or other form of legal organization used by persons to engage in the acts of farming, ranching, fishing, forestry, research, or any other activity.

(i) "Board of Supervisors" means the Sonoma County Board of Supervisors.

### **Section 7. Enforcement.**

(a) The Agricultural Commissioner is hereby designated to enforce this Ordinance and shall exercise such powers as legal and necessary to carry out and effectuate the purposes and provisions of this Ordinance.

(b) Within five (5) business days of having reason to suspect that a violation of the prohibitions in Section 4 of this Ordinance has occurred, the Agricultural Commissioner shall give written notice to the suspected person or legal entity that any organisms in violation of this Ordinance constitute a public nuisance and are subject to confiscation and destruction, and that a violator is subject to the administrative and abatement costs and the civil penalties set forth in this Ordinance.

(c) Any person who, or legal entity which, receives notification under paragraph (b) shall have five (5) business days to respond to that notification with evidence that such organisms are not in violation of this Ordinance, or that such organisms have been destroyed or entirely removed from Sonoma County.

(d) Within two (2) business days of receiving notification under paragraph (c), a notified person may request an administrative hearing before the Agricultural Commissioner, to be held prior to the lapse of the five (5) business days referred to in paragraph (c). Such a hearing shall provide all due process legal safeguards.

(e) Within fifteen (15) business days of having given written notice to a person or legal entity pursuant to paragraph (b), the Agricultural Commissioner shall determine if the organisms are in violation of this Ordinance, or if they have been destroyed or entirely removed from Sonoma County. The Agricultural

Commissioner shall consider evidence submitted under paragraphs (b), (c) and (d), and any other evidence that is presented or which is relevant to the determination of such violation.

(f) Upon making a determination that a violation of this Ordinance exists, the Agricultural Commissioner shall thereafter promptly take all actions necessary to ensure that such organisms are confiscated and/or destroyed.

(g) The Agricultural Commissioner shall submit an annual report to the Sonoma County Board of Supervisors describing all complaints received and enforcement actions taken under this Ordinance, including information regarding the types and amounts of organisms in violation of this Ordinance, the locations of any violations, and the steps that have been taken to destroy or remove such organisms. In this report, the Agricultural Commissioner shall also include a list of all persons or legal entities who have sought and received exemptions to the prohibitions in this Ordinance as allowed in Section 5, paragraphs (b) and (c). This report shall be made available to the public by the Sonoma County Board of Supervisors. This provision (g) shall not have effect in cases of violations, or suspected violations, of this Ordinance where the Agricultural Commissioner is bound by a court order or by state law to not disclose facts in an ongoing investigation.

(h) The prohibitions in Section 4 of this Ordinance on engaging in the propagation, cultivation, raising, growing, sale or distribution of transgenic organisms in Sonoma County shall supersede any privileges and immunities set forth in the Sonoma County Code which may exempt agricultural or other activities from nuisance abatement.

(i) Any person who, or legal entity which, knowingly violates this Ordinance shall be held responsible for administrative and abatement costs associated with actions taken by the Agricultural Commissioner mandated by this Ordinance, including but not limited to:

1. Costs of investigation;
2. Costs of removing and destroying transgenic organisms, and of cleanup and restoration of the environment;
3. Cost of county employee enforcement time;
4. Court and legal costs;
5. Costs of monitoring compliance.

(j) Any person who, or legal entity which, knowingly violates this Ordinance shall also be fined a civil penalty of \$1,000 for each violation, payable to the County of Sonoma.

(k) Persons who, or legal entities which, possessed transgenic organisms prohibited by this Ordinance prior to the effective date of this Ordinance shall be in violation of this Ordinance and are subject to the enforcement provisions in this Section. Such persons or legal entities, however, shall not be assessed the administrative and abatement costs of paragraph (i), nor fined the civil penalties of paragraphs (j), provided they 1) report to the Agricultural Commissioner the fact of their possession of such prohibited transgenic organisms within 20 days of the passage of this Ordinance, and 2) can demonstrate to the Agricultural Commissioner's satisfaction that they have destroyed or removed from Sonoma County such prohibited transgenic organisms within 30 days of the passage of this Ordinance.

(l) The provisions of this Ordinance are cumulative, and nothing in this Ordinance affects any other remedies any individual or government entity may have against any person resulting from a violation of this Ordinance.

### **Section 8. Citizen Suits.**

This Ordinance hereby creates and vests a right in all citizens of the County of Sonoma to sue the Agricultural Commissioner to compel compliance with this Ordinance. All actions shall be filed in the California Superior Court, County of Sonoma. Citizen-Plaintiffs shall provide written notice to the Agricultural Commissioner of their intent to sue, and shall give the Agricultural Commissioner five (5) business days to initiate the enforcement of this Ordinance. Action by the Agricultural Commissioner to initiate enforcement of this Ordinance following the notice by a Citizen-Plaintiff shall supplant the Citizen-Plaintiff's right to file a citizen suit. However, if the action by the Agricultural Commissioner does not demand injunctive relief and sufficient damages for a violation of this Ordinance, the right of the Citizen-Plaintiffs to initiate a suit shall not be impaired by the actions of the Agricultural Commissioner.

### **Section 9. Changes and Amendments.**

(a) Changes or amendments to this Ordinance may be made by the Sonoma County Board of Supervisors by unanimous vote with all five Supervisors present and voting.

(b) Four (4) or more weeks before a final vote on a proposed change or amendment of this Ordinance, the proposed changes or amendments allowed in paragraph (a) shall be read aloud at a noticed, public hearing of the Board of Supervisors. At that hearing, the Supervisors shall insure that sufficient time be allocated for all public comment.

(c) Sections and provisions of this Ordinance that are not changed or amended by an act of the Board of Supervisors as allowed in paragraphs (a) and (b) remain fully valid and legal.

**Section 10. Sunset.**

(a) The legal enforceability of this Ordinance shall expire ten (10) years after its date of passage, provided the Board of Supervisors do not extend the legal enforceability of this Ordinance as allowed in paragraph (b).

(b) Twelve (12) or more weeks before the expiration date of this Ordinance, the Board of Supervisors shall read aloud the text of this Ordinance at a noticed, public hearing of the Board of Supervisors. At that hearing, the Supervisors shall insure that sufficient time be allocated for all public comment on the merits of renewing the legal enforceability of this Ordinance for another ten (10) year term. Four (4) or more weeks before the expiration date of this Ordinance, and after the hearing provided in this paragraph (a) has been held, the Board of Supervisors may, by a majority vote, extend the legal enforceability of this Ordinance for another ten (10) year term.

**Section 11. Severability.**

The provisions of this Ordinance are severable. If any section, clause, sentence, word, part or provision of this Ordinance or its application is held illegal, invalid or unconstitutional, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

***Questions or Comments about the Initiative?***

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***Want to Get Involved in Getting this Initiative Passed?***

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