

ORDINANCE NO. 1340

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NAPA, STATE OF CALIFORNIA, AMENDING SECTIONS 18.08.370, 18.08.620, 18.16.030, AND 18.20.030 OF THE COUNTY CODE AS THEY RELATE TO THE MARKETING OF WINE, FOOD AND WINE PAIRINGS CONDUCTED AS PART OF TOURS AND TASTINGS AND THE RETAIL SALE OF WINE RELATED PRODUCTS PERMITTED AT WINERIES IN THE AGRICULTURAL PRESERVE (AP) AND AGRICULTURAL WATERSHED (AW) ZONING DISTRICTS

Whereas, in 1990 the County adopted a Winery Definition Ordinance (Ordinance No. 497) with the intent of defining uses that are permitted in association with wineries; and

Whereas, the resulting sections of Napa County Code have ensured that wineries approved since adoption of the Winery Definition Ordinance have remained agricultural processing facilities with limited accessory uses, such as tours and tastings, marketing of wine, office, and retail sales; and

Whereas, such uses would be deemed inappropriate in agricultural areas and therefore not permitted unless they remain accessory to the primary use of a winery; and

Whereas, the Winery Definition Ordinance has been successful at limiting commercial uses in agricultural areas by ensuring that wineries remain focused on the business of producing wines, and by ensuring that tours and tastings and marketing of wine play an accessory role; and

Whereas, the preservation of agricultural land requires a reliable market to justify the investment required to acquire, develop and maintain vineyards capable of producing high quality fruit. In this regard, a reliable market for Napa County wine grapes is dependent on the ability of Napa County wineries to promote, market and sell Napa County wines in an increasingly competitive domestic and international market; and

Whereas, Napa County is in competition with other wine regions around the world. Direct sales and consumer visitation at wineries are increasingly important factors enabling Napa Valley wineries to compete, and the quality of the visitor experience affects the competitive position of

Napa Valley wineries; and

Whereas, the existence of wineries within the Agricultural Preserve and Agricultural Watershed zoning districts is a conditional use granted to wineries because the creation, selling and marketing of wine is a necessary and essential adjunct to the agricultural activity of growing grapes, and thereby ensures the long term viability and sustainability of agriculture in Napa County; and

Whereas, the Board of Supervisors is considering adoption of this Ordinance clarifying the definition of “Marketing of Wine,” food and wine pairings permitted as part of tours and tastings, the sale of wine related products, and other sections of Napa County Code first adopted as the Winery Definition Ordinance in 1990.

The Board of Supervisors of the County of Napa, State of California, ordains as follows:

SECTION 1. Section 18.08.370 (Marketing of Wine) of Chapter 18.08

(Definitions) of the Napa County Code is amended to read in full as follows:

18.08.370 Marketing of wine.

“Marketing of wine” means any activity of a winery which is conducted at the winery on a prearranged basis for the education and development of customers and potential customers with respect to wine which can be sold at the winery on a retail basis pursuant to Chapters 18.16 and 18.20. Marketing of wine may include cultural and social events directly related to the education and development of customers and potential customers provided such events are clearly incidental, related and subordinate to the primary use of the winery. Marketing of wine may include food service, including food and wine pairings, where all such food service is provided without charge except to the extent of cost recovery.

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” (subsection (G)(5) of Sections 18.16.030 and subsection (I)(5) of 18.20.030). 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.

SECTION 2. Section 18.08.620 (Tours and Tastings) of Chapter 18.08

(Definitions) of the Napa County Code is amended to read in full as follows:

18.08.620 Tours and tastings.

“Tours and tastings” means tours of the winery and/or tastings of wine, where such tours and tastings are limited to persons who have made unsolicited prior appointments for tours or tastings. Tours and tastings may 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.

SECTION 3.

Section 18.16.030 (Uses Permitted Upon Grant of a Use Permit) of

Chapter 18.16 (AP Agricultural Preserve District) of the Napa County Code is amended to read in full as follows:

18.16.030 Uses permitted upon grant of a use permit.

The following uses may be permitted in all AP districts, but only upon grant of a use permit pursuant to Section 18.124.010:

- A. Farmworker housing and seasonal farmworker centers conforming to Section 18.104.300 or 18.104.310, unless exempt from a use permit requirement under subsection (M) of Section 18.16.020;
- B. Facilities, other than wineries, for the processing of agricultural products grown or raised on the same parcels or contiguous parcels under the same ownership;
- C. Kennels and veterinary facilities;
- D. Feed lots;
- E. Noncommercial wind energy and conversion systems;
- F. Wineries, as defined in Section 18.08.640;
- G. The following uses in connection with a winery:
 - 1. Crushing of grapes outside or within a structure,
 - 2. On-site aboveground disposal of wastewater generated by the winery,
 - 3. Aging, processing and storage of wine in bulk,
 - 4. Bottling and storage of bottled wine and shipping and receiving of bulk and bottled wine, provided the wine bottled or received does not exceed the permitted production capacity,
 - 5. Any or all of the following uses provided that, in the aggregate, such uses are clearly incidental, related and subordinate to the primary operation of the winery as a production facility:
 - a. Office and laboratory uses,
 - b. Marketing of wine as defined in Section 18.08.370,
 - c. Retail sale of (1) wine fermented or refermented and bottled at the winery, irrespective of the county of origin of the grapes from which the wine was made, providing nothing herein shall excuse the application of subsections (B) and (C) of Section 18.104.250 regulating the source of grapes; and (2) wine produced by or for the winery from grapes grown in Napa County;
- H. The following uses, when accessory to a winery:
 - 1. Tours and tastings, as defined in Section 18.08.620,
 - 2. Display, but not sale, of art,
 - 3. Display, but not sale, of items of historical, ecological or viticultural significance to the wine industry,
 - 4. Sale of wine-related products,

- 5. Child day care centers limited to caring for children of employees of the winery;
- I. Telecommunication facilities, other than satellite earth stations, that do not meet one or more of the performance standards specified in Section 18.119.200;
- J. Satellite earth stations that cannot, for demonstrated technical reasons acceptable to the director, be located in an Industrial (I), Industrial Park (IP), or General Industrial (GI) zoning district;
- K. Facilities, other than wineries, for the processing of agricultural products where the products are grown or raised within the county, provided that the facility is located on a parcel of ten or more acres, does not exceed five thousand gross square feet, and is not industrial in character. Only those agricultural products raised or processed on-site may be sold at the facility;
- L. Farm management uses not meeting one or more of the standards contained in subsections (E)(2), (E)(3), and (E)(4) of Section 18.08.040.

SECTION 4. Section 18.20.030 (Uses permitted upon grant of a use permit) of

Chapter 18.20 (AW Agricultural Watershed District) of the Napa County Code is amended to read in full as follows:

18.20.030 Uses permitted upon grant of a use permit.

The following uses may be permitted in all AW districts, but only upon grant of a use permit pursuant to Section 18.124.010:

- A. Parks and rural recreation uses and facilities as defined in Chapter 18.08, conforming to the standards in Chapter 18.104;
- B. Farmworker housing and seasonal farmworker centers conforming to Section 18.104.300 or 18.104.310, unless exempt from a use permit requirement under subsection (R) of Section 18.20.020;
- C. Facilities, other than wineries, for the processing of agricultural products grown or raised on the same parcels or contiguous parcels under the same ownership;
- D. Kennels, horse boarding and/or training stables, and veterinary facilities;
- E. Feed lots;
- F. Sanitary landfill sites;
- G. Noncommercial wind energy and conversion systems;
- H. Wineries, as defined in Section 18.08.640;
- I. The following uses in connection with a winery:
 - 1. Crushing of grapes outside or within a structure,
 - 2. On-site, aboveground disposal of wastewater generated by the winery,
 - 3. Aging, processing and storage of wine in bulk,
 - 4. Bottling and storage of bottled wine; shipping and receiving of bulk and bottled wine, provided the wine bottled or received does not exceed the permitted production capacity,
 - 5. Any or all of the following uses provided that, in the aggregate, such uses are clearly incidental, related and subordinate to the primary operation of the winery as a production facility:
 - a. Office and laboratory uses,
 - b. Marketing of wine as defined in Section 18.08.370,
 - c. Retail sale of (1) wine fermented or refermented and bottled at the winery, irrespective of the county of origin of the grapes from which the wine was made, providing nothing herein shall excuse the application of subsections (B) and (C) of Section 18.104.250 regulating the source of grapes; and (2) wine produced by or for the winery from grapes grown in Napa County;

- J. The following uses, when accessory to a winery:
 - 1. Tours and tastings, as defined in Section 18.08.620,
 - 2. Display, but not sale, of art,
 - 3. Display, but not sale, of items of historical, ecological or viticultural significance to the wine industry,
 - 4. Sale of wine-related products;
 - 5. Child day care centers limited to caring for children of employees of the winery;
- K. Telecommunication facilities, other than satellite earth stations, that do not meet one or more of the performance standards specified in Section 18.119.200;
- L. Satellite earth stations that cannot, for demonstrated technical reasons acceptable to the director, be located in an Industrial (I), Industrial Park (IP), or General Industrial (GI) zoning district;
- M. Campgrounds on public lands conforming to the standards in Chapter 18.104;
- N. Hunting clubs (large) as defined in Chapter 18.08 and subject to the standards in Chapter 18.104;
- O. Facilities, other than wineries, for the processing of agricultural products where the products are grown or raised within the county, provided that the facility is located on a parcel of ten or more acres, does not exceed five thousand gross square feet, and is not industrial in character. Only those agricultural products raised or processed on-site may be sold at the facility; and
- P. Farm management uses not meeting one or more of the standards contained in subsections (E)(2), (E)(3), and (E)(4) of Section 18.08.040.

SECTION 5. After a preliminary review of the Project, the Planning Department determined that this Ordinance would have no potentially significant environmental impacts and recommends adoption of a Negative Declaration.

SECTION 6. Pursuant Chapter 4, Title 7, commencing with Section 65800, of the California Government Code, this Ordinance is consistent with the following policies and goals of the 2008 General Plan Update: Goal AG/LU-3 (Support the economic viability of agriculture, including grape growing, winemaking, other types of agriculture, and supporting industries to ensure the preservation of agricultural lands); Policy AG/LU-13 (The 1990 Winery Definition Ordinance, recognized certain pre-existing wineries and winery uses as well as new wineries. For wineries approved after the effective date of that ordinance, agricultural processing includes tours and tastings by appointment only, retail sales of wine produced by or for the winery partially or totally from Napa County grapes, retail sale of wine-related items, activities for the education and development of consumers and members of the wine trade with respect to wine produced by or at

the winery, and limited non-commercial food service. The later activity may include winefood pairings. All tours and tastings, retail sales, marketing activities, and noncommercial food service must be accessory to the principal use of the facility as an agricultural processing facility. Nothing in this policy shall alter the definition of “agriculture” set forth in Policy AG/LU-2); Policy AG/LU-2 (“Agriculture” is defined as the raising of crops, trees, and livestock; the production and processing of agricultural products; and related marketing, sales and other accessory uses. Agriculture also includes farm management businesses and farm worker housing); Goal E-1 (Maintain and enhance the economic viability of agriculture.); and Policy E-1 (The County’s economic development will focus on ensuring the continued viability of agriculture in Napa County).

SECTION 7. If any section, subsection, sentence, clause, phrase or word of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Supervisors of the County of Napa hereby declares it would have passed and adopted this Ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.

SECTION 8. This Ordinance shall be effective thirty (30) days from and after the date of its passage.

SECTION 9. A summary of this Ordinance shall be published at least once 5 days before adoption and at least once before the expiration of 15 days after its passage in the Napa Valley Register, a newspaper of general circulation published in the County of Napa, together with the names of members voting for and against the same.

The foregoing Ordinance was introduced and public hearing held thereon before the Napa County Conservation, Development and Planning Commission at a regular meeting of the

Commission on the 21st day of April, 2010, and was passed at a regular meeting of the Board of Supervisors of the County of Napa, State of California, held on the 11th day of May, 2010, by the following vote:

AYES: SUPERVISORS WAGENKNECHT, CALDWELL, LUCE, DODD
and DILLON

NOES: SUPERVISORS NONE

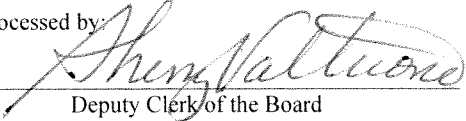
ABSTAIN: SUPERVISORS NONE

ABSENT: SUPERVISORS NONE


DIANE DILLON, Chair
Napa County Board of Supervisors

ATTEST: GLADYS I. COIL
Clerk of the Board of Supervisors

By: _____

APPROVED AS TO FORM Office of County Counsel	Approved by the Napa County Board of Supervisors
By: <u>Laura J. Anderson</u> (by e-signature) Deputy County Counsel	Date: May 11, 2010
By: <u>Susan Ingalls</u> (by e-signature) County Code Services	Processed by: 
Date: April 23, 2010	Deputy Clerk of the Board

I HEREBY CERTIFY THAT THE ORDINANCE ABOVE WAS POSTED IN THE OFFICE OF THE CLERK OF THE BOARD IN THE ADMINISTRATIVE BUILDING, 1195 THIRD STREET ROOM 310, NAPA, CALIFORNIA ON MAY 11, 2010.


_____, DEPUTY
GLADYS I. COIL, CLERK OF THE BOARD

RESOLUTION NO. 2010-48

A RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, ESTABLISHING INTERPRETIVE GUIDANCE ON MARKETING ACTIVITIES FOR WINERIES

WHEREAS, wineries were established shortly after the planting of vineyards in Napa County and have been an important component of Napa County agriculture since the nineteenth century; and

WHEREAS, wineries have historically engaged in accessory uses in order to market and sell wine directly to consumers in addition to sales through other channels; and

WHEREAS, the County adopted a Winery Definition Ordinance in 1990 with the intent of defining uses that are permitted in association with wineries; and

WHEREAS, the resulting sections of Napa County Code have ensured that wineries approved since adoption of the Winery Definition Ordinance have remained agricultural processing facilities with accessory uses, such as tours and tastings, marketing of wine, office, and retail sales; and

WHEREAS, such uses would be deemed inappropriate in agricultural areas and therefore not permitted unless they remain incidental and subordinate to the primary use of a winery as an agricultural processing facility; and

WHEREAS, since adoption of the Winery Definition Ordinance, the County has relied on the ordinance in granting use permits and use permit modifications, and has attempted to implement provisions of the ordinance consistently and fairly; and

WHEREAS, the County, existing winery operators, and applicants seeking approval to construct new wineries all benefit from a common understanding of the requirements and restrictions added to Napa County Code with adoption of the Winery Definition Ordinance; and

WHEREAS, the County is now considering adoption of an ordinance clarifying the definition of "Marketing of Wine" and other sections of Napa County Code first adopted as the Winery Definition Ordinance in 1990; and

WHEREAS, the County wishes to complement the proposed ordinance with a resolution of Board policy providing interpretive guidance; and

WHEREAS, the interpretive guidance provided herein is intended to improve the quality of winery applications and compliance with winery requirements, and may be amended or supplemented by Board of Supervisors Resolution from time to time,

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of the County of Napa as follows:


1. The Interpretive Guidance provided in Exhibit "A" reflects the Board's interpretation of winery-related sections of the zoning ordinance; and
2. The zoning ordinance shall control in the event of any conflict between the ordinance and this Resolution and/or Exhibit "A."
3. This Resolution shall take effect at the same time as the concurrent ordinance clarifying the definition of "Marketing of Wine" and other sections of Napa County Code.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Board of Supervisors of the County of Napa, State of California, at a regular meeting of the Board held on the 11th day of May, 2010, by the following vote:

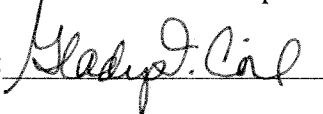
AYES: SUPERVISORS WAGENKNECHT, CALDWELL and DILLON

NOES: SUPERVISORS LUCE and DODD

ABSENT: SUPERVISORS NONE


DIANE DILLON, Chair
Napa County Board of Supervisors

ATTEST: GLADYS I.COIL
Clerk of the Board of Supervisors

By: 


APPROVED AS TO FORM Office of County Counsel	APPROVED BY THE BOARD OF SUPERVISORS
By: <u>Laura J. Anderson (by e-signature)</u> Deputy County Counsel	Date: May 11, 2010
Date: <u>April 23, 2010</u>	Processed by: 

Exhibit A
Interpretative Guidance

I. Events Permitted as part of “Marketing of Wine”

Since the adoption of the Winery Definition Ordinance in 1990, Napa County Code has allowed activities for the education and development of customers and potential customers at wineries under the definition of “marketing of wine.” Cultural and social events that are unrelated to education and development are explicitly not permitted, while cultural and social events that are directly related to education and development have always been allowed. Business events are similar to cultural and social events, in that they are only permitted as part of “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 an approved marketing plan that in its totality is “clearly incidental, related and subordinate to the primary operation of the winery as a production facility” (Sections 18.16.030(G)(5) and 18.20.030 (I)(5)).

The following are some examples of marketing events, including cultural and social events that the County considers directly related to education and development of consumers. These events fall within the definition of “marketing of wine.” In each case, the example describes the intent of the event, the wine-related content, and the non-wine related content.

1. A winery invites 250 members of their wine club to the winery for a special harvest musical event. Catered food is served, the previous year’s vintage is tasted from the barrel, and a string quartet performs.
2. Every year on December 5, a winery throws a Repeal Party for 100 invited distributors, wine shop owners, restaurant owners, and wine writers. No presentations are made, winemaking is not formally discussed, no food is served, but copious amounts of wine are consumed.
3. On Arbor Day, a winery owner invites 15 of her closest friends (many, but not all, of whom are regular purchasers of her wine) to a special luncheon event. Guests assemble around a heritage oak, various smoked and wood-grilled foods are served; the event culminates in the opening of the winery’s ultra rare Arbor Day Cuvee, a cabernet sauvignon that has been aged for three years in untoasted oak barrels.

Examples of cultural and social events that are not permitted include weddings, wedding rehearsals, anniversary parties, and similar events where the education and development of consumers is subordinate to non-wine-related content.

The following are some examples of business events that the County considers directly related to education and development of consumers, and therefore fall within the

definition of “marketing of wine.” In each case, the example describes the intent of the event, the wine-related content, and the non-wine related content.

1. A three hour (total) tour of the winery and private tasting event is provided for employees of a national bank. Half of the event is taken up by the regional bank manager delivering a speech addressing business prospects for the coming year.
2. The COO of a Rutherford winery leads a tour of the facility’s state of the art energy efficiency and wastewater recycling programs and hosts a round table discussion about green house gas reduction efforts in the County which includes County staff, Sacramento lawmakers, and local business leaders. The afternoon ends with a wine and cheese reception featuring the winery’s biodynamically certified wines.
3. A half-day corporate retreat for a San Rafael-based software firm’s 35-member account management group. From 10 to 1 they enjoy a tour of the cellars, a tasting, and a winemaker-hosted blending lab. From 1 to 2 there is a buffet luncheon featuring estate-produced wines; over lunch the group discusses the technical aspects of the firm’s new 3D rendering tool.

Examples of business events that are not permitted include non-winery related staff meetings, conferences, shareholder meetings, and similar events where the education and development of consumers is subordinate to non-wine-related content.

The above examples are provided for guidance only. They are not intended to constitute an exhaustive list of all cultural, social, or business marketing events which are either consistent with or inconsistent with the “marketing of wine.”

Under no circumstances may winery facilities be rented out to third parties as venues for parties, meetings, or events the way that restaurants or hotels might rent their banquet halls or meeting rooms.

II. Conversion of Existing Structures:

To discourage property owners from constructing residences and barns with the express intent of converting them to wineries, the County does not generally support use permit proposals seeking to convert existing buildings to winery use if the buildings have been constructed or substantially modified within the last 5-7 years.

III. The Appropriate Intensity of Marketing Programs:

To ensure that the intensity of winery activities is appropriately scaled, the County considers the remoteness of the location and the amount of wine to be produced at a facility when reviewing use permit proposals, and endeavors to ensure a direct relationship between access constraints and on-site marketing and visitation programs.

IV. Annual "Spot" Audits:

The Conservation, Development and Planning Department's code enforcement program is generally complaint-driven; however the Department and the Planning Commission will continue their practice of encouraging compliance with winery production volumes by annually auditing a random sample of permitted wineries, using data provided by the wineries to State and federal agencies. As staffing allows, the annual "spot" audit may be expanded to consider compliance with winery visitation and marketing programs using data collected by the wineries in conformance with their conditions of approval.

V. Temporary Certificates of Occupancy:

The Building Department will continue their practice of allowing new wineries to produce wine after a temporary certificate of occupancy (TCO) has been granted, and to prohibit wineries from opening to the public for tours and tasting or for marketing events until they have a final certificate of occupancy. TCOs are generally not to be used to allow production of wine for more than one year.

Last Amended: May 11, 2010