



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 1/28/2020
Agenda Placement: 9B
Set Time: 9:00 AM PUBLIC HEARING
Estimated Report Time: 30 minutes

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 use permits for existing entitled small wineries, modifying existing winery use permits, and modifying

projects within the Napa Valley Business Park. A copy of the proposed ordinance, including revisions recommended by the Planning Commission and as revised by the Board, 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 a 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.

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:

- | 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;
- | Added that any change in aggregate building size (including caves) of less than 10,000 square feet or 25% of the existing footprint, whichever is greater, is allowed as a Minor Modification, so long as there is no cumulative increase in impervious surface exceeding 25% of the parcel or 15 acres, whichever is less;
- | 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;"
- | Added any change in the days of operation to be allowed under a Minor Modification, so long as there was no increase in visitation;
 - | Replaced "impermeable or semi-impermeable" with "paved or impervious;"
 - | 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.

On January 14, 2020, the Board of Supervisors held a public hearing to consider the draft ordinance recommended by the Planning Commission. After considering the recommendation and accepting public testimony, the Board directed that several changes be made as described below. Because the changes were substantive, the item was continued to the next regularly scheduled meeting for a new first reading of the draft ordinance.

Summary of Code Amendment Changes

The following is a summary of major changes to the proposed ordinance as directed by the Board of Supervisors on January 14, 2020. The redlined version of the proposed ordinance, included as Attachment B, shows the changes made to the version presented to the Board of Supervisors on January 14, 2020.

- | Section 18.10.020.A.10: The word "new" has been deleted.
- | Section 18.10.020.A.10.b: The language was clarified to show the intent to exempt projects resulting in fewer than forty (40) Average Daily Trips (ADT) from the Napa County Road and Street Standards to the fullest extent possible.
- | Section 18.10.020.A.13: The following language has been deleted: "...after making the findings required by Section 18.124.130 of this title."
- | Section 18.124.130.2.A: The term "he/she" has been replaced with "the project applicant."
- | Section 18.124.130.C: Added language in the main subsection to clarify the intent to exempt projects resulting in fewer than forty (40) ADT from the Napa County Road and Street Standards to the fullest extent possible.
- | Section 18.124.130.C.1: The language relating to ADT and the Napa County Road and Street Standards has been removed, as this is covered in the parent subsection.
- | Section 18.124.130.C.2: Numeric references have been added to supplement written text. In addition, the language relating to ADT and the Napa County Road and Street Standards has been removed, as this is covered in the parent subsection.
- | Section 18.124.130.C.4: Numeric references have been added to supplement written text. In addition, the following language has been added: "The approval of marketing events under this section may include the change in hours of operation during which such events can occur to include times after 6:00 pm, provided the project applicants cease all operations by 11:00 pm."
- | Section 18.124.130.C.5: This subsection has been deleted in its entirety, which read: "Any change in hours of operation to include times before 9:00 am or after 6:00 pm, excluding operations between 11:00 pm and 6:00 am."
- | Section 18.124.130.C.7: This subsection has been renumbered to C.7. In addition, the words "...food

service has been previously approved" has been deleted and replaced with "there is an existing medium- or low-risk kitchen on the property."

- | Section 18.124.130.D.1: The term "he/she" has been replaced with "the project applicant."
- | Section 18.124.130.F: Since the amendments in the proposed ordinance only apply to winery use permits, staff determined that the existing subsection providing for very minor modifications to use permits should be retained to ensure that non-winery permits can continue to apply for such modifications. The provision was previously included in subsection (C) of Section 18.124.130. The section was moved to new subsection (F) in the proposed ordinance. No additional changes were made to the language.
- | Section 18.126.065.U: The existing language has been deleted, which read: "Similar items as determined by the director, in the director's sole discretion." It has been replaced by new language, which reads: "Increases or changes in building square footage by no more than ten (10) percent, not to exceed 2,500 square feet."

Effect on Wineries Entitled Before the Winery Definition Ordinance (WDO)

Chair Dillon raised the question of how this ordinance would apply to small wineries established by the Small Winery Exemption prior to the adoption of Ordinance No. 947 (the WDO) on parcels of less than 10 acres and now wish to expand their operations. The Small Winery Exemption authorized wineries without use permits, so long as they met specified standards. Among those standards was a minimum parcel size of four acres. After the WDO was adopted, the minimum parcel size for wineries established after its effective date was established at 10 acres, while the minimum parcel size for pre-WDO wineries was established at 1 acre.

For reference, according to the County Winery Database, there are currently 54 wineries that are on parcels less than 10 acres in size, on parcels zoned either Agricultural Preserve (AP) or Agricultural Watershed (AW). Of these 54, there are 8 that are Exempt Small Wineries and 40 have received a modification to their use permit or entitlement over the past 30 years.

The findings adopted by the Board in connection with the WDO address the question of whether or not small wineries established through the Small Winery Exemption, or other pre-WDO wineries on parcels less than 10 acres in size may expand their operations. Specifically, Sections 4 and 5 of the ordinance directly relate to this issue and are provided in their entirety as follows:

Section 4. Findings related to issuance of certificates of exemption for small wineries approved pursuant to Section 12048 of the Napa County Code

The Board finds that small wineries that were established in the past and whose activities were lawful when established and have not been abandoned are an integral part of the Napa Valley economy. One of the purposes of enacting Sections 12201(h) and 12231(I) is to recognize the legal existence of such operational small wineries which have previously been approved pursuant to Section 12048 of the zoning ordinance and to permit them to continue their approved operation or to complete construction and operation in accordance with their approved certificate of exemption. However, expansion beyond approved levels may only proceed in strict accordance with the provisions of this ordinance.

Section 5. Findings related to increased parcel size.

The Board of Supervisors specifically finds that requiring new wineries to meet larger minimum lot sizes than have been required previously, while at the same time recognizing existing wineries on smaller parcels as legal uses, is not discriminatory because all wineries regardless of parcel size have the right to expand to the extent the winery complies with the applicable provisions of this ordinance. The basis for requiring new wineries to have larger minimum parcels is that the increased parcel size for new wineries will reduce densities and thereby lessen local visual, traffic, air, noise, and groundwater impacts and reduce the conversion of viable agricultural land.

Based on the above findings, pre-WDO wineries on parcels of less than 10 acres may expand their operations. However, any such expansion is subject to all applicable current requirements of the Napa County Code.

It is important to note that the proposed ordinance does not affect or change the ability of pre-WDO wineries on parcels of less than 10 acres to expand their operations. Small wineries can apply for and obtain a use permit modifying its operations under the current code, after a hearing at the Planning Commission. The proposed ordinance only designates which approving body should issue use permits to small wineries or certain modifications to the pre-WDO entitlements. By choosing the streamlined route before the zoning administrator, small wineries would commit to not seeking modification of their use permits for two years after approval. The current code does not have this limitation.

Public Trust

Staff has considered the impact this ordinance may have on public trust resources and has determined that no impact will result. The proposed ordinance simply shifts the decision-making authority for certain use permit approvals or modifications from the Planning Commission to the zoning administrator. The small winery use permits and minor modifications will continue to be discretionary projects subject to independent review under the California Environmental Quality Act (CEQA) and to an individual determination of their impact on public trust resources, if any. The administrative permits created by the proposed ordinance will be ministerial in nature, but as described in the CEQA memorandum included as Attachment C, are sufficiently limited such that they will not have an impact on public trust resources.

On January 21, 2020, staff received a "Notice of Intended Litigation" from Water Audit California that appears to misunderstand the nature, intent, and effect of the proposed ordinance. For example, the Notice expresses frustration with Napa Valley dams, monitoring and modeling of the Napa River, the Napa County Groundwater Sustainability Agency (GSA), and the granting of well permits for agricultural purposes. The ordinance merely specifies the use permit process for approximately 28 small wineries that were legally entitled before February 22, 1990 and have been in operation for decades, as well as the process to review minor modifications to existing use permits. The small winery use permits and minor modifications will continue to be discretionary projects subject to a public hearing and/or public noticing, independent review under CEQA, an individual determination of their impact on public trust resources, if any, and an appeal by interested parties.

The Notice also relies on an October 4, 2019 letter from the Center for Biological Diversity that rested equally on incorrect assumptions. The letter incorrectly assumed that minor modifications under the ordinance would not be subject to CEQA review (Letter, p.3 [It is apparent that the County intends not to perform CEQA review for applications for minor modifications under the Proposed Ordinance".]) Based on this assumption, the letter alleged that 219 wineries could increase production from 20,000 or less gallons per year to 30,000 gallons per year, all with no CEQA review. (Letter, p.2.) These assumptions are incorrect. In fact, minor modifications will be subject to CEQA and a full analysis of all direct and cumulative impacts to groundwater, surface waters, and other public trust resources. Staff carefully drafted this ordinance to avoid adverse impacts to environmental and public trust resources, and no evidence has been presented that the ordinance would result in any significant adverse impacts, much less cause actual harm to a navigable waterway.

Recommendation

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

SUPPORTING DOCUMENTS

- A . Attachment A - Draft Use Permit Streamlining Ordinance (Clean)
- B . Attachment B - Draft Use Permit Streamlining Ordinance (Redline)
- C . Attachment C - CEQA and General Plan Consistency Memo

CEO Recommendation: Approve

Reviewed By: Leigh Sharp