

## STAFF REPORT to the PLANNING COMMISSION

For the May 1, 2017 Public Hearing

### WINERY PROVISIONS

(CASE FILE: PC -2017-7341)

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#### 1.0 BACKGROUND

State law has listed wineries as a permitted use in the EFU zone for many years, but statutory regulations relating to agri-tourism and other commercial events at wineries were only added in 2011 and 2013. These regulations expanded the list of allowable activities that wineries can conduct, set standards for some of these activities, and made a distinction between a “winery” and a “large winery”. In general, state law allows wineries to have a broader range of agri-tourism and other commercial activity than either the farm stand or stand alone agri-tourism statutes allow.

Because there are only a few, very small wineries in rural Multnomah County, they did not receive the attention that farm stands and agri-tourism received when developing Comprehensive Plan policies. However, the Community Advisory Committee for the Plan update decided that the policy on farm stands served as a good model to apply to winery operations as well, and so the Plan policy on wineries is quite similar to that on farm stands. The policy pertaining to wineries is shown in Attachment A. Although this policy mirrors that for farm stands, the actual code provisions for wineries deviate substantially from farm stands in order to comply with the winery statute’s broader scope and prescriptive nature.

#### 2.0 PROPOSED CODE AMENDMENTS

Along with agri-tourism and farm stand amendments, the Planning Commission held work sessions on the draft winery amendments on December 5, 2016 and January 27, 2017. Several changes were made to the draft at the Planning Commission’s request. However, at the last work session, the Planning Commission was informed that County legal counsel had not yet completed its review of the draft winery amendments and that other changes may be needed to ensure compliance with the rather complex winery statute.

Based on legal counsel’s completed review, the proposed code amendments are substantially different from what the Planning Commission saw at its work sessions. In general, they have been revamped to better align with statutory requirements for wineries (ORS 215.452). The change consists primarily of the following:

- “Agri-tourism or other commercial events” at wineries is listed as a separate review use subject to its own set of standards.
- Standards specific to operation of a winery have been separated out as its own section.
- Consistent with statute, all of the uses and activities allowed in conjunction with a winery have been listed as its own section.
- The standards for winery-related agri-tourism or other commercial events have been reconstructed for consistency with the statute’s mandatory and discretionary provisions.
- Provisions pertaining to “large wineries”, as defined in statute, have been removed because the large wineries statute (ORS 215.453) is much more prescriptive and does not allow for local discretionary standards the way the wineries statutes does.

There were two noteworthy revisions that the Planning Commission requested to the work session draft: 1) similar to what is proposed with farm stands, include a standard that two acres is the maximum land area that a winery and its associated permanent parking can occupy; and, 2) add language to the “winery” definition to make it clear that the wine must be produced from grapes (as opposed to fruit and berry wines).

The proposed amendments do not include a maximum land area standard for the winery because legal counsel concluded it may contravene statutory language limiting siting standards to those listed in the statute. But language clarifying that a winery must produce wine from grapes has been included with the proposed amendments.

### **Summary of Amendments**

The major elements of the proposed code amendments relating to wineries are summarized as follows:

- Adds “large winery” and winery related agri-tourism or other commercial events as review uses in the EFU zone.
- Incorporates the definitions of “winery”, “large winery” and “agri-tourism or other commercial events” from statute (ORS 215.452 and 215.453).
- Incorporates the standards from statute for establishment and operation of a winery.
- Establishes minimum parking standards for wineries and their associated activities.
- Incorporates from statute the list of uses and activities allowed in conjunction with a winery.
- Consistent with statute, sets Type I review licensing requirements for up to six days of winery-related agri-tourism or other commercial events and Type II review permitting requirements for 6 to 18 days of such events.
- Limits events to the hours of 8:00 AM to 9:00 PM.
- Sets the maximum land area that can be used for temporary event parking as five acres or five percent of the winery tract, whichever is less.

- Sets a noise limit of 60 decibels at the property lines and allows amplified sound only between 9:00 AM and 8:00 PM.
- Establishes requirements for traffic management, sanitation facilities and solid waste.
- Prohibits gravel surfacing of temporary parking areas or to be otherwise rendered unusable for agriculture.
- Prohibits a winery that conducts agri-tourism or other commercial events authorized by the winery statute from also conducting agri-tourism events authorized by the agri-tourism statute.

## Proposed Zoning Code Amendments

**Staff Note:**

Existing text to be deleted is shown with ~~strikeout~~.

New text being added is shown with **bold underline**.

**§ 33.0005 DEFINITIONS**

**§ 34.0005 DEFINITIONS**

**§ 35.0005 DEFINITIONS**

**§ 36.0005 DEFINITIONS**

As used in this Chapter, unless the context requires otherwise, the following words and their derivations shall have the meanings provided below.

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**Large Winery --**

**(A) A farm operation that owns and is sited on a tract of 80 acres or more, at least 50 acres of which is a vineyard; and**

**(B) The winery owns at least 80 additional acres of planted vineyards in Oregon that need not be contiguous to the acreage described in subsection A of this definition; and**

**(C) The winery has produced annually, at the same or a different location, at least 150,000 gallons of wine from grapes in at least three of the five calendar years before the winery is established as a large winery.**

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## **EFU Review Uses in Chapters 33, 34, 35, and 36**

**§ 33.2625 REVIEW USES**

**§ 34.2625 REVIEW USES**

**§ 35.2625 REVIEW USES**

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**(H) A winery, as described and regulated in ORS 215.452, and subject to MCC 33(34, 35).6800 – 33(34, 35).6820, including uses and activities listed in 33 (34, 35).6815.**

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**(S) A large winery, as described and regulated in ORS 215.453.**

**(T) A winery may carry out up to 18 days of agri-tourism or other commercial events in a calendar year on the tract occupied by the winery, subject to MCC 33(34, 35).6820.**

### **§ 36.2625 REVIEW USES**

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**(H) A winery, as described and regulated in ORS 215.452, and subject to MCC 36.6800 – 36.6820, including uses and activities listed in 36.6815.**

• • •

**(T) A large winery, as described and regulated in ORS 215.453.**

**(U) A winery may carry out up to 18 days of agri-tourism or other commercial events in a calendar year on the tract occupied by the winery, subject to MCC 36.6820.**

***Staff Note:  
The following text is all new and would be added to MCC Chapters 33, 34, 35 and 36.***

## **WINERIES**

### **33 (34, 35, 36).6800 Purposes**

The purposes of these regulations are to establish standards for siting wineries in accordance with the provisions of ORS 215.452 and to specify the uses and activities that may be conducted as part of a winery. Other purposes are to regulate the area, location, design, and function of agri-tourism or other commercial events at wineries to the extent allowed by law in order to retain a maximum supply of land in agricultural production, to ensure public health and safety, to minimize impacts on nearby farming operations, residents, roads, traffic circulation, wildlife and other natural resources, and to maintain the rural character.

### **33 (34, 35, 36).6805 Definitions**

As used in MCC 33(34, 35, 36). 6800 through 33(34, 35, 36).6820:

(A) “Agri-tourism or other commercial events” includes outdoor concerts for which admission is charged, educational, cultural, health or lifestyle events, facility rentals, celebratory gatherings and other events at which the promotion of wine produced in conjunction with the winery is a secondary purpose of the event.

(B) “On-site retail sale” includes the retail sale of wine in person at the winery site, through a wine club or over the Internet or telephone.

(C) “Winery” means an operation with a maximum annual production of:

(1) Less than 50,000 gallons of wine from grapes and:

- (a) Owns an on-site vineyard of at least 15 acres;
  - (b) Owns a contiguous vineyard of at least 15 acres;
  - (c) Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or
  - (d) Obtains grapes from any combination of subsection (C)(1) (a), (b) or (c) of this section;
- or

(2) At least 50,000 gallons of wine from grapes and the winery:

- (a) Owns an on-site vineyard of at least 40 acres;
- (b) Owns a contiguous vineyard of at least 40 acres;
- (c) Has a long-term contract for the purchase of all of the grapes from at least 40 acres of a vineyard contiguous to the winery;
- (d) Owns an on-site vineyard of at least 15 acres on a tract of at least 40 acres and owns at least 40 additional acres of vineyards in Oregon that are located within 15 miles of the winery site; or
- (e) Obtains grapes from any combination of subsection (C)(2)(a), (b), (c) or (d) of this section.

### **33 (34, 35, 36).6810 Standards for Establishment and Operation of Wineries**

A winery authorized under MCC 33(34, 35, 36).2625(H) shall comply with the following:

(A) The applicant shall show that vineyards described in MCC 33(34, 35, 36).6805(C) have been planted or that the contract has been executed, as applicable.

(B) For the sole purpose of limiting demonstrated conflicts with accepted farming or forest practices on adjacent lands:

(1) There must be a setback of at least 100 feet from all property lines for the winery and all public gathering places unless an adjustment or variance allowing a setback of less than 100 feet is granted.

(2) The winery shall have direct access onto a public road. Internal vehicle circulation shall avoid conflicts with accepted farming or forest practices on adjacent lands.

(C) In addition to the off-street parking and loading standards of MCC 33(34, 35, 36).4100 through 33(34, 35, 36).4210, a winery shall provide minimum required off-street parking spaces for all activities or uses of the lot, parcel or tract on which the winery is established in accordance with the following:

Winery (production, bottling and storage)	One space for each two employee positions on the largest shift.
Areas for use by or for patrons, including tasting room, reception area and retail sales	One space for each 300 square feet of gross floor area.
Agri-tourism or other commercial events	One space per each 2.5 expected attendees. The total area provided for event parking shall be based on a ratio of 300 square feet for every 2.5 persons anticipated.

**33(34, 35, 36).6815 Uses and Activities in Conjunction with a Winery**

(A) In addition to producing and distributing wine, a winery authorized under MCC 33(34, 35, 36).2625(H) may engage in the following uses and activities subject to the standards in MCC 33 (34, 35, 36).6810 and the applicable standards in this section:

- (1) Market and sell wine produced in conjunction with the winery.
- (2) Conduct operations that are directly related to the sale or marketing of wine produced in conjunction with the winery, including:
  - (a) Wine tastings in a tasting room or other location on the premises occupied by the winery;
  - (b) Wine club activities;
  - (c) Winemaker luncheons and dinners;
  - (d) Winery and vineyard tours;
  - (e) Meetings or business activities with winery suppliers, distributors, wholesale customers and wine-industry members;
  - (f) Winery staff activities;
  - (g) Open house promotions of wine produced in conjunction with the winery; and
  - (h) Similar activities conducted for the primary purpose of promoting wine produced in conjunction with the winery.
- (3) Market and sell items directly related to the sale or promotion of wine produced in conjunction with the winery, the marketing and sale of which is incidental to on-site retail sale of wine.
  - (a) Items allowed to be marketed and sold under this subsection (A)(3) of this section include food and beverages:
    - (i) Required to be made available in conjunction with the consumption of wine on the premises by the Liquor Control Act or rules adopted under the Liquor Control Act; or
    - (ii) Served in conjunction with an activity authorized by subsection (A)(2), (A)(4), or (A)(5) of this section.

(b) A winery may include on-site kitchen facilities licensed by the Oregon Health Authority under ORS 624.010 to 624.121 for the preparation of food and beverages described in this subsection (A)(3) of this section. Food and beverage services authorized under this subsection (A)(3) of this section may not utilize menu options or meal services that cause the kitchen facilities to function as a café or other dining establishment open to the public.

(4) Carry out agri-tourism or other commercial events on the tract occupied by the winery, subject to the provisions in MCC 33 (34, 35, 35).6820.

(5) Host charitable activities for which the winery does not charge a facility rental fee.

(B) The gross income of the winery from the sale of incidental items or services provided pursuant to subsection (A)(3), (A)(4) and (A)(5) of this section may not exceed 25 percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery. The gross income of a winery does not include income received by third parties unaffiliated with the winery. A winery shall submit a written statement that is prepared by a certified public accountant and certifies the compliance of the winery with this subsection for the previous tax year.

(C) When a bed and breakfast facility is sited as a home occupation within a lawfully established dwelling on the same tract as a winery established under MCC 33(34, 35, 36).2625(H) and in association with the winery:

(1) The bed and breakfast facility may prepare and serve two meals per day to the registered guests of the bed and breakfast facility; and

(2) The meals may be served at the bed and breakfast facility or at the winery.

### **33(34, 35, 36).6820 Standards for Agri-Tourism or Other Commercial Events at Wineries**

Agri-tourism or other commercial events carried out by a winery as authorized by MCC 33(34, 35).2625(T) [36.2625(U)] shall be subject to the following:

(A) Events on the first six days of the 18-day limit per calendar year are authorized through the issuance of a renewable multi-year license that:

(1) Has a term of five years; and

(2) Is subject to a Type I administrative review to determine necessary conditions pursuant to subsection (E) of this section.

(B) The decision on a license under subsection (A) of this section is not:

(1) A land use decision, as defined in ORS 197.015, and is not subject to review by the Land Use Board of Appeals.

(2) A permit, as defined in ORS 215.402.

(C) Events on days seven through 18 of the 18-day limit per calendar year are authorized through the issuance of a renewable multi-year permit that:

(1) Has a term of five years;

(2) Is subject to a Type II administrative review to determine necessary conditions pursuant to subsection (E) of this section; and

(3) Is subject to notice as specified in ORS 215.416(11).

(D) The decision on a permit under subsection (C) of this section is:

(1) A land use decision, as defined in ORS 197.015, and is subject to review by the Land Use Board of Appeals.

(2) A permit, as defined in ORS 215.402.

(E) As is necessary to ensure that agri-tourism or other commercial events on a tract occupied by a winery are subordinate to the production and sale of wine and do not create significant adverse impacts to uses on surrounding land, the following standards shall apply to a license or permit issued pursuant to subsection (A) or (C) of this section:

(1) Hours of Operation: Events shall begin no earlier than 8:00 AM and shall conclude no later than 9:00 PM.

(2) Parking and Traffic Management: Events shall comply with the following:

(a) The event will be conducted in compliance with a parking plan approved by the Planning Director. All event parking shall be accommodated on the tract; off-tract parking is prohibited. The amount of land used for parking associated with agri-tourism or other commercial events at wineries shall be the minimum necessary to accomplish the objective of supporting winery operations on the property and retaining farm land in production. The amount of land used for temporary event parking, shall not exceed five percent or five acres of the tract on which the winery is located, whichever is less.

(b) The event will be conducted in compliance with a traffic control plan providing safe and efficient on-site and off-site traffic management approved by the County Engineer, unless the County Engineer finds that a traffic control plan is unnecessary due to the nature of the event or finds that the characteristics of the tract or any other factor inherently ensures that traffic circulation and management will occur in a safe manner.

(c) Temporary parking for agri-tourism and other commercial events shall use areas on the property that are not high-value soils if available, but if lacking these soils, temporary parking may use farmed areas of the property that have already been harvested or on areas

that were not farmed during the current growing season. The temporary parking area shall not be graveled or otherwise rendered less productive for agricultural use in the following growing season.

(3) Noise Management: No artificial amplification of music or voices shall occur before 9:00 AM or after 8:00 PM. At no time shall the event generate noise above 60 dB(A) (decibels adjusted) at the property lines. (Note: The sound intensity of 60 decibels is comparable to conversations in a public place like a restaurant.)

(4) Sanitation Facilities: Sufficient restroom facilities meeting County health standards for the expected number of attendees shall be provided.

(5) Solid Waste: The event will be conducted in compliance with a solid waste plan that explains how solid waste generated by the event will be collected and disposed of at a Metro designated regional solid waste facility.

(F) If a winery conducts agri-tourism or other commercial events authorized by ORS 215.452(5) and MCC 33(34, 35).2625(T) [36.2625(U)], the winery may not conduct agri-tourism or other commercial events or activities authorized by ORS 215.283 (4) and MCC 35.2620(BB), 35.2625(S), 36.2620 (BB) or 36.2625(T).

<b>3.0 ATTACHMENTS</b>
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Attachment A -- Comprehensive Plan policies pertaining to wineries