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CITY ATTORNEY

REPORT NO. R 1 4 - 0 4 2 7

NOV 20 2014

REPORT RE:

**DRAFT ORDINANCE ADDING ARTICLE 3 TO CHAPTER XIX OF THE
LOS ANGELES MUNICIPAL CODE REGULATING THE PROPAGATION,
CULTIVATION, RAISING, GROWTH AND SALE OF GENETICALLY
MODIFIED ORGANISMS**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 13-1374

Honorable Members:

Pursuant to a Motion (Koretz-O'Farrell-Bonin) that was subsequently incorporated into the Arts, Parks, Health, Aging and River Council Committee's request on October 21, 2014, relative to prohibiting the growth of genetically modified (GM) crops within City limits, this Office has prepared and now transmits for your consideration the enclosed draft ordinance, approved as to form and legality, which adds Article 3 to Chapter XIX of the Los Angeles Municipal Code regulating the propagation, cultivation, raising, growth and sale of genetically modified organisms (GMO).

Background

On October 21, 2014, the City Council's Arts, Parks, Health, Aging and River Committee requested the City Attorney to prepare and present an ordinance which would prohibit the growth of GM crops within City limits, including a ban on: (1) the planting of GM seeds; (2) the sale of GM seeds by vendors; (3) the sale of any seeds that could potentially be contaminated by other GMOs; and (4) the sale of GM fruit trees and plants.

Recently, the California State Assembly passed a new assembly bill (AB 2470), which will take effect on January 1, 2015. AB 2470 includes language that would preempt the City of Los Angeles from regulating GMO seeds and crops unless the City enacts its own ordinance prior to the assembly bill's effective date.

Specifically, the bill would add Section 52334 to the Food and Agricultural Code, to read:

52334. Notwithstanding any other law, on and after January 1, 2015, a city, county, or district, including a charter city or county, shall not adopt or enforce an ordinance that regulates plants, crops, or seeds without the consent of the secretary. An ordinance enacted before January 1, 2015, shall be considered part of the comprehensive program of the department and shall be enforceable.

Given the limited time available to take action, we have prepared the draft ordinance as requested and modeled it on similar ordinances passed by cities and counties primarily in California and Oregon. This ordinance implements a ban on the propagation, cultivation, raising or growth of GMOs in the City. The ordinance also makes it unlawful for any person to intentionally or negligently cause or allow any GMOs from within or outside of the City to enter, drift or be dispersed into and within the City, in such a way as to risk genetic contamination of natural organisms within the City's jurisdiction. Finally, the ordinance makes it unlawful for any person to sell the seeds, plants or trees of any GMO within the City except as authorized by law.

The draft ordinance exempts state or federally licensed medical research institutions, medical laboratories or medical manufacturing facilities, as well as educational or scientific institutes, including but not limited to the University of California, Los Angeles and the University of Southern California, which are working with GMOs, provided that such activities are conducted under secure, enclosed indoor laboratory conditions with reasonable care taken to prevent release of any part of any GMO, especially but not limited to pollen, to the outside environment. Reasonable care is defined in the ordinance to mean the level of care consistent with the professional skill ordinarily provided by researchers working in the same or similar locality under the same or similar circumstances.

The draft ordinance further exempts licensed health practitioners working with GMOs for the purpose of providing diagnosis, care or treatment to any human patient. Farms or other agricultural operations that currently propagate, cultivate, raise or grow GMOs within the City limits are exempt for the first 12 months from the effective date of this Ordinance. The draft ordinance states that all existing GMO crops must be harvested, destroyed and removed from the City of Los Angeles by January 1, 2016.

The draft ordinance makes any violation a misdemeanor. In addition to any criminal proceeding, the draft ordinance provides the City Attorney with the authority to enforce the ordinance through a civil action brought in a court of competent jurisdiction. Enforcement of the ordinance is left to the discretion of the City Council, which shall designate one or more persons to administer and enforce the provisions of this ordinance, referred to as the Code Enforcement Officer. The Code Enforcement Officer may exercise such powers as may be necessary or convenient to carry out and effectuate the purposes and provisions of the ordinance.

Council Rule 38 Referral

A copy of the draft ordinance was sent, pursuant to Council Rule 38, to the Chief Administrative Officer with a request that all comments, if any, be presented directly to the City Council when this matter is considered.

California Environmental Quality Act (CEQA)

Section 15308 of the CEQA Guidelines exempts actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedure for the protection of the environment. You may comply with CEQA by determining that your action is exempt under Section 15308.

If you have any questions regarding this matter, please contact Deputy City Attorney Michael Dundas at (213) 978-8147. He or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By 

DAVID MICHAELSON
Chief Assistant City Attorney

DM:MD:as
Transmittal

ORDINANCE NO. _____

An ordinance adding Article 3 to Chapter XIX of the Los Angeles Municipal Code regulating the propagation, cultivation, raising, growth and sale of Genetically Modified Organisms.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. A new Article 3 is added to Chapter XIX of the Los Angeles Municipal Code to read as follows:

ARTICLE 3

GENETICALLY MODIFIED ORGANISMS

SEC. 196.00. PURPOSE.

The City of Los Angeles, desiring to protect the natural environment, the private property rights of land owners, and the health, safety and welfare of those who live, work and visit the City, deems it necessary to restrict the cultivation and sale of genetically modified crops and other organisms (GMO) within the City limits.

The City of Los Angeles further declares that it is a goal of the City to fashion an agricultural landscape that is as sustainable as the natural eco-system. By establishing Los Angeles as a "GMO-Free Zone," the City seeks to protect the availability of healthy, local and non-GMO foods, including vegetable varieties with cultural heritage or heirloom designation.

More than 90 scientists from the European Network of Scientists for Social and Environmental Responsibility recently released a statement saying, "As scientists, physicians, academics, and experts from disciplines relevant to the scientific, legal, social and safety assessment aspects of genetically-modified organisms (GMOs), we strongly reject claims by GM seed developers and some scientists, commentators and journalists that there is a 'scientific consensus' on GMO safety and that the debate on this topic is 'over.' We feel compelled to issue this statement because the claimed consensus on GMO safety does NOT exist."

The City has legitimate concerns about people's allergic reactions to products containing GMOs, the negative environmental impacts of increased pesticide use, the creation of pesticide-resistant super bugs and super weeds and the problems resulting from mono-cropping. As a City, we should protect seed diversity, so that if one strain of a plant fails, another will still be available. For instance, in 1903, there were 307 varieties of sweet corn in existence. By 1983, only 12 existed. That is the wrong direction for an environment that needs to remain resilient.

The City of Los Angeles has an additional responsibility to protect the City's backyard and community farmers from the threats of contamination by GMO crops. GMO pollen in wind-pollinated plants like corn and beets spreads without regard to property lines and can contaminate organic crops, thereby destroying the value of the organic designation. In many cases across the country, GMO crops have contaminated non-GMO varieties without the consent of farmers, putting them at economic risk due to lost markets, and under threat of litigation from GMO seed patent and license holders.

GMO crops that have not been approved for sale are being grown throughout the country in "field trials." But these crops are not static. Pollen gets picked up by the wind and insect pollinators and is carried great distances. Recently, the United States Department of Agriculture (USDA) announced that unapproved GMO wheat had been found growing at a Montana State University research center. A separate USDA report stated that GMO wheat was recently discovered by a farmer in Oregon. The report said that the USDA did not know where the wheat originated. The discovery of GMO wheat in Oregon caused area farmers to lose their export markets.

Over the past several years, GMO contamination has already jeopardized millions of dollars in exports for American farmers, including exports through the Ports of Los Angeles and Long Beach, where goods are shipped to international markets, including Asia. The City of Los Angeles has a strong interest in protecting those markets. By taking a public stand, the City is declaring protections for its port exports and port jobs, and would join over 60 countries around the world that have taken some form of action to label or prohibit the growth of GMO crops, including the European Union, Mexico, China, Japan, Bangladesh, India and Russia.

With the recent decline in the amount of farmland across the country, the City and State have focused on the importance of growing and promoting our local food systems. The City of Los Angeles is moving to allow residents to grow edible plants and fruit trees in our parkways. The Los Angeles Food Policy Council has been developing its Healthy Neighborhood Markets network ensuring that fresh, healthy fruits and vegetables are available in underserved communities. The City is working toward the implementation of Assembly Bill 551, which creates Urban Agriculture Incentive Zones where property owners who allow their land to be used for agricultural purposes can receive tax breaks. Similarly, last year, Governor Jerry Brown signed into law Assembly Bill 1616, which allows certain low risk foods, primarily made from fruits and vegetables, known as Cottage Foods, to be produced in private homes and sold to the public.

Planting genetically engineered crops is not an accepted method of farming among certified organic farmers who use organic farm practices. In order to acquire and maintain their organic certification, these farmers must comply with USDA regulations and certifications, which explicitly ban the use of genetically engineered organisms. Therefore, farming practices that utilize GMOs compromise the welfare of the organic farmers in the City of Los Angeles. Our urban farmers and our Cottage

Food movement need the protection of a GMO-Free zone, allowing those operators to thrive now and into the future.

SEC. 196.01. DEFINITIONS.

The following definitions shall apply to this Article:

A. **“DNA”** means deoxyribonucleic acid, the double-stranded material naturally found within living cells which contains the genetic code and transmits hereditary patterns.

B. **“RNA”** means ribonucleic acid, the single-stranded material naturally found within living cells which transmits genetic information from DNA to proteins produced by the cell.

C. **“Organism”** means any living thing, exclusive of human beings and human fetuses.

D. **“Genetic Engineering”** or **“Genetically Engineered”** means modification of living plants and organisms by genetic altering, engineering or amending DNA using recombinant DNA technology, including but not limited to: (1) gene deletion; (2) gene doubling; (3) introducing a foreign gene; (4) changing the position of genes; (5) cell fusion (including protoplast fusion); (6) microencapsulation; (7) gene splicing; (8) hybridization techniques that overcome natural physiological, reproductive or recombination barriers, where the donor cells/protoplasts do not fall within the same taxonomic family, in a way that does not occur by natural multiplication or natural recombination; (9) “in vitro nucleic acid techniques,” including but not limited to recombinant DNA or RNA techniques that use vector systems; (10) techniques involving the direct introduction into the organisms of hereditary materials prepared outside the organisms such as microinjection, macro-injection, chemoporation, electroporation, microencapsulation and liposome fusion; and (11) any other technology or technique that results in an organism that contains genes from more than one species, or genes that are not naturally occurring. “Genetic Engineering” does not include traditional selective breeding, conjugation, fermentation, hybridization or normal in vitro fertilization.

E. **“Genetically Modified Organism”** means an organism, or the offspring of an organism, the DNA of which has been altered or amended through Genetic Engineering.

F. **“Plants”** and **“Crops”** are used interchangeably in this Article.

G. **“Seed”** means a living embryonic plant enclosed in a covering called the seed coat that can be developed into a seedling through germination

or another similar process. "Seed" does not include those whole non-living seeds or grains processed as food meant for human consumption.

H. "Person" means an individual, corporation, partnership, limited partnership, limited liability partnership, limited liability company, business trust, estate, trust, association, joint venture, agency, instrumentality or any other legal or commercial entity, whether domestic or foreign.

SEC. 196.02. PROHIBITION.

A. It shall be unlawful for any Person to propagate, cultivate, raise or grow a Genetically Modified Organism in the City of Los Angeles, or to allow, knowingly or negligently, such activities to occur on one's land within the City of Los Angeles, except as provided in Section 196.03.

B. It shall be unlawful for any Person to cause or allow, intentionally or negligently, any Genetically Modified Organisms from within or outside of the City of Los Angeles to enter, drift or be dispersed into and within the City of Los Angeles, in such a way as to risk genetic contamination of natural Organisms within the jurisdiction of the City of Los Angeles.

C. It shall be unlawful for any Person to sell the Seeds, plants or trees of any Genetically Modified Organism to any Person within the City of Los Angeles except as authorized by law. Nothing in this Article shall make it unlawful for a Person to sell Genetically Engineered human food, animal feed or other agricultural products that are biologically unable to reproduce through pollination or Seed dispersal.

D. Violation of this section shall constitute a misdemeanor.

E. Any act in violation of this section is declared to constitute a public nuisance.

SEC. 196.03. EXEMPTIONS.

A. State or federally licensed medical research institutions, medical laboratories or medical manufacturing facilities engaged in licensed medical production or medical research involving Genetically Modified Organisms are exempt from this Article, provided that such activities are conducted under secure, enclosed indoor laboratory conditions with reasonable care taken to prevent release of any part of any Genetically Modified Organism, especially but not limited to pollen, to the outside environment. Reasonable care is the level of care consistent with the professional skill ordinarily provided by researchers working in the same or similar locality under the same or similar circumstances.

B. Educational or scientific institutes, including but not limited to the University of California, Los Angeles and the University of Southern California, working with Genetically Modified Organisms are exempt from this Article provided that such activities are conducted under secure, enclosed indoor laboratory conditions with reasonable care taken to prevent release of any part of any Genetically Modified Organism, especially but not limited to pollen, to the outside environment. Reasonable care is the level of care consistent with the professional skill ordinarily provided by researchers working in the same or similar locality under the same or similar circumstances.

C. Licensed health practitioners working with Genetically Modified Organisms for the purpose of providing diagnosis, care or treatment to any human patient are exempt from this Article.

D. Farms or other agricultural operations that currently propagate, cultivate, raise or grow Genetically Modified Organisms are exempt for the first 12 months from the effective date of this Article. All existing Genetically Modified Organism crops must be harvested, destroyed or removed from the City of Los Angeles by January 1, 2016.

E. Any institution listed in Subsection (A) or (B) above that intentionally or negligently allows release of any part of Genetically Modified Organisms into the outside environment is in violation of this Article and subject to enforcement as set forth herein.

SEC. 196.04. ENFORCEMENT.

A. In addition to any criminal proceeding, the City Attorney shall have the authority to enforce this Article through a civil action brought in a court of competent jurisdiction.

B. Nothing in Section 196.03(D) shall be construed to permit any Person who is not already propagating, cultivating, raising or growing Genetically Modified Organisms in the City to begin to do so after this Article takes effect.

C. Nothing in Section 196.03(D) shall be construed to permit any Person who is already propagating, cultivating, raising or growing Genetically Modified Organisms in the City to propagate, cultivate, raise or grow any Genetically Modified Organisms not already living and established in the City, or otherwise to begin any new activity prohibited by Section 196.02 after this Article takes effect.

D. The City Council shall designate one or more persons to administer and enforce the provisions of this Article, herein referred to as the Code Enforcement Officer.