



A Tradition of Stewardship
A Commitment to Service

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NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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: First Reading of the Small Winery Protection and Use Permit Streamlining Ordinance

RECOMMENDATION

Director of Planning, Building, and Environmental Services (PBES) requests the first reading and intention to adopt an ordinance amending section 18.10.020 of Chapter 18.10 (Zoning Administrator) Section 18.124.080 and Section 18.124.131 of Chapter 18.124 (Use Permits) and Section 18.126.030 and adding a new section 18.126.065 to Chapter 18.126 (Administrative Permits) of Title 18 (Zoning) of the Napa County Code regarding issuance of small winery use permits and modifications to winery use permits.

Environmental Determination: Consideration and possible adoption of Categorical Exemptions Class 1, Class 3, Class 4, and the General Rule. It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. [See Categorical Exemption Class 1 ("Existing Facilities") which may be found in the guidelines for the implementation of the CEQA at 14 CCR §15301]; Categorical Exemption Class 3 ("New Construction or Conversion of Small Structures") which may be found in the guidelines for the implementation of the CEQA at 14 CCR §15303]; Categorical Exemption Class 4 ("Minor Alterations to Land") which may be found in the guidelines for the implementation of the CEQA at 14 CCR §15304; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B]; and General Rule in that it can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable. [See Guidelines For the Implementation of the CEQA 14 CCR 15061(b)(3)]. This project is not on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.

EXECUTIVE SUMMARY

The draft ordinance proposes to amend the Zoning Code (County Code Chapter 18.10 - Zoning Administrator; Chapter 18.124 - Use Permits; and Chapter 18.126 - Administrative Permits) to provide a streamlined process for considering new use permits for existing entitled small wineries, modifying existing use permits, and modifying projects within the Napa Valley Business Park. A copy of the proposed ordinance, including revisions

recommended by the Planning Commission, is included as Attachment A. The key proposed changes are summarized in the Background and Discussion section of this staff report.

The proposed ordinance would implement two action items in the recently adopted Napa County Strategic Plan 2019-2022. Action Item 9.G requires the County to provide a healthy and welcoming business environment by implementing the recommendations of the Process Improvement Plan for the PBES Department. Action Item 9.H requires the County to protect family-owned businesses, local wineries, and small farmers. These action items would be implemented by creating a new process for existing entitled small wineries to obtain a use permit, streamlining the use permit modification process for existing wineries, and making a more efficient process for businesses in the Napa Valley Business Park.

The proposed ordinance implements General Plan Ag Preservation and Land Use Element Action Item AG/LU-16.1, which requires consideration of amendments to the Zoning Ordinance to establish a streamlined permitting process for small wineries. This action item would be implemented by creating more efficient process for reviewing and considering not only small wineries, but use permit modifications, and projects within the Napa Valley Business Park.

PROCEDURAL REQUIREMENTS

1. Staff presentation;
2. Open the Public Hearing and receive public comments;
3. Close the Public Hearing;
4. Clerk reads the Ordinance Title;
5. Motion, second, discussion and vote to waive the balance of the reading of the ordinance; and
6. Motion, second, discussion, and vote on intention to adopt the ordinance.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact?

No

County Strategic Plan pillar addressed:

Livable Economy for All - Collaboratively design systems and structures that promote a diverse and stable economy, with livable wages.

Action Item 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 Item 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

Consideration and possible adoption of Categorical Exemptions Class 1, Class 3, Class 4, and the General Rule. It has been determined that this type of project does not have a significant effect on the environment and is exempt

from the California Environmental Quality Act. [See Categorical Exemption Class 1 ("Existing Facilities") which may be found in the guidelines for the implementation of the CEQA at 14 CCR §15301]; Categorical Exemption Class 3 ("New Construction or Conversion of Small Structures") which may be found in the guidelines for the implementation of the CEQA at 14 CCR §15303]; Categorical Exemption Class 4 ("Minor Alterations to Land") which may be found in the guidelines for the implementation of the CEQA at 14 CCR §15304; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B]; and General Rule in that it can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable. [See Guidelines For the Implementation of the CEQA 14 CCR 15061(b)(3)]. This project is not on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.

BACKGROUND AND DISCUSSION

History

On May 21, 2019, the Board of Supervisors held a workshop regarding the use permit process. Based on the evidence and testimony presented during the workshop, the Board of Supervisors gave specific direction on a range of issues related to the use permit process and directed staff to prepare an ordinance for recommendation by the Planning Commission. The Board of Supervisors directed staff to prepare a draft ordinance that included the following components:

- | Provide regulatory relief for small wineries;
- | Streamline permits for projects within the Napa Valley Business Park;
- | Avoid the need for a new Environmental Impact Report;
- | Address pre-WDO wineries and provide a way for facilities without a Use Permit to transition into permitted status;
- | Better define what is included as Major and Minor Modifications to Use Permits; and
- | Share draft versions of the ordinance with the community.

A skeleton outline of the draft ordinance outline was distributed to agricultural, wine industry, community, and environmental groups, as well as planning consultants, on June 20, 2019, for a 30-day comment period. A second revised skeleton outline was circulated to interested parties on September 13, 2019, for a 21-day review period.

On October 15, 2019, the Board of Supervisors held a second workshop regarding the use permit process. They accepted the revised draft ordinance outline as presented by staff and directed that an ordinance be drafted following the outline. The Board also directed staff to meet with interested parties regarding the issue of micro-wineries and return to the Board with recommendations for discussion and direction in early 2020.

Relevant Documents

Napa County General Plan

The Napa County General Plan (2008) includes the following:

- | 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.

Board of Supervisors Approved Recommendations from the 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.

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"; and
- | 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.

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

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.

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.

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.
2. Very Minor Modifications. Actions 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.
3. Minor Modifications. Actions may 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 or 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.

4. Major Modifications. Includes 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.

Napa Valley Business Park (NVBP)

The County Code encourages wineries to locate in the NVBP. Section 18.104.250 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. Currently, there are 18 wineries located within the NVBP, with approved production ranging from 10,000 gallons annually to 44.5 million gallons. Requiring wineries located within the NVBP to go through a lengthy Major Modification process is not consistent with the County's goal of incentivizing production in the South County industrial area.

Summary of Code Amendment Changes

The following is a summary of major changes to the County Code recommended by staff, consistent with the direction of the Board of Supervisors on May 21, 2019. Minor changes that correct or clarify existing text are not included in the summary below.

Zoning Administrator

Section 18.10.020 – Duties - Specific Subjects.

This section describes the responsibilities and scope of actions conducted by the Zoning Administrator. The amendment makes the following changes to the existing code:

1. Clarifies when the Zoning Administrator may refer a matter to the Planning Commission. The current code allows the Zoning Administrator to refer a matter when it is in the public interest. The proposed language would expand this language to include when the project is of a size, importance, or unique matter that is considered to not be routine, and/or when there are potentially significant environmental impacts.
2. Creates a new category of small wineries. The Zoning Administrator would hold a public hearing on new Use Permits for existing small wineries that were legally entitled before February 22, 1990. To qualify for this provision, small wineries must meet all of the following criteria: (a) Production cannot exceed 20,000 gallons annually; (b) Traffic generated by the winery cannot exceed 40 Average Daily Trips (ADT); (c) Total occupied space, including both enclosed buildings and caves, cannot exceed 10,000 square feet; (d) There cannot be more than 11 marketing events annually; and (e) No change in production, tasting room visitation, or marketing can occur for two years following approval of the Use Permit.

3. Defines additional categories of Minor Modifications to a Use Permit that may be approved by the Zoning Administrator with public noticing, without a public hearing.
4. Allows the Zoning Administrator to be the decision making authority for all Use Permit Modifications (Administrative, Minor, and Major) for wineries within the Napa Valley Business Park.
5. Creates a new category of administrative modifications for wineries that may be approved by the Director without a public hearing.

Use Permits

Section 18.124.080 – Automatic Expiration of Use Permits.

This section describes the process by which Use Permits may automatically expire. The amendment changes the reference to another section of the code, to be internally consistent.

New Section 18.124.130 – Use Permit Modifications - Procedures - Categories.

This section describes the process for the approval of Minor Modifications to Use Permits by the Zoning Administrator. The amendment defines Minor Modifications for winery Use Permits and establishes that they may be approved by the Zoning Administrator without a public hearing. Notice of the action would be provided to landowners within 1,000 feet, interested parties, and would be posted on the County website. The types of actions that may be approved under a Minor Modification to a winery Use Permit include the following:

- a. Increase in the number of existing employees up to a total of ten, or an increase of 10 percent over the existing approved number, whichever is greater;
- b. Increase in the total number of Average Daily Trips (ADT) up to 40, cumulatively including employees, deliveries, tasting visitation, and marketing;
- c. Increase in wine production of up to 30,000 gallons annually, or an increase of 10 percent over the existing approved amount;
- d. Increase in the number of marketing events, up to 11 annually, subject to limits on the number of ADT generated for each event;
- e. Change in the hours of operation between 6:00 AM and 9:00 AM, or between 6:00 PM and 11:00 PM;
- f. Increase in occupied space, including buildings and caves, of up to 25 percent over the existing approved amount, within the winery footprint;
- g. Addition of a new high-risk commercial kitchen, where food service has been previously approved; and
- h. Approval of any use permit modification within the Napa Valley Business Park.

Administrative Permits

Section 18.126.030 – Issuance.

This section describes the types of activities that may be approved by the PBES Director under an Administrative Permit. The amendment would add a new category: administrative modifications to winery use permits, to the list of activities.

Section 18.126.065 – Wineries.

This is a new section that defines administrative modifications to winery use permits. Administrative modifications may only be approved if they meet the following criteria:

1. The change is not subject to discretionary approval. In other words something that may be considered

administrative under this section cannot be approved by the Director if it is subject to a view shed review, variance, or other discretionary approval;

2. There are no outstanding code compliance issues;
3. All other State and County permits are obtained;
4. The property is not located on a hazardous waste site; and
5. The proposed modifications are not located within environmentally sensitive areas.

The types of actions that may be approved under an administrative modification include the following:

- a. Interior remodeling, consistent with the production to accessory ratio;
- b. Outdoor shade structures of less than 2,500 square feet, consistent with the production to accessory ratio;
- c. Electric charging stations;
- d. Recycled water systems;
- e. Trash enclosures;
- f. Covers over previously approved crush pads;
- g. Storm water controls;
- h. Changes in existing permanent winery tanks, where there is no increase in production;
- i. Bicycle facilities;
- j. Temporary construction trailers;
- k. Change in occupancy within a cave, where there is no increase in visitation or marketing;
- l. Water system improvements, where there is no increase in water use or groundwater demand;
- m. Waste water system improvements, where there is no increase in generated waste water or treatment capacity;
- n. Change in hours of operation, between 9:00 AM and 6:00 PM;
- o. Removal of custom crush restrictions;
- p. Extension of time before a Use Permit expires;
- q. On-site wine consumption, consistent with the existing winery footprint, when located at least 500 feet from the nearest residence, and where there is no increase in visitation or marketing;
- r. Change in the number or configuration of parking spaces or alignment of internal roads and driveways, within the existing winery footprint;
- s. Additions or change in landscaping, where there is no increase in groundwater demand;
- t. Changes in existing permitted food services, or the addition of low-risk or medium-risk kitchens where food service has been previously approved, provided that there is no increase in visitation or marketing; and
- u. Other similar actions as determined by the Director.

Recommendation

The Napa County Planning Commission considered the proposed ordinance during its regular meeting of December 18, 2019. The Commission recommended that the Board approve the draft ordinance, as revised, on a unanimous vote, with the following revisions:

- 1 Clarified the recitals to indicate that proposed ordinance would not allow for the approval of new small wineries that did not have the previous entitlements under historic provisions of the County Code;
- 1 Modified the criteria under which the Zoning Administrator could refer a pending application to the Planning Commission for decision, by replacing "elicits significant controversy" with "is of a size, importance, or unique nature such that it is judged not to be a routine matter;"
- 1 Added any change in the days of operation to be allowed under a Minor Modification, so long as there was no increase in visitation;
- 1 Replaced "impermeable or semi-impermeable" with "paved or impervious;"
- 1 Moved the addition of a high-risk commercial kitchen from an Administrative Permit to a Minor Modification

of a Use Permit;

- | Expanded the criteria for defining an Administrative Permit to include that the project would not be located in an environmentally sensitive area;
- | Modified the provision that allowed changes in outdoor winery tanks as an Administrative Permit to be expanded to include changes in any permanent winery tank, so long as there is no increase in total production;
- | Clarified that changes or additions to landscaping may be allowed under an Administrative Permit only where there is no increase in groundwater use; and
- | Allowed for the addition of low-risk and medium-risk commercial kitchens to wineries as an Administrative Permit.

Staff recommends that the Board of Supervisors declare intention to adopt the proposed ordinance as recommended by the Planning Commission and as may be revised by the Board.

SUPPORTING DOCUMENTS

- A . Attachment A - Ordinance (Clean)
- B . Attachment B - Ordinance (track changes)
- C . Attachment C - CEQA and General Plan Consistency Memo
- D . Attachment D - Public Comments

CEO Recommendation: Approve

Reviewed By: Leigh Sharp