

MONTEREY COUNTY



COUNTY ADMINISTRATIVE OFFICE

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September 18, 2019

The Honorable Stephanie E. Hulse
Judge, Superior Court
Monterey County Superior Courts
240 Church Street
Salinas CA 93901

Re: Response to 2018 - 2019 Monterey County Civil Grand Jury Report: "Monterey County's Unenforced Rooster Keeping Ordinance"

Dear Judge Hulse:

Attached please find the Monterey County Board of Supervisors Response to the **2018 - 2019 Monterey County Civil Grand Jury Report: "Monterey County's Unenforced Rooster Keeping Ordinance"** and the signed Board Order. The Board of Supervisors approved the response on August 27, 2019, which complies with the requirements set forth in Sections 933 and 933.05 of the California Penal Code.

The Board approved response should be deemed and accepted by the Presiding Judge of the Superior Court of Monterey County and the Monterey County Civil Grand Jury as the response of the Board of Supervisors, Assistant County Administrative Officer, and appointed department heads.

Sincerely,

By: Nicholas E. Chiulos
Assistant County Administrative Officer

NEC:mri

cc: Charles McKee, County Administrative Officer
Office of the County Counsel
2019 – 2020 Civil Grand Jury

Attachments: Board of Supervisors Response
August 27, 2019 Signed Board Order



Monterey County Board of Supervisors

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Board Order

A motion was made by Supervisor Chris Lopez, seconded by Supervisor Luis A. Alejo to:

- a. Consider approval of the response to the 2018 - 2019 Monterey County Civil Grand Jury Final Report - " Monterey County's Unenforced Rooster Keeping Ordinance "
- b. Direct the County Administrative Officer to file the approved response with the Presiding Judge of the Superior Court, County of Monterey, by September 21, 2019.

PASSED AND ADOPTED on this 10th day of September 2019, by the following vote, to wit:

AYES: Supervisors Alejo, Phillips, Lopez, Parker and Adams

NOES: None

ABSENT: None

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting September 10, 2019.

Dated: September 13, 2019
File ID: 19-0692
Agenda Item No.: 18

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California


Julian Lorenzana, Deputy



Monterey County Board of Supervisors

Response to the

2018 - 2019 Monterey County Civil Grand Jury

"Monterey County's Unenforced Rooster Keeping Ordinance"

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2018 - 2019 Monterey County Civil Grand Jury Final Report - " *Monterey County's Unenforced Rooster Keeping Ordinance* " ***Elsa Jimenez, Director, Health Department, Carl Holm, Director of RMA, Nick Chiulos ACAO***

REPORT TITLE: 2018 - 2019 Monterey County Civil Grand Jury Final Report –
" Monterey County's Unenforced Rooster Keeping Ordinance "
RESPONSE BY: Monterey County Board of Supervisors
RESPONSE TO: Findings

F1. There are reported to be more than a thousand illegal rooster keeping operations in Monterey County, which is why Monterey County desperately needs a workable rooster keeping operations ordinance.

Response F1: *The Board of Supervisors partially disagrees with this finding.*

We do not have accurate records as to the current number of illegal rooster keeping operations in the County. At the time the ordinance was enacted, it was estimated there were several hundred operations in the County based on a scan of the County using Google Earth. Regardless of the exact current number of operations, we agree that there was and continues to be a critical need for a workable rooster keeping operations ordinance in Monterey County.

F2. The BOS approved a workable ordinance, but the added processes made implementation and enforcement impossible.

Response F2: *The Board of Supervisors partially disagrees with this finding.*

Implementation and enforcement of new ordinances can be challenging in cases like this where there are entirely new practices, procedures, and policies that need to be developed. Experience with the Ordinance leads to refinement over time in ordinance implementation and enforcement. It can take months or years for ordinance implementation and enforcement to become a seamless, effective process.

Specific factors impeded implementation of the Rooster Keeping Ordinance. New duties were added without increasing staffing levels to support the operations of the ACS, the principal enforcement agency of the Ordinance. Even with its regular operations pre-ordinance, ACS has been unable to accomplish a sustained, organized roll out of services. In addition, the ordinance includes coordinated planning among various County departments and training of ACS staff on enforcement under the ordinance. It takes time to train and develop a new program.

F3. The lack of oversight from the Health Department, BoS, and RMA Code Enforcement contributed to the failed implementation of The Ordinance.

Response F3: *The Board of Supervisors disagrees with this finding.*

Low staffing levels in Health Department Animal Services Field Services has been the most significant contributing factor in implementation of the ordinance. RMA's enforcement role is related to land use and structures, and there are limitations for enforcement of roosters under the Building (Title 18) and Zoning (Titles 20 and 21) Codes. With the number of complaints received and the resources available, RMA prioritizes cases based on the level of life safety risk.

2018 - 2019 Monterey County Civil Grand Jury Final Report - " Monterey County's Unenforced Rooster Keeping Ordinance " **Elsa Jimenez, Director, Health Department, Carl Holm, Director of RMA, Nick Chiulos ACAO**

F4. The Environmental Health Bureau had no background in animal welfare and was insufficiently qualified to write a rooster keeping operations ordinance.

Response F4: *The Board of Supervisors disagrees with this finding.*

The rooster ordinance was a collaborative effort between Monterey County Sheriff, Agricultural Commissioner, Environmental Health Bureau, and Resource Management Agency which provided a broad range of expertise. Staff conducted extensive research reviewing literature and interviewing subject matter experts over a one year period of time to assure the draft Ordinance was prepared using best practices in the keeping of rooster operations. Additionally, staff worked extensively with County Counsel in the finalizing of the Ordinance draft.

F5. The process created to obtain a rooster keeping permit deters applicants from obtaining one.

Response F5: *The Board of Supervisors disagrees with this finding.*

The purpose of the Ordinance is to balance legitimate interests of agricultural businesses and agricultural educational organizations with the prevention of rooster keeping that is unsanitary, environmentally damaging, inhumane, and conducive to illegal cockfighting. The process established for obtaining a permit is in line with the purpose of the Ordinance. The Health Department shall assess its permit procedures for purposes of improvement and refinement as needed based on experiences in implementing the Ordinance.

F6. The one-year roll-out period was not in keeping with the requirements of the ordinance.

Response F6: *The Board of Supervisors disagrees with this finding.*

During the public hearing, the public was informed of the intent to implement a "soft roll out" as a means of informing and educating the public about the new ordinance prior to any enforcement of provisions of ordinance. Soft roll-outs of new ordinances is a common practice enabling the County to notify and educate the public of an individual's obligations and the penalties to which the individual may be subject to and to provide adequate time for training staff responsible with enforcing the Ordinance.

F7. To accommodate the community of rooster keepers, the Environmental Health Bureau created what was referred to as a "soft roll-out", intentionally circumventing the timeframe given in The Ordinance.

Response F7: *The Board of Supervisors disagrees with this finding.*

During the public hearing, the public was informed of the intent to implement a "soft roll out" as a means of informing and educating the public about the new ordinance prior to any enforcement of provisions of ordinance. Soft roll-outs of new ordinances is a common practice enabling the County to notify and educate the public of an individual's obligations and the penalties to which the individual may be subject to and to provide adequate time for training staff responsible with enforcing the Ordinance. Amortization periods are also common practice to allow phasing out existing operations where there has been legitimate financial investment under prior regulations.

F8. After the one-year soft roll-out period ended, no direction was given to any agency, creating confusion and inability to execute The Ordinance.

Response F8: *The Board of Supervisors partially disagrees with this finding.*

With any new Ordinances, there could be confusion amongst responsible parties until all of the steps in the process of implementation are worked out. Implementation and enforcement of new ordinances are challenging. The ordinance is the framework upon which entirely new practices, procedures, and policies may need to be developed. Experience with the ordinance leads to refinement over time in ordinance implementation and enforcement. It can take months or years for ordinance implementation and enforcement to become a seamless, effective process.

F9. The Environmental Health Bureau enacted a multi-step process that hindered enforcement.

Response F9: *The Board of Supervisors disagrees with this finding.*

A multi-step process was enacted in an effort to implement the ordinance. The ordinance language does not get into the full details of all of the actions needing to take place to ensure successful implementation. The process developed to implement the ordinance is not what hindered enforcement.

There are very specific factors that impeded implementation of the ordinance. Inadequate staffing levels supported the operations of the ACS, the principal enforcement agency of the ordinance. Absent adequate staffing for even its regular operations pre-ordinance, ACS was unable to accomplish a sustained, organized roll out of the ordinance that would have included coordinated planning among various County departments and training of County staff on enforcement under the ordinance.

F10. Staff from multiple agencies are inadequately trained to implement and enforce The Ordinance creating confusion with the public.

Response F10: The Board of Supervisors partially disagrees with this finding.

There has not been continued training as turnover and attrition has occurred at Animal Services. RMA staff is adequately trained regarding enforcement of building and zoning codes.

F11. ACS staff morale suffered after learning that funds allocated for salaries and wages were diverted to settle a lawsuit against the Environmental Health Bureau.

Response F11: The Board of Supervisors disagrees with this finding.

There isn't credible evidence to support the connection between this finding and the implementation of the ordinance.

F12) Inadequate cooperation between ACS and The Office of the Agricultural Commissioner has caused poor implementation and enforcement of The Ordinance.

Response F12: The Board of Supervisors disagrees with this finding.

Specific factors impeded implementation of the Ordinance. Inadequate staffing levels supported the operations of the ACS, the principal enforcement agency of the Ordinance. Absent adequate staffing for even its regular operations pre-ordinance, ACS was unable to accomplish a sustained, organized roll out of the ordinance that would have included coordinated planning among various County departments.

F13. RMA Code Enforcement's current involvement in The Ordinance process hinders the effectiveness of the Animal ACO's responsibilities.

Response F13: The Board of Supervisors partially disagrees with this finding.

We agree that timely communication and coordination among County departments is needed to be able for the ACO and ACS to effectively implement the ordinance. RMA's enforcement role is related to land and structures, which is secondary for enforcement of roosters under the Building (Title 18) and Zoning (Titles 20 and 21) Codes. With the number of complaints received and the resources available, RMA prioritizes cases based on the level of life safety risk.

F14. The ACO has authority to implement and enforce Title 8, Chapter 8.50 but was prohibited from doing so by the Director at Environmental Health.

Response F14: *The Board of Supervisors disagrees with this finding.*

The plan for implementation was to commence with a "soft roll out" prior to full enforcement of ordinance. "Soft rollouts" are a means of informing and educating the public about the new ordinance prior to any enforcement of provisions of ordinance. Soft rollouts of new ordinances is a common practice. The perception may be that this approach prohibited enforcement, but this was not the case, and staff were merely following common practice.

F15. ACS budget would benefit from keeping revenues generated from issuing permits, citations, and services.

Response F15: *The Board of Supervisors agrees with this finding.*

The ACS budget would benefit from increased revenues and County policies would need to be followed dependent on revenue source and where funds get deposited.

F16. ACS is severely understaffed, which prevents them from adequately and effectively implementing and enforcing The Ordinance

Response F16: *The Board of Supervisors agrees with this finding.*

F17. Illegal rooster keeping operations in Monterey County are so pervasive that current ACO's cannot eradicate the problem.

Response F17: *The Board of Supervisors partially disagrees with this finding.*

We do not have records indicating the current number of illegal rooster keeping operations in Monterey County. The extent of the problem would need to be first determined to evaluate the number of positions needed to fully meet the needs for Field Services including implementation of the Ordinance.

F19) A dedicated Assistant District Attorney (ADA) for animal cruelty cases is crucial to keeping up with enforcement and prosecution in Monterey County.

Response F19: *The Board of Supervisors disagrees with this finding.*

It is the Board of Supervisors' understanding that the office of the District Attorney effectively prioritizes criminal prosecution as part of their caseload management.

To the extent applicable, the RMA is available to effectively use administrative enforcement tools where appropriate.

F20. Ample revenues to cover additional staff could be generated from permitting and enforcement from rooster-keeping application and permitting fees.

Response F20: *The Board of Supervisors partially disagrees with this finding.*

We do not have an accurate estimate of the number of rooster keeping operations in Monterey County to evaluate the amount of new revenue that could be generated with issuance of permits and enforcement of ordinance. There are also possible revenues from the Administrative Citation process. The budgeting issue is that revenue is not retained across fiscal years, unless there is an enterprise fund in place.

F22. Without regard to the possibility of spreading Viral Newcastle Disease, RMA Code Enforcement mandated owners relocate roosters.

Response F22: *The Board of Supervisors disagrees with this finding.*

The RMA Director has stated that he is unaware of the factual accuracy of this finding.

RMA's enforcement role is related to land use and structures, which is secondary for enforcement of roosters under the Building (Title 18) and Zoning (Titles 20 and 21) Codes. If an owner of roosters was found to be out of compliance with County Code, RMA would mandate owners come into compliance with County regulations. Under RMA's process, this directive could include removing unpermitted uses/structures subject to a "restoration plan" that would be vetted by applicable agencies.

F23 The Environmental Health Bureau did not follow the mandates of The Ordinance and did not provide adequate direction, training, and oversight to those who were to implement its provisions.

Response F23: *The Board of Supervisors disagrees with this finding.*

There has not been continued training as staff turnover and attrition has occurred at Animal Services.

F24. The debris and animal waste left after illegal rooster keeping operations are abandoned, create unsightly conditions and ultimately lower property values.

Response F24: *The Board of Supervisors agrees with this finding.*

REPORT TITLE: 2018 - 2019 Monterey County Civil Grand Jury Final Report –
"Monterey County's Unenforced Rooster Keeping Ordinance "
RESPONSE BY: Monterey County Board of Supervisors
RESPONSE TO: Recommendations

R1. Immediately, The Health Department should remove the multi-step process required by the Environmental Health Bureau for implementation and enforcement and restore The Ordinance as written.

Response R1: *This recommendation requires further analysis.*

Health Department staff will review the ordinance and determine if recommended changes need to be presented to the Board of Supervisors and the public through a public hearing process. Once Animal Services is staffed, we will implement activities in support of enforcing the ordinance.

R2. By March 2020, the Health Department should provide paid training for all Animal Control Services staff and any other necessary staff for the implementation and enforcement of The Ordinance.

Response R2: *This recommendation will be implemented once Animal Services is more fully staffed.*

Health Department will provide training to all ACS staff involved in the implementation of the ordinance. The Health Department will also coordinate meetings with other County staff to discuss implementation plans and clarify roles and responsibilities of all parties involved.

R3. By March 2020, the Director of Health Department should fill all budgeted ACS staff positions.

Response R3: *This recommendation will be implemented.*

The vacant ACS positions are on a continuous recruitment process and every effort is being made to recruit qualified candidates for positions.

R4. Beginning March 2020, the Director of the Health Department should ensure that fees collected for applications and permits for rooster keeping are retained in the ACS budget to help subsidize enforcement of The Ordinance.

Response R4: *This recommendation is already implemented.*

Revenues generated from Health fees associated with ACS operations are retained within the ACS budget in any given fiscal year.

2018 - 2019 Monterey County Civil Grand Jury Final Report - " Monterey County's Unenforced Rooster Keeping Ordinance " **Elsa Jimenez, Director, Health Department, Carl Holm, Director of RMA, Nick Chiulos ACAO**

R5. Immediately, The Health Department should create an interagency task force for the purposes of implementing and enforcing the rooster-keeping ordinance, to include the Health Department, ACS, Sheriff, The Agricultural Commissioner and SPCA.

Response R5: *This recommendation requires further analysis and may be implemented at a future date.*

An interagency task force will be considered and may be created once the department has reviewed and determined the appropriate response needed as well as the agencies that would be involved. However, to implement immediately when staffing levels cannot support a leading role would not be feasible or realistic. This recommendation may be implemented at a future date.

R6. By March 2020, the BoS should ensure that The Ordinance has been implemented and is being enforced.

Response R6: *The recommendation will be implemented in a timeframe commensurate with filling vacant ACS positions.*

Every effort is being made to recruit and fill the vacant ACS positions. Successful implementation of the ordinance and other operations of ACS is contingent upon successful recruitment of qualified candidates. Depending on staffing levels, the March 2020 deadline may or may not be met but the Department will work towards implementing as soon as possible.

R7. The BoS should immediately institute a two-year mandatory feedback plan for ordinances they pass to ensure they are being implemented and enforced according to Monterey County Code.

Response R7: *This recommendation will not be implemented because it is not warranted.*

The Board of Supervisors, as the legislative body of County government retains the discretion to review the implementation status of enacted ordinances at such time as the Board deems appropriate.

R8. By August 31, 2019, the Health Department should allow ACS to avail itself of training from the Humane Society subject matter experts pertaining to rooster keeping and cockfighting.

Response R8: *This recommendation will be implemented.*

Any needed training for staff will be provided as needed. At this time, with 50% vacancy of ACO positions, it does not make fiscal sense to provide this training. When new ACOs are on board and ready, this training can be made available. While this ordinance is not a cockfighting ordinance, it does make sense for ACOs to be trained about them and able to recognize signs.

R9. By July 2020, the BoS should pass an Ordinance mandating that all County employees report animal welfare concerns of cruelty and notify appropriate agencies.

Response R9: This recommendation will not be implemented because it is not warranted.

The Board of Supervisors believes that it is the responsibility of all County residents, not just County employees, to report instances of animal cruelty.

R10. Beginning immediately the Health Dept. should allow the ACO to fully execute the duties of their office as it relates to rooster keeping implementation and enforcement.

Response R10: This recommendation will be implemented. Based on current staffing levels, deployment of ACOs is being prioritized to assure public health and safety. Once ACS is fully staffed, staff will be able to more fully address all areas of responsibility.

R11. By January 2020, the District Attorney should assign a dedicated Assistant District Attorney (ADA) to accept and review all criminal animal cruelty referrals, from SPCA and Animal Control Services.

Response R11: This recommendation has been implemented in part.

It is the Board of Supervisors' understanding that the District Attorney has assigned a dedicated Deputy District Attorney to review all animal cruelty referrals from the SPCA and Animal Control Services.

R12. By July 2020, the Director of Health should assign a dedicated ACO to specifically oversee rooster keeping operations.

Response R12: This recommendation will not be implemented.

Ideally, there should be a dedicated ACS staff member responsible for overseeing the permitting process, however all ACOs will be trained to conduct inspections and report back. There is value in cross training to assure the public's needs are met. This will not be implemented as recommended as there is greater benefit to the public to have all ACO's cross trained to be able to implement the ordinance.

R13. By March 2020, the BoS should enact a process and procedure to remove and clean up abandoned rooster keeping operation blight.

***Response R13:** This recommendation has been implemented in part with respect to authority for property clean up.*

The RMA Building Division is responsible for enforcing the provisions of Title.18.14 of the Monterey County Code regarding property maintenance issues. Once a case is referred to the RMA for property maintenance issues related to an abandoned rooster keeping operation, RMA opens a case file and assigns the case to an inspector.

Regarding coordinated process and procedures, as Animal Services positions are filled, processes and procedures will be developed to ensure coordination between Health, RMA, District Attorney and Sheriff. Through this process, abandoned rooster keeping operations and complaints will be referred to the RMA.