



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 10/15/2019

Agenda Placement: 10B

NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors

FROM: David Morrison - Director
Planning, Building and Environmental Services

REPORT BY: David Morrison, Director, Planning, Building & Environmental Servi - (707) 253-4805

SUBJECT: Amendment of Code Compliance Resolution

RECOMMENDATION

Director of Planning, Building and Environmental Services requests adoption of a resolution amending Resolution No 2018-164 to extend the deadline by 90 days for owners who submitted a Status Determination application prior to the March 29, 2019 compliance deadline and who wish to submit a Use Permit or Use Permit Modification application to remedy any violations discovered through the Status Determination process.

EXECUTIVE SUMMARY

On September 24, 2019, the Board of Supervisors directed staff to prepare an amendment to Resolution No. 2018-164 to extend the deadline for owners who submitted an application for a Status Determination prior to the March 29, 2019 deadline, and who subsequently want to submit a Use Permit or Use Permit Modification application to remedy any potential violations identified as a result of the Status Determination process. The intent of the deadline extension would be to allow the County time to draft and consider the Small Winery Protection and Use Permit Streamlining Ordinance, and to provide sufficient time for those Status Determination applicants to understand how the ordinance may affect the types of changes owners may want to request.

PROCEDURAL REQUIREMENTS

1. Receive the staff report;
2. Hold the Public Hearing and receive public comments;
3. Motion, second, discussion, and vote on the proposed resolution.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?

No

County Strategic Plan pillar addressed: Strategic Action 9.F states: Implement and enforce the updated Code Enforcement Program.

ENVIRONMENTAL IMPACT

There is no Environmental Impact for this item.

BACKGROUND AND DISCUSSION

History

On March 1, 2016, the Board of Supervisors took final action on the recommendations of the Agricultural Protection Advisory Committee (APAC), as modified by the Planning Commission. The Board directed staff to implement a phased Code Compliance program. The program included an opportunity for wineries to come in for a voluntary review of their use permit to: (1) consolidate and streamline existing use permit conditions of approval; (2) determine and specify existing vested rights; (3) clarify the scope of activities addressed; and/or (4) consider alternative effective measures of tasting and marketing visitation. The reviews would not involve any change to legally established vesting or permitted rights. The program also included transition to a practice of strict code enforcement whereby violators would be required to immediately comply with all applicable requirements.

On August 22, 2017, the Board of Supervisors directed staff to develop a comprehensive Code Compliance Program that included the following components:

1. A systematic program with enforceable deadlines for landowners to apply for new Use Permits or modifications to resolve outstanding violations;
2. A reporting program that would include annual production and grape sourcing data for all wineries located within the unincorporated area;
3. Revisions to the current process and procedures for temporary events, including a probationary period for temporary events that have violations;
4. Recognition of the significant work needed to carry out additional enforcement efforts, in light of workload priorities for both PBES and County Counsel's office.

On September 12, 2017, after public comment and extensive discussion, the Board of Supervisors accepted many of the staff recommendations regarding the draft Code Compliance program, with several revisions including the following direction:

1. Authorize the Director to close out an application that is incomplete after the deadline, where the applicant is not making a good faith effort towards timely completion.
1. Revise future staff reports to "decouple" recommendations with an intent to clearly distinguish between portions of a proposed project that are necessary to remedy existing violations and portions that would expand beyond existing permissible uses. Each set of recommendations will be considered separately by the decision-making body.
1. Continue to place a high priority on those violations that represent immediate threats to public health and safety, and/or the environment. Also prioritize cases where the violation is unambiguous ("black and white")

and resolution can be quickly obtained.

- | Exempt those pre-Winery Definition Ordinance (WDO) wineries or portions thereof, which do not have to comply with the 75% Napa County grape source requirement, from submitting annual grape source data.
- | Provide regular updates to the Board of Supervisors regarding the status of implementing the various code compliance efforts discussed herein.

A draft resolution was prepared for October 10, 2017. The 2017 Napa Fire Complex started on October 8, 2017 and this item was postponed for one year. During that year, staff met with various stakeholder groups regarding the code compliance resolution and distributed draft documents for public comment and review.

On October 30, 2018, staff presented a revised draft resolution to the Board of Supervisors. The draft resolution memorialized the direction to staff provided by the Board of Supervisors on September 12, 2017 and included additional recommended changes from the public, County Counsel, and PBES staff. A summary of the revisions made for the October 30, 2018 version of the resolution is provided as follows:

- | The deadline to submit applications was changed from March 27, 2018, to March 29, 2019.
- | A compliance inspection would be conducted for applications to verify any violations the applicant was requesting to remedy in the application, as well as to determine if health and safety violations exist.
- | As a part of the decision-making process for applications submitted before the deadline, the staff recommendations would distinguish between applicant requests related to significant violations (defined as production levels, grape sourcing, tasting room visitation and marketing events, and unpermitted buildings or changes in occupancy) and requests for expansion of existing operations.
- | Applications submitted after the deadline would prioritize health and safety violations, as well as significant violations, by requiring that they be brought into immediate compliance.
- | Rather than create a new Use Determination process for owners who request that the County determine the extent of existing entitlements and/or permissible uses of their property, staff would rely on the existing Status Determination process.
- | To the extent feasible, a single staff planner would be assigned to each project as the point of contact throughout the process.
- | "White papers" regarding vesting rights, small winery exemptions, outdoor hospitality areas, and other topics would not be prepared.
- | Annual winery reporting of production and grape source data (where applicable) would start in 2019.
- | Staff would outreach to winery owners regarding the new reporting requirements.
- | Staff would outreach to stakeholders regarding the new temporary event ordinance changes.

During the October 30 meeting, the Board also provided additional direction as summarized below.

1. Allow applications submitted prior to the deadline to be considered substantially conforming, if technical studies that could not be completed by the deadline due to seasonal conditions or extenuating circumstances were not included. In such cases, any deferred technical studies would have to be submitted within 120 days after the deadline.
2. Provide that recommendations for discretionary applications submitted prior to the deadline be "decoupled," distinguishing between requests related to remedying any existing violations and those requests related to the expansion of existing operations.
3. Require owners to operate within their existing legal entitlements for one year, before submitting a use permit or modification application to remedy any violations. Owners who agree in writing that their legal entitlements or existing legal operations, whichever is less, will be used as the environmental baseline for the California Environmental Quality Act (CEQA) analysis, may submit their use permit or modification application during the one-year period. However, the public hearing to consider the application would not be held until the one-year period of operating within their legal entitlements has been completed.

4. If the PBES Director denies a status determination application accepted as complete prior to the deadline, in whole or in part, the deadline for would be extended for the amount of time required to process the application or 120 days, whichever is less. The extension would be to allow the applicant sufficient time to prepare a use permit or modification application.
5. Review the letter submitted by George Calyonidis on October 29, 2018, wherein he provided comments and recommendations regarding the draft resolution, and incorporate any comments as appropriate.

Prior to the November 13, 2018, meeting, staff submitted a supplemental memo making a change to the draft resolution to delete language regarding the noticing of Status Determination decisions. The Board also provided the following direction:

1. Change the reference to "denial" of a Status Determination application, as the decision is a determination, not a denial.
2. Maintain the proposed deadline as March 29, 2019.
3. Clarify that Status Determination applications must be submitted prior to the deadline in order to qualify for tolling .
4. Provide updates on the status of the code compliance changes described in the draft resolution to the Board of Supervisors every month, instead of every quarter.
5. Post information about Status Determination applications on the County website, including background, a timeline, and representative examples of prior decisions.

On December 4, 2018, the Board adopted Resolution No. 2018-164, providing direction to County staff regarding the Code Compliance Program, annual winery production and grape source reporting, and the regulation and permitting of temporary events.

Analysis

Under Resolution 2018-164, any owners who submitted a Status Determination application to the County prior to the March 29, 2019 compliance deadline have 120 days (or the time tolled during processing of the Status Determination application, whichever is less) in which to submit a Use Permit or Use Permit Modification application to remedy any potential violations discovered through the Status Determination process.

On May 21 and September 24, 2019, the Board gave direction to staff to prepare a Small Winery Protection and Use Permit Streamlining Ordinance with the intent of providing regulatory relief for small wineries and streamlining the modification process for all use permit holders. In light of this direction, on September 24, 2019, the Board also gave direction to staff to prepare an amendment to Resolution No. 2018-164, to extend the deadline for owners who submitted an application for a Status Determination prior to the March 29, 2019, deadline, and who subsequently want to submit a Use Permit or Use Permit Modification application to remedy any potential violations identified as a result of the Status Determination process. The intent of the deadline extension proposed today would be to allow the County time to draft and consider a Small Winery Protection and Use Permit Streamlining Ordinance, and to provide sufficient time for those Status Determination applicants to understand how the ordinance may affect the types of changes owners may want to request.

The County received 19 Status Determination applications prior to the March 29, 2019 compliance deadline. Two of the 19 have already filed their Use Permit Modification application. One of the Status Determination applications is currently under appeal, with a public hearing currently scheduled in January 2020. Of the remaining 16 Status Determination applications, 5 have use permit submittal deadlines that will have expired prior to October 15, 2019. All other use permit submittal deadlines vary between late October and late November. A table showing the Status Determination applications, their submittal dates, tolling periods, and deadlines is provided in Attachment C.

On September 24, 2019, the Board discussed extending the deadline by adding 90 days to the tolling period. The

table in Attachment C includes a column indicating how the deadline for each applicant would be affected by a 90-day extension. Deadlines would vary, generally extending from late December to late March, 2020.

The draft outline for the Small Winery Protection and Use Permit Streamlining Ordinance currently proposes to define small wineries as 20,000 gallons of annual production or less. Of the 19 Status Determination applicants, only 3 fall under this threshold. Another 7 applicants are currently entitled to 20,000 gallons of annual production so could not expand production but may be able to modify other aspects of the winery operation if they meet the criteria included in any future ordinance, if adopted. While the other 6 applicants may not benefit from the small winery protections, they may benefit from the use permit streamlining proposals, if adopted.

As previously directed, and following additional direction by the Board, staff intends to draft the Small Winery Protection and Use Permit Streamlining Ordinance and take it to the Planning Commission for their recommendation. Staff anticipates returning to the Board for final consideration of the draft ordinance by December 2019.

Staff recommends that the Board of Supervisors adopt the draft resolution to extend the deadline for owners who submitted an application for a Status Determination prior to the March 29, 2019, deadline, and who subsequently want to submit a Use Permit or Use Permit Modification application to remedy any potential violations identified as a result of the Status Determination process. Attachment A highlights the difference between Resolution 2018-164 and the draft resolution proposed. Attachment B is a clean version of the draft resolution.

SUPPORTING DOCUMENTS

- A . Attachment A - Draft Resolution (track changes)
- B . Attachment B - Draft Resolution (clean)
- C . Attachment C - Table of Status of Determination Applications

CEO Recommendation: Approve

Reviewed By: Leigh Sharp