



Jesse Arreguín
Councilmember, District 4

CONSENT CALENDAR
September 10, 2013

To: Honorable Mayor and Members of the City Council
From: Councilmember Jesse Arreguín
Subject: Genetically Modified Organism Labeling

RECOMMENDATION

Refer to the City Manager, Community Environmental Advisory Commission and the Community Health Commission the issue of Genetically Modified Organism labeling of the retail of fresh produce for review and request that they return to City Council with a recommendation. Specifically, the Commissions should consider the following issues:

1. Scale of Applicability (e.g. should the policy apply to all grocery retailers regardless of size? Should it also apply to value added products (i.e. jams, baked goods)?
2. Home-grown crops that are sold or exchanged by individuals or small groups
3. Enforcement mechanism: should enforcement be achieved through a Private Right of Action or through City monitoring and enforcement?
4. Labeling: How should fresh produce be labeled –individually or as a group? How will retailers determine whether or not produce is a GMO? What if some produce cannot be reasonably determined to be a GMO?
5. Standards of Violation (e.g. good faith, incorrect information provided by distributor/producer, etc.)

In addition to these issues, the City Manager and Commissions should review the language of 2012's Proposition 37 (attached) for a regulatory framework, and also look at other proposed or adopted labeling requirements of other jurisdictions.

BACKGROUND:

Genetically Modified Organisms (GMOs) are organisms whose genetic material has been altered using genetic engineering techniques; as applied to food and crops, new traits are genetically inserted into plants and animals that do not naturally occur within their species. Some examples include corn that have been modified with genes from special bacteria in order for the corn to produce its own insecticide, or farmed Atlantic salmon that has been modified with genes from Ocean Pout to boost growth hormones, thereby allowing for faster growth and harvesting.

The subject of GMOs has engendered controversy and ongoing disputes over the costs and benefits of genetic modification to improve yields and its potential to adversely impact health, the environment, biodiversity, and market dynamics. Last fall, California initiated a statewide discussion about GMOs with Proposition 37, which would have required the labeling of genetically modified foods; the measure narrowly failed last fall after millions were spent to defeat the measure by many of the largest multi-national agro-businesses, such as Monsanto.

Though California would have been the first State to enact such labeling requirements, the European Union, Japan, China, Australia and New Zealand, among others, have already mandated GMO labeling on produce that exceed a certain genetically modified threshold. Currently, a bill to require GMO labeling has passed the Connecticut Legislature and awaits their Governor's signature, who has pledged to sign it into law.

Though Proposition 37 may not have passed, Berkeley has always been on the forefront of progressive policies that protect the health of its residents and the environment. Its adoption of a GMO labeling requirement will not only provide more information to promote better choices locally, but it can serve as an opportunity for other communities to join together in adopting GMO labeling requirements, leading the way for a state requirement to ensure that all Californians have the right to know about their food.

FINANCIAL IMPLICATIONS:

Unknown; some staff time required.

CONTACT PERSON:

Jesse Arreguin, Councilmember, District 4

981-7140

Attachments:

1. Text of Proposition 37

TEXT OF PROPOSED LAWS

(2) The petitioner's disciplinary record and record of rehabilitation while incarcerated; and

(3) Any other evidence the court, within its discretion, determines to be relevant in deciding whether a new sentence would result in an unreasonable risk of danger to public safety.

(h) Under no circumstances may resentencing under this act result in the imposition of a term longer than the original sentence.

(i) Notwithstanding subdivision (b) of Section 977, a defendant petitioning for resentencing may waive his or her appearance in court for the resentencing, provided that the accusatory pleading is not amended at the resentencing, and that no new trial or retrial of the individual will occur. The waiver shall be in writing and signed by the defendant.

(j) If the court that originally sentenced the defendant is not available to resentence the defendant, the presiding judge shall designate another judge to rule on the defendant's petition.

(k) Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the defendant.

(l) Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of this act.

(m) A resentencing hearing ordered under this act shall constitute a "post-conviction release proceeding" under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy's Law).

SEC. 7. Liberal Construction:

This act is an exercise of the public power of the people of the State of California for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate those purposes.

SEC. 8. Severability:

If any provision of this act, or the application thereof to any person or circumstance, is held invalid, that invalidity shall not affect any other provision or application of this act, which can be given effect without the invalid provision or application in order to effectuate the purposes of this act. To this end, the provisions of this act are severable.

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SEC. 9. Conflicting Measures:

If this measure is approved by the voters, but superseded by any other conflicting ballot measure approved by more voters at the same election, and the conflicting ballot measure is later held invalid, it is the intent of the voters that this act shall be given the full force of law.

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SEC. 10. Effective Date:

This act shall become effective on the first day after enactment by the voters.

SEC. 11. Amendment:

Except as otherwise provided in the text of the statutes, the provisions of this act shall not be altered or amended except by one of the following:

(a) By statute passed in each house of the Legislature, by rollcall entered in the journal, with two-thirds of the membership and the Governor concurring; or

(b) By statute passed in each house of the Legislature, by

rollcall vote entered in the journal, with a majority of the membership concurring, to be placed on the next general ballot and approved by a majority of the electors; or

(c) By statute that becomes effective when approved by a majority of the electors.

PROPOSITION 37

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure amends and adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

The people of the State of California do enact as follows:

THE CALIFORNIA RIGHT TO KNOW GENETICALLY
ENGINEERED FOOD ACT

SECTION 1. FINDINGS AND DECLARATIONS

(a) California consumers have the right to know whether the foods they purchase were produced using genetic engineering. Genetic engineering of plants and animals often causes unintended consequences. Manipulating genes and inserting them into organisms is an imprecise process. The results are not always predictable or controllable, and they can lead to adverse health or environmental consequences.

(b) Government scientists have stated that the artificial insertion of DNA into plants, a technique unique to genetic engineering, can cause a variety of significant problems with plant foods. Such genetic engineering can increase the levels of known toxicants in foods and introduce new toxicants and health concerns.

(c) Mandatory identification of foods produced through genetic engineering can provide a critical method for tracking the potential health effects of eating genetically engineered foods.

(d) No federal or California law requires that food producers identify whether foods were produced using genetic engineering. At the same time, the U.S. Food and Drug Administration does not require safety studies of such foods. Unless these foods contain a known allergen, the FDA does not even require developers of genetically engineered crops to consult with the agency.

(e) Polls consistently show that more than 90 percent of the public want to know if their food was produced using genetic engineering.

(f) Fifty countries—including the European Union member states, Japan and other key U.S. trading partners—have laws mandating disclosure of genetically engineered foods. No international agreements prohibit the mandatory identification of foods produced through genetic engineering.

(g) Without disclosure, consumers of genetically engineered food can unknowingly violate their own dietary and religious restrictions.

(h) The cultivation of genetically engineered crops can also cause serious impacts to the environment. For example, most genetically engineered crops are designed to withstand weed-

killing pesticides known as herbicides. As a result, hundreds of millions of pounds of additional herbicides have been used on U.S. farms. Because of the massive use of such products, herbicide-resistant weeds have flourished—a problem that has resulted, in turn, in the use of increasingly toxic herbicides. These toxic herbicides damage our agricultural areas, impair our drinking water, and pose health risks to farm workers and consumers. California consumers should have the choice to avoid purchasing foods production of which can lead to such environmental harm.

(i) Organic farming is a significant and increasingly important part of California agriculture. California has more organic cropland than any other state and has almost one out of every four certified organic operations in the nation. California’s organic agriculture is growing faster than 20 percent a year.

(j) Organic farmers are prohibited from using genetically engineered seeds. Nonetheless, these farmers’ crops are regularly threatened with accidental contamination from neighboring lands where genetically engineered crops abound. This risk of contamination can erode public confidence in California’s organic products, significantly undermining this industry. Californians should have the choice to avoid purchasing foods whose production could harm the state’s organic farmers and its organic foods industry.

(k) The labeling, advertising and marketing of genetically engineered foods using terms such as “natural,” “naturally made,” “naturally grown,” or “all natural” is misleading to California consumers.

SEC. 2. STATEMENT OF PURPOSE

The purpose of this measure is to create and enforce the fundamental right of the people of California to be fully informed about whether the food they purchase and eat is genetically engineered and not misbranded as natural so that they can choose for themselves whether to purchase and eat such foods. It shall be liberally construed to fulfill this purpose.

SEC. 3. Article 6.6 (commencing with Section 110808) is added to Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, to read:

ARTICLE 6.6.

THE CALIFORNIA RIGHT TO KNOW GENETICALLY ENGINEERED FOOD ACT

110808. Definitions

The following definitions shall apply only for the purposes of this article:

(a) *Cultivated commercially.* “Cultivated commercially” means grown or raised by a person in the course of his business or trade and sold within the United States.

(b) *Enzyme.* “Enzyme” means a protein that catalyzes chemical reactions of other substances without itself being destroyed or altered upon completion of the reactions.

(c) *Genetically engineered.* (1) “Genetically engineered” means any food that is produced from an organism or organisms in which the genetic material has been changed through the application of:

(A) *In vitro nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) techniques and the direct injection*

of nucleic acid into cells or organelles, or

(B) *Fusion of cells, including protoplast fusion, or 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.*

(2) *For purposes of this subdivision:*

(A) *“Organism” means any biological entity capable of replication, reproduction, or transferring genetic material.*

(B) *“In vitro nucleic acid techniques” include, but are not limited to, recombinant DNA or RNA techniques that use vector systems and techniques involving the direct introduction into the organisms of hereditary materials prepared outside the organisms such as micro-injection, macro-injection, chemoporation, electroporation, micro-encapsulation, and liposome fusion.*

(d) *Processed food.* “Processed food” means any food other than a raw agricultural commodity, and includes any food produced from a raw agricultural commodity that has been subject to processing such as canning, smoking, pressing, cooking, freezing, dehydration, fermentation, or milling.

(e) *Processing aid.* “Processing aid” means:

(1) *A substance that is added to a food during the processing of such food, but is removed in some manner from the food before it is packaged in its finished form;*

(2) *A substance that is added to a food during processing, is converted into constituents normally present in the food, and does not significantly increase the amount of the constituents naturally found in the food; or*

(3) *A substance that is added to a food for its technical or functional effect in the processing, but is present in the finished food at insignificant levels and does not have any technical or functional effect in that finished food.*

(f) *Food Facility.* “Food facility” shall have the meaning set forth in Section 113789.

110809. Disclosure With Respect to Genetic Engineering of Food

(a) *Commencing July 1, 2014, any food offered for retail sale in California is misbranded if it is or may have been entirely or partially produced with genetic engineering and that fact is not disclosed:*

(1) *In the case of a raw agricultural commodity on the package offered for retail sale, with the clear and conspicuous words “Genetically Engineered” on the front of the package of such commodity or, in the case of any such commodity that is not separately packaged or labeled, on a label appearing on the retail store shelf or bin in which such commodity is displayed for sale;*

(2) *In the case of any processed food, in clear and conspicuous language on the front or back of the package of such food, with the words “Partially Produced with Genetic Engineering” or “May be Partially Produced with Genetic Engineering.”*

(b) *Subdivision (a) of this section and subdivision (e) of Section 110809.2 shall not be construed to require either the listing or identification of any ingredient or ingredients that were genetically engineered or that the term “genetically*

engineered” be placed immediately preceding any common name or primary product descriptor of a food.

110809.1. *Misbranding of Genetically Engineered Foods as “Natural”*

In addition to any disclosure required by Section 110809, if a food meets any of the definitions in subdivision (c) or (d) of Section 110808, and is not otherwise exempted from labeling under Section 110809.2, the food may not in California, on its label, accompanying signage in a retail establishment, or in any advertising or promotional materials, state or imply that the food is “natural,” “naturally made,” “naturally grown,” “all natural,” or any words of similar import that would have any tendency to mislead any consumer.

110809.2. *Labeling of Genetically Engineered Food—Exemptions*

The requirements of Section 110809 shall not apply to any of the following:

(a) Food consisting entirely of, or derived entirely from, an animal that has not itself been genetically engineered, regardless of whether such animal has been fed or injected with any genetically engineered food or any drug that has been produced through means of genetic engineering.

(b) A raw agricultural commodity or food derived therefrom that has been grown, raised, or produced without the knowing and intentional use of genetically engineered seed or food. Food will be deemed to be described in the preceding sentence only if the person otherwise responsible for complying with the requirements of subdivision (a) of Section 110809 with respect to a raw agricultural commodity or food obtains, from whoever sold the commodity or food to that person, a sworn statement that such commodity or food: (1) has not been knowingly or intentionally genetically engineered; and (2) has been segregated from, and has not been knowingly or intentionally commingled with, food that may have been genetically engineered at any time. In providing such a sworn statement, any person may rely on a sworn statement from his or her own supplier that contains the affirmation set forth in the preceding sentence.

(c) Any processed food that would be subject to Section 110809 solely because it includes one or more genetically engineered processing aids or enzymes.

(d) Any alcoholic beverage that is subject to the Alcoholic Beverage Control Act, set forth in Division 9 (commencing with Section 23000) of the Business and Professions Code.

(e) Until July 1, 2019, any processed food that would be subject to Section 110809 solely because it includes one or more genetically engineered ingredients, provided that: (1) no single such ingredient accounts for more than one-half of one percent of the total weight of such processed food; and (2) the processed food does not contain more than 10 such ingredients.

(f) Food that an independent organization has determined has not been knowingly and intentionally produced from or commingled with genetically engineered seed or genetically engineered food, provided that such determination has been made pursuant to a sampling and testing procedure approved in regulations adopted by the department. No sampling procedure shall be approved by the department unless sampling is done according to a statistically valid sampling plan

consistent with principles recommended by internationally recognized sources such as the International Standards Organization (ISO) and the Grain and Feed Trade Association (GAFTA). No testing procedure shall be approved by the department unless: (1) it is consistent with the most recent “Guidelines on Performance Criteria and Validation of Methods for Detection, Identification and Quantification of Specific DNA Sequences and Specific Proteins in Foods,” (CAC/GL 74 (2010)) published by the Codex Alimentarius Commission; and (2) it does not rely on testing of processed foods in which no DNA is detectable.

(g) Food that has been lawfully certified to be labeled, marketed, and offered for sale as “organic” pursuant to the federal Organic Food Products Act of 1990 and the regulations promulgated pursuant thereto by the United States Department of Agriculture.

(h) Food that is not packaged for retail sale and that either: (1) is a processed food prepared and intended for immediate human consumption or (2) is served, sold, or otherwise provided in any restaurant or other food facility that is primarily engaged in the sale of food prepared and intended for immediate human consumption.

(i) Medical food.

110809.3. *Adoption of Regulations*

The department may adopt any regulations that it determines are necessary for the enforcement and interpretation of this article, provided that the department shall not be authorized to create any exemptions beyond those specified in Section 110809.2.

110809.4. *Enforcement*

In addition to any action under Article 4 (commencing with Section 111900) of Chapter 8, any violation of Section 110809 or 110890.1 shall be deemed a violation of paragraph (5) of subdivision (a) of Section 1770 of the Civil Code and may be prosecuted under Title 1.5 (commencing with section 1750) of Part 4 of Division 3 of the Civil Code, save that the consumer bringing the action need not establish any specific damage from, or prove any reliance on, the alleged violation. The failure to make any disclosure required by Section 110809, or the making of a statement prohibited by section 110809.1, shall each be deemed to cause damage in at least the amount of the actual or offered retail price of each package or product alleged to be in violation.

SEC. 4. ENFORCEMENT

Section 111910 of the Health and Safety Code is amended to read:

111910. (a) Notwithstanding the provisions of Section 111900 or any other provision of law, any person may bring an action in superior court pursuant to this section and the court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of Article 6.6 (commencing with Section 110808), or Article 7 (commencing with Section 110810) of Chapter 5. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the person shall not be required to allege facts

necessary to show, or tending to show, lack of adequate remedy at law, or to show, or tending to show, irreparable damage or loss, or to show, or tending to show, unique or special individual injury or damages.

(b) In addition to the injunctive relief provided in subdivision (a), the court may award to that person, organization, or entity reasonable attorney’s fees *and all reasonable costs incurred in investigating and prosecuting the action* as determined by the court.

(c) This section shall not be construed to limit or alter the powers of the department and its authorized agents to bring an action to enforce this chapter pursuant to Section 111900 or any other provision of law.

SEC. 5. MISBRANDING

Section 110663 is added to the Health and Safety Code, to read:

110663. Any food is misbranded if its labeling does not conform to the requirements of Section 110809 or 110809.1.

SEC. 6. SEVERABILITY

If any provision of this initiative or the application thereof is for any reason held to be invalid or unconstitutional, that shall not affect other provisions or applications of the initiative that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this initiative are severable.

SEC. 7. CONSTRUCTION WITH OTHER LAWS

This initiative shall be construed to supplement, not to supersede, the requirements of any federal or California statute or regulation that provides for less stringent or less complete labeling of any raw agricultural commodity or processed food subject to the provisions of this initiative.

SEC. 8. EFFECTIVE DATE

This initiative shall become effective upon enactment pursuant to subdivision (a) of Section 10 of Article II of the California Constitution.

SEC. 9. CONFLICTING MEASURES

In the event that another measure or measures appearing on the same statewide ballot impose additional requirements relating to the production, sale and/or labeling of genetically engineered food, then the provisions of the other measure or measures, if approved by the voters, shall be harmonized with the provisions of this act, provided that the provisions of the other measure or measures do not prevent or excuse compliance with the requirements of this act.

In the event that the provisions of the other measure or measures prevent or excuse compliance with the provisions of this act, and this act receives a greater number of affirmative votes, then the provisions of this act shall prevail in their entirety, and the other measure or measures shall be null and void.

SEC. 10. AMENDMENTS

This initiative may be amended by the Legislature, but only to further its intent and purpose, by a statute passed by a two-thirds vote in each house.

PROPOSITION 38

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and adds sections to the Education Code, the Penal Code, and the Revenue and Taxation Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

OUR CHILDREN, OUR FUTURE: LOCAL SCHOOLS AND EARLY EDUCATION INVESTMENT AND BOND DEBT REDUCTION ACT

SECTION 1. Title.

This measure shall be known and may be cited as “Our Children, Our Future: Local Schools and Early Education Investment and Bond Debt Reduction Act.”

SEC. 2. Findings and Declaration of Purpose.

(a) California is shortchanging the future of our children and our state. Today, our state ranks 46th nationally in what we invest to educate each student. California also ranks dead last, 50th out of 50 states, with the largest class sizes in the nation.

(b) Recent budget cuts are putting our schools even farther behind. Over the last three years, more than \$20 billion has been cut from California schools; essential programs and services that all children need to be successful have been eliminated or cut; and over 40,000 educators have been laid off.

(c) We are also failing with our early childhood development programs, which many studies confirm are one of the best educational investments we can make. Our underfunded public preschool programs serve only 40 percent of eligible three- and four-year olds. Only 5 percent of very low income infants and toddlers, who need the support most, have access to early childhood programs.

(d) We can and must do better. Children are our future. Investing in our schools and early childhood programs to prepare children to succeed is the best thing we can do for our children and the future of our economy and our state. Without a quality education, our children will not be able to compete in a global economy. Without a skilled workforce, our state will not be able to compete for jobs. We owe it to our children and to ourselves to improve our children’s education.

(e) It is time to make a real difference: no more half-measures but real, transformative investment in the schools on which the future of our state and our families depends. This act will enable schools to provide a well-rounded education that supports college and career readiness for every student, including a high-quality curriculum of the arts, music, physical education, science, technology, engineering, math, and vocational and technical education courses; smaller class sizes; school libraries, school nurses, and counselors.

(f) This act requires that decisions about how best to use new funds to improve our schools must be made not in Sacramento, but locally, with respect for the voices of parents, teachers, other school staff, and community members. It requires local school

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