

MEIBEYER LAW GROUP



TRUSTED COUNSEL TO THE WINE INDUSTRY

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CITY OF CALISTOGA
City Clerk

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Re: Grape Sourcing Requirement

Mayor Gingles, Vice-Mayor Dunsford
and Council Members Canning, Kraus and Slusser:

As an attorney with 28 years experience representing wineries in Napa County, I am very pleased that the Council has decided to adopt the 75% requirement for wineries within the City of Calistoga. From reading the staff report for this item for tomorrow night's hearing, it is obvious that certain additional direction needs to be provided to staff regarding the Council's intention. Prior to that consideration I wanted to take the opportunity to mention some concerns that I have with certain aspects of the proposed definitions set forth in the Staff Report. I note that the Staff Report indicates that the definitions are modeled on the City of St. Helena's definitions. Because Napa County has long regulated wineries in Napa County I would encourage modeling the City of Calistoga's winery regulations on Napa County's Winery Definition Ordinance, because that Ordinance has the most pervasive scope (and is the one relied on by the City of Napa when it considered these same issues).

The definition for "Private Wine Marketing Event" is clear and reflects Napa County's general provisions. Napa County, however, has eliminated "Public Tours and Tastings" since 1990, with all new and expanded wineries being required to conduct only Private Tours and Tastings, with the requirement that there be a prior appointment. Given Calistoga's express, and strict requirements for wineries in lands designated as Rural Residential in the Zoning and/or General Plan (i.e. the "number and frequency of private marketing events shall be strictly limited", with a "maximum of four events per year" for wineries on parcels less than four acres in size), I would strongly recommend a "private tour and tasting requirement by appointment" policy, particularly at wineries on agricultural lands, including properties with PD Zoning, but Rural Residential General Plan designations.

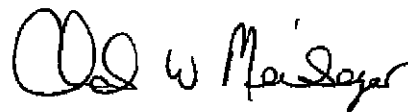
Napa County has recently discovered that a number of "faux wineries" have been developed by which a property owner has obtained a winery use permit, but never actually conducted wine production activities but did take advantage of the marketing opportunities allowed under their ABC license. The County has determined that no new winery shall be allowed to undertake marketing activities on-site unless there will actually be fermentation on-site. I would encourage the definition of "Winery" in Calistoga to include some requirement of fermentation to ensure that the definition of Winery does not negate the requirement that 20% of the wine produced at a winery be grown on-site, particularly in the RR and PD Zoning Districts.

Finally, I strongly encourage the elimination of the proposed definition for "Winery Event" because I believe that definition will inadvertently open the door to activities that are not appropriate at agricultural processing facilities. Napa County has long prohibited social and cultural events at wineries, and has consistently expressly prohibited wineries from leasing out portions of their facilities for use by third parties. The "Winery Event" definition allows events or activities which are open to or **hosted by members of the general public.** While "temporary events" can occur at a winery with the issuance of a temporary event permit in Napa County (which generally is conducted on a non-profit basis), the proposed definition appears to contemplate events that are not related to the winery's marketing activities, which is inconsistent with the long-standing assumption that accessory uses should be subordinate to the winery's primary function as a winery processing facility. The only types of events that are allowed under Napa County's ordinance, other than the activities included within its definition of "Marketing of Wine" which is analogous to Calistoga's "private marketing events", are "business events" which are allowed only when consistent with the following criteria:

Business events are similar to cultural and social events, in that they will only be considered as "marketing of wine" if they are directly related to the education and development of customers and potential customers of the winery and are part of a marketing plan approved as part of the winery's use permit. Marketing plans in their totality must remain "clearly incidental, related and subordinate to the primary operation of the winery as a production facility" [under Napa County's Code]. To be considered directly related to the education and development of customers or potential customers of the winery, business events must be conducted at no charge except to the extent of recovery of variable costs, and any business content unrelated to wine must be limited. Careful consideration shall be given to the intent of the event, the proportion of the business event's non-wine-related content, and the intensity of the overall marketing plan.

Calistoga has recently made great strides in supporting Napa County agriculture, and helping to develop a consistent scheme of operating wineries throughout Napa County. There are other measures that can be adopted at a later date. Subject to the concerns noted here (particularly regarding "public tours and tastings" and "Winery Events") the proposed additional definitional elements will support the current efforts undertaken by the Council.

Very truly yours,



Charles W. Meibeyer

cc: City of Calistoga Planning Department