



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 8/22/2017

Agenda Placement: 10A

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: Code Compliance Discussion

RECOMMENDATION

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

1. Accept staff presentation;
2. Provide direction regarding code compliance procedures; and
3. Director staff to draft revisions to the Code Compliance Manual consistent with the proposed changes and return on September 12, 2017, for consideration.

EXECUTIVE SUMMARY

The purpose of this discussion is to provide context and background for a discussion by the Board of Supervisors regarding future code compliance procedures.

PROCEDURAL REQUIREMENTS

1. Staff Presentation
2. Public Comment
3. Motion, second, discussion vote on the item.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Government Code Sections 15307, 15308, 15309, and 15321 of the CEQA Guidelines categorically exempts actions taken by regulatory agencies to protect natural resources and the environment, perform inspections, and enforcement actions by regulatory agencies. Government Code Section 15262 statutorily exempts feasibility or planning studies for possible future actions. Based on the above citations, CEQA is not applicable.

BACKGROUND AND DISCUSSION

HISTORY

In 1986, the Board of Supervisors adopted a "Policies and Procedures Manual for the Zoning Enforcement Function." The first manual included Section 560.00, titled "Relief Procedure," which required that all illegal construction and uses must cease until required permits or approvals have been issued.

In 1987, the Board of Supervisors adopted the "Review of the Planning Division of the Napa County Conservation, Planning and Development Department," prepared by the private consulting firm of Zucker Systems. The report included 121 recommendations to improve the operation of the Conservation, Planning and Development Department, including a discussion regarding enforcement, which suggested that code enforcement as described in the 1986 Manual was too rigid and inflexible for a small county. The study recommended revising the procedures for code enforcement, and suggested a guideline to advise citizens if their illegal activity could be modified to make it compliant, or if it could be legalized through a use permit or other approval.

In 1988, the Planning Division Review Committee made recommendations to the Planning Commission to implement the Zucker Report. In particular, they focused on the direction to clarify the role and function of zoning enforcement. They expanded their charge to n revise the entire Policies and Procedures Manual for Zoning Enforcement. A key issue in this revision was how to process violations. One option (supported by enforcement staff) was to continue to require operations to cease non-complying activities until a new permit was issued. The second option (supported by County Counsel) was to allow an owner who met specific criteria to continue non-complying activities for up to six months until a decision was reached on any pending applications to remedy the violation. The second option was recommended by the Commission and adopted by the Board, as provided in Section 560.20 of the Manual.

In 1998, the County adopted a new "Code Compliance Policies and Procedures Manual" for the Conservation, Development, and Planning Department. Sections 535.00 and 535.10 of the Manual continued the practice of allowing additional time to come into compliance for those violations that met specific criteria. The time allowed to correct violations was reduced from 6 months to 4 months, however.

In 2005, the County rescinded the "County of Napa Conservation, Development and Planning Department Code Compliance Policies and Procedures Manual." The manual was rescinded to eliminate a conflict with the County Policy Manual with regards to building permit penalties. Although the Board staff report accompanying the rescinding resolution indicated that this action would "eliminate the 30-60 day grace period," it appears that was with regards to building permits. The Manual was replaced with a four-page flow chart. Section 8.E of the flow chart indicates that compliance remedies may include building permits, use permits, and/or other discretionary approvals, which could prolong the overall resolution of the violation.

In 2017, the Board of Supervisors adopted a new Code Compliance and Procedures Manual that governs enforcement for all divisions within PBES, not just zoning and building. The Manual provides a thorough and professional basis for responding to public complaints, identifying violations, encouraging voluntary compliance, and pursuing legal enforcement when needed.

AGRICULTURAL PRESERVATION

The Board of Supervisors met with the Planning Commission on March 10, 2015, in a Special Joint Meeting on the cumulative impacts of new development. The meeting was attended by approximately 450 members of the public and ran several hours. At the end of the Special Joint Meeting, the Board of Supervisors directed staff to take several actions, including the establishment of an advisory committee to review County policies and regulations regarding winery development.

To implement the recommendation, the Board of Supervisors appointed the Agricultural Protection Advisory Committee (APAC) on March 24, 2015. The APAC was made up of a broad cross-section of interests, including the wine industry, agriculture, businesses, cities, environmental organizations, neighborhood groups, and at-large members. The Committee was directed to address a variety of issues and to make its recommendations to the Planning Commission. The APAC presented their final recommendations to the Planning Commission on September 10, 2015. Among APAC's recommendations was the following, which was adopted by unanimous vote:

- I Implement an annual self-certification reporting process, requiring a report to be submitted by the principal officer of each winery certifying the amount of wine produced, compliance with the 75% rule, as applicable, and compliance with all conditions of use permit approval. All data collected shall remain confidential to the extent allowed under the law.

The Planning Commission completed its review of the APAC recommendations and made their final recommendations to the Board of Supervisors on November 4, 2015. The Commission's recommendations included the following:

- I Implement an annual code compliance process, including the following:
 - a. Reporting must be submitted annually, by all wineries that have use permit approval within the unincorporated area;
 - b. 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;
 - c. Copies of ATTB and CDFA forms shall be provided to the County to verify the above information;
 - d. All data collected shall remain confidential to the extent allowed under the law;
 - e. Enforcement and compliance review fees shall be adopted to support the cost of the expanded compliance review;
 - f. Subject to applicable law, the County shall prepare a formula for calculating civil penalties associated with violating wineries;
 - g. A more in-depth compliance review will be held if the winery is exceeding 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;
 - h. 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; and
 - i. 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.

On March 1, 2015, the Board of Supervisors completed their review of the Commission's recommendations. Among the directions to staff was 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.

RECENT EFFORTS

Over the past three years, the Board of Supervisors has given significant attention to strengthen and enhance the effectiveness of code compliance in Napa County. These include:

1. Increased the number of code compliance staff from 3 to 6;
2. Created code compliance as a separate division within PBES;
3. Adopted a new Code Compliance Manual and standard forms;
4. All compliance staff obtained certification by the California Association of Code Enforcement Officers;
5. Expanded the role of the Code Compliance Division to include conservation, engineering, and environmental health;
6. Held annual workshops with the Board of Supervisors on the status of code compliance efforts and development of new goals;
7. Adopted an ordinance to allow for the recordation of Notices of Violation and Citations;
8. Standardized the formula for calculating civil penalties for conservation and zoning violations;
9. Held four community clean-up events in unincorporated neighborhoods;
10. Responded to a Grand Jury report; and
11. Compliance staff trained in safety and provided protective equipment.

As a result of these efforts, the number of backlog compliance cases has been reduced by more than 25%, from 986 in 2014 to 676 in 2017. The backlog has been reduced while at the same time the number of new cases increased from 305 in 2014 to over 350 in 2017.

On August 15, 2017, the Board of Supervisors directed staff to return on August 22, 2017, for a discussion on code compliance, including the issue of temporary events.

PROPOSED COMPLIANCE STRATEGY

Any changes to code compliance procedures should build upon the foundation of the agricultural preservation actions previously taken by the Board, as well as recent concerns raised by recent appeals involving violations, and imminent threats resulting from violations currently under investigation. Staff recommends that the Board address

the following issues in providing any new direction:

- | Should a deadline be established after which violators would be required to immediately come into compliance with their entitled conditions and/or scope?
- | Should there be additional consequences for violations that occur after the deadline, in addition to any fines or penalties?
- | How should violations of temporary event permits be addressed?
- | Should additional resources be provided to ensure that existing applicants are not unduly delayed in the processing of their applications, due to increased compliance efforts?

SUPPORTING DOCUMENTS

None

CEO Recommendation: Approve

Reviewed By: Helene Franchi