



A Tradition of Stewardship  
A Commitment to Service

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## 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:** Direction on Use Permit Streamlining Ordinance

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### **RECOMMENDATION**

Director of Planning, Building and Environmental Services (PBES) requests direction on the preparation of an ordinance to streamline the use permit process for new small wineries, modifications to existing use permits, and development in the Napa Valley Business Park.

### **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 direction to staff.

### **FISCAL & STRATEGIC PLAN IMPACT**

Is there a Fiscal Impact?

No

County Strategic Plan pillar addressed:

Strategic Action 9.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.

Strategic Action 9.H.: Protect family-owned businesses, local wineries, and small farmers as a vital part of the economy, including preservation of the small vineyard exemption.

### **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**

Napa cannot compete globally on a volume discount basis. We produce only 4% of wine grapes in the state and less than 0.5% of world-wide wine grape production. Other regions in California and the U.S. produce wine on cheaper land, with less regulation, and lower costs for energy, water, and labor. To maintain its competitive advantage, Napa must produce high-quality and unique wines that cannot be replicated anywhere else. Those wines will likely come from small, independent winemakers.

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 higher 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 Action 9.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 9.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.

### **ANALYSIS**

As mentioned in several of the citations above, the Board of Supervisors has provided general direction to streamline the permit process for use permits. There are three primary areas that the Board has directed staff to focus on where streamlining should occur.

#### **Small Winery Exemptions**

The Small Winery Exemption was established in a series of ordinances (Nos. 629, 681, and 691) in 1980 and 1981. These ordinances were superseded by the Winery Definition Ordinance. Under these provisions, wineries were allowed to operate as an allowed use, without discretionary approval by the County, 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.

According to the County Winery Database, there are 34 wineries listed as having been approved under a Small Winery Exemption. Of the 34 small wineries, 6 appear to be closed or were never used. There are 6 operating small wineries in the Agricultural Preserve (AP) zone, with the remaining 22 in the Agricultural Watershed (AW) zone. Of the 28 operating small wineries, 24 are located in Supervisorial District 3 and 4 are located in District 4. The operating small wineries are located on parcels ranging from 4 to 349 acres. Most are entitled at 20,000 gallons annual production, but 8 of the small wineries are at 12,000 gallons or lower.

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.

Staff recommends that small wineries that wish to obtain a Use Permit be decided by the Zoning Administrator, so long as they meet criteria that is consistent with the County's Local Procedures for Implementing the CEQA (see Attachment A). New Use Permit applications that do not meet the proposed criteria would be decided by the Planning Commission. In addition, staff is recommending that a two-year restriction be placed on new use permits under this provision for increases in production, tasting room visitation, and/or marketing events. This would deter potential buyers from purchasing these operations and converting them into larger and more intense operations.

### Use Permit Modifications

Currently, under the County Code, there are four levels of approval for processing a requested modification of an existing Use Permit, as follows:

- 1 Substantial Conformance actions may be approved by the Director, without a public hearing, and must be consistent with and within the scope of the existing legal entitlement of the winery.
- 1 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.
- 1 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.
- 1 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 definition of Minor and Very Minor Modifications is fairly limited. The "overall concept, density, intensity" of a project can be broadly interpreted to include a wide range of requested changes, which require applications to instead be processed as Major Modifications. Similarly, Very Minor Modifications must be non-controversial and highly limited in scope, which can require applications to be processed as Minor or even Major Modifications. The process as currently structured does not provide clarity to applicants or the public as to how the application will be processed; increases the cost and time required of the applicant; does not provide flexibility to wineries that need to move quickly to adjust to a rapidly changing and highly competitive global market; and results in the use of staff time and resources on matters that could be dealt with more efficiently and effectively, thereby deferring work on important policy issues of broader importance.

Staff recommends reducing the three categories of Minor Modifications, Very Minor Modifications, and Substantial Conformance into two levels of approval: Minor Modifications and Administrative Approvals (see Attachment B). Both levels would be approved by the Director without a public hearing. Neighbors and interested parties would be notified of all Minor Modifications. Where there is significant controversy and/or significant environmental impacts, the Director may refer the application to the Planning Commission for a public hearing.

Staff also recommends providing greater clarity and definition about the range of actions that can be considered under both Minor Modifications and Administrative Approvals, so that the public, applicants, and staff have a better understanding about the process required for future applications.

### Napa Valley Business Park (NVBP)

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.

Staff recommends that all modifications to existing use permits within the NVBP be processed by the Zoning Administrator or Director, to further encourage wineries and winery support businesses to locate in the industrial area.

### Micro-wineries

During the course of putting together staff recommendations for the streamlining ordinance, a fourth issue was raised. Vineyard owners, including winemakers who produce at custom crush facilities, have requested that a separate category of winery permit approval be created. In general, these are people who would like the opportunity to provide for tasting at their property, but are deterred by the significant costs associated with permitting and constructing a winery. They have requested that a new use permit category be created for micro-wineries, which they define as follows:

- | Annual production not to exceed 10,000 gallons;
- | Wine must include 75% estate grown fruit, 100% of the wine must use Napa County fruit;
- | Production using on-site barrel fermentation;
- | Owner must live on the property; and
- | Tasting limited to three vehicles per day.

The Board has not previously provided direction regarding the issue of micro-wineries. Therefore, staff has no recommendation specific to the issue. Should the Board wish to explore this topic, staff recommends that it be considered separately from the draft Use Permit Streamlining Ordinance.

### Public Comments

Staff has received written comments from the Napa Valley Vintners, Winegrowers of Napa Valley, Coalition Napa Valley, Save the Family Farms, Center for Biological Diversity, Vision 2050, Get a Grip on Growth, Kirsty Shelton, Laurie Claudon, Tower Snow, Bill Hocker, Tom Thornton and Brenda Mixson, Paul Holm, Beth Milliken, Randy Dunn, Betsy Kane-Hartnett, Paul Moser, Tom Davies, Caymus Vineyards, Paloma Vineyards, and Cain Cellars. Copies of all public comments received may be found in Attachment B.

### Next Steps

Following this meeting, staff will work with County Counsel to prepare a draft ordinance that codifies the Board direction received on the above issues. The draft ordinance will be circulated for public review, evaluated under the California Environmental Quality Act (CEQA), and will be forwarded to a public hearing before the Planning Commission for their recommendation. The Commission's recommendation will then be sent to a public hearing before the Board of Supervisors for final consideration. Staff anticipates that the Board hearing will occur in December 2019.

**SUPPORTING DOCUMENTS**

A . Attachment A - Draft Outline Use Permit Streamlining Ordinance

B . Attachment B - Public Comments

CEO Recommendation: Approve

Reviewed By: Leigh Sharp