



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 11/13/2018

Agenda Placement: 6G

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: Adoption of a Resolution Providing Direction Regarding the County Code Compliance Program

RECOMMENDATION

Director of Planning, Building and Environmental Services requests adoption of a resolution providing direction to County staff regarding the County code compliance program; annual winery production and grape source reports; and regulation and permitting of temporary events.

EXECUTIVE SUMMARY

On August 22, 2017, the Board initiated discussions regarding a revised code compliance program. The Board directed staff to return on September 12, 2017, with a comprehensive land use compliance program that included the following components: 1) a systematic program with enforceable deadlines for landowners to apply for new 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 and 4) recognition of the significant work needed to carry out additional enforcement efforts, in light of existing workload priorities for both PBES and County Counsel.

The attached draft resolution memorializes the direction to staff provided by the Board of Supervisors on September 12, 2017, regarding code compliance. It is intended that this resolution be a reference guide for decision makers, staff, the public, and landowners in the months to come as the various compliance programs are implemented.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

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's action included the following:

Prepare a plan to implement a phased, self-certification compliance program.

The first phase would require all wineries to report their production and grape sourcing data to the County. An ordinance to require production and grape sourcing would be considered late in 2016, would be implemented in 2017, and the first reports would be due in 2018. During this phase, staff would review the existing methodology for calculating wine production for consistency with the ATTB (Alcohol, Tobacco, Tax and Trade Bureau) definition, as well as current types of winery operations. Staff would also work with County Counsel to prepare a series of papers explaining the legal guidelines by which existing vested rights are determined.

The second phase would involve 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. Depending on the volume of such requests and the extent of the Planning Division workload, outside planning and legal consultants may be needed to implement this second phase. The current practice of the wine audit would continue through the first and second phases.

The third phase would 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 Land Use Compliance Program that includes 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 existing workload priorities for both PBES and County Counsel's office.

On September 12, 2017, staff reported back with recommendations in response to the direction provided by the Board of Supervisors. The recommendations proposed a Land Use Compliance Program to establish a deadline

for applications to resolve existing violations; require owners who are in violation after the deadline to come into immediate compliance with their legal entitlements; create a Use Determination process for owners to determine the extent of their legal entitlements; and requested the use of temporary staffing if needed to process future workloads associated with the increased compliance efforts. Staff also proposed the details of a winery reporting program, to require production and grape source data from all wineries on an annual basis. Finally, staff recommended changes to the existing Temporary Event Permit program, to create a probationary system for violations and to require that applications be submitted 90 days prior to the event.

After public comment and extensive discussion, the Board of Supervisors accepted many of the staff recommendations, with several revisions including the following direction:

- | 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.
- | Revise future staff reports to "decouple" recommendations, to clearly distinguish between portions of a proposed project that are necessary to remedy existing violations, and those that that would expand beyond existing permissible uses. Each set of recommendations will be considered separately by the decision-making body.
- | 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, regarding code compliance, 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 been 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 there are health and safety violations.
- | 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.

Revised Draft Resolution

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 CEQA (California Environmental Quality Act) 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.

The Board of Supervisors also directed staff to review the letter submitted by George Calyonidis on October 29, 2018, wherein he provided comments and recommendations regarding the draft resolution. As a result, the following changes have been included in the revised draft resolution:

1. Require that the health and safety inspection for properties be held within 30 days of submittal for a use permit or modification application that has been submitted prior to the deadline.
2. Provide that the PBES Director will issue the decision regarding a status determination application accepted as complete before the deadline within 120 days of it being determined complete. In addition, the decision would be mailed to property owners within 1,000 feet of the subject property and all interested parties, as well as posted on the PBES website.

Staff recommends that the Board of Supervisors adopt the draft resolution, as modified by the Board.

SUPPORTING DOCUMENTS

A . Attachment A - Draft Code Compliance Resolution (red-line)

B . Attachment B - Draft Code Compliance Resolution (clean version)

CEO Recommendation: Approve

Reviewed By: Helene Franchi