



Meeting Date: September 21, 2010

Agenda Item: 8

Reviewed by Town Manager:

m. [signature]

Yountville Town Council Staff Report

TO: Mayor and Town Council

FROM: Bob Tiernan, Planning Director
Sandra Smith, Associate Planner
Matthew Gorman, Assistant Town Attorney

SUBJECT: Wine Tasting Rooms – Town Council Discussion

BACKGROUND/DISCUSSION

At the Town Council meeting of September 7, 2010, the Council heard a request for a wine tasting room and winery, which renewed a discussion of whether Yountville has reached its saturation point for tasting rooms. At that meeting, the Council directed staff to schedule a discussion of tasting rooms for the next Council meeting in order to further review the issue.

As a reminder, over the last four years, there has been a dramatic increase in requests to establish wine tasting rooms in all of Yountville's commercial zoning districts (Primary Commercial, Residential-Scaled Commercial, and Old Town Commercial). During this time, the Town has seen Hill Family, Hope & Grace, Ma(i)sonry, Girard, Verismo, Cornerstone Cellars, Page Cellars, and Somerston locate in Town and, to date, Yountville is home to a total of twelve wine tasting establishments.

In February 2009, a citizen petition was submitted to the Council requesting adoption of a policy limiting the number of wine tasting rooms and wine bars. In response to the proliferation of existing and proposed wine tasting rooms and the monoculture that was developing, in May 2009, the Council adopted a retail diversity policy. The policy was intended as a means to achieve a diverse and interesting commercial retail base.

Other than the retail diversity policy noted above, the Council has not imposed other restrictions on tasting rooms. Accordingly, staff continues to process requests for wine tasting rooms and present them to Council for review and approval on a case-by-case basis. Recently, as evidenced both at Council meetings and in the local newspaper, there has been an increase in the number of residents expressing a belief that the wine tasting room saturation point has been reached.

Presently, there are two conceptual requests for wine tasting rooms before the Council, but formal applications for the use have yet to be made. One of the conceptual proposals is the wine tasting room and market/café noted above: a redevelopment of the property at 6752 Washington Street, the site of McGraths Garage and Napa Valley Aloft. The other conceptual proposal is the wine tasting room and furniture showroom that is behind the request to rezone and redevelop the property located at 6548 Washington Street, the residential parcel south of Gates Estates. If approved, these two wine tasting rooms would bring the total number of such establishments in Town to fourteen.

The vacant parcel north of the Somerston tasting room represents a potential site that could be developed with wine tasting room use. Another potential option is the vacant Vita restaurant site if the permitted use is abandoned, although the Town has no indication that this is probable or even possible. These are the only two vacant sites in town, but an opportunity for new wine tasting rooms always exists

in any of the existing vacant tenant spaces, including Washington Square, Edward James Courtyard, V Marketplace, or Piazza Quercia. While the availability of these spaces tends to be in short supply, they do become available from time to time.

The only other remaining option for new wine tasting rooms would be underutilized parcels that represent redevelopment opportunities, which could include the West American Bank or Panchas properties. As the town nears build-out these properties are included as potential opportunities, but staff notes that any future redevelopment depends on the current owners' plans for the properties.

History of Wine Tasting in Yountville. Napa Valley's reputation as a world-class wine region and Yountville's growing importance as a culinary center are factors that make Yountville a desirable location for the wine tasting room use, particularly for wineries that custom crush and are without a set location elsewhere in Napa County. Some tasting rooms are affiliated with wineries, others are wine shops with tastings, and others combine wine tasting with one or more additional retail activities. As noted above, there are currently a total of twelve tasting rooms in Yountville.

Wine tasting is an extension of local agritourism in that it provides an outlet for sampling the County's most important crop. Generally, the basic intention of the use is to sample and learn about wines offered with the option of purchase. Wine tasting in Yountville is similar to tastings at wineries in the County, the purpose of which is to taste and acquire information about the wines offered for sale. In some cases multiple wineries offer wines for tasting at one tasting room (i.e. Ma(i)sonry). The sampling and educational aspect of wine tasting distinguishes it from restaurants and wine bars. As noted above, the use is occasionally and, based on the retail diversity policy, increasingly linked to another retail activity in addition to wine tasting, such as olive oil or antique sales.

"Wine Tasting Room" is not specifically defined in the Zoning Ordinance and the use is grouped under the broader retail use category. All requests for wine tasting rooms are considered during the use permit process. While no wine tasting rooms have been denied to date, the discretionary nature of the permit allows the Council to approve or deny the use based on the findings applicable to the specific site.

The winery concept that was brought before the Council at the last meeting is a manufacturing or production use that is not generally permitted in the Town's commercial zoning district. In order to locate in one of the Town's commercial districts, a finding would need to be made that a winery is a commercial use, which the Council rejected at the noted meeting.

Considerations During the Entitlement Process. Since all wine tasting rooms are allowed with a use permit only, the scope of operations is reviewed and conditioned during the entitlement process. Some of the considerations that the Town looks at during the entitlement process are mentioned in the following paragraphs.

Source of Grapes. There are no Town restrictions regarding the source of the grapes used in the production of the wines offered such as being from the Yountville appellation or within a local district or geographic area. While some members of the Council have expressed the opinion that local sourcing of the grapes should be a requirement, no regulations require that a certain percentage of the grapes be local.

Scope and Hours of Operation. Wine tasting usually operates on a drop-in basis, however, some businesses also operate on an appointment basis. When operated by appointment or invitation, control over the number of clients expected and duration of the event is possible.

Closing hours for daily wine tasting in the County is usually at approximately 5:00 p.m. Within Town, while wine tasting room closing times vary, they tend to be later and, in some cases, operate until 10:00 p.m. (Ma(i)sonry and Somerston).

Food and Wine Pairings. Some of the entitled wine tasting rooms offer food/wine pairings, generally limited to cheese and crackers or charcuterie, and in most cases these pairings must be pre-packaged, but some tasting rooms are permitted to serve catered appetizers on a daily basis. Catered meals are always reserved for special events (see below).

Special Events. In addition to sampling and receiving information about wines that are offered, applications are frequently accompanied by requests for special events associated with the tasting

experience, either private events with an attendance limit or open to the public without such a limit. The special events include, but are not limited to, food/wine pairings, private dinners, release parties, barrel tastings, and blending seminars, all of which are in addition to the routine wine tasting activity.

Food is either catered or prepared on-site, either at an outdoor grilling area or in a facility kitchen, which is not the usual case. It is important to note that when food is offered at a special event that is open to the public, the food service exceeds the normal restriction on food/wine pairings that accompanies the daily wine tasting use and somewhat blurs the everyday experience from the special event experience.

Depending on the site, the requests for special events may include outdoor activities that may continue into the evening or nighttime hours. Less frequent are requests to include music with such events, such as Somerston's Thursday Night Live series that occurs throughout the summer. Occasionally, tents are requested to be erected for special events.

Staff has classified special events into two types, minor and major. The frequency of occurrence for each of these event types varies with requests for minor special events being 12 to 24 times per year and major special event occurring perhaps one to four times per year. The frequency depends on the applicant's business plan and the capabilities of the building and site.

The impacts from such events typically are concerned with parking adequacy, noise disturbance if outdoors, and perhaps the necessity for providing additional facilities such as portable toilets. If the frequency of special events is very high and includes food service, there may be a concern that the use is similar to a restaurant.

Experience in dealing with requests for special events has indicated that a level of flexibility is desirable by the applicant since the scope of the activities that take place is often honed post-approval and in response to the operational logistics of the business. Given this evolving nature of wine tasting businesses in Town, staff would support approval of special events on an annual review basis.

Department of ABC. It should be noted that currently Alcohol Beverage Control requires a local Finding of Public Convenience or Necessity for new alcohol licenses (applicable to restaurants and bars) due to the overconcentration of liquor licenses for Yountville's population and geographic area. This finding, however, does not need to be made for wine tasting rooms.

TOWN ATTORNEY ON MORATORIA

The following discussion addresses the process for Council to impose a moratorium on the establishment of new wine tasting establishments within the Town.

SUMMARY

1. A moratorium may be adopted by four-fifths vote of the Council, lasts for an initial period of 45 days, and may be extended to last a maximum of two years.
2. Specific findings must be made which indicate that **current** and **immediate** threats to public health, safety, or welfare are posed, and the record must provide evidence substantiating these findings.
3. If Council wishes to consider adopting a moratorium to prohibit new wine tasting establishments, evidence concerning such issue should be evaluated at the next possible regular meeting or special meeting for evaluation and action.

GENERAL PROCEDURES

California law provides two options for soothe council to adopt a moratorium:

1. **Urgency Measure:** Council may adopt an urgency measure to prohibit "any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the [Council] is

considering or studying or intends to study within a reasonable time.” Adoption of a moratorium under this provision entails the following:

- a. Procedures typically required for adoption of zoning ordinances are **not** required (*i.e.*, standard notice and publication may be bypassed).
 - b. A **four-fifths** vote of the Council is required.
 - c. Initially, the moratorium may last no more than **45 days** from adoption.
 - d. However, upon holding **properly-noticed public hearings** and approval by **four-fifths vote**, Council may extend the moratorium as follows: (i) initially, for **10 months and 15 days**; and (ii) subsequently, for **one additional year**.
2. **Standard Measure:** As an alternative to the procedures above, Council may adopt the moratorium as a non-urgency ordinance, subject to the following requirements:
- a. Proper notice (*e.g.*, newspaper publication) and a public hearing is required.
 - b. A **four-fifths** vote of the Council is required.
 - c. Initially, the moratorium may last no more than **45 days** from adoption.
 - d. Subsequently, upon holding **properly-noticed public hearings** and approval by **four-fifths vote**, Council may extend the moratorium for **22 months and 15 days**.

FINDINGS REQUIRED

Under either procedure, specific findings must be made in order to justify imposition of the moratorium. In particular, Council must find:

“[T]hat there is a **current and immediate threat to the public health, safety, or welfare**, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for use which is required in order to comply with a zoning ordinance **would result in that threat to public health, safety, or welfare**.” [Gov’t Code § 65858(c) (emphasis added).]

Furthermore, California law requires Council to explain, prior to the expiration of the moratorium, the measures taken by the Town to address the matters which necessitated it:

“Ten days prior to the expiration of that interim ordinance or any extension, the [Council] shall issue a **written report** describing the **measures taken** to alleviate the condition which led to the adoption of the ordinance.” [Gov’t Code § 65868(d) (emphasis added).]

A moratorium is intended to place pending applications temporarily “on-hold” so that local agencies can develop regulations which address impacts which had theretofore not been developed. In essence, the moratorium “buys time” so that alternatives can be thoughtfully considered and regulations developed without the threat of pending applications. Once the regulatory provisions are developed, the applications will be resumed and subjected to the new regulatory requirements.

CONSIDERATIONS FOR WINE TASTING MORATORIUM

Assuming proper procedure is followed, either option listed above (*i.e.*, either urgency or standard measure) may be utilized by the Council to impose a moratorium against the operation of new wine tasting establishments. The critical requirement will be ensuring that there is sufficient evidence to

support the necessary findings required to adopt the moratorium. Broken into its necessary components, for a moratorium to be justified evidence must exist which shows:

- There is a *current* and *immediate* threat posed by wine tasting establishments (e.g., evidence shows that multiple applications for the entitlement of wine tasting establishments are currently pending, or that such applications are expected very soon).
- New wine tasting establishments pose a threat to *public health, safety, or welfare* (e.g., evidence shows that there is some public danger or harm posed by the opening of new wine tasting establishments in the Town, some threat *public safety*, or similar negative impact on the Town).
- Threats to public health, safety, or welfare would be realized if new wine tasting establishments are opened (e.g., evidence shows that the threat to public welfare actually materialize if the moratorium is not adopted).

IMPLEMENTING THE MORATORIUM

Assuming that the procedures, findings, and other requirements for establishing a moratorium on new wine tasting establishments are followed, the Town would then need to proceed to develop a comprehensive scheme to regulate those uses. This may include such things as:

- Revisions to the Zoning Ordinance and zoning requirements applicable to wine tasting establishments;
- Amending land use designations in the General Plan or rezoning property to address wine tasting establishments;
- Establishing uniform policies on business operations for wine tasting establishments (e.g., hours of operation, limitations on square footage, retail requirements, etc.);
- Addressing preexisting wine tasting establishments (e.g., "grandfathered" sites); and
- Addressing potential conflicts with ABC license privileges.

During this period, staff may engage in outreach with businesses and residents, hold informational or information-gathering meetings, solicit input from other jurisdictions, and assess legal- and planning-related issues concerning proposed revisions to existing Town regulations.

Council should note that restrictions on wine tasting rooms must conform with State ABC requirements. As regulations are considered, staff and Council would consider whether final regulations could conflict with ABC authority and adjust the regulations, accordingly.

In keeping with the general purpose for the moratorium, proposed options for a final Ordinance to regulate wine tasting rooms would be brought back to Council prior to the expiration of the moratorium.

CONCLUSION

The steps to adopt a moratorium are relatively simple, but sufficient findings and evidence must exist for the moratorium to be valid. We recommend that these issues be considered prior to bringing any proposal for a moratorium on new wine tasting establishments to Council.

DISCUSSION

The fundamental question before the Town Council is whether wine tasting room applications should (1) continue to be processed on a case-by-case basis, or whether (2) the use should be restricted or limited in some way such as requiring that a greater percentage (say 50%) of floor space be devoted to a secondary retail item or requiring that wine tasting be subordinate and secondary to the primary use, or (3) by imposing a cap limiting the total number of tasting rooms to a set number. The answer to this question is important given that there are not many opportunities for new wine tasting rooms to locate on vacant or redeveloped land, especially if the Council were to approve the two wine tasting rooms that are currently in the conceptual stage of planning.

Currently, the specific details of the wine tasting use (including special events, hours of operation, outdoor activities, etc.) are detailed in the staff report and are specifically approved in the resolution by the Town Council for each use on a case-by-case basis. Consideration of the tasting room uses on this basis may be deemed acceptable and require no changes in the current review process. It is important to note that all applications for wine tasting rooms require approval of a conditional use permit, a discretionary action by the Council that can be approved or denied given the appropriate findings. While the Council has not yet denied a wine tasting room, it could deny the use permit where it determines that, based on a specific site or setting, the impacts are too great and cannot be mitigated. If the basis of denial were consistently to be that there are too many wine tasting rooms in Town, then a cap is indicated as the best solution.

If it is deemed necessary or desirable to allocate tasting room space through zoning regulations the mechanisms may include regulations that limit tasting room hours of operation, food service, outdoor activities, or the number and nature of special events. It is also possible to limit the amount of total commercial square footage allocated to this use within Town, limit the percentage of floor area within a given building or project, set a distance requirement between tasting room uses, require a greater percentage of secondary retail, require that the wine tasting be subordinate and secondary to the primary use, or determine that a cap on the maximum number of such uses should be implemented.

If the Council determines that the regulations on wine tasting rooms should be modified pursuant to the options detailed in the paragraph above, the Council may want to consider a moratorium. If a moratorium were to be in place, the two requests for wine tasting rooms noted above would be put on hold while the Council develops policies to regulate wine tasting rooms, including possibly setting a cap for this use.

If the Council determines that a cap is the best solution, it would need to be supported by findings as outlined in the Town Attorney's section of the staff report. If overconcentration or oversaturation of wine tasting establishments, based on alcohol consumption, is the foundation of the moratorium, the finding could have unintended consequences on other alcohol serving uses, like restaurants. If, however, the oversaturation determination is specifically and narrowly construed to the wine tasting room "use," this issue may be eliminated. Then, the number that sets the cap will need to be determined, which could be the existing twelve tasting rooms that are currently in Town. Alternately, it may include the two conceptual tasting rooms that are in the conceptual stage, for a cap of fourteen and representing a near build-out of Town. This would be an item for further discussion if a cap is deemed the appropriate route.

If a cap is set, consideration must be given to the situation where an entitled and operating tasting room wishes to relocate elsewhere within a commercial center or to another location in Town. In this case, both the ABC license and the use permit should probably be transferable to the new location, with the use being considered one of the uses permitted under whatever cap is established, rather than being considered a new use that would come under the new provisions. Also, it is important to note that if a cap were placed on the number of tasting rooms in Town, the existing uses would increase in value. Rather than discontinuing a use under an existing permit, the holder of the permit would be in a position to "sell" the use permit to the highest bidder.

The Town would need to establish a clear definition of a "tasting room" that would be affected by a moratorium or cap. The reason is to distinguish between wine tasting establishments where the wine tasting is the primary use (i.e. wine tasting room) and those where it is incidental or secondary to another established retail use, such as Napa Style. If wine or other alcohol consumption itself is the trigger, the regulations could be overly broad and capture more businesses than intended.

ALTERNATIVES

There are three alternatives available to the Council regarding the processing of applications for wine tasting room uses, as follows:

1. Continue to review applications on a case-by-case basis, realizing that since it is a discretionary action, the use could be approved or denied.
2. Create regulations that restrict or limit wine tasting room uses, including limiting tasting room hours of operation, food service, other activities, or special events; limiting the amount of total square footage allocated to wine tasting room uses throughout Town; limiting the percentage of floor area within a given building or project; setting a distance requirement between tasting room uses; requiring a greater percentage of secondary retail; or requiring that wine tasting be subordinate and secondary to the primary use. If this option is selected then we should renew the discussion regarding definition of uses. A moratorium on the processing of current applications is an avenue open to Council during this time so that the necessary policies can be created before any new decisions on wine tasting uses are made.
3. Determine that a cap on the maximum number of wine tasting uses should be set. Again, a moratorium on the processing of current applications is an option open to Council during this time so that the necessary policies can be created before any new decisions on wine tasting uses are made.

RECOMMENDATION

1. Receive staff report, discuss, and provide direction to staff.