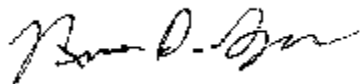


City of Calistoga

Staff Report

TO: Honorable Mayor and City Council
FROM: Kenneth G. MacNab, Planning and Building Manager
DATE: February 21, 2012
SUBJECT: Municipal Code Amendment to Establish Grape Sourcing Regulations for Wineries and Stand-Alone Winery Tasting Rooms

APPROVAL FOR FORWARDING:



Richard D. Spittler, City Manager

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2 **ISSUE:** Consideration of text amendments to the Calistoga Municipal Code,
3 initiated by the City of Calistoga, amending Title 17 (Zoning) to: establish grape
4 sourcing regulations for wineries and stand-alone winery tasting rooms, clarify
5 winery-related uses, and update winery-related land use definitions.

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7 **RECOMMENDATION:** Introduce the Ordinance and waive first reading.

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9 **BACKGROUND:** Last summer the City Council received a request from the
10 agricultural community and the Calistoga Chamber of Commerce to adopt an
11 ordinance regulating the source of grapes used in wines produced at local
12 wineries and in wines tasted and sold in local winery tasting rooms (see
13 Attachments 3 and 4). At the September 6, 2011 regular meeting of the City
14 Council, the Council received a staff report comparing the City's winery-related
15 regulations to regulations that have been adopted by the County as part their
16 Winery Definition Ordinance and to regulations that have been adopted by other
17 communities in the Valley. After extensive public testimony and thorough
18 discussion, the City Council concluded its deliberations by directing staff to
19 prepare an ordinance that would establish grape sourcing requirements for both
20 wineries and stand alone winery tasting rooms

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22 At the October 4, 2011 regular meeting of the City Council, staff presented an
23 outline of Municipal Code amendments necessary for implementing grape

24 sourcing requirements for wineries and winery tasting rooms. Discussion at this
25 meeting focused on the zoning districts in which to apply grape sourcing
26 requirements for new wineries and on alternative approaches for applying grape
27 sourcing requirements for wines poured and sold in winery tasting rooms.

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29 With regards to zoning, the City Council expressed an interest in applying the
30 75% grape sourcing requirement to all zoning districts that wineries are allowed
31 in. For stand alone tasting rooms, the Council expressed an interest in requiring
32 that 75% of all bottles of wine poured or sold in a stand alone/off-site winery
33 tasting room be made with at least 75% Napa grapes, and that the remaining
34 25% could be unrestricted in terms of grape origin BUT must be produced by a
35 winery that is physically located within the County of Napa.

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37 The City Council was advised (both by staff and by an attorney representing the
38 Bounsall family) of potential legal issues related to the establishment of grape
39 sourcing regulations. In response, the City Council requested that staff consult
40 with the City Attorney and report back before proceeding with the preparation of
41 an ordinance.

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43 Following the October 4, 2011 meeting, staff contacted the City Attorney's office
44 to discuss the Council's interests in regulating wineries and winery tasting rooms.
45 Based upon information provided by the City Attorney, staff made the following
46 recommendations to Council at their regularly scheduled meeting on December
47 6, 2011.

- 48
49 1. Wineries. The requirement that 75% of the wine produced at a winery be
50 made from fruit grown within the County of Napa (i.e., the "75% rule")
51 should only be applied to wineries that are located within the Rural
52 Residential zoning district (consistent with the County's Winery Definition
53 Ordinance).

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55 Basis for Recommendation: The primary policy interest in regulating the
56 source of grapes used in wine production is to preserve agricultural lands
57 located within city limits and the area immediately surrounding city limits.
58 Because the majority of agricultural production within the city occurs on
59 lands that are zoned Rural Residential, staff believes there is an
60 appropriate regulatory relationship for establishing grape sourcing
61 requirements in this district.

- 62
63 2. Winery Tasting Rooms. 75% of all wines poured for tasting should be
64 labeled as Napa County, Napa Valley or other legally recognized
65 American Viticultural Area within the County of Napa. The remaining 25%
66 could be any other wine that the winery produces. The 75% requirement

67 should not apply to wines that are sold in a stand-alone winery tasting
68 room.

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70 Basis for Recommendation: In general, the authority to regulate the
71 manufacture, sale and distribution of alcoholic beverages rests with the
72 State. However, cities are allowed to regulate the consumption of
73 alcoholic beverages. Staff believes that the recommended approach of
74 regulating what can be consumed (i.e., poured/tasted) in a stand-alone
75 winery tasting room without restriction on what can be sold in the tasting
76 room avoids regulatory conflicts, supports local agriculture and promotes
77 quality Napa wines.

78
79 The City Council accepted and directed inclusion of these recommendations in
80 the draft ordinance with one modification: wineries located on properties that are
81 zoned Planned Development (“PD”) and have a General Plan land use
82 designation of Rural Residential should also be subject to the “75% rule”. The
83 City Council also directed that the City Attorney prepare a memorandum
84 summarizing pertinent legal considerations so that the public could better
85 understand the reasons for staff’s recommendation of proceeding with a more
86 limited regulatory approach. This memorandum has been included with this
87 report (Attachment 5).

88
89 **DISCUSSION:** Implementation of grape sourcing regulations for wineries and
90 winery tasting rooms will require amendments to multiple sections of Title 17
91 (Zoning) of the Municipal Code. Individual chapter amendments are
92 summarized below and detailed in Attachment 2.

93
94 **1. ADD NEW WINE-RELATED USE DEFINITIONS TO THE ZONING CODE**

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96 New and revised wine-related use definitions would be added to Section
97 17.04 of the Municipal Code. The definitions would serve to update and
98 clarify terms currently used in the Zoning Code and will distinguish
99 between different wine-related uses. Most definitions have been modeled
100 from definitions used by the City of St. Helena and Town of Yountville.

101
102 A. “Private Wine Marketing Event”. A private wine marketing event is
103 any activity conducted for the purpose of educating members of the
104 wine trade and persons who have a pre-established business
105 relationship with the owner/operator of the business in order to
106 increase the amount of wine sold to those individuals. Marketing
107 activities may include food service without charge when provided in
108 association with such education and business development, but
109 shall not include cultural and social events unrelated to such
110 education and development.

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- B. "Public Tours and Tastings". Public tours and tastings are tours of a winery and/or on-site tastings of wines produced on the premises. Public tours and tastings may also include food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery and is incidental to the tasting of wine. Food service may not involve menu options and meal service such that the winery functions as a café or restaurant.
- C. "Winery". A winery is a bonded establishment primarily used for the purpose of processing grapes or other fruit products into wine. Processing includes, but is not limited to, crushing, fermenting, blending, aging, storage, bottling, and wholesale or retail sales of wine produced or bottled on the premises. Ancillary activities such public tours and tastings, private wine marketing events, sales of wine or winery-related merchandise, and public winery events may be conditionally permitted in conjunction with a winery.
- D. "Winery Event". Winery events are events or activities which are open to or hosted by members of the general public.
- E. "Wine Shop". A wine shop is an establishment that purchases and sells wines from multiple wineries and distributors. Wine shops are not owned or operated by wineries and must possess a Type 20, 21 or 42 license from the State Department of Alcoholic Beverage Control (ABC). Wines sold in a wine shop may be made in other counties in California, other states or other countries. Incidental wine tastings may occur in wine shops.
- F. "Winery Tasting Room". A winery tasting room is an establishment that sells wines on behalf of one or more wineries and enables consumers to taste wine (with and without charge) as a regular part of the sales business. Winery tasting rooms are owned or operated by wineries that possess a Type 02 license from the State Department of Alcoholic Beverage Control (ABC).

2. REVISE THE RURAL-RESIDENTIAL ZONING DISTRICT REGULATIONS FOR "SMALL" AND "LARGE" WINERIES TO IMPLEMENT THE "75% RULE" AND CLARIFY WINERY-RELATED PROVISIONS

Sections 17.14.020(B)(8) and (9) would be amended to require that a minimum of 75% of the wine produced at winery located in the Rural Residential zoning district be made from fruit grown within the County of

155 Napa. Current requirements that a minimum percentage of grapes used
156 in wine production be grown on the same site the winery is located on
157 would remain unchanged. Terminology related to tours and tastings and
158 winery events would also be updated to be consistent with the definitions
159 noted in No. 1 above.

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161 **3. REVISE HOME OCCUPATION REGULATIONS TO CLARIFY HOME**
162 **WINERY USES.**

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164 The following subsection would be added to Section 17.21.040 (Home
165 Occupations) to clarify permissible wine-related home occupation uses:

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167 “Winery-related home occupations shall be limited to administrative
168 activities, barrel aging and storage. Indoor storage of up to two
169 barrels or 50 cases of wine shall be permitted. Home wineries shall
170 comply with any grape sourcing requirements that are applicable to
171 the facility at which the fruit used to produce the wine is crushed.
172 No public tours and tastings, private wine marketing events, winery
173 events, retail or wholesale distribution shall be permitted on the
174 premises.”

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176 **4. REVISE THE DOWNTOWN COMMERCIAL (DC) ZONING DISTRICT**
177 **REGULATIONS TO CLARIFY AND DISTINGUISH BETWEEN**
178 **DIFERRENT WINE-RELATED USES AND IMPLEMENT THE “75%**
179 **RULE” FOR WINERY TASTING ROOMS.**

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181 Section 17.22.040(B)(20) would be revised to clarify and distinguish
182 between conditionally permitted wine-related uses and to establish a 75%
183 requirement for wines poured in a winery tasting room.

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185 “Wine Shops” and “Winery Tasting Room” uses (as defined in No. 1
186 above) would be added to the list of conditionally permitted uses.

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188 **5. REVISE THE COMMUNITY COMMERCIAL (CC) ZONING DISTRICT**
189 **REGULATIONS TO CLARIFY AND DISTINGUISH BETWEEN**
190 **DIFERRENT WINE-RELATED USES AND IMPLEMENT THE “75%**
191 **RULE” FOR WINERY TASTING ROOMS.**

192

193 Section 17.22.040(B)(20) would be revised to clarify and distinguish
194 between conditionally permitted wine-related uses and to establish a 75%
195 requirement for wines poured in a winery tasting room.

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197 “Wine Shops” and “Winery Tasting Room” uses (as defined in No. 1
198 above) would be added to the list of conditionally permitted uses.

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6. REVISE THE PLANNED DEVELOPMENT ZONING DISTRICT REGULATIONS TO ALLOW WINERIES AS A CONDITIONALLY PERMITTED USE AND IMPLEMENT THE “75% RULE”

A new provision would be added to Section 17.24.025 (Uses Permitted) to identify wineries as a conditionally permitted use and establish a requirement that 75% of the wine produced at a winery located on property with an underlying General Plan land use designation of Rural Residential be made from fruit grown within the County of Napa.

“C. Wineries, including public tours and tastings, winery events and private wine marketing events as defined in Chapter 17.04 CMC, may be permitted in a planned development district as a conditionally permitted use provided that a winery would normally be permitted in the zoning or General Plan regulations. If the winery is located on property that is designated as Rural Residential by the General Plan, a minimum of 75% of the fruit used to make wine produced on-site must be grown within the County of Napa.”

7. REVISE THE LIGHT INDUSTRIAL (I) ZONING DISTRICT REGULATIONS TO CLARIFY USES ALLOWED IN CONJUNCTION WITH A WINERY.

Section 17.26.020(H) of the Light Industrial (“I”) zoning district would be revised to clarify that tours and tastings and events may be allowed in conjunction with a winery through the conditional use permit process.

PLANNING COMMISSION REVIEW: The Planning Commission considered the draft amendments at a public hearing held during its regular meeting on February 8, 2012. The Planning Commission voted 4-1 in support of the draft amendments, with the following recommendation:

1. Require that 100% of wines poured for tasting in a stand-alone tasting room be labeled Napa County or a legally-recognized AVA within Napa County.

Staff Comment: The Planning Commission believes that the City has more latitude in regulating the consumption of wine in a stand-alone winery tasting room and supports a “100%” requirement for wines poured for tasting. It is also the Planning Commission’s opinion that a “100% rule” would be easier to enforce. Based on the City Attorney’s memo dated

242 February 1, 2012 (Attachment 5), staff does not see a substantive
243 difference between a 75% requirement and a 100% requirement.

244 In addition to the recommendation above, some Planning Commissioners
245 commented that the City Attorney's opinions on the grape sourcing issue might
246 be overly conservative and that a more comprehensive ordinance (i.e., one that
247 would apply to all zoning districts) might be worth the risk, particularly in light of
248 the fact that other communities within the County have adopted more
249 comprehensive regulations.

250

251 **POINTS OF CLARIFICATION:** Staff has received a number of questions about
252 the draft amendments that merit clarification for the purposes of a common
253 understanding on the applicability and implementation of the proposed
254 regulations.

255

256 1. Does the sourcing requirement for a stand-alone winery tasting room also
257 apply to a tasting room that is located on the same site as the winery?

258

259 **RESPONSE:**

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261 No. The sourcing requirement for stand-alone winery tasting room is intended to
262 apply to "off-site" or "stand-alone" tasting rooms only. A tasting room that is
263 located on the same site of the winery at which the wine is produced is
264 considered part of the winery use and may pour or sell any wine that is produced
265 by the proprietor of the winery.

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267 2. If a winery in a stand-alone tasting room charges a general fee for tasting
268 and/or a fee for a "tasting flight" would they be exempt from the sourcing
269 requirement?

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271 **RESPONSE:**

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273 No. Staff recognizes that charging a general fee for tasting and/or charging a fee
274 for a "tasting flight" is a common practice and does not identify such fees as a
275 "sale" of wine.

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277 3. How do the proposed regulations affect existing wineries and stand-alone
278 winery tasting rooms?

279

280 **RESPONSE:**

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282 Wineries and stand-alone winery tasting rooms that are legally operating or have
283 been approved prior to the adoption of the grape sourcing ordinance would not
284 be subject to the new regulations. However, compliance with the ordinance

285 could be required in the future should such “grandfathered” uses expand or
286 intensify in the future.

287

288 **ENVIRONMENTAL REVIEW:** This action has been reviewed pursuant to the
289 California Environmental Quality Act (CEQA). Section 15061(b)(3), the “general
290 rule” exemption, states that where it can be seen with certainty that there is no
291 possibility that the activity in question may have a significant effect on the
292 environment the activity is not subject to CEQA. It has been determined that the
293 activity in question, a Municipal Code amendment to establish grape sourcing
294 requirements for new wineries located in certain zoning districts and for wines
295 poured in new stand-alone winery tasting rooms, will not have any impact on the
296 environment and therefore is exempt from CEQA under the general rule.

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298 **IN-PROCESS PROJECTS:**

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300 There are two wine-related development applications that potentially could be
301 effected by the adoption of a new grape sourcing ordinance (see Table 1 below).

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303 TABLE 1 – LIST OF PENDING WINERY APPLICATIONS

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Project	Status
Arden Winery	Application has been submitted. Tracking for PC and CC review in March/April, 2012.
Silver Rose Resort / Winery Expansion	Application has been submitted. Review will not be completed prior to anticipated adoption date in March, 2012.

305

306 The processing of the Arden Winery and Silver Rose Expansion development
307 applications will not be completed prior to the anticipated adoption date of the
308 draft grape sourcing ordinance. The applicant for each project has been advised
309 of the pending grape sourcing ordinance and is aware that they may be subject
310 to the “75% rule”. Both have indicated that they intend to comply.

311

312 It should also be noted that the Planning Commission’s approval of Andrea
313 Anderson’s Conditional Use Permit for a winery tasting room on First Street
314 included a condition requiring that all of the wines poured and sold within the
315 winery tasting room be made with a minimum of 75% fruit grown within the
316 County of Napa. The approval also included a condition that would allow Ms.
317 Anderson to request a modification to this condition if the provisions of the
318 adopted grape sourcing ordinance differed – which they do with respect to
319 restriction on sales of wine sold in a tasting room.

320

321 **FISCAL IMPACT:** No direct fiscal impacts resulting from adoption of the
322 proposed text amendments to the Calistoga Municipal Code have been identified
323 at this time.

324

325 **ATTACHMENTS:**

326

327 1. Draft Ordinance 2012-XXX

328 2. "Track-Changes" version of Proposed Municipal Code Amendments

329 3. Correspondence from Napa County Farm Bureau, Napa Valley Grape

330 Growers and Napa Valley Vintners dated June 21, 2011.

331 4. Correspondence from Calistoga Chamber of Commerce, dated June 21,
332 2011.

333 5. City Attorney Memorandum on Grape Sourcing

334 6. General Plan, Zoning and Affected Property Maps.