

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE 8 ("RECORDS OF OWNERSHIP OF NUT CROPS") OF CHAPTER 5 ("AGRICULTURE") OF PART VI ("BUSINESS REGULATIONS AND LICENSE") OF THE ORDINANCE CODE OF TULARE COUNTY

THE BOARD OF SUPERVISORS OF THE COUNTY OF TULARE ORDAINS AS FOLLOWS:

Section 1. ARTICLE 8 ("RECORDS OF OWNERSHIP OF NUT CROPS") OF CHAPTER 5 ("AGRICULTURE") OF PART VI ("BUSINESS REGULATIONS AND LICENSE") of the Ordinance Code of Tulare County is hereby amended to read in its entirety as follows:

ARTICLE 8. RECORDS OF OWNERSHIP OF NUT CROPS

6-05-8000 PURPOSE AND INTENT:

In Section 851, *et seq.*, of the Food and Agricultural Code the Legislature established minimal requirements concerning Agriculture Theft Prevention. This Article 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 Food and Agricultural Code 866. In this Article, Tulare County establishes additional requirements regarding the transportation and identification of nut crops, including establishing a walnut cash-buying period. It is the purpose and intent of this Article to establish a means of verifying ownership of specified agricultural commodities in order to prevent and deter theft of these commodities and to provide a means for local enforcement of laws and regulations pertaining to the purchase and sale of these commodities.

6-05-8010 DEFINITIONS:

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

(a) "Agent" means any Person that, on behalf of any Processor, contracts for or solicits the purchase of any agricultural commodity from a producer of the commodity, or that negotiates the purchase of any agricultural commodity on behalf of any Processor within Tulare County and who is licensed to engage in such business by the State.

(b) "Agricultural Commissioner" means the Agricultural Commissioner of Tulare County and his or her designated representatives.

(c) "Agricultural commodities" or "commodity" means any nut crop of any quantity.

(d) "Buyer" means any Person who obtains title to, possession or control of, or buys or agrees to buy any agricultural commodity within Tulare County.

(e) "Cash" means coin or currency of the United States, and does not include a check, money order, or other negotiable instrument.

(f) "Cash Buyer" means any Person who obtains title to, possession or control of, or buys or agrees to buy any agricultural commodity within Tulare County by paying to the seller the full agreed price in cash at the time of obtaining possession or control, or at the time of contracting for title to, or possession or control of any agricultural commodity, and who is licensed to engage in such business by the State.

(g) "Gleaner" means a Person who engages in gleaning within Tulare County.

(h) "Gleaning" means the process through which nuts remaining on the ground following the Grower's completion of the harvest are gathered with the permission of the Grower and accompanied by an approved Proof of Ownership Certificate or Small Grower's Certificate.

(i) "Grower" means the Person who has personally, or through the employment of others, grown and harvested an agricultural commodity within Tulare County.

(j) "Person" means any individual, firm, partnership, joint venture, corporation, limited liability company, trust, estate, or other entity possessing, buying, transporting, or selling an agricultural commodity within Tulare County and regulated under this Article.

(k) "Non-processing Walnut-Buying Operation" means a Buyer of walnuts that have not been dried or processed and which Buyer does not have a permanent form of on-site processing or does not operate a walnut processing facility and is compliant with Tulare County building and zoning and licensing requirements. A Non-processing walnut-buying operation is compliant when operating with pertinent State and County licenses and within the Walnut Cash Buying Period.

(l) "Processor" means a Person that operates a nut processing facility within Tulare County that has a permanent functioning form of processing on site, is compliant with Tulare County building, zoning, and licensing requirements, and who is licensed to engage in such business by the State.

(m) "Proof of ownership" means:

(1) If the possessor of the agricultural product is the Grower of the commodity, proof that the commodity was 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 commodity.

(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 agricultural commodity is other than the Grower of the possessed agricultural commodity, such as a Buyer, Cash Buyer, Gleaner, or Processor, a completed Proof of Ownership Certificate or Small Grower's Certificate signed by the possessor of the agricultural commodity and signed by the person who sold or otherwise conveyed the agricultural commodity to the person in possession.

(n) "Seller" means a Person who sells or attempts to sell an agricultural commodity within Tulare County to a Buyer or other Person.

(o) "Verified Small Grower" means any Grower who grows and harvests less than five hundred pounds of in-shell walnuts from no more than 5 trees annually within Tulare County and obtains a Small Grower's Certificate issued annually by the Agricultural Commissioner pursuant to this Article.

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

(q) "Walnut Cash Buying Period" means the annual period of time within Tulare County beginning with the declared conclusion of harvest of the Chandler variety of walnuts by the Agricultural Commissioner after consultation with a committee of walnut growers (approximately November 1), and ending on the following April 30. The Agricultural Commissioner shall announce the beginning date of the annual period 72 hours in advance by press release and such date shall be posted on the County's website.

6-05-8020 PROOF OF OWNERSHIP AND SMALL GROWER CERTIFICATES:

The Proof of Ownership Certificate utilized by a possessor of the agricultural commodity who is other than the Grower of the possessed commodity, or the Small Grower's Certificate, shall only be a form approved and issued by the Agricultural Commissioner and contain the following information:

(a) Name, address, telephone number, original thumbprint, and original signature of the Seller.

(b) Name, address, telephone number, and original signature of the Buyer.

(c) The vehicle license plate number of the Seller.

- (d) The driver's license number of Seller.
- (e) The weight of the agricultural commodity purchased.
- (f) The date and time of the transaction.
- (g) The variety and condition of the agricultural commodity.
- (h) Specific identification of the source of the commodity being sold. This shall mean, if the Seller is the Grower of the commodity, the address at which the product was grown. This shall mean, if the Seller is not the Grower of the commodity, the name and address and phone number of the Person from whom that Seller obtained the commodity, and, if known, the address where the commodity was grown.

It is the responsibility of a Buyer, Cash Buyer, or Gleaner to obtain the requisite information to permit completion of the original Proof of Ownership Certificate or Small Grower Certificate forms. The Proof of Ownership Certificate or Small Grower Certificate forms shall not be valid unless signed by both the Person in possession of the commodity and by the Person from whom the possessor obtained the commodity.

6-05-8030 PROOF OF OWNERSHIP CERTIFICATE AND SMALL GROWER CERTIFICATE: INSPECTION, PRESENTATION, AND RETENTION:

- (a) The Proof of Ownership Certificate and Small Grower Certificate forms shall be issued directly to Growers by the Agricultural Commissioner and retained with the agricultural commodity to which they pertain while the commodity is in any Person's possession, while being transported and until sold.
- (b) Upon probable cause to believe that any agricultural commodity is in the unlawful possession of any Person, the Agricultural Commissioner or any peace officer may inspect the commodity and request that proof of ownership be provided. The possessor of the commodity shall permit inspection of the commodity and of corresponding Proof of Ownership Certificates, or Small Grower's Certificate. If the possessor is a Grower, then the Grower shall provide information sufficient to verify that status. Upon reasonable notice, copies of Proof of Ownership Certificate or Small Grower's Certificate forms shall be provided. To facilitate inspection by the Agricultural Commissioner, the Buyer shall register with the Agricultural Commissioner on an annual basis and comply with Business and Professions Code section 12501.1. The Buyer shall purchase and keep the commodity at a place of business in compliance with the Tulare County Building and Planning/Zoning Ordinances, until transported for resale or other handling. At the time of registration, the Buyer shall designate a Processor, to which sales will be made.
- (c) Following any sale of the agricultural commodity by the Buyer, the Proof of Ownership Certificate or Small Grower's Certificate forms shall be retained by the Buyer for a period of two (2)

years from the date of such sale. Buyers shall also retain any records pertaining to the resale of agricultural products to which the Proof of Ownership Certificate or Small Grower's Certificate forms pertain for a period of two years.

6-05-8040 FALSIFICATION OF PROOF OF OWNERSHIP:

It is unlawful for any Person to knowingly falsify, or cause the falsification of, any Proof of Ownership Certificate, Small Grower's Certificate, or other document presented as evidence of a Person's proof of ownership.

6-05-8042 WALNUT CASH BUYING PERIOD AND PAYMENT FOR WALNUTS:

(a) Walnuts that have not been dried or processed shall not be sold to or by, provided to or by, purchased from or by, or received from or by a Cash Buyer or Non-processing Walnut-Buying Operation except during the annual Walnut Cash Buying Period established by the Agricultural Commissioner in accordance with this Article. Each Non-processing Walnut Buying Operation must have a State Cash Buyer license and County license to operate. Each such operation must pay the Seller in the form of cash during the Walnut Cash Buying Period in accordance with State law.

(b) Except during the annual Walnut Cash Buying Period, purchases and sales authorized by this Article must be paid for by check or money order only, which the Seller may collect on or after the tenth calendar day after the date of sale and which the Buyer shall not cash or otherwise negotiate for the Seller or any other Person.

(c) Except during the annual Walnut Cash Buying Period, no Person may post signs for or advertise in any way that it buys walnuts for cash, or operate a roadside stand or any other kind of business operation for purposes of buying walnuts for cash.

(d) Except during the annual Walnut Cash Buying Period, Non-processing Walnut-Buying Operations shall not operate within the boundaries of Tulare County.

6-05-8045 EXCEPTION FOR VERIFIED SMALL GROWERS:

(a) Any Grower who grows and harvests less than five hundred pounds of in-shell walnuts from no more than 5 trees annually may 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 five hundred pounds of in-shell walnuts from no more than 5 trees annually. Such certificates shall be valid for one year.

(b) Notwithstanding Section 6-05-8042, such Verified Small Growers may sell walnuts that they have grown and harvested, not to exceed the amount specified in that year's Small Grower Certificate, to a Non-processing Walnut-Buying Operation at any time of the year with a Small

Grower's Certificate. However, such purchases made outside of the Walnut Cash Buying Period must be paid for by check or money order only, which the Seller may collect on or after the tenth calendar day after the date of sale and which the Buyer shall not cash or otherwise negotiate for the Seller or any other Person.

6-05-8050 VEHICLE STOPS:

Any peace officer may, upon having probable cause to believe that a Person is in illegal possession of an agricultural commodity, stop and search and inspect the agricultural commodity and request proof of ownership. If the Agricultural Commissioner has probable cause to believe that any agricultural commodity is unlawfully possessed, then he or she may request a peace officer to stop a vehicle for inspection.

6-05-8060 RETENTION OF SEIZED COMMODITY:

Upon reasonable belief that a Person is in unlawful possession of an agricultural commodity, the commodity or any portion of it which is reasonably determined to be unlawfully possessed may be seized and held by the Agricultural Commissioner or any peace officer. The commodity so seized shall be held at such place and in such manner as is reasonable under the circumstances, and until disposed of as provided in this Article. The Agricultural Commissioner or peace officer shall record the date and place of seizure and information pertaining to the Person from whom the commodity was seized, and, to the extent practical, the quantity, type, condition and other information pertaining to the commodity.

6-05-8070 INVESTIGATION TO ASCERTAIN OWNERSHIP:

The Agricultural Commissioner or any peace officer may investigate to ascertain the ownership of any commodity that has been held pursuant to this Article. If the lawful owner is located, then the commodity shall be released to the owner or Agent. The Agricultural Commissioner may require reasonable payment, not to exceed the value of the commodity, to cover costs incurred for storage of the commodity.

6-05-8080 DISPOSITION OF AGRICULTURAL COMMODITIES:

(a) If for any reason the commodity cannot be released to the rightful owner within 48 hours after coming into the custody of the Agricultural Commissioner, or for any shorter period of time that the Agricultural Commissioner deems necessary in the case of perishable commodities, then the Agricultural Commissioner may sell the commodity by public auction or by private sale at fair market value to a commercial packer of the commodity. Prior to any such sale, the Agricultural Commissioner shall determine that the sale of the commodity will not impair the prosecution of any Person who is or may be charged with a crime related to the commodity.

(b) All of the proceeds derived from the sale of the commodity shall be held by the Agricultural Commissioner for a period of not less than six months, during which time the lawful owner of the commodity may submit satisfactory proof of ownership and obtain possession of the proceeds. The Agricultural Commissioner may require the payment by the owner of an amount sufficient to cover the costs incurred for the storage and sale of the commodity, in an amount not to exceed the value of the commodity. If, after retention of the proceeds for a period of at least six months, no demand is made or if proof of ownership is not supplied, then the Agricultural Commissioner shall deposit the proceeds of the sale of the commodity in the general fund of the County.

(c) If any seized commodity remains unsold after being offered for sale pursuant to this section, then the Agricultural Commissioner may donate the commodity to a nonprofit organization.

(d) If the commodity is unfit for human consumption, then the Agricultural Commissioner may destroy it.

6-05-8090 EXEMPTION:

(a) This Article shall not apply to commodities transported and accompanied by a valid permit, disposal order, or certificate issued by the State Secretary of Agriculture or the Agricultural Commissioner for any reason other than to comply with this Article.

(b) Notwithstanding the exemption provided in this section, the Agricultural Commissioner and any peace officer may inspect any agricultural commodity as provided in this Article and may require that proof of ownership and other information be provided sufficient to permit verification that the possessor is in lawful possession of the commodity and the exemption applies in the circumstances presented.

6-05-8100 VIOLATIONS:

Any Person violating any of the provisions of this Article shall be guilty of a misdemeanor, which shall be punishable as provided in section 125 of this Ordinance Code. This punishment is separate and independent from any punishment or penalty provided for under any other law or regulation, including forfeiture.

6-05-8110 CIVIL PENALTIES AND REMEDIES

(a) In accordance with Food and Agricultural Code Section 885, in lieu of pursuing a civil prosecution, the Agricultural Commissioner may levy a civil penalty against any Person violating the provisions of this Article. 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 seven hundred fifty dollars (\$750), nor more than one thousand dollars (\$1,000). Before the Agricultural Commissioner levies a civil penalty, the Person charged with the violation

shall receive notice of the nature of the violation and shall be given 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. Upon receiving the notice of violation, the Person charged has 15 calendar days within which to pay the civil penalty or file a notice of appeal with the Agricultural Commissioner in accordance with section 1-23-5015 of this Ordinance Code

(b) Subdivision (e) of Food and Agricultural Code Section 43003 shall apply to any fine levied pursuant to this section for purposes of appealing the Agricultural Commissioner’s initial hearing decision. Subdivision (f) of Food and Agricultural Code Section 43003 shall apply to any decision where a fine is levied and judgment is to be entered.

Section 2. SEVERABILITY AND EFFECT:

(a) The provisions of this Ordinance are hereby declared to be severable. 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.

(b) The prohibitions of this Ordinance shall not be applicable to the extent that their application would result in a violation of the Constitution or other laws of the United States or the state of California. The Agricultural Commissioner shall issue a permit to authorize conduct otherwise prohibited under this Chapter if the applicant demonstrates that such permit is necessary to avoid such a violation of state or federal law.

Section 3. This Ordinance shall take effect 30 days from and after its final passage. Prior to the expiration of 15 days from the final passage hereof, this Ordinance or a summary thereof shall be published in the *Visalia Times Delta*, a newspaper printed and published in the County of Tulare, State of California, together with the names of the members of the Board of Supervisors voting for and against the same.

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THE FOREGOING ORDINANCE was passed and adopted by the Board of Supervisors of the County of Tulare, State of California, on _____, 2017 at a regular meeting of said Board duly and regularly convened on said day, by the following vote:

AYES: _____

NOES: _____

ABSENT: _____

Chairman, Board of Supervisors

ATTEST: MICHAEL C. SPATA, Clerk of the Board of Supervisors/County Administrative Officer

By: _____
Deputy

Approved as to Legal Form:
COUNTY COUNSEL

By: _____
Deputy