



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 2/2/2010
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NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

TO: Board of Supervisors
FROM: Gitelman, Hillary - Director
Conservation, Development & Planning
REPORT BY: Hillary Gitelman, Director - 253-4805
SUBJECT: Winery Definition Ordinance

RECOMMENDATION

Director of Conservation, Development and Planning to discuss potential changes to the Winery Definition Ordinance, including potential changes to enable cultural and social events at wineries, and to:

1. Introduce industry group representatives and other stakeholders interested in providing public testimony on the subject; and
2. Seek direction regarding next steps.

EXECUTIVE SUMMARY

On October 6, 2009, the Planning Commission and the Board of Supervisors met in joint session to discuss the Winery Definition Ordinance (WDO) and suggestions that the ordinance be amended to permit a subset of cultural and social events at wineries. At the close of the meeting, the Board directed planning staff to:

1. complete a quick and preliminary review of options that might exist for using the County's temporary events ordinance as a way to permit cultural and social events at wineries;
2. offer support to industry group discussions about potential changes to the WDO; and
3. assemble data regarding regional economic conditions and the characteristics of Napa County wineries.

Planning staff will present the results of the requested analysis and data gathering efforts, and has invited four industry groups (Napa Valley Vintners, Napa County Farm Bureau, Napa Valley Grapegrowers, Wine Growers of Napa County) to present the results of their deliberations for the Board's consideration. Following these presentations and public testimony from other interested parties, planning staff is seeking Board of Supervisors direction regarding next steps, including possible near-term changes to County Code, and longer-term planning

efforts.

PROCEDURAL REQUIREMENTS

1. Staff presentation
2. Board chair opens the public hearing & invites comments, beginning with industry group representatives
3. Board chair closes the public hearing
4. Board discussion & direction to staff

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

This is a discussion item only and no final decisions will be made. As a result, there are no environmental impacts associated with this item, and California Environmental Quality Act (CEQA) review is not required.

BACKGROUND AND DISCUSSION

The Winery Definition Ordinance (WDO) was adopted in 1990 and codified in various sections of the County's zoning code, including Section 18.08.620 requiring that winery tours and wine tastings be by appointment only, and Section 18.08.370 (Marketing of Wine), which states:

1. *"Marketing of wine" means any activity of a winery identified in this paragraph which is conducted at the winery and is limited to members of the wine trade, persons who have preestablished business or personal relationships with the winery or its owners, or members of a particular group for which the activity is being conducted on a prearranged basis. Marketing of wine is limited to activities for the education and development of the persons or groups listed above with respect to wine which can be sold at the winery on a retail basis pursuant to Chapters 18.16 and 18.20, and may include food service without charge except to the extent of cost recovery when provided in association with such education and development, but shall not include cultural and social events unrelated to such education and development.*

Based on this code section, winery use permits approved since 1990 generally authorize wineries to hold a specified size and number of marketing events over the course of a year, in addition to a specified number of prearranged (by appointment) tours and tastings. Social and business events (e.g. weddings, parties, conferences) have been deemed to fall outside the definition of marketing and, as a result, have not been permitted at wineries.

In late 2005, the Planning Commission and the Board of Supervisors considered broadening the definition of "marketing of wine" to, among other things, allow wineries to host weddings. This followed preparation of an Initial Study and preliminary negative declaration pursuant to the California Environmental Quality Act (CEQA). After public input and deliberations, the Board of Supervisors elected not to proceed with the ordinance.

On September 15, 2009, a number of speakers provided public comments to the Board of Supervisors requesting

that the Board broaden the definition of "marketing of wine" to include cultural and social events; it was argued that this would be a way to stimulate the local economy for a two year trial period. Separately, other members of the community who had been discussing broader ideas for changes to the WDO, saw this as an opportunity to propose potential changes to the requirement that tours and tastings be by appointment only.

On October 6, 2009, the Planning Commission and the Board of Supervisors met in joint session to discuss these issues. At the end of the meeting, planning staff was directed to review any options that might exist for using our temporary events ordinance as a way to permit social and cultural events at wineries, offer support to industry group discussions about potential changes to the Winery Definition Ordinance (WDO), and assemble data regarding regional economic conditions and characteristics of Napa County wineries.

The first of these subjects -- potential changes to the temporary events ordinance -- is addressed in the attached memo via a series of five questions and answers which reference relevant sections of the Napa County General Plan and Napa County Code. The staff interpretations and suggestions inherent in these questions and answers represent initial thoughts, and were developed in late October 2009 to inform discussions by interested stakeholders. The Planning Commission received this material at their meeting of November 19, 2009, and heard a status report from the Napa Valley Vintners (and other public testimony) at that time.

Current Status & Requested Data/Analysis

Discussions internal to and between the four principal wine industry groups (Vintners, Farm Bureau, Grapegrowers, Winegrowers) have been ongoing for several months, and it is unclear whether consensus will be reached regarding desired changes to the WDO by the Board's meeting of February 2, 2010. At the time this staff report was prepared, it appeared that the groups were nearing consensus on the desire to allow tours and tastings without appointment and on modest clarifications to the definition of "marketing," but not on a mechanism for allowing cultural and social events at wineries. The Board of Supervisors should hear directly from the industry groups on these subjects.

Meanwhile, staff has gathered demographic and economic data that allow a gross comparison between the Napa "wine country" and other counties in California with significant grape growing and wine-related businesses. Leaving any true economic analysis to those with more expertise, the comparison demonstrates that Napa is small when compared to other counties, and enjoys relatively higher wages and incomes. Napa County has also experienced a greater dip in tourism (as represented by transient occupancy taxes paid) than Sonoma County in the current economic downturn, possibly because of the higher cost associated with Napa accommodations. As evidenced by Napa's high average price per ton of grapes (slightly less than twice Sonoma County's average and more than three times the average for Monterey and San Luis Obispo Counties), Napa has staked out a position at the top of the premium wine market. Recent analyses by Wine Business Monthly and Silicon Valley Bank (both attached) indicate that the "luxury" wine market has been disproportionately impacted by the recent recession.

The accompanying analysis of the Planning Department's winery data base shows in graphic form the relationship between permitted winery production, permitted winery visitation (marketing events plus tours & tastings), and location. The analysis demonstrates that wineries with the most production and visitation tend to be located on the valley floor, along Highway 29 and Silverado Trail. It also demonstrates that there is no direct relationship in many cases between winery production (i.e. size) and visitation (i.e. intensity), suggesting that there is an opportunity for the Planning Commission to develop some kind of criteria or guidelines in the future.

Staff Observations & Recommendations

Any specific industry group recommendations for changes to the WDO will require careful analysis to determine the potential need for conforming code amendments, the potential need for general plan amendments, the potential environmental impacts, and legal issues. Without having seen specific suggestions,

staff believes that changing the zoning ordinance to allow tours and tastings without appointment will require a General Plan amendment and detailed assessment of traffic impacts and mitigation, quite possibly within the context of an environmental impact report (EIR). If an EIR is prepared, it would begin with a review of the analysis and conclusions contained in the original WDO EIR from 1989, and a review of the projections of future winery development used in the General Plan Update EIR certified in June 2008. If the Board is interested in undertaking (and funding) a longer-term planning effort related to tours and tasting, staff would recommend establishment of a formal advisory group to participate in the process.

As noted in staff's October 26, 2009 memorandum, in the shorter term, there's an opportunity to provide additional clarity about the nature of business meetings and events that are permitted under the current definition of "marketing." This clarification could be provided via a code amendment, a Planning Commission or Board-adopted policy, or a legal interpretation. In either instance, it seems clear from the current definition of "marketing" that business meetings must include content that is for "the education and development" of wine consumers, and must not become a profit center for the winery, so as to avoid transforming the winery from an agricultural processing facility to a conference center.

Limited code changes regarding the definition of "marketing" or a special event permit process may also be feasible without a General Plan amendment or EIR, depending on the specifics of the proposal. For example, the changes to the definition of "marketing" proposed in 2005 were considered in the context of an initial study and negative declaration and did not require General Plan changes at the time. This level of review may be appropriate again, particularly if proposed code changes and the proposed special event permit process are limited in scope and impacts. While we have yet to see specific industry group recommendations, it appears there are two possible alternatives for a special events ordinance:

1. Create an administrative permit for special events by amending Section 18.126.060 (Administrative Permit - Issuance Prerequisites), and Section 18.120.010 (Exceptions to Use Limitations). With this approach, event permits could be issued to anyone (not just wineries), but the ordinance would need to limit the overall number and scope of permits (e.g. 100 permits county-wide and no more than one or two at any given location in a year) in order to allow a finding of consistency with the General Plan, and in order to avoid significant environmental impacts.
2. Create an administrative permit for cultural and social events at wineries by amending Section 18.126.060 (Administrative Permit -- Issuance Prerequisites) and the definition of "Marketing of Wine" in Section 18.08.370 to reference the administrative permit. With this approach, event permits could only be issued to wineries which choose to hold cultural and social events as part of their overall marketing program. The ordinance would need to require that events be non-commercial (i.e. limited to cost recovery like the current requirement for "non-commercial food service"), and should allow them only at wineries with permitted marketing events, and only in lieu of other permitted (and similarly sized) marketing events.

If the Board is interested in one of these two alternatives for a special events ordinance, staff requests specific direction, and will then commence preparation of an ordinance for consideration by the Planning Commission and the Board of Supervisors in the coming months. Given the import of this decision, staff would also request an opportunity to return to the Board for further discussion if needed after staff of Conservation, Development & Planning Department and County Counsel's office have an opportunity to review any industry group recommendations that may be presented to the Board on February 2, 2010.

SUPPORTING DOCUMENTS

A . October 26, 2009 Memo about Temp Events & the WDO

- B . Economic Data -- Napa & Other "Wine Country" Counties
- C . Silicon Valley Bank, "What Will 2010 Bring for Fine Wine Sales?" (November 2009)
- D . Wine Business Monthly, "What Lies Ahead for the High End?" (December 2009)
- E . Winery Data Base -- Map Showing Permitted Production
- F . Winery Data Base -- Map Showing Permitted Visitation
- G . Public Input Recieved (to January 15, 2010)

CEO Recommendation: Approve

Reviewed By: Helene Franchi