RESOLUTION NO. 2018-164

RESOLUTION OF THE BOARD OF SUPERVISORS OF NAPA COUNTY, STATE OF CALIFORNIA, EFFECTIVE DECEMBER 4, 2018, PROVIDING DIRECTION TO COUNTY STAFF REGARDING THE COUNTY CODE COMPLIANCE PROGRAM, ANNUAL WINERY PRODUCTION AND GRAPE SOURCE REPORTS, AND REGULATION AND PERMITTING OF TEMPORARY EVENTS

WHEREAS, on August 22, 2017, the Board of Supervisors directed staff of the County Planning Building & Environmental Services Department ("Staff") to present for the Board's consideration Staff's recommendations regarding certain changes to the County's land use regulation and compliance program that included the following components: 1) a systematic program with enforceable deadlines for landowners to apply for new permits or modifications to resolve outstanding violations; 2) a reporting program that would include annual production and grape sourcing data for certain wineries located within the unincorporated area of Napa County; and 3) revisions to the current process and procedures for temporary events; and

WHEREAS, in public session on September 12, 2017, October 20, 2018, and November 13, 2018, Staff presented its recommendations to the Board on the issues described above and accepted the Board's direction; and

WHEREAS, the Board heard and considered Staff's presentations and all public comments and written input on Staff's recommendations; and

WHEREAS, on November 13, 2018, the Board gave direction to Staff to make certain modifications to Staff's recommendations to be set forth in a Resolution for the Board's consideration,

NOW, THEREFORE, BE IT RESOLVED, effective as of December 4, 2018, as follows:

1. The Board hereby directs Staff to implement the following procedures and policies in connection with the processing of land use entitlement applications that are related to properties that are the subject of County Code violations. These procedures and policies do not apply to the issuance and/or enforcement of Building Permits, except where specified:

    a. Establish a deadline of 2:00 PM on March 29, 2019 ("deadline"), for all landowners who wish to apply for a permit to voluntarily remedy their violations, or for a status determination application to clarify the extent of existing entitlements in accordance with subsection (b) below. Qualified permit applications must be substantially conforming and must be received by the Planning, Building, and Environmental Services (PBES) Department by the deadline. A "substantially conforming" application must include a substantially complete set of the documents required in the application checklist, and information responsive to the requirements. A "substantially conforming" application need not include technical studies where the applicant demonstrates studies could not be completed by the deadline due to seasonal conditions or other extenuating circumstances. All excluded technical studies must be submitted as soon as possible, not to exceed 120 days from the

deadline. Applicants must make a good faith effort to make the application as complete as possible.

i. Require applicants to make a continuous good faith effort to complete their applications in as timely a manner as is practicable. Napa County's Local Procedures for Implementing the California Environmental Quality Act (CEQA) state that no application for a permit shall be deemed complete until all information has been submitted necessary to complete an Initial Study, determine that the project is exempt, or determine that the project is not subject to CEQA. After 120 days from the deadline, when the PBES Director ("Director") determines, in the Director's sole discretion, that an application is incomplete and that the applicant is not making a good faith effort towards timely completion, the application will be closed out and any unused funds will be returned to the applicant.

ii. Advise applicants who seek to participate in this program that the County does not make any promise or representation that their applications will be granted in whole or in part. Each application will be considered on its own respective merits.

iii. Within 30 days of the submittal of a substantially conforming application, staff shall conduct a compliance inspection of each property for which an application was received pursuant to this program. The inspection would verify the violations that the applicant was requesting to correct in the application and the existence of health and safety violations. Upon verification of violation(s), staff will send a new or amended Notice of Violation to the owner, which will clearly list the verified violations and any health and safety violations determined through the inspection, and will describe how compliance can be achieved. Those violations that pose an immediate threat to public health, safety, and/or threaten the environment, must be abated before the application can be deemed complete. Owners who submit an application for any new or modified permit by the above deadline would continue to be subject to penalties for constructing improvements without a Building Permit.

iv. Revise staff reports to "decouple" recommendations regarding all discretionary applications submitted before the deadline that involve both existing significant violations and requests to expand operations. The project description, recommendations, and options presented in staff reports will clearly distinguish between portions of a proposed project that are necessary to remedy existing significant violations, and those portions of a proposed project that would expand beyond current levels of operation. 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 (if applicable), visitation or marketing in excess of approved limits, and unpermitted building construction and/or occupancy. The recommendations for those elements of a proposed project dealing with violations and those dealing with an expansion beyond existing operations/entitlements will be considered separately by the decision-making body.

v. Except for substantially conforming applications received by PBES prior to the deadline, require all properties that have new or continued health and safety or significant pre-existing violations to come into immediate compliance with legal entitlements and all applicable County Code requirements. Owners of properties with health and safety or significant violations shall be required to operate within their existing legal entitlements for one year from the date of the initial Notice of Violation, absent extraordinary circumstances, before a use permit or modification application to remedy the violation(s) may be submitted to PBES. Owners may also be subject to fines or penalties for past and ongoing violations. This provision is intended to and shall require that the environmental impacts of discretionary permit applications shall be assessed against a "baseline" of operations that are within existing legal entitlements, rather than in violation of them. Owners may submit a use permit or modification application to remedy violation(s) during the one-year period while they operate within their legal entitlements, but only if they agree in writing that their legal entitlements or their existing legal operations, whichever is lower, shall be used as the environmental baseline for all CEQA analysis related to the application. Public hearings for such use permit or modification applications shall not be scheduled until the owner has operated within legal entitlements for one year from the date of the Initial Notice of Violation, absent extraordinary circumstance.

b. Continue to allow any property owners to voluntarily initiate a review by the County to determine the extent of their existing entitlements and/or permissible uses of their property. The purpose of such status determinations would be solely to document and/or delineate existing property rights, and would not reduce or affect established entitlements. Staff would evaluate existing use permits, use permit modifications, other land use entitlements, and any documentary evidence provided by the applicant. The resulting analysis would lead to a written decision by the PBES Director that would provide the owner with a clear understanding of both their rights and obligations, which the owner and staff would then both rely upon in the future to determine if a land use is operating in compliance with existing entitlements and the County Code. The Director's decision would be issued administratively within 120 days of the application being determined complete, without a public hearing. Any party entitled to appeal under County Code Chapter 2.88 can appeal the decision to the Board of Supervisors. If an owner or interested party disagrees with the Director's decision, in whole or in part, regarding a status determination application accepted as complete prior to the deadline set forth in subparagraph 1(a) above, the deadline will be extended for an amount of time equal to the time required to process the status determination application or 120 days, whichever is less. This extension is to allow the owner an opportunity to prepare a substantially conforming use permit or modification application to remedy any outstanding violations.

c. To the extent feasible, assign one planner to each application for a use permit or use permit modification who will be the point of contact for the owner throughout the process. Contract with appropriate and qualified consulting firms to provide short-term support for Code Compliance, Planning, County Counsel, and other functions as needed if implementation of the above procedures results in a significant increase in workload for PBES and/or County Counsel's office. Budgets may be adjusted as necessary to accommodate the additional expenditures, following approval by the

Board of Supervisors. The full cost of contract personnel would be paid for by the applicants. Contract personnel may be retained until the permit applications submitted prior to the deadline have been fully processed.

d. Provide outreach and education to landowners and the public regarding the policies and procedures contained within this Resolution, between now and the deadline.

e. Provide monthly updates to the Board of Supervisors regarding the status of implementing the policies and procedures contained within this Resolution, including but not limited to reports on the number of permit applications received, the timelines for processing such applications, number of code compliance cases, and the number and the performance of contract personnel.

2. The Board of Supervisors directs Staff to return to the Board with a proposed Ordinance for the Board's consideration at a public hearing to enact annual winery reporting requirements with the following proposed elements:

a. Require that all wineries within the unincorporated area, other than those referenced in sub-section (d) below, annually report by July 1 the following information to the PBES Director, beginning in 2019 and each year thereafter: (A) number of gallons of wine produced in the previous calendar year; and (B) number of gallons crushed and juiced in the previous year from grapes that were grown in Napa County.

b. Evaluate all production reporting pursuant to the County Winery Production Process, including the use of a rolling three-year average. For the first year of reporting in 2019 only, wineries will submit data for the previous three years to determine current compliance with production requirements. Production data will be required annually thereafter.

c. Acknowledge that the Winery Production Process formula is not equally applicable to all winery operations. Those wineries that wish to submit alternative calculations may submit an amended report, which shall explain the methodology proposed to calculate a winery's production and/or grape source percentage.

d. Exempt wineries outside the Agricultural Preserve and Agricultural Watershed Zoning districts and pre-Winery Definition Ordinance (WDO) wineries within those zoning districts which do not have to comply with the 75% Napa County grape source requirement, from annually submitting sourcing data and United States Department of Agriculture (USDA) California Grape Crush Inquiry Reports. However, such wineries must provide annual production level reports, along with scanned United States Alcohol, Tobacco Tax and Trade Bureau (TTB) Reports of Wine Premises Operation, to verify that they are staying within their approved or recognized pre-WDO levels.

e. Require scanned TTB Reports of Wine Premises Operations, and United States Department of Agriculture (USDA) California Grape Crush Reports to be submitted as attachments to verify the information submitted to the County. All information submitted to the County will be treated as proprietary or tax records gathered for purpose of enforcement and will be maintained in a secured database with limited

access and shall not be treated as public records pursuant to Government Code §6250 et seq. to the extent permitted by law. Once reporting has been reviewed by staff to verify compliance, production and grape source data will be destroyed, except when used as part of an ongoing violation investigation related to wine production and/or grape sourcing. The County will engage in outreach and education efforts to ensure that winery owners are informed of the reporting requirement.

f. Conduct an inspection and full evaluation of all entitlement requirements and conditions of approval, when the reporting data submitted to the County indicates that a winery is in violation of either their production limit and/or their grape sourcing requirement. If violations are discovered, staff will send a Notice of Violation to the owner, which will clearly list all violations and how compliance can be achieved.

g. Create the software and Internet interface necessary to minimize the burden for wineries to report their annual data to the County electronically. In addition, develop a database/spreadsheet to evaluate the production data in accordance with the Count Winery Production Process. The software programs shall be designed to ensure that all data and analysis obtained through annual winery reporting is fully secured with restricted staff access. Staff will work with Information Technology Services (ITS) to develop the program. If additional expertise is required, ITS may hire a consultant to assist with the development of the software program. Budgets may be adjusted as necessary to accommodate the additional expenditure, following approval by the Board of Supervisors.

3. The Board directs Staff to return to the Board with a proposed Ordinance for the Board's consideration at a public hearing for revisions to the current process and procedures for regulation and permitting of temporary events, with the following proposed elements:

   a. Create an enforcement process for Temporary Events, similar to the procedures currently used by the Public Works Department to enforce permits that allow Special Events on Public Roadways. The enforcement process would include the ability to place permit holders "on probation" when a violation has been confirmed, and to allow for the denial of applications for Temporary Event permits where there are multiple violations.

   b. Require that applications for Temporary Events be submitted a minimum of 90-days in advance of the date of the event. The County will engage in outreach and education efforts to ensure that property owners, non-profit organizations, and other sponsors of temporary events are informed of the change in the application timeline.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Napa County Board of Supervisors, State of California, at a regular meeting of the Board held on the 4th of December, 2018, by the following vote:

AYES:	SUPERVISORS	PEDROZA, RAMOS, DILLON and GREGORY
NOES:	SUPERVISORS	NONE
ABSTAIN:	SUPERVISORS	NONE
ABSENT:	SUPERVISORS	WAGENKNECHT

NAPA COUNTY, a political subdivision of the State of California

By: _____
RYAN GREGORY, Vice Chair of the Board of Supervisors

APPROVED AS TO FORM Office of County Counsel By: *Jeffrey M. Brax,* *(via e-signature)* County Counsel Date: December 4, 2018	APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS Date: December 4, 2018 Processed By: Deputy Clerk of the Board	ATTEST: JOSE LUIS VALDEZ Clerk of the Board of Supervisors By: _____