



A Tradition of Stewardship  
A Commitment to Service

Agenda Date: 8/11/2015  
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Set Time: 9:30 AM  
Estimated Report Time: 45 minutes

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** David Morrison - Director  
Planning, Building and Environmental Services  
**REPORT BY:** David Giudice, PRINCIPAL PLANNER - Code Enforcement Supervisor - 299-1347  
**SUBJECT:** Code Enforcement Program Workshop

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### **RECOMMENDATION**

Director of Planning, Building, and Environmental Services requests the following actions regarding the code enforcement program:

1. Accept the update and presentation provided by staff regarding the code enforcement program;
2. Direct staff to hold the first community clean-up event in East Imola this September, or as soon thereafter as is feasible;
3. Direct staff to return by November, 2015, with a limited residential building permit amnesty program;
4. Direct staff to post on-line the "Frequently Asked Questions" memo included in Attachment B of the staff report;
5. Direct staff to return with formulas for calculating civil penalties for both vineyard violations and zoning violations, for future consideration by the Board;
6. Direct staff to return with a draft ordinance to allow for the recordation of Notices of Violation and Citations, for future consideration by the Board; and
7. Approve the prepared responses to the 2014-15 Grand Jury Report - Are Napa County Wineries Following the Rules? in Attachment F of the staff report and authorize the Chair to sign a letter transmitting the responses to the Presiding Judge (Attachment E of the staff report).

### **EXECUTIVE SUMMARY**

The purpose of this agenda item is to provide an update and follow-up to the Code Enforcement discussion that occurred on March 3, 2015.

### **PROCEDURAL REQUIREMENTS**

1. Staff presentation
2. Public comment
3. Board discussion and direction to staff.

### **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

### **ENVIRONMENTAL IMPACT**

Government Code Sections 15307 and 15308 of the CEQA Guidelines categorically exempts actions taken by regulatory agencies to protect natural resources and the environment. Government Code Section 15309 of the CEQA Guidelines categorically exempts activities associated with inspections for performance of an operation; and/or the health, safety, and/or quality of a project. Government Code Section 15321 of the CEQA Guidelines categorically exempts actions taken by regulatory agencies to enforce or revoke a lease, permit, license, certificate, or other entitlement for use. Government Code Section 15262 statutorily exempts feasibility or planning studies for possible future actions.

### **BACKGROUND AND DISCUSSION**

The Code Enforcement Unit presented its regular report to the Board of Supervisors on March 3, 2015. The discussion included the current code enforcement program and the additional programs that have been added since the department consolidation in 2012. The purpose of this agenda item is to provide an update to the Board on the direction of the Code Enforcement program, recommendations to improve the function and effectiveness of code enforcement, update the Board on other efforts as they relate to code enforcement, and to explain the response provided to the recent Grand Jury report.

#### **1. Neighborhood Improvement Program**

As presented previously in the March workshop, staff proposes a program to clean-up neighborhoods, help maintain or improve home values, and reduce the potential for crime. Code Enforcement staff along with the Sheriff's Problem Oriented Policing (POP) Unit would engage the neighborhood by educating residents of the County's property maintenance related ordinance. Staff would canvas neighborhoods and attempt to contact residents that have maintenance issues such as vehicles parked on the front lawn, trash, debris, household appliances, and high weeds and dead vegetation. These are considered violations that are easy and realistic to resolve for homeowners or tenants. If a resident is not present, staff would leave a door hanger identifying the violations.

Staff also recommends providing temporary dumpsters to assist with the neighborhood clean-up program.

They could also be used for neighborhood clean-up days, where the County could drop one or two dumpsters in an area for the weekend so that residents could get rid of debris from their yards for free. Staff would be available to monitor the dumpster activity and/or assist in the clean-up of blighted properties. The cost of this program would be paid for from the civil fines collected through violation convictions.

The six neighborhoods that will be included in the program are: East Imola, Pueblo Park, Milton Road,

Berryessa Highlands, Berryessa Estates, and Angwin. The program will begin in September and each dwelling identified will be provided with a door hanger that educates the owner or occupant about the County's property maintenance code along with the identification of any violations and a reasonable time to correct. Photos of the types of violations staff will be enforcing are provided in Attachment A of the staff report.

## 2. Amnesty Program

At the March 20, 2015, workshop, the Board of Supervisors directed staff to consider implementation of a residential building permit amnesty program. This would provide an opportunity for property owners to legalize buildings, additions, and alterations that were not previously permitted. The benefits to the property owner include:

- ) Elimination of penalties, which may be two to three times the building permit fee;
- ) Enhance property value and improve the safety of residents; and
- ) Avoid the prospect of having citations or notices recorded against the property, which would show up in title reports.

The benefits to the County include:

- ) Improvement in the safety of dwellings and residents;
- ) Approved improvements are reported to the County Assessor, increasing the overall tax roll; and
- ) Reduction of the code enforcement backlog of building code violations.

If the Board would like the scope of the amnesty program to include a broad range of building violations, staff would like to return at a future date, to allow time to explore several questions. Requiring applicants to comply with the current construction codes may result in significant costs to upgrade buildings or may require the removal of structures. In addition, property owners who apply for permits through the amnesty program must still comply with all other provisions of Napa County Development regulations (i.e. flood plain, Building and Fire codes, Zoning, and Health regulations for septic and well). Also, if a property owner voluntarily visits the County to apply for a permit, but wishes to withdraw the application due to the cost to correct the violation, it would have to then be turned over to code enforcement. However, that possibility may deter potential participants in the amnesty program and limit its effectiveness. The public would need to understand that there is the potential for significant costs and in some cases they may be required to remove the structure entirely.

As an alternate approach, staff recommends that the scope of the program be limited to less intensive and costly residential permits such as:

- ) Re-roofs
- ) Interior remodels (alterations)
- ) Plumbing and electrical
- ) Accessory buildings
- ) Windows

Staff requests direction from the Board to begin a limited-term trial amnesty program (based on the above recommendation) for residential violations beginning in the Fall of 2015.

### **3. Temporary Certificates of Occupancy (TCOs)**

In March of 2015, staff discussed the TCO process and concerns that several wineries have been operating under expired TCOs or operating out of scope of a TCO. TCOs have historically been granted to wineries or commercial businesses to allow them to use the facility or a specific area of the facility temporarily if they have not completed the final construction or land use conditions of the project. Most commonly, TCOs are requested by applicants to begin crush operations during harvest when the hospitality portion of the project is not complete. Since March, staff has implemented a new process for the granting of a TCO and is not proposing any changes to the code at this time. The new process includes the following:

- ) Applications require a minimum of three weeks to process.
- ) Applications must include an evaluation of the steps needed and timeline necessary for final occupancy. Staff will determine whether the work can be reasonably completed within the amount of time approved under the TCO. If the work plan does not demonstrate that the remaining work can be completed within the time frame, then the TCO is not granted.
- ) Fees charged for department review and processing will be done on an hourly basis.
- ) Inspections are coordinated between multiple divisions and/or departments, in order to streamline review.

Staff believes that this process will allow businesses to continue operating during critical periods, while ensuring that all conditions are fully met before full operation is approved. Any businesses that fully occupy a building without final permit approval would be treated as being a violation of their respective TCO's and code enforcement actions would follow.

### **4. Enforcement Fines and Penalties**

Code enforcement fines are strictly set by State law. The administrative fines for offenses can be found in the County's Schedule of Fines, Resolution Number 00-120. As permitted pursuant to State law, administrative fines for most County code violations are \$100 for the first offense, \$200 for the second offense, and \$500 for the third and all subsequent infractions. Other types of fines may apply, as determined by the applicable legislation or regulation. Under the Government Code, the administrative fine for local building and safety violations is \$100 for the first offense, \$500 for the second offense, and \$1,000 for each subsequent offense. The Health and Safety Code allows fines of up to \$1,000 per day.

Assembly Bill (AB) 514 would increase the administrative fines that cities and counties may impose in certain circumstances on violators of the County's zoning ordinance. The first offense would increase fine limits to a minimum of \$1,000 and maximum of \$5,000. The second offense would increase to a minimum of \$2,500 and maximum of \$5,000. The third and subsequent offenses would increase to a minimum of \$5,000 and maximum of \$15,000. The Board of Supervisors indicated its support of AB 514 in their meeting of June 2, 2015.

Civil penalties assessed against illegally constructed vineyards are based upon a pre-determined formula that takes into account grape varietal planted, acreage disturbed, and the amount of time that the land has been disturbed. For cabernet, the penalty equates to about \$1,000 per acre per month of disturbance. In the past, a portion of the penalties received have been provided to the Wildlife Conservation Commission to provide restoration funding. Staff will be bringing this formula to the Board at a future meeting for formal adoption. No similar formula has been developed for civil penalties concerning zoning violations. As a

result, it is difficult for both businesses and the public to understand the potential consequences of illegal behavior in dealing with use permit non-compliance.

County Counsel has prepared a brief document which responds to "Frequently Asked Questions" as they relate to fines and penalties associated with code enforcement actions. With Board direction, the document will be posted on the Department website. Please see Attachment B of the staff report.

#### **5. Enhanced Winery Audit**

The Wine Audit began in 2006 with a review of production data for a small number of wineries. The Audit increased in scope and today includes an annual review of 20 randomly selected wineries and reviews a range of factors, including grape sourcing, visitation, and conditions of approval. While the Audit has made significant progress in the past nine years, concerns have been raised by the public, the Grand Jury, the Planning Commission, and the Agricultural Protection Advisory Committee (APAC) that the Audit needs to continue to expand both its range and scope to be effective. The Board also indicated its interest in expanding the Wine Audit at the March 2015 workshop, by authorizing an additional planner position for the code enforcement program, beginning with the 2015-16 Fiscal Year. The planner position has been filled and will begin full-time work in December, upon completing a previously approved leave of absence.

Staff agrees with the need to revamp the Wine Audit, beginning with the name. The word "audit" is used in the dictionary and in common language to mean "an independent review of an individual or organization's financial records." To date, the Wine Audit has not reviewed the financial records of any winery. As a result, the industry is left with the impression that code enforcement is intent on intruding into their business's finances. On the other hand, the public is led to believe that an exhaustive and rigorous review of all aspects of the winery is being conducted. The use of the term "audit" is misleading and should be replaced by another term, such as "compliance review."

As several have noted, the current practice of randomly selecting 20 wineries a year (from the list of over 450 wineries with approved use permits) means that it would take more than 22 years for staff to review each winery in the unincorporated area. The Grand Jury recommended that the number of annual winery code enforcement audits be increased from the current rate of 20 per year to 90 per year, so that every winery would be audited at least every five years. A broader review of wineries needs to occur to ensure timely and effective enforcement. For a discussion of what such a program could look like, please see the summary of the tentative recommendation of the APAC provided below in Section 6. For the draft response to the Grand Jury on this issue, please see Section 9 and Attachment E of the staff report.

Code enforcement is housed within the Building Division, which under County policy is required to fully recover 100 percent of its operating costs. The code enforcement program is largely supported through the general fund. Penalties and fines have helped to offset the cost of the program in the past, and PBES and County Counsel staff time are billed at approved hourly rates when remedying a violation. However, these revenues would not likely cover the cost of code enforcement to meet any new expanded mandate. A fee to cover the cost of the broader compliance program would reduce the impact to the taxpayers in paying for additional policing of the wine industry.

#### **6. Agricultural Protection Advisory Committee (APAC) Tentative Recommendation:**

At their regularly scheduled meeting of July 27, 2015, the APAC unanimously supported the following tentative recommendation regarding winery compliance reviews:

- ) Reporting must be submitted annually by all wineries that have use permit approval within the unincorporated area;
- ) The principal officer of each winery shall sign a document certifying the amount of wine produced, compliance with the 75% rule, as applicable, and compliance with all conditions of approval;
- ) Copies of ATTB (US Alcohol and Tobacco Tax and Trade Bureau) and CDFA (California Department of Food and Agriculture) forms shall be provided to the County to verify the above information;
- ) All data collected shall remain confidential, to the extent allowed under the law;
- ) Enforcement and compliance review fees shall be adopted to support the cost of the expanded compliance review;
- ) Subject to applicable law, the County shall prepare a formula for calculating civil penalties associated with violating wineries;
- ) An in-depth compliance review will be held if the winery exceeds their annual production limit, or is in violation of the 75% rule. In-depth compliance reviews will also be held to investigate complaints received from the public;
- ) If it is determined that a violation has occurred, then the winery must immediately comply with the conditions of its use permit. An application to modify the use permit to correct the violation may not be submitted for one year;
- ) Staff will provide an annual report to the Planning Commission regarding the number of wineries found to be in violation during the previous year, and a summary of production, crush, and 75% compliance aggregate data.

Final recommendations of the APAC will be forwarded to the Planning Commission on September 2, 2015. In turn, the Commission will be making their recommendations to the Board of Supervisors on November 24, 2015. At that time, the Board may support, modify, or decline any or all recommendations and provide direction to staff regarding implementation of specific proposals. Many of the recommendations considered to date by the APAC would require either new ordinances or modifications to existing ordinances; some may require General Plan amendments. Staff would begin to draft the necessary documents to implement the recommendations, including any required CEQA analysis, following Board direction. Public workshops would likely be held, followed by public hearings before both the Planning Commission and Board of Supervisors, to consider the draft implementation documents. Staff conservatively estimates that any new programs would likely be approved in the Spring of 2016, at the earliest. Depending on the action, ordinances may require 30 to 60 days to become effective. As a result, any new code enforcement program may not be initiated until mid-2016, with the first reports required to be submitted in 2017, after the ATTB and CDFA forms have been filed.

For further information regarding a brief legal analysis on the confidentiality of information submitted under the proposed reporting program, please see Attachment C of the staff report.

## **7. Grape Crush Report**

For several years, staff from both the code enforcement program and the Agricultural Commissioner's office has diligently worked to obtain aggregate data from the ATTB and the CDFA. Staff was looking to obtain aggregate data on total amount of grapes produced, grapes crushed, and total amount of wine produced, in order to provide an overall assessment of cumulative wine industry conditions to inform decision makers on critical policy questions.

In May of this year, staff was finally able to obtain the requested data, summaries of which are provided in

Attachment D of the staff report. The data shows several interesting trends over the past 25 years.

- ) The total amount of grapes grown in Napa County has increased by 27 percent since 1991, the year after the Winery Definition Ordinance was adopted.
- ) The total amount of grapes crushed in Napa County has grown by nearly 124 percent during the same time.
- ) The total amount of wine produced in Napa County has increased 386 percent since 1995.
- ) The amount of demand for Napa wine (or crushed grapes) has greatly exceeded the supply (locally grown grapes). As a result, the percentage of local grapes that are crushed in Napa, compared to the total amount of crush, has dropped from 67 percent in 1991 to 31 percent in 2014.
- ) The amount of local grapes that are exported (crushed outside of Napa County) has increased from 11 percent in 1991 to 26 percent in 2014.
- ) The amount of gallons created by each ton of grapes crushed remained fairly consistent, at around 160 gallons/ton until 2008. Since then, the average has dropped to about 120 gallons per ton.
- ) The average tons of wine grapes produced per acre has remained relatively steady at 4 tons/acre.

The above information may create questions regarding if and how Napa Valley wineries are complying with local regulations regarding grape sourcing, as well as federal regulations regarding labeling standards. It is important to note several factors that need to be taken into account when looking at cumulative production data.

- ) Only 18 percent of all winery production in the Napa Valley is subject to the 75 percent rule (e.g., at least 75 percent of the grapes that are used in wine production must come from Napa sources). The other 82 percent of wine production can use wine grapes from a variety of sources, including vineyards located outside of Napa County. The 82 percent not subject to the sourcing rule includes the Airport Industrial Area Specific Plan (38%), pre-Winery Definition Ordinance (WDO) facilities (34%), cities (8%), and pending wineries or wineries whose status is unknown (2%). It should be noted that while only 18 percent of total production is subject to the WDO, all or a part of the production of 66 percent of all wineries (310 out of 470) must comply with the 75 percent rule.
- ) Because only a relatively small portion of total wine production is subject to the WDO, it only takes 17.8 million gallons to fully comply with the 75 percent rule. There were 175,607 tons of wine grapes harvested in Napa in 2014. Depending on whether the conversion factor is 120 gallons/ton or 160 gallons/ton, the total amount of available crush ranges between 21 and 28 million gallons, which is sufficient to meet full post-WDO production requirements.
- ) Although Napa County has a large amount of permitted production at 126.8 million gallons per year, the amount of constructed production is likely far less. Napa County production peaked in 2006 at 55.1 million gallons. Last year, production was 47.7 million gallons. Limited actual production capacity may have shifted production elsewhere to Sonoma, Solano, Lodi, Monterey, and other locations. This may account in part for the increase in grape exports.
- ) The average amount of gallons per ton can be attributed to several possible factors. One is hang time, where grapes are left on the vine longer, to reduce moisture content and concentrate flavor. A second is the popularity of cabernet sauvignon, which generates less juice per ton than other varieties. Third is smaller berry size in recent crops, which also results in less juice. The process of saignee, or draining off the juice, may contribute. Free run and light press wines may also lower the per ton yield. There may be another reason, however. It may be that the industry as a whole is continuing to

produce an average of 160 gallons of wine per ton of grapes, but 25 percent of the resulting juice could be sold to wineries outside of Napa.

- ) With regards to labeling, listing “Napa County” as the appellation of origin can only be used on wine labels under federal law if at least 75% of the grapes come from Napa County. The remainder of the grapes may come from outside Napa County. For those wines that are labeled with an American Viticultural Area (AVA), a more specific appellation (i.e., Oakville, Rutherford, Stag’s Leap, etc.), they must consist of at least 85 percent grapes that come from the named AVA.

It should be noted that the factors listed above may or may not play a significant role in accounting for the trends seen in the ATTB and CDFA data. While many of them seem plausible and/or likely, there is no substantive evidence to support these interpretations. The tentative recommendation of the APAC to require mandatory production and grape sourcing reporting from each winery on an annual basis, would, if adopted, provide staff with more specific and detailed data which can be used to better understand the broader trends that are occurring in both vineyards and the wine industry.

#### **8. Recordation of Administrative Citations, Notices of Code Violations, and Notices of Public Nuisance:**

In 2012, Assembly Bill (AB) 1642 was enacted, amending Section 880.340 of the Civil Code and Section 27201 of the Government Code. The bill requires County Clerk/Recorders to officially record those documents that are authorized by local ordinance to be recorded.

Chapter 1.20 of the Napa County Code provides Enforcement Officers with the power to declare code violations to be public nuisances, to take steps to abate nuisances administratively, and to issue notices of nuisance as part of the administrative process. Chapter 1.28 of the Napa County Code provides Enforcement Officers with the power to issue citations (i.e., notices of violation) and to assess administrative penalties. Staff believes that providing Enforcement Officers with the authority to record citations, notices of violations, and notices of nuisance would strengthen the effectiveness of code enforcement efforts. Recording citation and notices would better protect consumers and prospective property buyers by attaching code violations to the title of affected real estate. It would also increase incentives for violators to resolve the violations and clear the property title.

Staff requests the Board’s direction to prepare such an ordinance and present it to the Board at a future date for consideration and adoption.

#### **9. Grand Jury Response:**

The County Executive Officer received the Final Report titled “Are Napa County Wineries Following the Rules?” on May 20, 2015, with a response due to the Presiding Judge no later than August 18, 2015. Since the Grand Jury’s report focused on the issue of code enforcement, and as the Board’s discussion of general code enforcement issues during this workshop may inform the County’s response to the Grand Jury, the report and draft response have been included as a part of this agenda item. Today’s action will provide the Board with the opportunity to review the responses and make revisions, if necessary.

The primary function of the Grand Jury is to examine all areas of local government: county, city, school districts, and special districts. The 19-member civil Grand Jury in Napa County conducts non-criminal investigations to ensure that government funds are judiciously used, services are effectively delivered, and

that all accounts are properly audited.

The Grand Jury made five recommendations in their report as provided below:

R1. By January 1, 2016, the Planning Department to increase the number of yearly winery code enforcement audits from the current rate of 20 audits per year so that every winery would be audited at least every five years or at such intervals that the Planning Commissioners or County Supervisors deem to be appropriate.

R2. By June 30, 2016, the Planning Department and the Planning Commissioners to develop a process for monitoring and inspecting winery water treatment and disposal. A plan for monitoring water usage should also be implemented.

R3. By January 1, 2016, the Planning Department to make the inspection reports of non-compliant wineries more transparent to the public in much the same fashion as health code violations of restaurants are reported.

R4. By June 30, 2016, the County Board of Supervisors and the Planning Commissioners to determine whether the WDO as written provides the regulatory framework necessary to maintain a winery industry that is consistent with the Agriculture Preserve Ordinance.

R5. By June 30, 2016, the Planning Commissioners to establish and publish a range of penalties and/or operating restrictions for non-compliance infractions of use permit requirements. Such action should encourage wineries to be more cognizant of the cost of non-compliance.

Please refer to Attachment E of the staff report for the draft transmittal letter and Attachment F of the staff report for staff's draft responses to the Grand Jury Findings and Recommendations.

#### **10. Policies and Procedures Manual**

A policies and procedures manual for zoning enforcement was approved by the Board of Supervisors on March 25, 1986. The manual was amended in 1988 and in 1998, but was rescinded by the Board in 2005. Staff has spent the past several months coordinating with the County Counsel's office to prepare a new code enforcement policies and procedures manual. Once completed, the manual would be adopted as a department level document.

#### **SUPPORTING DOCUMENTS**

- A . Attachment A - Neighborhood Photos
- B . Attachment B - Frequently Asked Questions
- C . Attachment C - Confidentiality Table
- D . Attachment D - Grape Crush Data
- E . Attachment E - Transmittal Letter
- F . Attachment F - Draft Responses to the Grand Jury

CEO Recommendation: Approve

Reviewed By: Liz Habkirk