

Response to Sonoma County implementation of AB 1990, and AB 234. For more information, please contact Suzi Grady, Program Director at Petaluma Bounty

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Good food is going to waste each day in our community at the same time approximately 15% of our community lacks access to healthy foods and approximately 60% of adults are overweight. The EPA estimates that upwards of 35% of food grown in our food system goes to waste. Because Sonoma County is no different, our county-wide gleaning programs and endeavors have been widely accepted and utilized by our emergency food systems.

Decentralized gleaning and food recovery efforts exist because they supplement these emergency food systems by collecting and distributing small amounts of locally grown, highly perishable produce that is impractical and inefficient for food banks to consider. It is typically local efforts that bring perishable produce (beyond potatoes, carrots, onions, celery, apples, and oranges) into small pantries and distribution sites. Donors and gleaners are motivated because they believe improving access to locally grown fresh produce that would otherwise go to waste for our community's most vulnerable is the right thing to do.

State regulation, however, will deter many individuals from continuing, or beginning to participate in gleaning endeavors. State regulators offer that the Good Samaritan Act, federal law, protects food donors and removes the need for over-regulation. Yet, the language chosen for AB 1990 and AB 234 could inadvertently undermine the very liability protections the Good Samaritan Act provides.

Additionally, while traceability is one method of disease monitoring that is effective for specific pathogens in certain environments, decentralized community efforts is not one such environment.

This discussion highlights the juxtaposition of two pressing public health issues: diet-related chronic disease and food-borne diseases. We believe that collaboratively, health experts (preventive health, nutrition, infectious disease, community health), food system experts, and community food security advocates can come together to design solutions that don't jeopardize food access, food security, and chronic disease prevention efforts.

Although Environmental Health experts' end goal is safe food, pursuing that with AB 1990 and AB234 will come at the cost of significantly impacting food security and reducing access to fresh, locally grown produce collected through community food recovery efforts. We are all concerned about food safety. However, those of us who are actually working on the front lines also know that low income folks are more likely to face chronic, diet-related diseases than any serious food-borne pathogen. Food safety is a serious concern but law makers must also be mindful that food safety is but only one concern facing the health and wellbeing of our community. Further, any critical observation of our community's most vulnerable must first factor in the probability that many will experience diet-related chronic diseases, and then continue by examining the following:

- *Does insistence of having Approved Source labeling and traceability for all donated food make our community any healthier?*
- *Do the benefits of traceability outweigh the likely (and already reported) detrimental impacts on gleaning efforts and produce donations?*
- *What are the actual risks of food-borne pathogens being passed through gleaning and donation efforts (which types, how are they introduced, and what environmental conditions do they need to flourish) and what is the actual probability of them happening?*
- *Food Recovery/Gleaning Efforts take different forms in different communities. The proposed regulation may work well for one model of gleaning but the negative impacts may regulate other models out of existence.*
- *Are there other ways to promote healthy communities and safe food that don't negatively impact the volunteer gleaning movement and potentially undermine legal protections provided by the Good Samaritan Act?*
- We have been asked to consider the plight of a person that gets sick from a food-borne illness because traceability and Approved Source methods have not been implemented to all food distribution activities. But who speaks for the people who will surely go hungry, develop chronic diet-related diseases, become frail or

worse because they were prevented from accessing “unapproved” fresh community food, all due to a theoretical risk of exposing a small number of people to food-borne pathogens via gleaning and food recovery efforts?

- Furthermore, will those people be denied access to healthy fresh produce based on the untested assumption that this one method of traceability and certifying Approved Sources is the best method to ensure food safety in all environments? Who currently is doing this research and where are the answers to these critical questions? Shouldn't law makers hear from these experts as well before making any decisions?

In order to make the best decision for the health and wellbeing of our communities, law makers must hear from health experts from multiple fields, industry and farming experts, community food security advocates, senior citizens and low-income families, the latter of which tell us they would prefer the option of having access to locally grown fresh produce over potentially lower quality “safe” and “approved” foods.

Diversity of Gleaning Models in Sonoma County and Beyond:

Because gleaning or food recovery takes different forms in different communities, regulatory effectiveness and burdens will vary widely per community and food recovery models. The most common forms of gleaning are: a table of extra produce in a church lobby, delivering extra prepared meals or produce from one site to another, collecting unsold produce from the farmers' market and providing it to a service provider to distribute to clients, gardener drop sites of extra produce, volunteer drivers that pick up and deliver pre-packaged aged produce from a grocery store or un-packaged produce from a local distributor.

A. Various factors related to donations- 1) the type of donors: individual homeowners, commons areas, community gardens, small farms, farmers' markets, produce distributors, grocery stores, restaurants, community kitchens and service providers, large farms; **2) type and size of donations:** unsold produce, bread, packaged food, prepared food left over from commercial operations or events; extra produce from the garden, grow a row, unmanaged orchards or fruit trees, abundance from commercial farms. Donation sizes vary, from thousands of pounds to a couple items.

B. Various types of donation recipients and activities- individuals in need, direct service providers that re-distribute to clients, religious groups that host their own pantries, homeless shelters and community kitchens, direct service providers that cook for their clients.

C. Various types of volunteer efforts that connect surplus food to people in need, all could be considered gleaning- harvesting produce, regular routes to move food from one source to another, on-demand pick up and distribution of extra food, re-route food from one distribution point to a less centralized location, support outreach efforts to solicit more donations and raise awareness.

Historical Perspective on Gleaning and Petaluma Bounty Background:

Evidence of gleaning dates back 3,000 years and it is mentioned both in the Old Testament and New Testament of the Bible. Formalized gleaning efforts, as we know them today, have been going on in Sonoma County for at least three decades. Petaluma Bounty was founded in 2006 to make healthy food available to everyone through collaboration, education, and promoting self-reliance. Petaluma Bounty's first program, Bounty Hunters Gleaning is a network of volunteers that provides fresh, nutritious food to low-income families and seniors through emergency food outlets. Bounty Hunters' activities include harvesting food from private farms, gardens and fruit trees; supporting community drop sites; recovering left over food from farmers' markets; redistributing food that was purchased or donated to the local homeless shelter and other pantry sites; and training and encouraging others to do the same.

Since 2006, over 600,000 pounds of fresh produce was recovered and diverted into the emergency food system. Annually, we collect, harvest, recover or redistribute approximately 145,000 pounds of fresh food that is redirected to emergency food systems, including eight local service agencies. The Bounty Hunters helps our community turn a food waste problem into a food access solution and we are part of a much wider network of volunteer efforts. However, our efforts touch only a small portion of the food that is going to waste in our community because of limited numbers of volunteers and willing donors.

Our local efforts round out the nutritional offerings to low-income households. During the growing season, our collective efforts supplement low-income seniors' food budgets significantly, reportedly by 50% or more. If Petaluma

Bounty's operations are impacted any further by the subject regulations, our low-income seniors and families will absolutely feel the burden of these unintended and preventable consequences.

Background of Local and State Legislation:

The Approved Produce Garden Certificate (APGC) of Sonoma County resulted from work done by the Sonoma County Public Health Department and Sonoma County Agriculture Commissioners Office to make it easier for gardens to sell produce. The certificate was modeled after the Napa County Certificate but included language (first of its kind) on donated produce. Gleaning groups voiced their concerns about the potential impact of the APGC but were told that there would be no enforcement capability and that there was new legislation coming that would necessitate some sort of tracking of donated goods.

The new legislation is here, AB1990, and the interpretation of the law has yet to be determined, nor has it been fully implemented. Additionally, there is a cleanup bill still making its way through the legislature (AB 234). Others have shared that the motivation for AB1990 was that the California Retail Food Code did not provide explicit instructions on how to regulate Community Food Providers, including gleaners, as well as articulating the need for all food that is shared, donated, or sold to come from an "Approved Source". It is our position that this is one interpretation of CalCode on Retail Food and that there is room to reinterpret the necessity of traceability and Approved Sources, especially considering the significant negative impact this will have on community food security efforts.

Environmental Health advocates prioritize food safety concerns over other health risk factors because they have interpreted CalCode to require Approved Sources and Traceability for all food exchanged, sold, or donated. This is a narrow interpretation that deserves scrutiny and balance from other health perspectives including nutrition, chronic disease prevention, community health, and behavioral health. If Environmental Health truly believes that CalCode is written in a way that mandates them to ensure all food comes from an Approved Source and is traceable, at any and all costs to the health and wellbeing of our communities, then we must work together to rewrite the Code to allow all health professionals to acknowledge diverse risk factors in distinct communities, and moreover, prioritize the greater wellbeing of our communities, rather than narrowly focus on just food safety.

Limitations and Unintended Outcomes of AB 1990 and AB 234:

Petaluma Bounty questions the food safety regulatory approach that takes a one-size-fits-all approach to all food, producers and now gleaners, when all gleaning operations look very different, even within Sonoma County.

Food safety is a serious concern for all food producers and consumers. Traceability and Approved Source requirements work well to contain food-borne illnesses (by recalling food, identifying and isolating pathogens, assigning culpability and responsibility) in certain situations. Ideal environments for this tool include: large volumes of uniform types of produce harvested from the same site at one time; one centralized growing entity with uniform growing practices; centralized distribution sites with standardized engagement; produce remains in same container throughout distribution process or when each unit is individually marked to retain original source information; grower/distributor work force is uniform, standardized and motivated (perhaps by a paycheck, reputation of business or acceptance of the cost of doing business) to adhere to standardized practices and certifications.

However, traceability and Approved Source requirements do not work well for community gleaning and food recovery efforts because the environments we work in include: small amounts of non-uniform batches of produce trickling in from across the community; multiple growers using a wide array of growing practices; produce aggregated multiple times that is not individually marked thus does not retaining original source information; volunteer work force and suppliers/donors motivated by a moral imperative and goodwill.

There are unique characteristics of decentralized community gleaning efforts that makes traceability and the Approved Source approach less effective and more burdensome, such as: 1) the food would be distributed and consumed before a recall was engaged due to the highly perishable nature of the produce recovered, 2) many pantries operate on the basis of anonymity to remove barriers to participation thus making timely communication with clients unlikely, and 3)

environmental conditions and practices that compromises source information and increased motivation for aggregation make identification of culpable practices and environments more difficult and time consuming.

Potential negative impact on Petaluma Bounty gleaning and recovery efforts:

Gleaning groups only get to a fraction of the fresh produce wasting away in private gardens, on trees, and on farms. Presently, Petaluma Bounty and other community groups are encouraging and catalyzing efforts to increase neighborly sharing activities such as grow-a-row, neighborhood produce exchanges, etc. Our biggest limitations are willingness of landowners/gardeners to open their space to our group as well as volunteer capacity to respond to gleaning requests. Here's why:

- Gleaning regulation may jeopardize land owners' willingness to donate food or invite gleaners onto their land because they don't want to adhere to "Best Management Practices" as defined by the creators of the APGC, or they are put off by the legalese that requires them to "sign on penalty of perjury that these best management practices are followed." Although completing the APGC check list is not particularly burdensome, many donors may not agree to the Best Management Practices, nor would they want to make their properties available for inspection.
- Diminished volunteer willingness to take on increased tracking burden. This equates to less people power and more produce left to waste.
- Once the foundation of traceability is laid, so follows the tracks of liability. Specifically, the legal business of general liability, thus putting into jeopardy legal protections of charitable activities under the Good Samaritan Act.
- These new requirements will require gleaning groups like Petaluma Bounty to put our name on produce we did not grow, thus forcing gleaning groups to take on even greater liability. When insurance companies realize that potential liability is being shifted their way, they are apt to drop activities deemed as risks, regardless of the community benefit.
- Gleaning groups are primarily volunteer driven organizations with limited funding for coordination. The increased administrative burden that gleaning regulation puts on individuals is fairly low, but for a gleaning group it adds up and could become prohibitive for operations- first due to the extra administrative burden of tracking, and second due to increased liability exposure.
- For many larger food banks, if regulations were enforced that required more tracking and work for their staff, it wouldn't be worth their increased operating costs to accept any donated produce from local sources. Similarly, the APGC will push Petaluma Bounty Hunters and other gleaning groups to forego non-commercial (gardens and individuals') offers of produce due to the added burden of certificate tracking.

A More Effective Approach to Food Safety with Less Collateral Damage and Proposed Solutions:

Instead of enforcing Approved Sources and traceability requirements in all circumstances, regulators must take into consideration scale of operations, biological eco-systems, farm management practices, and probabilities; distribution methods, likelihood of success of prevention; not to mention unintended consequences and other relevant health concerns of our communities such as risk of chronic diet-related disease, hunger and malnutrition. It is time that Environmental Health diversifies its methods to consider the above factors.

It is imperative that Environmental Health regulators know and report the strengths and weaknesses of their tools, identify problematic environments and practices, note and measure unintended impacts, and have a baseline amount of research done to quantify the actual risks of food-borne illness in diverse settings. Petaluma Bounty staff contend that new regulations ought to be based on such research and we are ready to partner with UC Extension to gather data on food safety concerns specific to sustainable, small scale farms and community-based gleaning efforts.

Additionally, another factor in working toward healthier communities is the long term impact of agency interventions. Groups like Petaluma Bounty focus on building the capacity of our community for better health outcomes into the future. However, prioritizing Traceability and Approved Sources will only serve to disempower communities from helping themselves through local gleaning and food recovery efforts. It creates greater regulation while institutionalizing and centralizing what used to be neighborhood efforts, leaving individuals more dependent upon an institution to provide a service and an agency to provide oversight. Petaluma Bounty would rather focus our efforts on providing information on risk factors and build skills on safe handling practices, to ensure the highest standard of food safety in this context, while expanding our community's capacity to respond to its own needs.

- If the State Lawmakers are in agreement that the Good Samaritan Act will protect donors, gleaners and food recovery groups from the risk of liability if a food borne illness happens, then these governing bodies should author an educational pamphlet advising of this liability protection to donors and gleaning groups. This should help diminish the chilling effect that increased traceability requirements is having and will continue to have on charitable activities related to food recovery and gleaning.
- Create a legal definition of gleaning that incorporates the end use into the definition (donated for charitable purposes only). For-profit gleaners would then be regulated as the equivalent scale food producer/distributor.
- Remove language that includes gleaners or donated food from AB1990 and AB234 and instead work with gleaning groups (including Petaluma Bounty) and food banks to identify unique issues, factors and solutions. Conduct baseline research to identify actual food safety concerns specific to community-based gleaning efforts, develop best practices that reflect the unique food distribution environments of decentralized efforts and reconsider approach (See below).
- Define and offer an “informed consent” model where community members can choose whether they want to accept donated produce from non-certified sources by labeling them as such. Pantries could designate a table “Community Produce, not from an approved source. Take at your own risk.” Consumers could be informed to take extra precautions (extra washing or cooking) and would understand that they take the food at their own risk. **Better to be informed and have access to the produce than not to have access to perishable items.**

Conclusion:

Environmental Health regulators are trying to enforce one method of regulating food safety concerns with little consideration of varying likelihood of success in very different food production/distribution environments, treating as well as doing no cost/benefit analysis of negative impacts compared to positive gains. All potential threats are treated as if they are severe and will benefit from the same method of monitoring and containment. That logic may make sense in a setting if all people had equitable access to fresh produce and could just go back to the store for safer, approved source produce. But sadly that is not the case in our society.

Although Environmental Health experts’ intentions are honorable and commendable, the unintended consequences of their interpretation of CalCode, AB 1990 and AB234 may very well be less healthy communities as the administrative burden will significantly diminish community food recovery efforts. This will result in less locally grown fresh produce being available to our community’s most vulnerable. Although all food may come from “Approved Sources”, there will be less fresh produce which will result in less healthful diets for our seniors and low-income families.

Environmental Health Regulators’ apparent prioritization of prevention of food-borne pathogens over more pressing public health concerns presumably is due to their interpretation of CalCode. They are in the best position to give expert opinion on food safety issues and to identify gaps in research on efficacy of methods. But in order to ensure the wellbeing of everyone in our communities, law makers must hear from other health, industry, community food security experts, as well direct service providers to better understand unintended consequences and alternative solutions. In order to move forward, law makers should address what Environmental Health Regulators claim is a legal mandate for their actions.