

94-267

MARIPOSA COUNTY
BOARD OF SUPERVISORS

AGENDA
ACTION FORM

DATE: June 28, 1994
AGENDA ITEM NO.: 5-C

DEPARTMENT: Planning BY: Duane Hall PHONE: 966-5151

RECOMMENDED ACTION AND JUSTIFICATION: (Policy Item: Yes ___ No X ;
NOTE: This item is for initiation of public review process for
policy item.)

Resolution initiating the public review and hearing process for a
"right to agricultural activity" ordinance and amendments to the
General Plan and Title 17 (Zoning Ordinance) as stated in Exhibits
"A", "B", and "C".

BACKGROUND AND HISTORY OF BOARD ACTIONS:

At December 21, 1993 and March 1, 1994 meetings, the Board
considered a request from the Farm Bureau to establish a right to
agricultural activity ordinance in Mariposa County. At the March
1st meeting the Board directed the Planning Department to initiate
the process for the Board to consider and adopt such an ordinance.
The Board also made a right to agricultural activity ordinance as a
high Planning Department priority at the January 4th meeting.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

ALTERNATIVES: (1) Continue matter; (2) modify ordinance and/or
amendments prior to initiation; (3) Take no action.

NEGATIVE ACTION, or taking no action, would result in the ordinance
and amendments not being initiated and a "right-to-farm"
ordinance would not be established in Mariposa County.

COSTS: (X) Not Applicable
A. Budgeted current FY \$ _____
B. Total anticipated costs \$ _____
C. Required additional funding \$ _____
D. Internal transfers \$ _____
SOURCE: () 4/5ths Vote Required
A. Unanticipated revenues \$ _____
B. Reserve for contingencies \$ _____
C. Source description: _____
Balance in Reserve for Contingencies,
if approved: \$ _____

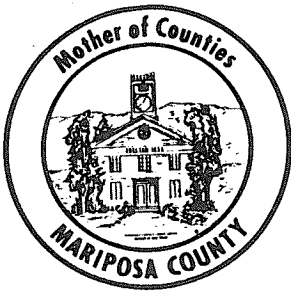
SPECIAL INSTRUCTIONS:
List the attachments and number
the pages consecutively:
1. Memo to Board
2. Exhibit A - Proposed ordinance
3. Exhibit B - Proposed General Plan amendments
4. Exhibit C - Proposed Title 17 amendments

CLERK'S USE ONLY:
Res. No.: 94-267 Ord. No. _____
Vote Ayes: 5 Noes: _____
Absent: _____ Abstained: _____
Approved: _____ () Denied _____
() Minute Order Attached () No Action Necessary

The foregoing instrument is a correct copy of
the original on file in this office.
Date: _____
ATTEST: MARGIE WILLIAMS, Clerk of the Board
County of Mariposa, State of California
By: _____
Deputy

ADMINISTRATIVE OFFICER'S RECOMMENDATION:
This item on agenda as:
 Recommended
 Not Recommended
 For Policy Determination
 Submitted with Comment
 Returned for Further Action

Comment: _____
A.O. Initials: W



Mariposa County Planning and Building Department

EDWARD J. JOHNSON
Director

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Mariposa, CA 95338
(209) 966-5151
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MEMORANDUM

June 20, 1994

TO: Mariposa County Board of Supervisors

FROM: Duane Hall, Associate Planner *DH*

SUBJECT: Initiation of "Right to Agricultural Activity" Ordinance and Related Amendments to General Plan and Zoning Ordinance

Background

The Mariposa County Farm Bureau has requested that the County establish a right to agricultural activity ordinance in Mariposa County. The Board considered the Farm Bureau's request on December 21, 1993 and March 1, 1994. On March 1st the Board directed the Planning Department to initiate the process for the Board to consider a right to agricultural activity ordinance. The Board also directed staff to apply the ordinance to all existing and future agricultural operations throughout the county and to draft amendments to the General Plan's and Zoning Ordinance's agricultural use policies and regulations in order to maintain consistency with the proposed right to agricultural activity ordinance. The Planning Department consulted with the Farm Bureau on June 14th on some last details of the ordinance regarding length of time to claim a nuisance, disclosures, and notices.

Recommendation

Staff recommends the Board adopt a resolution initiating the public review and hearing process for a "right to agricultural activity" ordinance and amendments to the General Plan and Title 17 (Zoning Ordinance) as stated in Exhibits A, B, and C.

Discussion

The requested action is for formal initiation of the public review and hearing process for a right to agricultural activity ordinance and amendments to the General Plan and Zoning Ordinance relating to the regulation of agricultural uses in Mariposa County. It should be

clearly noted that the recommended action is only for initiation of the public review and hearing process which will allow a public review period to be established and also allow for the public to comment on the proposed ordinance and amendments. Both the Planning Commission and the Board of Supervisors will hold public hearings to receive public comments. The Board of Supervisors will consider the Planning Commission's recommendation and all public comments prior to taking any action on the ordinance and amendments. Initiation of the ordinance and amendments will not bind the Board in any way regarding future action on the ordinance and amendments. At the conclusion of the Commission and Board public hearings, the Board may take action to adopt the ordinance and amendments as proposed or with modifications. The Board may also act not to adopt the ordinance and amendments.

Right to Agricultural Activity Ordinance: The proposed ordinance is attached as Exhibit "A". As directed by the Board, the ordinance in conjunction with the proposed amendments will apply to existing and future operations in all areas of the County except town planning areas with adopted specific plans. The proposed ordinance differs from the State Farm Bureau "model" ordinance in the following ways:

- Definitions are provided for "commercial purposes", "nuisance", "private nuisance", and "public nuisance". County Counsel recommended that the ordinance include definitions for nuisances since those terms are used in the ordinance.
- The time period during which an agricultural operation may be considered a nuisance is one (1) year. The model ordinance and most other counties have a time period of two (2) or three (3) years, but the County Farm Bureau recommends one (1) year to provide the fullest possible protection to agricultural operations.
- Disclosures and notices will be limited to real estate transfers, building permits, and recordation of the ordinance. The Farm Bureau does not recommend that the notice be included with property tax statements because of logistics and added costs.

General Plan and Title 17 Amendments: Pursuant to the Board's direction, staff has drafted amendments to the General Plan and Zoning Ordinance relating to the regulation of agricultural uses. The proposed amendments will limit the length of time during which a commercial agricultural operation could be determined to be a nuisance and therefore in violation of the Zoning Ordinance. Presently there is no time limit in determining when an commercial agricultural operation is a nuisance; the amendments propose a time limit of one (1) year after which time the commercial operation would be "grandfathered". The policies and regulations for non-commercial agricultural uses (e.g. personal garden, 4-H/FFA projects) would remain unchanged. The proposed amendments represent a substantial change in County policy regarding agricultural uses outside the Agricultural Exclusive zone. The policy implications and potential environmental impacts of the proposed amendments will be analyzed by staff as part of the public review process.

Chapter 18.04RIGHT TO AGRICULTURAL ACTIVITYSections:

18.04.010	Definitions
18.04.020	Findings and Policy
18.04.030	Nuisance
18.04.040	Disclosure
18.04.050	Notice
18.04.060	Penalty for Violation
18.04.070	Separability
18.04.080	Precedence

18.04.010 Definitions.

A. "Agricultural land" shall mean all that real property within the boundaries of Mariposa County currently used for agricultural activities or operations or upon which agricultural activities or operations may in the future be established.

B. "Agricultural activity or operation" shall mean any activity or operation which has to do with agricultural and shall include, but not be limited to, the cultivation and tillage of the soil; dairying; the production, irrigation, frost protection, cultivation, growing, harvesting and processing of any agricultural commodity, including viticulture, horticulture, timber or apiculture; the raising of livestock, fur-bearing animals, fish or poultry; and any commercial agricultural practices performed as incident to or in conjunction with such operations, including preparation for market, delivery to storage or to market, or to carriers for transportation to market.

C. "Commercial purposes" shall mean an activity or operation that is primarily conducted for commercial use or sale of an agricultural product or commodity on the activity or operation site with financial gain as the primary aim.

D. "Nuisance" shall mean anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

E. "Private nuisance" shall mean every nuisance which is not included in the definition of a public nuisance.

F. "Public nuisance" shall mean a nuisance which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

18.04.020 Findings and Policy.

A. It is the declared policy of this County to enhance and encourage agricultural operations within the County. It is the further intent of this County to provide to the residents of this County proper notification of the County's recognition and

support through this ordinance of those persons' and/or entities' right to conduct agricultural activity.

B. Where non-agricultural land uses extend into agricultural areas or exist side by side, agricultural operations frequently become the subject of nuisance complaints due to lack of information about such operations. As a result, agricultural operators are forced to cease or curtail their operations. Such actions discourage investment in farm improvements to the detriment of adjacent agricultural uses and the economic viability of the County's agricultural industry as a whole. It is the purpose and intent of this section to reduce the loss to the County of its agricultural resources by clarifying the circumstances under which agricultural operations may be considered a nuisance. This ordinance is not to be construed as in any way modifying or abridging state law as set out in the California Civil Code, Health and Safety Code, Fish and Game Code, Food and Agricultural Code, Division 7 of the Water Code, or any other applicable provision of state law relative to nuisances; rather, it is only to be utilized in the interpretation and enforcement of the provisions of this code and County regulations.

C. An additional purpose of this ordinance is to promote a good neighbor policy by advising purchasers and users of property adjacent to or near agricultural operations of the inherent potential effects associated with such purchase or residence. Such concerns may include, but are not limited to, the noise, odor, dust, chemicals, smoke and hours of operation that may accompany agricultural operations. It is intended that, through mandatory disclosure, purchasers and users will better understand the impact of living near agricultural operations and be prepared to accept attendant conditions as the natural result of living in or near rural areas.

18.04.030 Nuisance.

No existing or future agricultural activity, operation, or facility or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs, standards, and practices and with all chapters of the Mariposa County Code, as established and followed by similar agricultural operations, shall be or become a nuisance, public or private, pursuant to the Mariposa County Code, after the same has been in operation for more than one year if it was not a nuisance at the time it began. The provisions of this section shall not apply whenever a nuisance results from agricultural operations inconsistent with accepted customs, standards, and practices or contrary to local, state, or federal ordinances, laws, and regulations.

18.04.040 Disclosure.

A. Pursuant to Section 1102.6a of the California Civil Code, it is intended by this section to require disclosures in addition to those disclosures required by Section 1102.6 of the California Civil Code.

B. Upon any transfer of real property by gift, sale, exchange, installment land sale contract, lease with an option to purchase, any other option to purchase, or ground lease coupled with improvements, or transfer of residential stock cooperative improved with dwelling units, the transferor shall require that the disclosure statement set forth in Section 18.04.040(C) shall be signed by the grantee, purchaser, or lessee.

C. The disclosure required by Section 18.04.040(B) is set forth herein, and shall contain, and be in the form of, the following:

"REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE COUNTY OF MARIPOSA, STATE OF CALIFORNIA, DESCRIBED AS

THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE-DESCRIBED PROPERTY IN COMPLIANCE WITH MARIPOSA COUNTY CODE SECTION _____. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTION OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

(I)

SELLER INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in a real estate transaction dealing with the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property. THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AS REQUIRED BY THE COUNTY OF MARIPOSA AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

The County of Mariposa permits properly conducted agricultural operations within the County. You may be subject to inconveniences or discomfort arising from such operations including but not limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery (including aircraft) during any 24-hour period, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendmets, herbicides and pesticides. One or more of the inconveniences described may occur as a result of any agricultural operation which is in conformance with existing laws and regulations and accepted customs and standards. You should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in a county with a strong rural character and an active agricultural sector. Mariposa

County has determined that no existing or future agricultural activity, operation, or facility or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs, standards, and practices and with all chapters of the Mariposa County Code, as established and followed by similar agricultural operations, shall be or become a nuisance, public or private, pursuant to the Mariposa County Code, after the same has been in operation for more than one year if it was not a nuisance at the time it began. If you have any questions concerning this policy, please contact the Mariposa County Planning and Building Department.

Seller certifies that the information herein is true and correct to the best of Seller's knowledge as of the date signed by the Seller.

Seller _____ Date _____

Seller _____ Date _____

(II)

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTION OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER(S) AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTION/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller _____ Date _____ Buyer _____ Date _____

Seller _____ Date _____ Buyer _____ Date _____

Agent (Broker representing Seller):
_____ By _____ Date _____

(Associate licensee or Broker signature)

Agent (Broker obtaining the offer):
_____ By _____ Date _____

(Associate licensee or Broker signature)

State of _____)
County of _____) ss.

On this _____ day of _____, 19__, before me, the undersigned Notary Public, personally appeared

_____ Personally known to me. _____ Provided to me on the basis of satisfactory evidence to be the person(s) whose name(s) _____ subscribed to the within instrument and acknowledged

that _____ executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

Present Assessors Parcel No. _____

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY."

D. If a Buyer refuses to sign the disclosure statement set forth in Section 18.04.080(C), the transferor may comply with the requirements of this ordinance by delivering the statement to the Buyer as provided in Section 18.04.080(B) and affixing and signing the following declaration to the statement:

I, (name), have delivered a copy of the foregoing disclosure statement as required by law to (Buyer's name), who has refused to sign.

I declare the foregoing to be true.

Date: _____

Signature

Print Name: _____

E. Forms for the disclosure statement set forth in Section 18.04.080(C) shall be printed and made available to property owners and real estate agents by the Mariposa County Planning and Building Department.

18.04.050 Notice.

A. The Mariposa County Planning and Building Department shall provide all applicants for building permits for new residential construction or mobile home installation with a "Right-to-Agricultural Activity Notice" in substantially the form provided in Section 18.04.050(C).

B. To provide all property owners with constructive notice of Mariposa County's right-to-agricultural activity policy, this chapter of County Code shall be recorded with the Mariposa County Recorder.

C.

"Mariposa County Right-to-Agricultural Activity Ordinance

The County of Mariposa permits properly conducted agricultural operations within the County and it is the declared policy of this County to enhance and encourage agricultural operations within the County. It is the further intent of this County to

provide to the residents of this County proper notification of the County's recognition and support of those persons' and/or entities' right to conduct agricultural activity. Residents of property on or near agricultural land should be prepared to accept the inconveniences or discomfort arising from such operations. Such discomfort or inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery (including aircraft) during any 24-hour period, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. One or more of the inconveniences described may occur as a result of any agricultural operation which is in conformance with existing laws and regulations and accepted customs and standards. You should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in a county with a strong rural character and an active agricultural sector.

Mariposa County has determined that no existing or future agricultural activity, operation, or facility or appurtenances thereof, conducted or maintained for commercial purposes, and in a manner consistent with proper and accepted customs, standards, and practices and with all chapters of the Mariposa County Code, as established and followed by similar agricultural operations, shall be or become a nuisance, public or private, pursuant to the Mariposa County Code, after the same has been in operation for more than one year if it was not a nuisance at the time it began. If you have any questions concerning this policy, please contact the Mariposa County Planning and Building Department."

18.04.060 Penalty for Violation.

Noncompliance with any provision of this ordinance shall not affect title to real property, nor prevent the recording of any document. Any person who violates any provision of this ordinance is guilty of an infraction punishable pursuant to County Code Section 1.20.030.

18.04.070 Separability.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of the ordinance.

18.04.080 Precedence.

This ordinance shall take precedence over all ordinances or parts of ordinances or resolutions or parts of resolutions in conflict herewith and to the extent they do conflict with this ordinance they are hereby repealed with respect to the conflict and no more.

EXHIBIT "B"

PROPOSED AMENDMENTS TO THE MARIPOSA COUNTY GENERAL PLAN LAND USE ELEMENT

Add Section 3.1025 as follows:

Agricultural activity or operation shall mean any activity or operation which has to do with agriculture and shall include, but not be limited to, the cultivation and tillage of the soil; dairying; the production, irrigation, frost protection, cultivation, growing, harvesting and processing of any agricultural commodity, including viticulture, horticulture, timber or apiculture; the raising of livestock, fur-bearing animals, fish or poultry; and any commercial agricultural practices performed as incident to or in conjunction with such operations, including preparation for market, delivery to storage or to market, or to carriers for transportation to market.

Add Section 3.1075 as follows:

Commercial purposes shall mean an activity or operation that is primarily conducted for commercial use or sale of an agricultural product or commodity on the activity or operation site with financial gain as the primary aim.

Add Section 3.1265 as follows:

Nuisance shall mean anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. Public nuisance shall mean a nuisance which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. Private nuisance shall mean every nuisance which is not a public nuisance.

Amend Section 3.063(E)(2) to read as follows:

~~2. Agriculture and grazing may be permitted in all districts. Animal husbandry and the production of crops, plus the sale of agricultural products. Notwithstanding anything to the contrary contained herein, it shall be a violation of this~~

~~Title for any landowner, tenant, or person in possession or control of land in Mariposa County to conduct any agricultural use, horticultural use, viticultural use, silvicultural use, or agricultural enterprise, including but not limited to, grazing, animal husbandry, production of crops, or sale of agricultural products, on land in Mariposa County, in such a manner as to constitute either a private or public nuisance. Agricultural uses, including but not limited to animal husbandry, livestock grazing, the production of crops, horticulture, viticulture, silviculture, sale of agricultural products, and accessory uses and structures appurtenant to the agricultural use, may be permitted in all districts subject to the following standards:~~

1. ~~The provisions of this section shall not be applicable in the AE land use classification and in town planning areas with specific land use policies and zoning regulations.~~

2. ~~The agricultural use shall not be conducted in such a manner as to constitute a nuisance, public or private.~~

3. ~~Notwithstanding anything to the contrary contained herein, no existing or future agricultural activity, operation, or facility or appurtenances thereof, conducted or maintained for commercial purposes, in a manner consistent with proper and accepted customs, standards, and practices and with all chapters of the Mariposa County Code as established and followed by similar agricultural uses, shall be or become a nuisance, public or private, after the same has been in operation for more than one year if it was not a nuisance at the time it began. The provisions of this section shall not apply whenever a nuisance results from agricultural operations inconsistent with accepted practices and standards or contrary to local, state, or federal ordinances, laws, and regulations.~~

EXHIBIT "C"

PROPOSED AMENDMENTS TO TITLE 17 MARIPOSA COUNTY ZONING ORDINANCE

Amend Section 17.108.060(A) to read as follows:

A. ~~Agriculture and grazing: Animal husbandry and the production of crops, plus the sale of agricultural products. Notwithstanding anything to the contrary contained herein, it shall be a violation of this Title for any landowner, tenant, or person in possession or control of land in Mariposa County to conduct any agricultural use, horticultural use, viticultural use, silvicultural use, or agricultural enterprise, including but not limited to, grazing, animal husbandry, production of crops, or sale of agricultural products, on land in Mariposa County, in such a manner as to constitute either a private or public nuisance.~~ Agricultural uses, including but not limited to animal husbandry, livestock grazing, the production of crops, horticulture, viticulture, silviculture, sale of agricultural products, and accessory uses and structures appurtenant to the agricultural use, subject to the following standards:

1. The provisions of this section shall not be applicable in the AE zone and in town planning areas with specific land use policies and zoning regulations developed in accordance with Section 17.12.010(a).

2. The agricultural use shall not be conducted in such a manner as to constitute a nuisance, public or private.

3. Notwithstanding anything to the contrary contained herein, no existing or future agricultural activity, operation, or facility or appurtenances thereof, conducted or maintained for commercial purposes, in a manner consistent with proper and accepted customs, standards, and practices and with all chapters of the Mariposa County Code as established and followed by similar agricultural uses, shall be or become a nuisance, public or private, pursuant to this section or Chapter 18.04 of County Code, after the same has been in operation for more than one year if it was not a nuisance at the time it began. The provisions of this section shall not apply whenever a nuisance results from agricultural operations inconsistent with accepted practices and standards or contrary to local, state, or federal ordinances, laws, and regulations.

4. In any enforcement action to determine if an agricultural use is a nuisance, public or private, the burden shall be upon the landowner, tenant, or person in possession or control of the land upon which the agricultural use is located to provide evidence to the Planning Director of the date of

commencement of the agricultural use and the characteristics of the use at the date of commencement.

Amend definition for "agricultural use" as contained in Chapter 17.148 to read as follows:

Agricultural use activity or operation:

"Agricultural Use activity or operation" shall mean any use activity or operation which has to do with agriculture ~~including but not limited to horticultural use, viticultural use, silvicultural use, and agricultural enterprises~~ and shall include, but not be limited to, the cultivation and tillage of the soil; dairying; the production, irrigation, frost protection, cultivation, growing, harvesting and processing of any agricultural commodity, including viticulture, horticulture, timber or apiculture; the raising of livestock, fur-bearing animals, fish or poultry; and any commercial agricultural practices performed as incident to or in conjunction with such operations, including preparation for market, delivery to storage or to market, or to carriers for transportation to market.

Add definition for "commercial purposes" to Chapter 17.148 as follows:

Commercial purposes:

"Commercial purposes" shall mean an activity or operation that is primarily conducted for commercial use or sale of an agricultural product or commodity on the activity or operation site with financial gain as the primary aim.

Add definition for "nuisance" to Chapter 17.148 as follows:

Nuisance:

"Nuisance" shall mean anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

Add definition for "nuisance, private" to Chapter 17.148 as follows:

Every nuisance which is not a public nuisance

Add definition for "nuisance, public" to Chapter 17.148 as follows:

A nuisance which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.