

Proposal Z – Staff:

Staff has the following comments and observations on the issue of code enforcement.

Staff supports the concept of self-certification, as included in several proposals. However, self-certification is valuable only to the extent that it can be independently verified. Several of the criteria that have been suggested cannot be easily confirmed, or are currently not within the County's authority. For instance, water usage would require mandatory meters and monitoring on private wells, which is required on select wineries but is not presently required countywide. Similarly, waste water treatment is the responsibility of the Regional Water Quality Control Board, not the County. Visitation is particularly problematic. Wineries generally maintain log books or other means of counting visitors, but the log books cannot be verified for their accuracy. To be credible and to allow for successful prosecution of violations, standards must be defined and quantifiable.

The suggestion that wineries be provided three years to come into compliance allows violators to continue to violate permit requirements. This creates an unfair business advantage, allows operators to continue to impact health and safety and/or the environment, and establishes a CEQA baseline that reduces the need for mitigation of potential environmental impacts.

The County currently uses a formula to calculate civil penalties in the case of illegal vineyard conversions. The formula takes into account the acreage of the disturbance, the value of the varietal planted, and the length of time that the violation has occurred. There is no similar process for determining civil penalties for violating wineries. As a result, it is difficult for both businesses and the public to understand the potential consequences of illegal behavior.

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, but would not likely cover the cost of code enforcement to meet its 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.

Based on the above, staff offers the following outline for a code enforcement program, borrowing ideas included in Proposals P, W, and Y:

- 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 and CDFA 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;
- 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;
- 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.

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 would require ordinances; some may require General Plan amendments. Staff would begin to draft the necessary documents, including any required CEQA analysis. Public workshops would likely be held, followed by public hearings before both the Planning Commission and Board of Supervisors. 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 becoming available in 2017, after the ATTB and CDFA forms have been filed.

SUPPORTING DOCUMENTS

A . Attachment A - Revised Proposal X

Recommendation: Approve

Reviewed By: Melissa Frost