



A Tradition of Stewardship  
A Commitment to Service

# Napa County Code Enforcement

## Board of Supervisors Report

*Napa County Code Enforcement's goal is to protect the health and safety of people who live in, work in, and visit Napa County, by ensuring compliance with local, state, and federal requirements.*

### **Introduction**

The purpose of this agenda item is to provide an overview of the existing Code Enforcement Program, present some notable program activities that have occurred in the recent past, and provide recommendations to the Board of Supervisors to improve Code Enforcement in the future.

Currently the Code Enforcement unit consists of four staff members that serve the County of Napa. Its primary role is enforcing local and state land use and building codes. With the department consolidation that occurred in 2012 (i.e. Planning, Building & Environmental Services (PBES)), the Code Enforcement unit has broadened to include other programs including consumer protection and land use within the Environmental Health Division; and storm water within the Conservation and Engineering Division. Later in the year, the Board will receive an update on other division's enforcement efforts in the County. In the interest of time, staff will only be discussing planning and building enforcement during this agenda item.

Beyond PBES, Code Enforcement staff coordinate enforcement issues with multiple agencies and departments such as the District Attorney's Office, Sheriff, Cal Fire, California Fish and Wildlife, Fair Housing, Bay Area Air Quality Management District, Regional Water Quality Control Board, and many others. The Code Enforcement unit also coordinates with a variety of agencies to address problems in our community. PBES hosts a monthly meeting to discuss cases that cross multiple jurisdictions regarding land use and environmental violations.

Code Enforcement is primarily complaint based. Due to the volume of complaints, however, staff prioritizes its enforcement response. Cases that get first response are those that represent a threat to public health and safety. Second are those cases that threaten public or private property. Nuisances are responded to third.

Initially, Code Enforcement was primarily focused on conducting initial investigations and notifying owners of violations. Often, violation letters were ignored and the investigation stalled, resulting in a

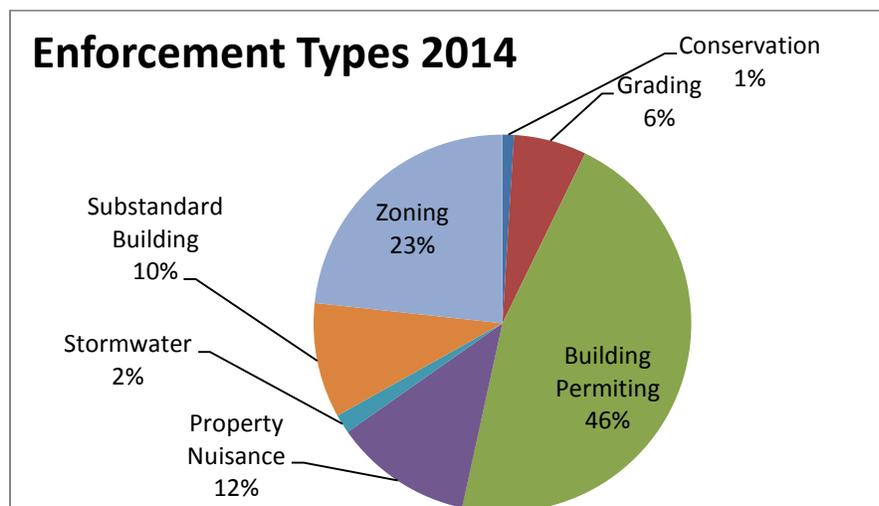
backlog of unresolved cases. In 2008 Code Enforcement staff began working with County Counsel to strengthen the County’s enforcement response when owners failed to comply, in the form of lawsuits and formal abatement activities. Since 2011, staff has referred 111 cases to County Counsel for assistance with enforcement. The majority of cases are resolved with little effort that involved a demand letter or other noticing by our attorneys. Of those 111 cases, 36 were litigated, four of which are currently still being processed. None of the 36 cases has made it to trial, and instead have been resolved through detailed settlement agreements that bring the properties into compliance. Of those 36 cases, 10 are winery-related.

Although legal actions take a great deal of time and effort, they have been very successful in bringing many uncooperative property owners into compliance. Legal actions have also led to civil penalties that have recovered a part of the cost of staff time for both Code Enforcement and County Counsel’s office. Over the past two years, more than \$1.4 million has been awarded to the County resulting from litigation related to land use and building code violations. This includes a \$1 million settlement with one winery.

In recent years, the Code Enforcement unit has expanded its approach beyond litigation to include public education and outreach. Code enforcement staff regularly makes presentations at compliance workshops and wine law programs sponsored by the Napa Valley Vintners, helping owners to learn more about how they can remain in compliance. Similar efforts will be made for Realtors Association and other related trade groups.

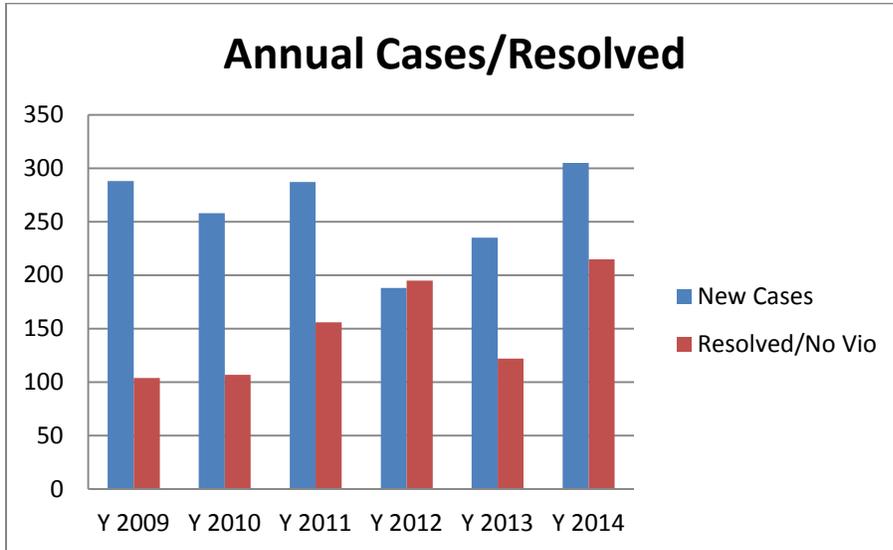
### Program Statistics

The following pie chart shows the types of cases the Code Enforcement unit handles throughout the year. The pie chart is based only on cases processed in 2014; however, the distribution of violations is typical of what has been seen in recent years.



Code Enforcement initiates 200-300 cases annually. The chart below shows the number of annual cases initiated over the past 6 years. The chart also shows the number of cases resolved each year. With the

exception of 2012, more cases have been opened each year than have been closed. As a result, a significant backlog has been created over the past 15 years resulting in 986 pending or unresolved cases. In January 2015, staff hired a new Code Enforcement officer that will assist with reducing the case backlog over the coming year.



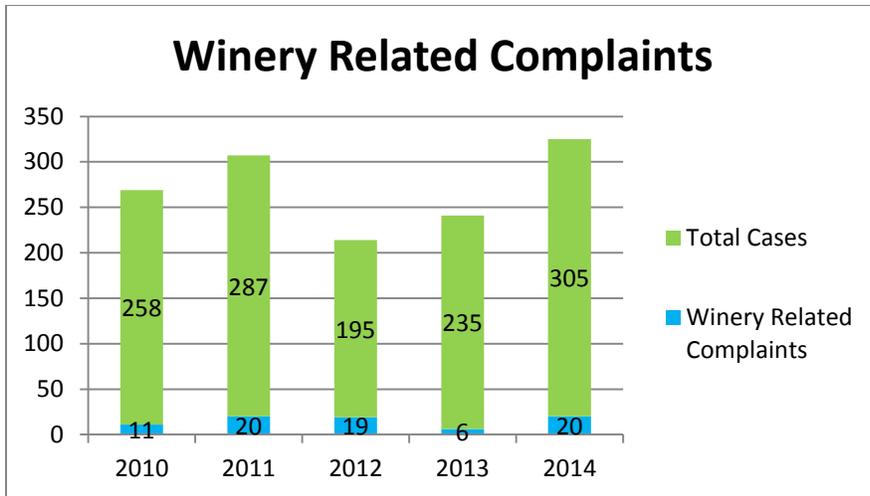
### Winery Compliance

Typically winery compliance falls in to three areas. 1) Use permit and condition violations; 2) Building construction and occupancy violations and; 3) the Winery Audit.

#### *Use Permits and Condition Violations*

There are 348 wineries actively producing wine in Napa County. The most common complaints received by staff concern wine tasting, marketing events and construction without permits. Production complaints related to noise and light are also common during the fall crush. A small number of complaints are received annually regarding total wine production.

The chart below shows the number of winery cases created compared to total cases. A total of 20 winery-related complaints were logged with PBES in 2014. Over the past five years, an average of 6 percent of all complaints received by staff each year is related to wineries. The total number of complaints over the past five years involves less than 20 percent of all wineries.



#### *Building Construction and Occupancy*

Over the past two years Code Enforcement staff has resolved nine major violations involving unpermitted winery construction and/or occupancy. Currently staff has four cases in process that involve winery construction or occupancy without a final permit. A database search of our permitting system indicates that there are 17 additional wineries that have outstanding permits that do not have a final or certificate of occupancy. Code Enforcement staff will pursue these violations over the coming year.

#### *Winery Audit*

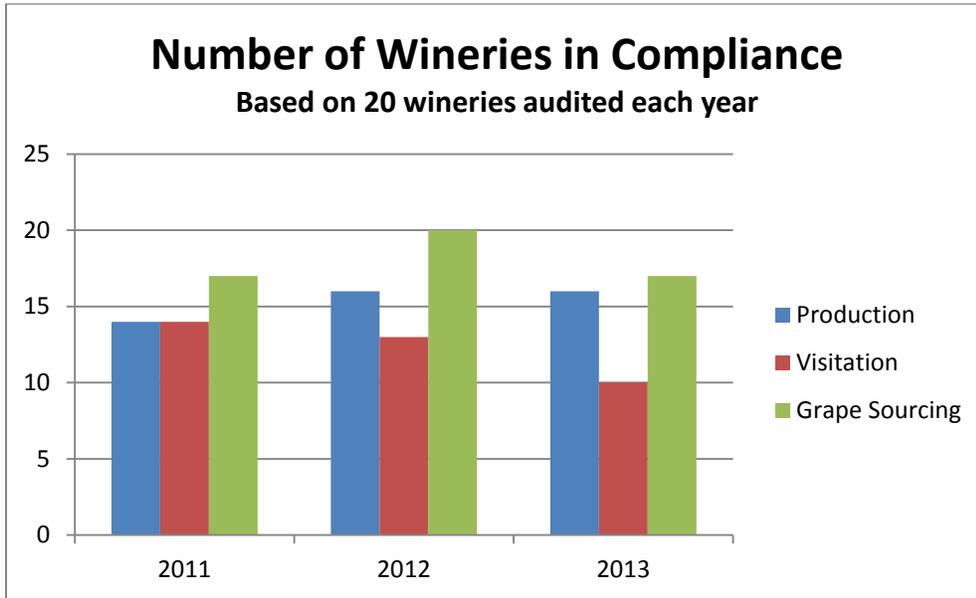
PBES Planning Division initiated a “spot” audit of six wineries beginning in 2005, focusing solely on compliance with production limits. PBES staff worked with the wine industry to develop a formula to calculate existing wine production levels for use in the audit. In 2007, the Board of Supervisors directed staff to establish a formal wine production monitoring program, looking at the production of six wineries each year. In 2009, the Planning Commission directed that the program be expanded from six wineries to 20. The following year, the Commission broadened the audit again, to confirm compliance with limits on tours and tastings visitors, as well as marketing events. PBES staff was also asked to visit wineries to confirm that on-site retail sales were limited to winery-related items only. In 2011, the audit was further expanded to include review of compliance with grape sourcing and the 75 percent rule.

In 2013 the Audit moved from the Planning Division to the Code Enforcement Division. Code Enforcement staff continues to evaluate the same information, but takes a more stringent view of non-compliance and issues Notices of Violation to those wineries that do not pursue a modification or cease activities in direct violation to their use permit conditions of approval.

Currently, 20 wineries are randomly selected every year by the Planning Commission to participate in the Audit. Each winery is evaluated by Code Enforcement staff with respect to production, visitation, grape sourcing, and custom crush clientele. After receiving and evaluating the above data, staff inspects all 20 wineries to determine compliance with the use permit conditions of approval. The results of the

Audit are presented to the Planning Commission annually. Those who fail the Audit are required to stop any illegal activities or amend their permit. Participation in the Audit the following year is also required, to ensure that the violation does not continue.

The following table provides the annual Audit results of the 20 wineries over the past three years related to production, visitation and grape sourcing.



The past seven years of audits has seen a range of results. For the most part, wineries participating in the Audit have maintained compliance. An almost 100% compliance rate has been reached for grape sourcing as most wineries take pride in using locally sourced Napa fruit for their products. During the economic downturn, there was an increase in visitation violations as wineries moved to increase their direct sales activities. Those increases in visitation, once determined to be out of compliance, led to either a modification to the use permit or a forced reduction in the number of visitors. Increased production levels also continue to occur at wineries and PBES staff has found that, at times, this is in direct correlation to weather patterns and number of tons harvested each year. As was noted last year, eight of the 20 wineries were found to be in violation of their permit. This is the highest rate of non-compliance seen in the Audit, although it should be noted that in recent years the Audit has grown in both the number of wineries inspected, as well as the range of activities being evaluated.

Code Enforcement staff has taken recent measures to respond to increased non-compliance. To ensure full disclosure in pending applications, staff has begun to include information in all PBES staff reports for winery modifications regarding the past history of code enforcement or failed audit, so that decision makers understand the context of the request being made. Staff has also been recommending new conditions of approval which require participation in the Audit and require the winery to maintain future records for the Audit. These conditions have been approved for recent new wineries use permits and modifications.

## **Events**

In the past year the public has taken steps to be more involved in the efforts to reduce code violations. Code Enforcement staff received early reports of plans for three major events occurring at Napa wineries. These wineries had not obtained temporary event permits and the events were not allowed as a part of their approved use permits. The Code Enforcement Division was able to contact the wineries and ensure that the events were cancelled before they happened, modified to meet the approved marketing plan, or moved to a location that would allow such activity.

## **Weddings**

Commercial weddings are not allowed on Agricultural land in the County. When an event occurs, Code Enforcement staff typically finds out through noise complaints the following Monday morning or when reviewing web site advertisements. In 2014 staff only received two wedding operation complaints. However, an Internet search resulted in several media publications and social media sites indicating that weddings occur in the Napa Valley regularly. In response, several investigations have recently started, and staff is coordinating with the Sheriff's Department to have them forward wedding-related noise complaints to PBES. One couple who announced their upcoming wedding at a local winery has been informed that they need to make other arrangements. In addition, the following notice was recently published on the County Facebook site:

As Valentine's Day approaches, it is a wonderful time for couples to celebrate their love. If you are making wedding plans this year, please remember that Napa County does not generally allow weddings to be held at wineries or other rural venues. While there are a few wineries that have historically hosted weddings and are allowed to continue to hold them, commercial wedding events have been prohibited in the agricultural areas of Napa County since 1990.

If you are planning a wedding, please contact the Planning, Building, and Environmental Services Department at (707) 253-4417 to find out if the location you are considering is legally permitted for commercial weddings. By doing so, you help us continue to protect the agricultural heritage and the scenic beauty that has come to define Napa County.

## **Short-Term Vacation Rentals**

Code Enforcement staff continues to receive numerous complaints regarding vacation rentals. These are usually triggered by neighbors observing a variety of people moving in and out of homes, along with nuisance complaints spurred by parties and late night activity. With the advent of vacation websites such as VRBO and Air B&B, vacation rentals have become a popular option to generate income for second homes or business entrepreneurs in the County. A simple search on VRBO of Napa County results in 305 rentals (including both the cities and unincorporated areas of the County). Since 2008 we have initiated 92 cases for short-term rental violations. In most cases, staff sends an initial violation notice asking the property owner to cease the activity. If the activity continues, the case is referred to the Napa District Attorney who will pursue an unfair business practice action.

Since 2011 the Napa County District Attorney has resolved 15 cases that included illegal vacation rentals with two other cases that are currently pending resolution. It is important to note that many of these cases also had other prohibited activities such as wine tasting, weddings and building code violations. The multiple violations factored into the final judgment for penalties. Nevertheless, these convictions have resulted in the Napa County District Attorney being awarded total civil penalties of \$257,225. Additionally, the Napa County District Attorney obtained \$58,243 in staff cost recovery and restitution of \$15,000 going to the Napa Parks and Open Space District and \$5,000 going to the Napa Wildlife and Commission.



### **Building Permit Enforcement**

The majority of Code Enforcement case backlog is in the area of building code violations. Code Enforcement staff continues to deal with a significant amount of construction without building permits in the valley. Most cases are reported through our complaint process. Because of the volume of complaints regarding illegal construction, staff has to prioritize building code violations that have immediate threats to public health and safety. Over the past three years staff has issued over 315 permits to correct code violations for construction with a total valuation of \$10.3 million. This has not only resulted in increased property value assessments, but has also generated permit fee revenue exceeding \$895,000.

## Proposed New Programs and Policies

### *Neighborhood Improvement Program*



Staff recommends the development of a neighborhood improvement program. Napa County has several residential neighborhoods that would benefit from a pro-active enforcement program to address property maintenance issues. 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. 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 "low hanging fruit" 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 believes that this program would beautify the neighborhood and help improve or sustain home values, as well as reduce the potential for crime. The cost of this program would be paid for from the civil fines collected through violation convictions. Suggested neighborhoods where this program could be initially implemented include:

- East Imola
- Pueblo Park
- Berryessa Highlands
- Berryessa Estates
- Angwin

## **Dumpster Program**



Staff also recommends using a portion of the civil penalties awarded through litigation to provide temporary dumpsters to assist with a neighborhood clean-up program. This would provide another avenue for ensuring that some of the fines collected go back into communities to directly address the impacts of violations. The use of dumpsters would be used to support the neighborhood improvement 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.

## **Temporary Certificates of Occupancy**

Temporary Certificates of Occupancy (TCO) are often requested when a construction project is nearly complete and the business or residents are given occupancy of the structure temporarily until a final certificate is issued by the Building Official. In Napa, the TCO is most commonly requested for wineries right before crush season. This allows for the winery to request immediate occupancy for the part of the facility where crushing and wine production takes place. Other portions of the project, such as hospitality areas, would remain unused until the final certificate of occupancy is issued. Historically, the Building Official grants temporary occupancy for production only. Over the past several years, Code Enforcement staff has discovered several wineries operating under expired TCO's or operating out of scope of the TCO. In an effort to improve this process, we have developed a more stringent TCO application process and began tracking expiration dates.

Under Napa County Code the Building Official can only grant a TCO for a maximum of 180 days. However, many wineries have found themselves unable to complete all of the necessary improvements within that time frame and find themselves having to close down production activities until they have a final certificate of occupancy.

Staff recommends that the code be amended or that new policies are adopted to allow the Building Official some flexibility when granting a TCO. Additional requirements could be added to the process to encourage the winery to complete the work in a timely manner. Some options might be:

- Allow the Building Official to extend TCO's beyond the 180 days;
- Increase application fees for the TCO; and
- Require the applicant to post a bond to complete the remaining work.

### **Winery Use Permit Penalties**

A significant amount of Code Enforcement staff time is required to bring wineries into compliance and these costs are not recovered unless the case is under litigation. Staff recommends that a violation fee be added to use permits and use permit modifications that correct code violations. This would be similar to the building permit violation fee that is charged when a person applies for a permit for work that commenced without a building permit. Fees charged for use permit violations can be used to cover enforcement costs.

### **Expand the Winery Audit**

Within the past year there has been public interest in further expanding the Audit. Staff has several concerns with this proposal. The Audit currently takes approximately 30% of one staff member's time per year. Dedicating additional resources to this effort would require staff to place other violations back farther on the priority list. As previously mentioned, the majority of complaints are building related, many of which involve threats to public health and safety. Spending additional resources to address the six percent of the complaints received that concern wineries, which generally do not involve public health and safety, does not appear to be the best way to allocate scarce staff time and funding.

Should the Board wish to consider expanding the audit, staff offers the following: With over 400 wineries in the unincorporated area, at the current rate of 20 wineries being audited each year, it would take 23 years to ensure that each winery is reviewed. Consequently, there have been requests to increase the number of wineries audited annually. Staff would recommend a modest increase from 20 to 35, which would allow for all wineries to be evaluated within 12 years (instead of 23), while keeping the Audit to 50 percent of a full-time position. As an alternative, the full audit could be kept at 20, but all wineries could submit production and visitation data to PBES annually. It may also be possible to create a web portal that would allow winery owners to log in and submit their compliance data on-line.

A second option would be to expand the scope of the Audit. At present, the Audit is limited to looking at production, grape sourcing, visitation, and retail sales. The Audit could include a review of the winery's conditions of approval to ensure that all relevant requirements are being met.

A third option would be to require that wineries found to be in violation remain in the Audit until compliance is received, and be subject to appropriate penalties or fines.