


City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Ken MacNab, Planning and Building Manager
DATE: September 6, 2011
SUBJECT: Grape Sourcing Requirements for Wineries and Winery Tasting Rooms

APPROVAL FOR FORWARDING:



Richard D. Spitler, City Manager

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ISSUE: Discussion on grape sourcing requirements for wineries and winery tasting rooms and direction to staff on scheduling of a study session.

RECOMMENDATION: Discuss and provide direction to staff.

BACKGROUND: In response to recent proposals to establish new wineries within city limits, the City Council received requests from the agricultural community to adopt an ordinance similar to Napa County's Winery Definition Ordinance ("WDO") that regulates the source of grapes used in wines produced at local wineries or in wines tasted and sold in local winery tasting rooms. At the July 19, 2011, regular meeting of the City Council staff provided an overview of wine-related regulations and presented several regulatory options for the Council to consider. During this meeting the City Council received testimony from both supporters and opponents of such regulations. After some discussion, the City Council requested that staff provide additional information on regulations and possible approaches for preparing an ordinance that would be appropriate for Calistoga.

DISCUSSION: Attached for the City Council's review and consideration is a "Q & A" on how the County and the City regulate wineries and winery tasting rooms (Attachment 1). More specifically, the "Q & A" summarizes how the WDO regulates grape sourcing for wineries and winery tasting rooms and compares those regulations to current regulations adopted by the City and other communities in the Valley. Based on this information, staff has identified a number of policy considerations for the City Council to consider should it decide to proceed with the development of grape sourcing regulations for local wineries and winery tasting rooms. These are summarized in Attachment 1.

29 **NEXT STEPS:** At the August 16, 2011, regular meeting of the City Council, an
30 interest was expressed in holding a study session – possibly with the Planning
31 Commission – to further review and discuss issues related to grape sourcing
32 regulations. Staff has identified the following three topics as the focus of this
33 study session:

34

- 35 1. Grape sourcing regulations for wineries.
- 36
- 37 2. Grape sourcing regulations for “stand-alone” winery tasting rooms.
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- 39 3. Regulations addressing an overconcentration of winery tasting rooms.
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41 It has been suggested that local experts be invited to participate in the study
42 session. Staff will look into the availability of such experts to attend the study
43 session.

44

45 Staff is targeting the last week of September to hold the study session (to allow
46 for public noticing). If the study session concludes with a direction to prepare an
47 ordinance, it is anticipated that it will take approximately two months to draft the
48 ordinance and complete the public review and adoption process.

49

50 **IN-PROCESS PROJECTS:** There are several wine-related development
51 projects that may be delayed as a result of the effort to prepare and adopt a
52 grape sourcing ordinance. Below is a list of pending projects and their current
53 status.

54

55 **TABLE 1 – LIST OF PENDING WINERY & TASTING ROOM PROJECTS**

56

Project	Status
Anderson Wine Tasting	Scheduled for PC action on 9/14/11.
Arden Winery	Application has been submitted. Tracking for PC and CC review in Nov./Dec., 2011.
Bounsall Winery	MOU approved. No application has been submitted.
Lava Vine Winery Expansion	Tracking for PC review in November, 2011.
Silver Rose Winery Expansion	MOU approved. No application has been submitted.
T-Vine Cellars	Tracking for PC review in October, 2011.

57 Given the estimated timeline for developing a grape sourcing ordinance, there is
58 a need to take Andrea Anderson's pending Conditional Use Permit to the
59 Planning Commission for action in order to meet State permit processing
60 obligations. Consequently, staff has scheduled her request for a decision by the
61 Planning Commission on September 14, 2011.

62
63 Other projects potentially effected by the timing of a grape sourcing ordinance
64 include expansion of the Lava Vine Winery on Silverado Trail and construction of
65 a new winery (T-Vine Cellars) on the old "Rainbow Ag" property on Foothill
66 Boulevard.

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68 **ATTACHMENTS:**

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- 70 1. Questions and Answers (Q & A): Winery Regulations and Grape Sourcing
- 71 2. Article from North Bay Business Journal: Winery Tasting Rooms: Zoning,
72 Licensing and Leasing Considerations, Katherine Philippakis and Richard
73 Shapiro; August, 2010
- 74 3. E-mail communication from Don Luvisi dated August 9, 2011.
- 75 4. E-mail communication from Anne Steinhauer, dated August 30, 2011.
- 76 5. List of existing wineries and wine tasting outlets.

**ATTACHMENT 1
Q & A: WINERY REGULATIONS & GRAPE SOURCING**

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WINERIES

1. What is the “WDO”?

Napa County’s Winery Definition Ordinance (or “WDO” as it is more commonly referred to) was adopted by the County Board of Supervisors in 1990. The WDO establishes development and operational parameters for wineries located in the Agricultural Preserve (AP) and Agricultural Watershed (AW) zoning districts. It defines several classes of wineries and sets forth specific regulations for winery-related uses, including winery development standards, wine production activities, grape sourcing, marketing events and tours and tastings. The stated intent of the WDO is to “protect agriculture and open space as the primary land use in Napa County.”

2. How does the City currently regulate wineries?

Wineries are currently allowed as conditionally permitted uses in the Rural Residential (RR), Community Commercial (CC) and Light Industrial (I) zoning districts. The City has also allowed wineries in Planned Development (PD) zoning districts.

The Rural Residential zoning district contains winery regulations that are similar to those established by the WDO, as summarized in Table 1 below.

TABLE 1 – SUMMARY OF CITY AND COUNTY WINERY REGULATIONS

	AP / AW (County WDO)	RR (Calistoga)
Minimum Parcel Size	Y	Y
Production Requirements	Y	Y
On-Site Grape Source Requirement	N	Y
Off-Site Grape Source Requirement	Y	N
Regulations for Marketing Events	Y	Y
Regulations for Tours and Tastings	Y	Y

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With regard to the issue of grape sourcing, it should be noted that unlike the WDO the City requires a minimum percentage of the grapes used in wine production to be grown on site (20% for small wineries, 30% for large wineries). However, the City does not have any sourcing requirement for grapes used in production that are grown off-site. This is an issue that it is of concern to the agricultural community.

35 It should also be noted that like the WDO, the City's winery regulations
 36 only apply in agriculturally-related zoning districts and do not apply in
 37 areas that are zoned for commercial or industrial uses.
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39 **3. What grape sourcing requirements are established by the WDO?**
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41 The WDO sets forth sourcing requirements for wineries located in the AP
 42 and AW zoning districts that were established after January, 1990. It
 43 requires that at least 75% of the grapes used to make still or sparkling
 44 wine be grown within the County of Napa.
 45

46 Wineries that were established before 1990 are not subject to the "75%
 47 rule" unless they expand beyond their recognized/approved production
 48 limit, in which case the increment of expansion becomes subject to the
 49 75% rule.
 50

51 **4. What grape sourcing requirements do other communities in the
 52 County have?**
 53

54 Each of the incorporated communities within the County is different with
 55 respect to grape sourcing requirements (see Table 2 below). This
 56 variation is primarily attributable to differences in regulatory interests
 57 and/or land use conditions.
 58

59 **TABLE 2 – SUMMARY OF JURISDICTION GRAPE SOURCING REQUIREMENTS FOR**
 60 **WINERIES**
 61

	WDO (County)	American Canyon	Calistoga	City of Napa	St. Helena	Yountville
Sourcing Rules	Y	N	Y	Y	Y	n/a*
<i>On-Site Req.</i>	N	--	Y	N	Y	--
<i>Off-Site Req.</i>	Y	--	N	Y	Y	--
<i>All Zones</i>	N	--	N	Y	N	--

62 * Wineries are not a permitted use in the Town of Yountville.
 63

64 **5. What is the relationship between winery regulations and ABC**
65 **licensing types?**

66
67 Wineries operating in the State of California are required to obtain a "Type
68 02" "winegrower" license from the State Department of Alcoholic Beverage
69 Control (ABC). A winegrower must have facilities and equipment for the
70 conversion of fruit into wine and engage in the production of wine.

71
72 Having a Type 02 license does not exempt a license holder from
73 compliance with local land use and permitting regulations. In fact, ABC
74 will not issue a Type 02 license (or any other type of license) unless it has
75 confirmed with the local jurisdiction that the winery use is allowed under
76 local zoning and all necessary permits have been obtained. Therefore,
77 ABC license types should not be viewed as the "driver" of policies for
78 winery-related uses. However, ABC license types are useful in
79 distinguishing between different types of winery related uses for regulatory
80 purposes – which is discussed later in this report.

81
82 **6. There is an interest in establishing grape sourcing regulations for**
83 **wineries in Calistoga. What are some of the considerations that**
84 **should be made?**

85
86 Should the City Council be interested in establishing more comprehensive
87 grape sourcing requirements for wineries, staff would suggest the
88 following considerations be made (specific to current regulatory conditions
89 in Calistoga):

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91 (A) Should sourcing requirements for new wineries consider the
92 winery's overall production capacity so that small / hobby producers
93 are not negatively impacted? For example, sourcing requirements
94 could be established that only apply to wineries producing more
95 than 4,000 cases annually.

96
97 (B) Should "off-site" sourcing requirements be applied only to wineries
98 operating in the Rural Residential zoning district or land designated
99 as Rural Residential by the General Plan (similar to how the WDO
100 only applies to agriculturally designated lands), or should off-site
101 sourcing requirements be applied to wineries regardless of land use
102 designation?

103
104 (C) There are many "garage" wineries located in Calistoga that do not
105 physically produce or taste wines on site but have administrative
106 offices and/or limited storage. These wineries may be inadvertently

107 be effected by regulations intended for wineries with full production
108 capabilities. If sourcing requirements are established, should there
109 be a provision that exempts "garage" wineries.
110

111 (D) Should regulatory incentives be offered to encourage use of grapes
112 grown within the Calistoga AVA?
113

114 WINERY TASTING ROOMS

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116 7. How does the WDO regulate winery tasting rooms?

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118 The WDO allows wineries located in the AP and AW zoning districts to
119 offer tastings on the premises of the winery to members of the wine trade,
120 persons invited by the winery who have a pre-established business or
121 personal relationship with the winery or its owners, and persons who have
122 made unsolicited prior appointments for tastings. Wines offered for
123 tasting at a winery are limited to those that are produced by or for the
124 winery.
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127 Wine that is sold at winery must be (1) wine that is fermented or
128 refermented and bottled at the winery (subject to grape sourcing
129 requirements discussed in No. 3 above); and (2) wine that is produced by
130 or for the winery from grapes grown in Napa County.

131

132 "Stand-alone" tasting rooms that are located in a commercial zoning
133 district are not subject to the regulations of the WDO. There are no
134 sourcing restrictions for stand-alone tasting rooms in County's commercial
135 zoning districts.

136

136 8. What regulations does the City have for winery tasting rooms?

137

138 Winery tasting rooms are allowed as a conditionally permitted use in the
139 Rural Residential (RR) zoning district in conjunction with a winery and
140 have also been allowed in Planned Development (PD) zoning district.
141 "Stand-alone" winery tasting rooms are allowed in the Downtown
142 Commercial (DC), Community Commercial (CC) and Light Industrial (I)
143 zoning districts.
144

145

146 In the Rural Residential (RR) zoning district, wine tasting is identified as
147 an allowable use for "large" wineries (defined as producing up to 4,000
148 cases annually), but is not identified as being permitted for small wineries
149 (defined as producing up to 2,000 cases). It is staff's interpretation that
tasting of wine at a small winery would be inherently allowed as part of a

150 private wine marketing event, but that a room or facility specifically
151 designed for tasting would not be permissible.
152

153 Wines sold at wineries located within the RR zoning district are limited to
154 those produced on site.
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156 In the DC, CC or I zoning districts, wines poured and sold in a stand-alone
157 tasting room would be restricted to those produced under the winery's
158 Type 02 license.
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160 **9. Does the City have grape sourcing requirements for winery tasting**
161 **rooms?**
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163 As noted in No. 2 above, in the RR zoning district requires a minimum
164 percentage of the grapes used in wine production to be grown on site
165 (20% for small wineries, 30% for large wineries) but does not have any
166 sourcing requirement for off-site grape sources. Therefore it is possible
167 that wine tasted and sold at a winery in the RR zoning district might have
168 been produced with only 20 or 30 percent of grapes grown in Napa
169 County.
170

171 There are currently no grape sourcing requirements for wines poured or
172 sold in a stand-alone winery tasting room in the DC, CC or I zoning
173 districts.
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175 **10. Who can operate a stand-alone / off-site winery tasting room?**
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177 A winery with a Type 02 "winegrower" license is permitted to operate one
178 stand-alone tasting room at an "off-site location" (i.e., a location other than
179 the location where the wine is produced) under what is called a "Duplicate
180 Type 02" license. Under a Duplicate Type 02 license, any winery -
181 whether located in Napa County or elsewhere in California - may open up
182 a stand-alone winery tasting room in Calistoga.
183

184 Stand-alone tasting rooms have become increasingly popular and are a
185 particular focus of communications received from the agricultural
186 community. An article written by local attorneys Katherine Philippakis and
187 Richard Shapiro describing the land use considerations associated with
188 off-site tasting rooms is provided as Attachment 2 to the staff report.
189

190 **11. Have other communities in the County established grape sourcing**
191 **requirements for stand-alone winery tasting rooms?**
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The City of St. Helena and Town of Yountville have both established grape sourcing requirements for stand-alone winery tasting rooms (see Table 3 below).

TABLE 3 – SUMMARY OF JURISDICTION GRAPE SOURCING REQUIREMENTS FOR STAND-ALONE WINERY TASTING ROOMS

	WDO (County)	American Canyon	Calistoga	City of Napa	St. Helena	Yountville
Sourcing Rules	N*	N	N	N	Y	Y
<i>Requirement**</i>	—	--	--	--	75%	75%

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* The WDO does not apply to stand-alone tasting rooms that are located in a commercial zoning district.

** Requirement that wines poured and sold in stand-alone tasting rooms be made from a minimum of 75% Napa County grapes.

Technically, the sourcing requirements established by St. Helena and Yountville are more restrictive than the sourcing requirements for a winery operating in Napa County in that they require all wines poured and sold in a stand-alone tasting room to be made with a minimum 75% Napa County grapes. For wineries located in the AP or AW zoning districts, only 75% of the wine produced is required to be from grapes grown in the County (with the remaining 25% being unrestricted). Staff's understanding is that the more restrictive approach for stand-alone tasting rooms has been done for ease of code enforcement.

Establishment of a "75% rule" for stand-alone tasting rooms would virtually eliminate the ability of a winery that produces wine made primarily with grapes from Sonoma, Lake or elsewhere to open a stand-alone tasting room in Calistoga. A 75% rule for stand-alone tasting rooms could also prevent Napa-based wineries that are "pre-WDO" (not subject to sourcing restrictions) from opening a tasting room in Calistoga if they are producing wines made with less than 75% Napa County grapes.

226 **12. How do grape sourcing requirements for stand-alone winery tasting**
227 **rooms effect other businesses that may sell and/or taste wines?**
228

229 For regulatory purposes, it is possible to distinguish between winery-
230 related uses through definitions that reference the type (or types) of ABC
231 license that the business holds. For example, a wine shop that is not
232 owned by a winery but may pour and sell wines may require a Type 20, 21
233 and/or Type 42 license from ABC as opposed to a Type 02 license for a
234 winery tasting room.
235

236 **13. There is an interest in establishing grape sourcing regulations for**
237 **stand-alone winery tasting rooms in Calistoga. What are some of the**
238 **considerations that should be made?**
239

240 Should the City Council be interested in establishing more comprehensive
241 grape sourcing requirements for winery tasting rooms, staff would suggest
242 the following considerations be made (specific to current regulatory
243 conditions in Calistoga):
244

245 (A) Should sourcing requirements for stand-alone winery tasting rooms
246 be consistent with the sourcing requirements for wineries subject to
247 the WDO (including provisions for pre-WDO wineries) or should
248 they be more restrictive like the requirements adopted by St.
249 Helena and Yountville?
250

251 (B) Should sourcing requirements for stand-alone winery tasting rooms
252 include incentives for wineries located within city limits and/or that
253 are made with a minimum percentage of grapes grown within the
254 Calistoga AVA?
255

256 (C) Should additional definitions be added to the Municipal Code to
257 distinguish between the different types of uses that may sell or
258 serve wine so to avoid any unintended regulatory consequences?
259

260 **14. There is also some concern about an over-concentration of stand-**
261 **alone winery tasting rooms in our downtown area. What options**
262 **might be available to address this concern?**
263

264 The City of Healdsburg and Town of Yountville have adopted both
265 adopted regulations to limit the number of new tasting rooms in their
266 respective communities. Healdsburg's approach utilizes proximity, size
267 and activity levels as a regulatory basis. Yountville now requires that a

268 certain percentage of floor area within a new tasting room be devoted to
269 non-wine uses.
270
271 While consideration of such regulations is beyond the immediate focus of
272 this report, it is an issue that staff can pursue further should the Council be
273 interested.

BY KATHERINE PHILIPPAKIS AND RICHARD SHAPIRO
 FARELLA BRAUN + MARTEL LLP

Winery tasting rooms: Zoning, licensing and leasing considerations

In an attempt to reach a greater number of consumers directly and enhance their retail sales, wineries are increasingly focused on their tasting room operations. In particular, many wineries have been opening offsite tasting rooms, often located in locations with high visitor traffic, which provide consumers the opportunity to taste and purchase their wines. Offsite tasting rooms are particularly popular with those wineries that produce their wine in another's facility and therefore do not have access to a tasting room within an actual winery facility. This article addresses some zoning, licensing and leasing considerations related to such tasting rooms.

LICENSING

Today, the concept of the "virtual winery" is increasingly popular. It denotes a wine brand that is not produced in its own bricks-and-mortar winery facility, and with rising prices for winery properties, many in the business have chosen to avoid the overhead associated with owning a winery facility outright, opting instead to produce their wine at a "custom crush" facility.

The term is, however, misleading because there are two types of virtual wineries, and one is not, properly speaking, a winery at all. A winery is, by definition, an entity that holds a Type 02 Winegrower License from the California ABC. Type 02 virtual wineries actually produce their own wine, albeit in another winery's facility, and they are therefore eligible to open a tasting room.

Those whose wine is "custom crushed" for them by another winery, however, do not hold a Type 02 license and thus are not true wineries. Rather, they generally hold a Type 17/20 license combination, which means they are licensed as a wholesaler of wine with limited retail

privileges. These wineries are not eligible to open a tasting room, although they may have their wines poured in a wine bar or sold in off-premise wine shops.

Wineries holding a Type 02 license may obtain what is known as a Duplicate Type 02 license, which allows a winery to have a tasting room away from the facility where the wine is made. Some wineries have tasting rooms both at their production facility and in another location, and some have a single offsite tasting room, with no tasting at their production facility. Either way, a winery may have no more than one offsite tasting room.

Wineries may offer tasting of wine free of charge in their tasting rooms, or they may charge consumers to taste wine. They may sell wine by the glass, and they may also sell wine by the bottle to be consumed on or off premise. Wineries may also join together and operate shared tasting rooms, where consumers may taste wines from more than one winery. In the case of a shared tasting room, each winery must have a designated space where its wine is served, or the wine must be served in a glass with a distinctive marker exclusive to the licensee. In a shared tasting room each winery's wine must be segregated, sales of wine must be recorded separately, and sales taxes must be paid separately. The wineries share the space, but they each operate their tasting activities independently.

ZONING

A winery may establish an offsite tasting room only if local zoning permits such a use. Under the zoning ordinances of the various municipalities in Napa and Sonoma counties, tasting rooms generally are conditional uses, which means that they require discretionary use permit approval by the city. Generally, tasting rooms – together with wine

shops and cocktail lounges or bars – are allowed with a use permit in commercial zoning districts. Certain jurisdictions have limitations upon the types of wine that can be poured in a tasting room. For example, the city of St. Helena limits offsite tasting room activities to wines made from a minimum 75% Napa Valley grapes, which are labeled Napa Valley or a sub-appellation thereof. When adopting its tasting room policy, the city was guided by similar regulations in the unincorporated county of Napa, which require new wineries to produce at least 75% of their wine from Napa grapes.

Similarly, certain jurisdictions have begun to take steps to limit the number of new tasting rooms within their boundaries. Cities such as Yountville and Healdsburg have expressed concern with the possible over-concentration of tasting rooms in their downtown areas, and they have adopted land-use policies that can be used to limit such uses. Yountville requires that a certain percentage of the retail space within a new tasting room be devoted to non-wine uses, and Healdsburg has a lengthy ordinance that incorporates numerous findings for the approval of alcohol beverage establishments. These include findings that the proposed use would not result in an "undue concentration" of such establishments and that the proposed use is of a size and activity level that is compatible with other uses in the surrounding area.

As more wineries open tasting rooms in downtown areas, it is not unreasonable to expect a proliferation of such land-use policies giving local agencies the ability to condition or deny tasting rooms. Although offsite tasting rooms may be a boon to a winery's retail sales, local agencies justifiably feel that large numbers of

such tasting rooms detract from the character of a downtown area because they generally serve only a visitor population. Wineries who are considering opening an offsite tasting room would be well advised to move forward with their projects while the various North Bay municipalities have relatively lax zoning regulations governing such uses.

LEASING

The lease is a critical component and certain issues are raised by the tasting room use. As a threshold matter, the obligation of the tenant should be conditioned upon the issuance of a use permit within a reasonable time period. The tenant will need to be the same entity that is obtaining the ABC license. If the tasting room facility will be shared, a landlord will want all of the users to be joint and severally liable, so that if one failed, the other(s) would continue to be responsible for its obligations. The shared tenants should therefore have a cross-indemnification agreement. The description of the premises should match that in the ABC license application and may include the right to use parking, patio area, storage and trash disposal areas. The visibility of the premises from the adjacent street or road should be protected so that the landlord is restricted from installing structures, signs or landscaping that would block visibility. Use of parking areas should be controlled. The ideal arrangement will provide designated parking spaces for the tasting room. The landlord should be restricted from designating restricted parking available for other users in a manner that would impair convenient access to tasting room visitors. If the landlord controls adjacent space, certain non-compatible uses should be prohibited, for example, those, such as training centers, that create high parking demand but do not draw visitors, and other uses that tasting room visitors might consider unattractive. If the premises is part of a larger project controlled by the landlord, consider whether the tenant should have the exclusive right to operate a tasting room in the project or whether it may be desirable to be located near other tasting rooms. Consider, also, whether the selection of the premises is being

made on the assumption of its proximity to other complementary tenants of the same landlord, such as a delicatessen, in which event it might be possible to have the benefit of an arrangement that reduces the rent, or even provides a right to terminate, if sales decline after the complementary use ceases. There are, of course, numerous other issues associated with commercial leases, including the rent and the basis of any increases, rent during option periods, the solvency of the landlord and protection from a foreclosure by the landlord's lender, the ability to assign the lease or sublet the premises either in connection with a sale of the business as a going concern or a decision to discontinue the use and have the space used for another purpose, the obligations for payment of operating expenses and taxes and the condition of

the premises at the end of the term.

CONCLUSION

Wineries wishing to bolster their retail sales may find that the operation of a tasting room in a downtown area with high visitor traffic can be a viable business strategy. By obtaining a Duplicate 02 license from the ABC and a use permit from the local municipality, a winery can have the necessary licenses to operate an offsite tasting room. And with some guidance through the pitfalls of negotiating a commercial lease, the winery may find that a new tasting room facility makes sound economic sense. Having a tasting room in a downtown area makes a winery highly visible to consumers and provides the enjoyment of a tasting room experience without the overhead of operating a traditional tasting room and production facility. ■

Katherine Philippakis chairs Farella Braun + Martel's wine industry practice. She has a diverse real estate, corporate and land use practice advising privately and publicly owned wineries, vineyards and other industry-related businesses. She represents clients in the structuring, negotiation and closing of complex real estate and corporate transactions, including acquisitions and dispositions, development, financing, management and leasing of winery and vineyard properties. Her practice extends to counseling clients through the various land use, environmental and beverage alcohol regulatory and diligence issues presented by such wine-related development projects.



Richard M. Shapiro is a partner at Farella Braun + Martel with a diverse real estate practice representing clients in transactions related to complex project development, acquisitions and dispositions, entity formation, financing and venture workouts, leasing, land use and construction. His transactional real estate experience involves a wide range of property types including land for development, agriculture, residential subdivisions, apartment projects, corporate campus projects, industrial buildings and parks, hotels, marinas, shopping centers, mobile home parks and suburban and high-rise office buildings.



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