



1901 Harrison Street - Suite 900  
Oakland, California 94612-3501  
voice 510.273.8780 - fax 510.839.9104  
www.bwslaw.com

## **MEMORANDUM**

**TO:** Calistoga City Council, **CC:** Richard Spitler, City Manager  
Calistoga City Planning Commission Ken MacNab, Planning & Building Manager

**FROM:** Michelle Marchetta Kenyon, City Attorney

**VIA:** Joseph P. Buchman, Esq.

**DATE:** February 1, 2012

**RE:** Zoning Ordinance Amendment (ZO 2012-01) – Grape Sourcing Regulations For Wineries and Winery Tasting Rooms

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At the City Council's regularly scheduled meeting on December 6, 2011, the Council considered the provisions of an ordinance to amend the City's Zoning Ordinance to establish grape sourcing regulations for wineries and "stand alone" winery tasting rooms in the City. At that meeting, the Council accepted and directed inclusion of the following in the draft ordinance:

1. Wineries. The requirement that 75% of the wine produced at a winery be made from fruit grown within the County of Napa (i.e., the "75% rule") should only be applied to wineries that are located within the Rural Residential zoning district (consistent with the County's Winery Definition Ordinance) and to wineries located on properties that are zoned Planned Development ("PD") and have a General Plan land use designation of Rural Residential.
2. Winery Tasting Rooms. 75% of all wines poured for tasting should be labeled as Napa County, Napa Valley or another legally recognized American Viticultural Area within the County of Napa. The remaining 25% could be any other wine that the winery produces. The 75% requirement should not apply to wines that are sold in a stand-alone winery tasting room.

The City Council also directed that the City Attorney prepare a memorandum summarizing pertinent legal considerations so that the public could better understand the reasons for staff's recommendation of proceeding with a more limited regulatory approach.

### **QUESTION NO. 1**

Why is the proposed Grape Sourcing Ordinance being changed to only apply to wineries in the Rural Residential Zone or to wineries on land in the Planned Development Zone with a Rural Residential designation under the General Plan?

### **ANSWER TO QUESTION NO. 1**

The Commerce Clause of the United States Constitution states that Congress has the power to regulate interstate commerce. State and local laws that discriminate against out-of-staters in commerce violate the Commerce Clause unless the local government can show that the law “serves a legitimate local purpose and that this purpose could not be served as well by available nondiscriminatory means.”<sup>1</sup> If a local ordinance discriminates against out-of-staters and those from other parts of the state, it is considered discriminatory for the purposes of a Commerce Clause analysis.<sup>2</sup>

The proposed Grape Sourcing Ordinance was changed so as to avoid any argument that it is unlawfully discriminating against out-of-staters and those from other parts of the state. Essentially, the Grape Sourcing Ordinance restricts the importation of grapes from areas outside of Napa County for wine-making. These discriminatory features of the Ordinance may be permitted if the Ordinance: 1) serves a legitimate local purpose, and 2) the purpose could not be served as well by nondiscriminatory means. Discriminatory laws must be justified by a purpose unrelated to economic protectionism.<sup>3</sup>

The identified purpose for the Ordinance is that by restricting the source of grapes used by wineries in the Rural Residential Zone to those that are predominantly from Napa County, the limited agricultural areas within the City will be preserved because the number of wineries will be limited in accordance with the amount of grapes available for the wineries to use in their production process. An uncontrolled proliferation of wineries using non-locally produced grapes could easily consume all of the unique agricultural land in the City, displacing agricultural land available for crop production. These same concerns do not apply, however, in the City’s non-agricultural zones.

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<sup>1</sup> *Maine v. Taylor*, 477 U.S. 131, 121 (1986).

<sup>2</sup> *Dean’s Milk Co. v. Madison*, 340 U.S. 349 (1951).

<sup>3</sup> *Wyoming v. Oklahoma*, 502 U.S. 437, 454 (1992).

## **QUESTION NO. 2**

Why is the proposed Grape Sourcing Ordinance being changed to require that 75% of all wines poured for tasting without charge should be labeled as Napa County, Napa Valley or another legally recognized American Viticultural Area within the County of Napa, but the 75% requirement will not apply to wines that are sold?

## **ANSWER TO QUESTION NO. 2**

Article XX, Section 22 of the California Constitution provides that the State has “the exclusive right and power to license and regulate the manufacture, sale, purchase, possession and transportation of alcoholic beverages within the State.” However, the courts have determined that Article XX, Section 22 does not preempt local cities’ authority to regulate the consumption of alcoholic beverages.<sup>4</sup>

The proposed Grape Sourcing Ordinance only seeks to regulate the consumption of wine poured for tasting without charge, i.e., not sold, in stand-alone winery tasting rooms in the Downtown Commercial and the Community Commercial districts. The Ordinance does not seek to restrict the source of wines that are sold in a stand-alone winery tasting room because to do so would exceed the City’s legal authority.

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<sup>4</sup> See, e.g., *People v. Brewer* (1991) 235 Cal.App.3d 909, 913.