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COMMENTS ON RESOLUTION NO. 2018_ (CODE COMPLIANCE PROGRAM)

VAGUENESS IN THE LANGUAGE:

1.a / b/ f:

"substantially conforming" defined as "substantially complete set of documents", "in a timely manner as is practicable", "making a good faith effort toward timely completion", "continuous good faith effort", "significant violations", extraordinary circumstances".

"Substantially conforming" may not be defined in terms of "substantially complete".

These are all undefined terms which create confusion and potential loopholes. Furthermore, they are subject to the sole discretion of the Director.

The County must define the extent of documentation required for an application to be complete so that applicants are not subject to a constant back and forth, time delays, guess work and unnecessary expenses.

CONFUSING DEADLINES AND TIME FRAMES:

1.a:

"March 29, 2019 to substantiate that the project is not subject to CEQA".

1.b:

"120 days thereafter if the application is incomplete at the sole discretion of the Director".

Again, lacking a definition of what constitutes a complete application, the process becomes cumbersome, unpredictable, time consuming and costly. It also places extraordinary power in the hands of the Director.

No deadline is stipulated for the Director to make these determinations.

The deadlines for the County to respond are extremely important as explained in GENERAL COMMENTS below.

1.d:

"Inspection to verify the reported health and safety violations and notification to the applicant".

No deadline is stipulated for the inspection findings or for the notification of violations.

1.e:

"Significant violations are defined as those involving wine production in excess of approved limits, grape sourcing that does not comply with the 75% grape source rule, visitation or marketing in excess of approved limits..."

Note the inclusion of "visitation and marketing" violations, conspicuously absent in the subsequent requirements of the Ordinance.

CEQA BASELINE ETC.

1.b:

As part of a complete application, "the applicant shall determine that the project is not subject to CEQA".

There is no language explaining what happens to the process, including time lines if the Director determines that that the application is subject to CEQA.

1.f:

"Applications shall be assessed against a 'baseline' of operations that are within existing legal entitlements, rather than in violation of them".

Per Eureka Citizens for Responsible Government v. City of Eureka (2007)147 Cal.App.4th 357,370 (existing playground built in violation of code was nevertheless part of the CEQA baseline).

And per Center of Biological Diversity v. Department of Fish and Wildlife (2015) 234 Cal.App.4th 214, 250-51 (the baseline must include existing conditions, even when these conditions have never been reviewed and are unlawful).

Accordingly, violator applications may not be assessed within CEQA ignoring the baseline which includes rather than excludes the violations. The only legal way by which CEQA baseline may be assessed excluding violations is by reverting violating operations to the existing entitlement for a scientifically established period of time.

The proposed time of one year is not supported by any scientific data as being sufficient to achieve the reset of the CEQA baseline to the legally entitled operations. Considering the multiple factors involved in changing operations, the one-year timeline seems grossly inadequate and may vary from one operation to another.

In addition, any CEQA study which fails to take into account the impact of visitation and events violations will be incomplete (see also comment 2.a /b / c / f / g below).

1.g:

"Any party entitled to appeal decisions under County Code Chapter 2.88 could appeal the decision to the Board of Supervisors".

Since the decisions are being made by the Director absent a public hearing - essentially behind closed doors - this precludes members of the public from being entitled to appeal.

2.a/ b /c /f /g:

The mandated annual reporting data include only numbers of gallons produced and those sourced from the Napa valley.

No data whatsoever are required for visitations as the Ordinance intends under 1.e.

3.a/ b:

While there Ordinance proposes procedures for Temporary Events, it requires none which are in violations of permitted winery events nor are they included in the mandated reporting requirements.

GENERAL COMMENTS:

The Ordinance lacks any provisions for violators who are caught following an audit but have not come forward voluntarily to report them.

The last winery audit revealed that 40% of all wineries were out of compliance. That would be approximately 200 wineries. If all non-conforming wineries were to report their violations as they are encouraged by this Ordinance, staff would be overwhelmed. It would need decades to respond to them rendering its contemplated compliance provisions unworkable.

- ***Encouraging violating wineries to come forward immediately is a good provision .It establishes a useful data base as a starting point and assesses the size and scope of the problem. But what next?***
- ***I suggest that the BOS prioritize violations by their generic importance across the board rather than resolving all the violations of each winery before addressing the next.***

In terms of countywide importance, they are:

- ***1) Enforcing the 75% rule is the most important one as it involves consumer fraud, a federal crime. It should be top priority so that the County does not become complicit / enabler to the crime.***
- ***2) Enforcing visitations and events should be the second priority as it involves traffic impacts throughout the county and advance the traffic CEQA baseline which has reached a critical point.***

- *3) Though important, production volume violations have a lesser general impact and ought to be addressed last.*
- *Since violators in all three categories involve unfair competition towards law abiding wineries, any compliance mechanism must also include proportional and sizable monetary penalties according to the degree of the violations.*

A further consideration the BOS must consider is the economic impact 200 violating wineries reverting to their existing entitlements all at once within established time frames. While such impact on the winery owners ought not to be a concern - after all this is the chance they took - the cumulative impact on fired employees and cancelled grape sourcing contracts will be substantial.

Perhaps a graduated compliance approach is both more fair and practical. On the other hand letting wineries roam freely in a violating environment is also unfair and counterproductive.

This is a difficult issue with enormous impacts in terms of its (1) practical implementation, (2) CEQA compliance, and (3) economic consequences, which the proposed Ordinance as written fails to address in an effective way.