



A Tradition of Stewardship  
A Commitment to Service

Agenda Date: 5/21/2019

Agenda Placement: 10A

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors

**FROM:** David Morrison - Director  
Planning, Building and Environmental Services

**REPORT BY:** David Morrison, Director, Planning, Building & Environmental Servi - (707) 253-4805

**SUBJECT:** Use Permit Process Workshop

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### **RECOMMENDATION**

Director of Planning, Building and Environmental Services (PBES) requests direction on the preparation of an ordinance regarding the use permit process.

### **EXECUTIVE SUMMARY**

The Board of Supervisors has regularly expressed their concern for small, family-owned wineries and the need to take pro-active steps to ensure their continued survival. This concern has been reflected in the County Strategic Plan, the General Plan, the Agricultural Protection Advisory Committee, the Local Guidelines for Implementing the California Environmental Quality Act (CEQA), and the Process Improvement Study.

This concern reflects that the vast majority of small wineries are family owned and operated. With the loss of the three-tier distribution system for selling their wine, they are increasingly turning to the direct-to-consumer business model. This requires them to compete against larger wineries and corporations that have much larger revenues, product volume, and staff resources to market globally to high-end wine consumers. At the same time, the impact of complying with complex Federal, State, and County regulations falls disproportionately on these family owned businesses, who are less able to absorb the additional costs necessary to meet increasingly stricter standards.

In various policy discussions over the past several months, the Board has requested to have a discussion of steps that can be taken to support small wineries, which represent the backbone of our local economy.

### **PROCEDURAL REQUIREMENTS**

1. Staff reports.
2. Public comments.

3. Motion, second, discussion and vote on the item

### **FISCAL IMPACT**

Is there a Fiscal Impact?                      No

### **ENVIRONMENTAL IMPACT**

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

### **BACKGROUND AND DISCUSSION**

#### **BACKGROUND**

There are 485 permitted wineries listed in the Napa County Winery Database. Of those wineries, 461 facilities are located in AP (Agricultural Preserve) or AW (Agricultural Watershed) zoning. There are 261 wineries on agriculturally zoned land that are permitted to produce 30,000 gallons annually or less. Small wineries account for 57% of all wineries on agricultural lands in Napa County.

The limited nature of small wineries is reflected throughout their operations. The average number of permitted tasting room visitors is 9 per day. Small wineries average 8 marketing events per year with 281 marketing visitors annually. The average number of employees is 3. Most small wineries are located on parcels of 25 acres or less. The average building size is 6,047 square feet. Most small wineries do not have caves, but those that do average 3,040 square feet in size.

A total of 97 of the 261 small wineries (37%) were established prior to the Winery Definition Ordinance (WDO). There are 34 facilities that were established under the Small Winery Exemption provisions that were allowed under County Code prior to the adoption of the WDO.

The vast majority of small wineries are family owned and operated. With the loss of the three-tier distribution system for selling their wine, they are increasingly turning to the direct-to-consumer business model. This requires them to compete against larger wineries and corporations that have much larger revenues, product volume, and staff resources to market globally to high-end wine consumers. At the same time, the impact of complying with complex Federal, State, and County regulations falls disproportionately on these family owned businesses, who are less able to absorb the additional costs necessary to meet increasingly stricter standards.

The Board of Supervisors has regularly expressed their concern for small, family-owned wineries and the need to take pro-active steps to ensure their continued survival, summarized as follows:

#### **Napa County Strategic Plan (2019-2022):**

- I Goal 9 - Collaboratively design systems and structures that promote a diverse and stable economy, with livable wages.
- I Action G: Provide a healthy and welcoming business environment by implementing the Process Improvement Plan for the Planning, Building, and Environmental Services (PBES) Department and

expanding the process to other permitting functions.

- | Action H: Protect family-owned businesses, local wineries, and small farmers as a vital part of the economy, including preservation of the small vineyard exemption.

#### Napa County General Plan:

- | Policy AG/LU-16: In recognition of their limited impacts, the County will consider affording small wineries a streamlined permitting process. For purposes of this policy, small wineries are those that produce a small quantity of wine using grapes mostly grown on site and host a limited number of small marketing events each year.
- | Action Item AG/LU-16.1: Consider amendments to the Zoning Ordinance defining “small wineries,” a “small quantity of wine,” “small marketing events,” and “mostly grown on site,” and establishing a streamlined permitting process for small wineries which retains the requirement for a use permit when the winery is in proximity to urban areas.

#### Agricultural Protection Advisory Committee (APAC):

Prepare an ordinance to establish a process to streamline the consideration of use permits for those small wineries that meet all of the following criteria:

- | Have structures that total less than 5,000 square feet in size, excluding caves;
- | Involve either no cave excavation, or excavation sufficient to create no more than 5,000 additional square feet, with all of the excavated cave spoils to be used on site;
- | Produce 30,000 gallons of wine or less per year
- | Generate less than 40 vehicle trips per day and 5 peak hour trips, except on those days when marketing events are taking place
- | Hold no more than 10 marketing events per year, each with no more than 30 attendees, with one additional wine auction event of up to 100 attendees; and
- | Hold no temporary events.

#### Napa County's Local Procedures for Implementing the California Environmental Quality Act (CEQA), Appendix B:

In addition to the exemptions contained in the State CEQA Guidelines, pursuant to Sections 15022(a)(1)(C) and 15300.4 of the State CEQA Guidelines the Board has found that the following types of projects typically do not have a significant effect on the environment and therefore qualify for a categorical exemption under the class of categorical exemptions listed below:

- | Class 3: New Construction or Conversion of Small Structures [State CEQA Guidelines §15303] 10. Construction and operation of small wineries, other agricultural processing facilities, and farm management uses that: (a) are less than 5,000 square feet in size excluding caves; (b) will involve either no cave excavation, or excavation sufficient to create no more than 5,000 additional square feet with all of the excavated cave spoils to be used on site; (c) will produce 30,000 gallons or less per year; (d) will generate less than 40 vehicle trips per day and 5 peak hour trips except on those days when marketing events are taking place; (e) will hold no more than 10 marketing events per year, each with no more than 30 attendees, except for one wine auction event with up to 100 persons in attendance; AND (f) will hold no temporary events.

#### Analysis of the Planning Review Process:

The 2018 process improvement study did not make any specific recommendations regarding streamlining of the use permit process. However, the following information from the report is relevant. In a survey conducted by Matrix Consulting Group as a part of this study, there were several key findings:

- | Respondents listed the following key opportunities for improving the permit process: (1) clarifying the land use process; and (2) empowering line staff to make approvals;
- | Over 77% of those responding disagreed with the statement: "It is easy to identify what level of review will be required for a proposed winery use permit modification";
- | Over 73% of respondents disagreed with the statement: "The process required for a winery use permit modification is straightforward" (p. 66). Those responding to the survey also indicated that the "Applicability of Very Minor Modification Use Permits is vague";

The study also noted the disparity between processing time for various planning applications between 2014 and 2016. New Use Permits were typically processed within about 22 months. Major Modifications took an average of 12-14 months. Minor Modifications were processed within an average of 3-5 months.

## **DISCUSSION**

As mentioned in several of the citations above, the Board of Supervisors has provided general direction to streamline the permit process for small wineries. There are several areas where streamlining may occur.

One challenge for small wineries is CEQA. However, those operations that are consistent with the criteria listed in the Local Guidelines for Implementing the CEQA are already considered categorically exempt from environmental review. Any additional change or expansion of the exemption would be subject to additional CEQA review.

A second challenge is presented for those facilities that were approved under the Small Winery Exemption Ordinance, which was in effect from 1981 to 1990. Wineries were allowed to operate without a Use Permit if they met all of the following criteria, as described in Section 18.08.600 of the County Code:

- | Annual production of 20,000 gallons or less;
- | Located on a parcel of 4 acres or larger;
- | Not located in an environmentally sensitive area;
- | Does not conduct public tours, provide wine tastings, sell wine-related items or hold social events of a public nature; and
- | Meets the requirements of the County's Design Criteria for Small Wineries.

Facilities approved under the Small Winery Exemption have been operating for more than 30 years, under restrictions that cannot accommodate the direct-to-consumer business model that most wineries have been required to adopt. Those wineries approved under the exemption never received Use Permit approval, as they were not required to do so at the time. As a result, owners who now wish to modify their operations to increase production, or allow for tasting room visitation or marketing events, must come in and apply for a new Use Permit. This can be a lengthy and expensive process, that may require bringing older facilities up to current development standards, all of which can be a significant financial impact to small wineries.

A third challenge is in the Airport Industrial Area Specific Plan (AIASP). There are 5 permitted wineries located in the business park with approved production of 30,000 gallons or less. Any increase in production would require a Major Modification of their Use Permit. This runs somewhat counter to the incentive for wineries to locate in the business park, as provided in County Code Section 18.104.250, which exempts wineries located on non-agriculturally zoned land from the requirement that 75% of the grapes used to make still wine must be grown in Napa County.

Lastly, there is a challenge regarding how Major, Minor, and Very Minor Modifications of existing Use Permits are defined.

Very Minor Modifications may be approved by the Zoning Administrator, without a public hearing, but only if they are non-controversial and are similar to a list of very limited changes, such as crush pad covers, realignment of internal roads, or building additions of less than 10 percent.

Minor Modifications may also be approved by the Zoning Administrator. Notice of the application is required to be sent to all property owners within 1,000 feet of the subject site. A public hearing is not required, unless requested by any member of the public. Minor Modifications may not exceed an increase of more than 25% in total building square footage for a project, or an increase of more than one story in height. To qualify for approval by the Zoning Administrator, Minor Modifications must be non-controversial and cannot affect "...the overall concept, density, intensity, or environmental impact of, or substantially alter or delete any environmental mitigation measure for the project." It has been the County practice to interpret the density and intensity of a project as any increase in production, office space, employees, tasting room visitors, or marketing events. Similarly, the issue of concept has been considered when looking at significant changes in architecture, food service, or outdoor music.

Major Modifications include all proposed Use Permit changes that do not qualify as either Very Minor or Minor Modifications. Major Modifications must be approved during a public hearing held before the Planning Commission.

The section of County related to Use Permit Modifications is provided below:

Section 18.124.130 - Use permit modifications—Procedure—Size limitation.

- a. Except as otherwise provided in subsection (B) of this section, modifications to an approved use permit shall be processed in the same manner and in compliance with the procedures set forth herein for use permits and appeals, including notice and the payment of applicable permit application fees.
- b. Upon receipt of a written request from the holder of a use permit, the zoning administrator may approve minor non-controversial modifications to approved use permits after giving notice of intent to approve or deny, but without a public hearing in regard to project design or permit conditions which do not affect the overall concept, density, intensity or environmental impact of, or substantially alter or delete any environmental mitigation measure for the project. Consistent with the foregoing, the zoning administrator may approve changes in location and/or size of approved structures or portions thereof, provided that, the zoning administrator shall not consider or approve a minor modification if the result of the approval of the requested minor modification would result in any structure or the aggregate of all approved structures being increased more than twenty-five percent in size or one story in height based on the size allowed under the approved use permit. Equipment enclosures whose permanent installation outdoors was approved by use permit are not subject to this size limitation.
  1. Notice of intent to approve or deny, for purposes of this subsection, shall include a general explanation of the matter to be considered, a general description, in text or by diagram, of the location of the subject real property, and a statement that the zoning administrator intends to approve or deny the requested modification on a certain date not less than ten calendar days after the date of mailing of the notice unless a member of the public requests a public hearing prior to that date.
  2. Notice of intent, for purposes of this subsection, shall be mailed or delivered as follows:
    - a. To the owner of the subject real property or the owner's duly authorized agent and to the project applicant if she/he is neither the owner of the property nor the owner's duly authorized agent; and
    - b. To all owners of real property, including businesses, corporations or other public or private

entities, as shown on the latest equalized assessment roll within one thousand feet of the real property that is the subject of the proposed zoning change. In lieu of utilizing the assessment roll, the records of the county assessor or tax collector which contain more recent information than the assessment roll may be used.

3. If any member of the public requests a public hearing during the comment period, then the zoning administrator will provide public notice in accordance with Section 18.136.040 and conduct a public hearing.
- c. Upon receipt of a written request from the holder of a use permit, the director may administratively approve very minor, non-controversial modifications to approved use permits without public notice, including, the following:
1. Additions of covers over previously approved pads;
  2. Small (less than ten percent) changes in square footage or building footprint;
  3. Realignment of internal circulation roads;
  4. An extension of use permit expiration time not to exceed one year beyond the then-operative date of use permit expiration as established in conformance with this chapter, provided that the director shall not approve more than three such extensions of any one use permit or use permit modification approval; and
  5. Similar items at the discretion of the director.

Today's item will provide the Board with the opportunity to discuss the use permit process and provide staff direction to return with a proposed ordinance at a later date.

#### **SUPPORTING DOCUMENTS**

None

CEO Recommendation: Approve

Reviewed By: Leigh Sharp