

SMITH·MADRONE

HOOPES

Summit Lake
VINEYARDS

November 8, 2023

Honorable Rob Bonta
Office of the Attorney General
California State Department of Justice
1300 I Street, Sacramento, CA 95814

The Honorable Ismail J. Ramsey
Northern District of California
United States Attorney's Office
450 Golden Gate Avenue
San Francisco, CA 94102

RE: Request for Investigation into Napa County's Unconstitutional Regulatory Practices, Enforcement of Civil Actions without Probable Cause and Upon False Evidence, and Abuse of Prosecutorial Discretion.

Dear Attorney General Rob Bonta and United States Attorney Ismail Ramsey:

We write today to request an investigation by your offices into Napa County's egregious constitutional rights violations. We know you take your responsibilities to ensure constitutional protection under the law seriously, and we are certain that a review of the actions taken by Napa County code enforcement and County Counsel demonstrates a pattern and practice of ultra vires enforcement, unconstitutional enforcement action, and discrimination against small business owners.

Through the use of knowingly unconstitutional regulations that do not serve any legitimate government interest, the County is subjugating small wineries with forty- to fifty-year-old land entitlements to improper and onerous applications for land entitlements they already have. They are also reading conditions into decades-old permits that do not exist, in violation of due process and *People v. Venice Suites, LLC*, (2021) 71 Cal. App. 5th, 715, various provisions of the State and Federal Constitutions, equal protection and procedural and substantive due process, and state government provisions mandating uniformity of zoning. These are impacting vested entitlements that are directly linked to the livelihoods of

these families. The aforementioned violations are denying long standing businesses critical economic and property rights and are causing the economic extinction of small family wineries in Napa Valley.

The County forces “compliance” citing unintelligible laws that in many instances do not exist, that attempt to prohibit entirely lawful conduct, and that discriminate against certain classes of small winery businesses. The County knowingly enforces unconstitutional laws and alleges violations and/or compliance failures that knowingly do not exist. Any inquiry seeking clarification about the authority to take this government action, which is carried out without training, supervision, procedure, or legal authority, results in extortionary direct civil actions for de minimis code enforcement “violations” (like string lights and chicken coops). These direct civil filings for lawful conduct, conduct they know did not occur, or minor violations are predatory, and an intentional work-around to fixing regulatory errors or worse, restricting conduct the County knows it cannot lawfully regulate. These violations are quasi-criminal, and the direct filings disable the businesses from meaningfully challenging the actions, or defending themselves, in violation of the State and Federal Constitutions.

In effect, the County strips property owners of entitlements without due process, and forces the businesses to re-apply (and re-pay) for the entitlements. If the businesses do not go back through the entitlement process, the County threatens code enforcement action for conduct the businesses have always engaged in, and that all similar businesses depend on as critical revenue streams. All attempts to work with the County are used against the property owners as admissions of wrongdoing, and yet, if they do not “participate,” they are sued.

The County circumvents legal challenge to their erroneous legal interpretations by creating insurmountable financial barriers to resolve the actual legal dispute. The County engages in a legal war of attrition, forcing parties into bankruptcy, to sell, or capitulate regardless of merit. For example, the County threatens anyone who attempts to defend property rights with unsurmountable attorney fees, public humiliation, direct civil filings, and loss of other winery land entitlements that are directly necessary for the livelihood and viability of the wine business. The property owners do not have the means to defend themselves in direct civil suits for chicken coops, or string lights. The unlawful and excessive fees threatened, and sheer cost of civil lawsuits relative to the offenses, are violative of the Eighth Amendment. The fact that the County brings direct civil filings for de minimis offenses where administrative procedures were established for this very purpose is also an abuse of discretion as a matter of law and violates *Beames v. City of Visalia*, 256 Cal. App. 5th 741 (2019), due process.

The County insists that business owners reapply for longstanding property rights on threat of a lawsuit that businesses cannot afford to defend. Small wineries for decades have been paralyzed from conducting business, and simultaneously fearful to speak out. Recent attempts to intervene invite enhanced code enforcement action, retaliatory undercover stings, public humiliation and harassment, and allegations of wrongful business operations that are inflammatory and objectively unfounded. These acts have created a monopoly of market access in revelation to critical winery functions favoring larger wineries.

Napa County is alleging “illegal” activities despite collecting and pocketing many thousands of dollars in sales tax revenue over the last 40-50 years for these very activities. This is also despite the fact that the County acknowledges this is a critical economic function of small winery survival, and for the Valley as a whole. This is despite the fact that this conduct remains lawful at other wineries. The government should be as concerned with protecting property rights as it is with enforcing the law; yet, with little explanation, these costly enforcement actions disregard this very contract. They also serve as a grave offense to the public taxpayer, costing far in excess of \$1 million to adjudicate what are, if anything, misdemeanors and minor infractions.

Background

We are small business owners in Napa County with wineries in operation since before 1990. In Napa County, wineries that sought permits to operate *after* passage of the 1990 Winery Definition Ordinance (WDO) had to go through a conditional use permit process. However, small wineries that were in existence before the WDO were grandfathered in as an “integral part of the Napa Valley economy.” Napa County Ordinance 947, and Napa County Code sections 18.16.020(H), 18.104.040 and 18.08.040 explicitly allow wineries with small winery use permits and exemptions in existence prior to 1990 to operate as wineries including marketing, sales, and any related winery accessory uses, under their existing entitlements. After decades in which those entitlements were interpreted to include the ability to engage in wine consumption, private tastings, and marketing on our properties, the County rather suddenly, curiously, and inexplicably decided that those entitlements— at existing small wineries—do not allow us to do what has been allowed for 40-50 years.

Among many other unlawful practices, the County currently requires these pre-WDO wineries to “re-apply” for their primary winery use entitlements to engage in *accessory* uses of a winery that were already vested in 1990, that

remain lawful uses of a winery, and that are uses that have never been abandoned. These accessory uses are knowingly essential for the economic survival of small wineries and our existing land use entitlements. This unlawful practice to strip these rights is incredibly cost prohibitive and has forced several small businesses to shutter, or sell, without due process of law, in violation of equal protection, and in taking or restricting land use entitlements without compensation. Again, and rather critically, the regulations purporting to authorize these government activities either do not exist or are unconstitutional. These activities remain lawful as to all other wineries.

Hoopes Vineyards

Napa County filed an action against Hoopes Vineyards in October, 2020, alleging that no one is allowed to stay on the property and consume wine in any format. Hoopes Vineyards subsequently filed a cross-complaint. The proprietor of Hoopes Vineyards, Lindsay Hoopes, is an adjunct law professor at UC Law San Francisco and a former Assistant District Attorney in San Francisco where she prosecuted some of the office's most high profile cases. Ms. Hoopes served dutifully under the Honorable Kamala Harris and George Gascón.

Napa County Superior Court Judge Cynthia Smith [ruled](#) in November of last year that the County was unlikely to prevail on the merits of its lawsuit against Hoopes Vineyards. In spite of this ruling, the County has pressed on with its action at extraordinary taxpayer expense.

In early September two wineries filed a motion to join Hoopes Vineyards as parties in interest in the ongoing action against Napa County alleging an unlawful pattern and practice of forcing wineries that have operated for decades to seek permits for rights they have long possessed. The wineries joining Hoopes Vineyards are Summit Lake and Smith-Madrone.

Summit Lake

Summit Lake did not receive a notice of apparent violation from Napa County until 2019 when they pursued a use permit modification to increase their wine production. The Small Winery Exemption under which they, along with Hoopes and Smith-Madrone, were grandfathered in requires production of less than 20,000 gallons. Napa County alleged in that violation notice that Summit Lake had been "out of compliance ... in operating to receive guests for wine consumption and tastings." After discovering that a permit modification approval would cost upwards of \$1 million, Summit Lake ultimately pulled its application.

Nonetheless, the County told the winery that regardless of maintaining its production volume below 20,000 gallons it still needed to apply for a new permit or cease the tasting operations it had conducted for decades. That new and unjustified requirement will shutter their business.

Smith-Madrone

Smith-Madrone joined the lawsuit to obtain clarity. Smith-Madrone recently discovered that the County's public winery database states that Smith-Madrone is limited to hosting 10 visitors per week and is not permitted to put on marketing events. Over the course of serving wine for over 50 years, however, it has never received a notice of violation for hosting tastings or marketing events. Napa County has also long been aware of Smith-Madrone's operations as past marketing events have been reported in the news and attended by Napa Valley politicians, including members of the Board of Supervisors. Smith-Madrone asserts that some pre-1990 wineries have been cited — and even sued — by the County, but not others. Smith-Madrone similarly may not survive as a business if its ability to host tastings and events is revoked.

Bremer (Prior Case With Similar Facts)

Napa County sued the Bremers in the summer of 2017 for allegedly violating the terms of a use permit granted in 1979. While the Bremers' permit set no limits on the number of visitors or the hours of operation—both issues that were not regulated until the 1990 Winery Definition Ordinance—the County sued alleging that the winery uses “far” exceeded what their permit allowed, calling them a “public nuisance.” Judge Victoria entered a tentative ruling that the County did not likely have authority to read conditions into older use permits, and thus, these pre-WDO wineries were allowed these uses. The order never entered, the judge was recused, and the issue never resolved on the merits.

Napa County's Constitutional & Civil Rights Violations

A. Enforcement of knowingly invalid/unconstitutional/preempted ordinances

Invalid & Unconstitutional Laws

Napa County Code sections 18.08.040 expressly allow “marketing, sales, and accessory (winery) uses” at small wineries pre-dating the WDO. Napa County Code sections 18.16.020, 18.16.030, 18.20.020, and 18.20.030, enacted for the first time in 1990, outline that all wineries are allowed “retail sales,” “tours and

tastings” and “marketing of wine,” with a use permit, but that uses *without* a use permit and uses *with* a use permit shall have any accessory use. NCC § 18.104.040. Section 18.08.040 explicitly states that small winery exemptions are allowed to engage in marketing, sales, and accessory uses.

Section 18.08.600(C) which purports to prohibit these activities at small wineries violates the Due Process Clause of the California and U.S. Constitutions and treats “small wineries” differently than other wineries, although there is only one “class” of winery in all open space zoning district (Cal. Const. Art. 1, § 7 and Art. IV, § 16; U.S. Const. Amend. XIV). *Further*, it attempts to prohibit lawful conduct expressly *authorized* by state (and local!) law as detailed below. It also violates uniformity in zoning, equal protection, and is unconstitutionally vague. As an invalid law, enforcement is a violation of due process.

Furthermore, the County’s enactment or continued application of vague laws relating to “onsite consumption” and “tours and tastings” violates due process. Unconstitutional vagueness implicates dual concerns of fair notice of the line between lawful and unlawful conduct, and sufficiently explicit statutory limitations on the discretion of officials to avoid arbitrary and discriminatory enforcement (*In re Scarpetti (1981) 124 Cal.App.3d 434, 441*). The County’s attempt to prohibit conduct that the code does not properly define, or beyond statutory description, renders the ordinance unconstitutionally vague. For example, the County’s attempt to ostensibly prohibit “onsite consumption” as a “tasting” demonstrates a material notice issue or a policy to prohibit conduct not prohibited by the statute. Both are violations of due process. Just because someone drinks wine at a winery does not automatically make that behavior a tasting because “tasting” is not defined. Furthermore, even if tasting were defined, the County cannot retroactively claw back our vested rights to pour wine on the property as that would be a taking. Finally, the ability to regulate the ability to consume wine on our properties is preempted by state law.

Preemption

The 1984 Small Winery Use Permit Exemption entitles Hoopes, Smith-Madrone and Summit Lake to produce up to 20,000 gallons of wine, operate a winery business, make onsite retail sales without limitation, and engage in primary and accessory uses of the vineyard and winery consistent with all wineries in Napa County’s Agricultural Preserve (AP). Napa County subsequently attempted to limit these rights further through Napa County Code section 18.08.600(C). These wineries, however, have O-2 permits which, pursuant to [Business and Professions Code Section 23558](#), allows licensed winegrowers to “sell wine to consumers for consumption on the premises.” Importantly, the law holds that

local authorities “may *restrict*, but not eliminate, [these] privileges.” There are other state and federal licenses implicated by the County’s enforcement actions, including California Business and Professions Code, section 23790, and many more.

B. Abuse of prosecutorial discretion in bringing civil actions where administrative procedures exist for garden variety code enforcement cases - remedies and means disproportionate to nature of allegations

The County created an expectation that good faith efforts by these wineries would result in the County’s resolution by way of the administrative process, including an opportunity to be heard, submit evidence in defense, present to a neutral arbiter, or appeal any unfavorable determinations. Despite the County’s assurances that they would follow a specific procedure, they did not do so.

The County threatens wineries with applications for new, limited *discretionary* use permit applications for property rights *already* entitled, that the County cannot explain or define in terms of justification, scope, cost, or timeline, or risk cost prohibitive lawsuits.

In the *Hoopes* matter, The County issued notices of apparent violation but no actual citations, did not meet with the owner in spite of their efforts to gain clarity on the violations, did not respond to any communication for nearly two years, and filed a lawsuit instead of using the County’s administrative procedure. The County never sought summary abatement, issued a citation, or requested a judicial order. In doing so, the County violated procedural due process.

This was after Ms. Hoopes proactively met with PBES director, David Morrison, to seek clarification on the subject land use permit and was advised certain conduct was lawful that the County later cited in their enforcement efforts.

Presuming the County’s allegations were true and these wineries are allowed to sell wine from the premises, but not let customers consume it on the premises, or the chicken coops are too big, this is an open container issue and a *minor* building code issue, at best. This does not remotely justify the actions taken to humiliate and intimidate the Hoopes family, including a raid of Lindsay Hoopes’ deceased mother’s home. The enforcement activities were nowhere proportionate to the conduct alleged, even if it had occurred.

C. Bringing of claims knowingly without probable cause as to the legal theories and factual basis for allegations in the complaint.

Beginning in 2020, Hoopes Vineyards began receiving notices of apparent violation (but not actual citations) from Napa County Code Enforcement. These notices demanded compliance with rules that do not exist, took issue with activity that did not occur, were speculative, and demanded Hoopes cease activities expressly allowed – like “marketing” and “sales” – under lawfully vested rights.

- The notices of apparent violation included incomprehensible allegations such as Hoopes’ use of string lights on the property. The code referenced in the notice of violation did not relate to the Agricultural Preserve (AP), but rather a **different zoning district**. The winery across the street from Hoopes—a much larger winery permitted after 1990—has string lights, too. (and has never been cited).
- The notices indicated that Airstreams were not allowed on the property, however, code enforcement [explicitly acknowledges](#) that there is no statute that prohibits RVs from being parked in our zoning district (p. 63, 96).
- Hoopes also received a notice of apparent violation for an animal sanctuary on the premises even though Code Enforcement [conceded](#) in their sworn deposition that animals *are* allowed in the zoning district and at the property (p. 69, 79, 96). The area is an agricultural preserve, with a right to farm, protecting agriculture of any kind without limitation.
- Hoopes Vineyards also received a notice of apparent violation for chicken coops that were larger than 120 square feet despite code enforcement [testifying](#) that no one from the County ever measured the animal sheds on the property, or confirmed that the sheds were larger than 120 square feet *before* issuing the notices of apparent violation or bringing the lawsuit (pp. 65, 75-76, 78, 96). The County included this allegation in the legally operative complaint *even though the coops were rebuilt several times at their direction, and requests were made that the County visit the property to ensure compliance*. Photographs of the repairs were transmitted to County counsel and discussed. Counsel knew any issue with the coops had been resolved, and they included the allegation in their Complaint anyway.
- Code enforcement officers filed a declarations stating that Hoopes had never corrected any violations, which they knew not to be true. Code enforcement admitted that some of the allegations in the complaint were purely speculative, had knowingly ceased, or were not actual violations of

law. Code enforcement officers admitted they did not have any admissible evidence of a violation prior to filing the civil action.

- County counsel knowingly used photographs of different properties to give the impression the violations occurred on the property, when they knowingly did not.
- County counsel has stated that they do not need probable cause to file civil actions, and will not dismiss unsubstantiated allegations in the complaint, and intend to use *discovery* to substantiate them.
- County Counsel acknowledged that they seek discovery of any documents that might evidence *any violation of any law*, including privileged tax records and financial documents, because they have alleged broad, yet unspecified, allegations of “nuisances” and “unfair business practices.”
- Arthur Hartinger, who serves as outside counsel for the County, said in a recent [CBS piece](#), "A use permit exemption does not allow for tours, tastings, or consuming wine on the premises." What else would be the purpose of such an exemption? The Napa County Winery Database, produced and published by the County, also [indicates otherwise](#). Furthermore, [this same attorney completely contradicted himself on this matter in comments to a judge](#) (p. 23), saying, "in the small winery, permits were granted at that time. The uses in place at the time were grandfathered in." Code Enforcement Officers similarly acknowledged [in their deposition](#) that some small wineries, *including exemptions, could* host tours and tastings (Cah. Dep. at p. 10).
- The above actions run afoul of the rules governing public prosecutors and in the absence of probable cause violate our fourth amendment rights against illegal search and seizure. Above all, seeking to justify a lawsuit the government has already brought through evidence they do not have, but hope to uncover during discovery, is a portrait of government overreach.

D. Arbitrary and capricious enforcement to silence small wineries, dissenters

At the heart of the controversy is whether Napa County can render valueless a lawful, operating business – a winery – from doing what a winery does through arbitrary, vague, and unintelligible rules, leaving no room for compliance.

“Although zoning officials have broad discretion, they may not act unreasonably or arbitrarily.” (*Scarpetti*, supra, 124 Cal.App.3d at 441; see also *Carlin v. City of Palm Springs* (1971) 14 Cal.App.3d 706, 715.) Prohibiting uses and accessory uses that are lawful, deemed economically critical, and granted to all other wineries without statutory limitation, is arbitrary. For example, bringing civil actions to determine whether retail items, like jams and jellies, are wine-related and whether brand t-shirts can be sold where wine is sold are patently arbitrary, and most certainly not suitable for resolution through direct civil actions.

There is no legitimate government purpose in prohibiting small wineries, vested pursuant to the small winery exemption, such as Hoopes, Smith-Madrone and Summit Lake, from engaging in “uses” and “accessory uses” permitted to other wineries established prior to, concurrent with, and subsequent to these small wineries. An ordinance granting small winery exemptions—such as those possessed by these wineries—fewer uses within the same zone for the same class, “winery,” is legally arbitrary. It is also a violation of state law regarding zoning uniformity. Any similar law, custom, or policy is void.

Conclusion

In Napa County, the government is discriminating against small wineries in its attempts to claw back property rights that we have possessed for decades. This, in turn, is a violation of equal protection, due process, and our 5th amendment rights not to have our property taken without just compensation. In pursuing these “violations,” it is important to note that no member of the public has ever complained about our properties, and no citations have been issued for actual violations. The County never deemed our properties a life safety issue or worthy of a summary nuisance abatement action, and simply denied hearings, responses, and guidance for years. Upon bringing the lawsuit, they have accused Hoopes of fraud, not being a winery, producing too much wine, bringing grapes from out of the county, and other absurd allegations without factual support, let alone probable cause. The County is trampling our fundamental rights as property owners.

We understand that your offices often investigate local governments who engage in unlawful patterns and practices, and we would similarly implore you to use this authority to protect small businesses and ensure we are not discriminated against. We are taxpaying citizens and our government should be working to protect our property rights, not systematically working to dismantle our longstanding vested interests that we have poured our livelihoods into.

On behalf of the undersigned and the many other wineries that are too afraid to come forward for fear of similar retribution from Napa County, we request an investigation into these unconstitutional patterns and practices.

Sincerely,



Lindsay Hoopes
Proprietor, Hoopes
Vineyards



Stu Smith
Proprietor,
Smith-Madrone



Heather Griffin
Proprietor, Summit
Lake