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Planning, Building & Environmental Services

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## USE PERMITS & MODIFICATIONS

### FAQ

#### Planning, Building and Environmental Services Department

**\*\*\*DISCLAIMER: A number of code sections are referenced and quoted in this document. When going through the Use Permit process, please consult a given code section in its entirety, and not merely an isolated excerpt.\*\*\***

#### What is a Use Permit?

While Napa County allows a number of uses “by right” in specific zoning districts county-wide (including, for instance, single-family residences and many agricultural structures), many uses in most zoning districts require a Use Permit. Use Permits are discretionary and are reviewed and acted on by either the Zoning Administrator or the Napa County Planning Commission and all Use Permits include a scope of the approved use, as well as conditions imposed by the County on that approved use. The scope of a Use Permit is a highly detailed description of the permitted use, including all of the buildings, facilities, and infrastructure which will be a part of the operation. These detailed descriptions allow the Planning Commission and Zoning Administrator to ensure consistency with applicable zoning and General Plan requirements, as well as to meet the County’s obligations under the California Environmental Quality Act (CEQA); they also serve a vital record-keeping function allowing the County to maintain up-to-date information about the activities occurring within its boundaries and to better plan for future development. For example, a Winery Use Permit would include its allowed annual wine production, visitation and marketing activities, the size of its visitor parking lot, and the square footage of its tasting room, production areas, and many other items. Two additional Winery Use Permit process types were added in 2020 – Small Winery Exemption (for existing wineries with a Certificate of Exemption) and in 2022 – Micro Winery (for small family farm wineries). Similarly, a Use Permit for lodging, a church, or an office building might describe the number of visitor rooms, church service attendance and hours, other on-site activities, the building size, the number of parking spaces, and building’s architectural details. To implement the County’s Conservation Regulations, a Use Permit may include the granting of an exception to a stream or an ephemeral/intermittent stream setback or slope regulation. It is the Use Permit scope, along with any conditions of approval adopted by the Planning Commission or Zoning Administrator, which actually constitute the entitlements granted through the formal Use Permit.

- **Types of Use Permits:**
  - Winery Uses
    - New Winery [NCC Chapter 18.124]:
      - To establish a new winery of any size with employees, tours and tastings and marketing activities based upon review of infrastructure capacity limitations such as groundwater, wastewater, and traffic, etc.
      - Subject to CEQA review.
      - Subject to a public hearing and authorized by the Planning Commission.
    - Small Winery Use Permit [NCC Section 18.10.020 (A)(10)]:
      - Only applicable to those wineries that have an active Certificate of Exemption granted prior to 1990, subject to specific thresholds.
      - Subject to CEQA review.
      - Subject to a public hearing and authorized by the Zoning Administrator.
    - Micro Winery [NCC 18.08.377 Defined; NCC Chapter 18.124]:
      - To establish a Micro Winery (a winery use type that is limited to 5,000 gallons of production and cannot hold marketing events, among other limitations) which is subject to specific thresholds.
      - Subject to CEQA review.
      - Subject to a public hearing and authorized by the Zoning Administrator.
    - An Exception to the Conservation Regulations. [NCC Chapter 18.108]:
      - Granting of an exception to a stream or an ephemeral/intermittent stream setback or to permit development on slopes exceeding 30%.
      - Subject to CEQA review.
      - Subject to a public hearing and authorized by the Planning Commission.
  - Residential and Non-Residential Uses
    - New Use [NCC Chapter 18.124]:
      - To establish a new use as permitted within a specific Zoning District upon grant of a Use Permit based upon review of infrastructure capacity limitations such as groundwater, wastewater, and traffic, etc.
      - Subject to CEQA review.
      - Subject to a public hearing and authorized by the Planning Commission.
    - An Exception to the Conservation Regulations. [NCC Chapter 18.108]:
      - Granting of an exception to a stream or an ephemeral/intermittent stream setback or to permit development on slopes exceeding 30%.
      - Subject to CEQA review.

- Subject to a public hearing and authorized by the Planning Commission.

### What is a Use Permit Modification?

As everyone knows, businesses grow and change over time to accommodate operational, staffing, and customer needs. There's also the common situation where development plans reviewed and approved during the Planning Commission or Zoning Administrator approval are changed upon submittal of the Building Permit, making the building permit request inconsistent with the scope of the approved Use Permit. Napa County has established a Use Permit modification process to provide a streamlined way for businesses which are growing or changing to expand their operations and adjust their Use Permit. Sections 18.124.130 and 18.126.065 of the Napa County Code sets the ground rules for processing Use Permit modifications. In 2020, the Board of Supervisors adopted Ordinance No 1455 and Ordinance No. 1474 in 2022 to further streamline the Use Permit process.

Each class of modification has its own specific review, thresholds, public noticing, application and processing requirements. For Winery Uses, they are Winery Administrative Permit, Minor Modification, and Major Modification. For Residential and Non-Residential Uses, they are Very Minor Modification, Minor Modification, and Major Modification.

### • **Types of Modifications**

#### • Winery Uses

##### ▪ Major Modification [NCC Chapter 18.124]:

- Applicable to an existing winery based upon review of infrastructure capacity limitations such as groundwater, wastewater, and traffic, etc.
- Subject to CEQA review.
- Subject to a public hearing and authorized by the Planning Commission.

##### ▪ Minor Modification [NCC Section 18.124.130(C)]:

- Subject to specific thresholds. Allows for a minor increase in employees, tours and tastings, production, marketing activities, a change in days of operation, a high-risk kitchen where a medium and low risk kitchen is existing, and an increase in the aggregate building footprint by a maximum of 10,000 sf or 25% of the total footprint whichever is greater. Furthermore, any additions, modifications, or changes that qualify for a Winery Administrative Permit as noted below may be processed when in connection with a minor modification application.
- Subject to CEQA review.

- Subject to a notice of intent and authorized by the Zoning Administrator without a public hearing.
- Minor Modification for a Micro Winery [NCC Section 18.124.130 (F)[D]]:
  - Amendments can be processed 2 years after initial approval.
  - Subject to specific thresholds.
  - Subject to CEQA review.
  - Subject to a notice of intent and authorized by the Zoning Administrator without a public hearing.
- Winery Administrative Permit [NCC Section 18.126.065]:
  - Subject to specific thresholds. Allows for minor changes to winery structures and/or winery operations, and allows for an increase or changes in buildings square feet by no more than 10%, not to exceed 2,500 square feet.
  - Ministerially Exempt from CEQA review.
  - Not subject to conditions of approval.
  - Authorized by the Director without a public notice.
- Residential and Non-Residential Uses
  - Major Modification [NCC Chapter 18.124]:
    - Applicable to a use under an existing Use Permit based upon review of infrastructure capacity limitations such as groundwater, wastewater, and traffic, etc.
    - Subject to CEQA review.
    - Subject to a public hearing and authorized by the Planning Commission.
  - Minor Modification [NCC Section 18.124.130(B)]:
    - Minor non-controversial modifications to approved changes in location and/or size of approved structures or portions.
    - Does not result in any structure or the aggregate of all approved structures being increased more than 25% in size or one story in height based on the sized allowed under the approved Use Permit.
    - Equipment enclosures whose permanent installation outdoors was approved by the use permit are not subject to this size limitation.
    - Subject to CEQA review.
    - Subject to a notice of intent without a public hearing unless any member of the public requests a public hearing subject to a new public notice.
    - Authorized by the Zoning Administrator.

- Minor Modification – Business Park [NCC Section 18.124.130(E)]:
  - Applicable to the Napa Valley Business Park Specific Plan including wineries.
  - Refer to provisions above.
  - Subject to a public hearing and authorized by the Zoning Administrator.
  
- Very Minor Modification [NCC Section 18.124.130(G)]:
  - Non-controversial modifications to approved Use Permits including wineries in the Napa Valley Business Park Specific Plan (NVBPSP).
  - An extension of Use Permit expiration time not to exceed one year up to three annual extensions.
  - Small (less than 10%) changes in square footage or building footprint.
  - Realignment of internal circulation roads.
  - Similar items at the discretion of the Director.
  - Subject to CEQA review.
  - Authorized by the Director without a public notice.

### [Permit Type Processing Flow Charts](#)

Attached to this FAQ are processing steps for all use permit types that will be heard before the Planning Commission and Zoning Administrator, as well as for a Minor Modification, and Very Minor Modification and a Winery Administrative Permit that require either Zoning Administrator or Director Authorization.

### [What is a Status Determination?](#) [Board of Supervisor Resolution No. 2018-164]

This type of application is used to determine existing authorized entitlements for the issuance of a Use Permit and subsequent modifications. It includes an evaluation of all planning actions and building permit issuance for the subject property. This process does not allow any Modifications to the existing entitlement, and is not subject to the County’s appeal process.

### [What is a Use Determination?](#) [NCC Section 18.124.080]

NCC Section 18.124.080 - Automatic expiration of Use Permits. A Use Permit shall, without further action by any county officer or body, expire and become void two years after the date the approving officer or body orders the Use Permit issued or, if an appeal is taken to the board of supervisors, two years after the date the decision of the board on appeal becomes final; provided, however, that if a shorter or longer time period is included in the conditions of approval of the use permit, that time period shall control (for purposes of this chapter this date shall hereafter be referred to as the "Use Permit expiration date").

The processing of a Use Determination before Use Permit Expiration allows the permittee to deem the project entitlement “used” and not subject to expiration deadlines if construction has not been commenced as follows:

Substantial evidence of use may be demonstrated by any of the following:

1. Securing a building permit, wastewater or sewage disposal permit, or other construction permit for the project.
2. In the case of projects requiring regional, state or federal approvals subsequent to the issuance of the use permit before construction may commence, by a showing that sufficient funds have been expended (or liabilities incurred) in the process of securing those approvals in an amount that is equivalent to the cost of constructing any foundation, wastewater or sewage disposal system, bridge, or similar improvement required by the use permit.
3. By showing that, subsequent to the issuance of the use permit and prior to the use permit expiration date, sufficient funds have been expended (or liabilities incurred) in preparing the site for construction that is equivalent to the cost of constructing any foundation, wastewater or sewage disposal system, bridge, cave or similar improvement required by the use permit [funds associated with the processing of a Use Permit are not acceptable].

What is required to be submitted to the Planning Division to provide proof on expenses? Submittal of invoices and proof of payment. After review and confirmation, Staff will issue a letter that the project has been deemed used.

This process is also used to confirm if a project is “Used” for property owner and/or permittee records. It should be noted that subsequent modifications to a use permit do not have expiration dates if the winery or non-winery use has been in operation.

### [Why a PreApplication Meeting?](#)

A PreApplication Meeting is an opportunity to meet with staff from applicable Divisions to receive feedback on a proposed project. It is not mandatory. The intent is to: 1) Identify the type of application and related permits that may be necessary, permit processing steps and timelines; and 2) Identify pertinent information and technical studies that will be required to submit a complete application. There are two types of PreApplication meetings: Office (Virtual or In-Office) and Site Visit. How does one set up an Office meeting? Visit the PBES On-Line Permit Center here [Online Permit Center: Getting Started | Napa County, CA \(countyofnapa.org\)](https://www.countyofnapa.org/online-permit-center/getting-started) to set up an Office meeting. Office meetings are only held on Thursdays 10:00 a.m. to Noon. To make a request for a Site Visit, please contact Planning, Building and Environmental Services at (707) 253-4417. At this time, we are not accepting Site Visit pre-application meeting requests through the Online Permit Center. A PreApplication meeting request will generally take at least three weeks to schedule and there is a fee associated with scheduling a meeting.

### [Appeals](#) [NCC Chapter 2.88 – APPEALS]

Since the Planning Director and the Zoning Administrator have the discretion to refer particularly controversial modifications to the Planning Commission, more contentious items are often decided at that level. However, discretionary permits such as a Use Permit (including a New Winery, a Small Winery and a Micro Winery Use Permits), a Major Modification, a Minor

Modification, a Very Minor Modification for either Residential/Non-Residential or Winery Projects, whether it is decided by the Planning Director, the Zoning Administrator, or the Planning Commission, are all ultimately appealable to the Board of Supervisors. A Winery Administrative Permit or a Status Determination on entitlement limits and Use Determinations are the only applications that are not subject to an appeal due to their administrative nature in changes to the winery or County interpretation of Use Permit entitlement limits.

### Operational Rules Affecting Wineries Associated with Napa County Code (NCC) and/or State Law

- On Premise Consumption.

In July 2008, the State adopted AB 2004 (Evans), which amended the State's Business and Professional Code (Section 23358) to allow wineries to sell wine produced by the winery to customers for consumption on premises. The addition of retail wine sales for on-site consumption to an existing winery Use Permit is subject to a Winery Administrative Permit. It is not the sale of wine itself which triggers the need for this permit, but the need to create a space on the property for the on-site consumption. If, however, a new area inside or outside (within the existing winery development area, provided the location is not within 500 feet from the nearest off-site residence) is proposed for on-site consumption, and there is no increase in visitation or marketing, a Modification of some description would be necessary. For a new winery, all proposed on-site consumption locations (inside or outside within the proposed winery development area) shall be identified on project plans and processed during the use permit process.

- NCC Section 18.16.030(H)(4) – AP & 18.20.030(I)(4) – AW: Sale of Wine Related Products.

Subject to a Use Permit. However, for existing wineries, so long as the sale of wine-related products occurs entirely within existing legal tasting room space (as opposed to any approved "production" area), no Modification is generally necessary to allow it.

- NCC Section 18.16.030 (G)(5)(c) – AP & 18.20.030 (I)(5)(c) – AW: Retail Sales of Wine.

Subject to a Use Permit. 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.

- Definition: NCC Section 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.

- Definition: NCC Section 18.08.620 - Tours and tastings.

"Tours and tastings" mean 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.

- Board of Supervisor Resolution No. 2010-48 - Exhibit A Interpretative Guidance, dated May 11, 2010.

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.

- Board of Supervisor Resolution No. 2018-164 - County Code Compliance Program, dated December 4, 2018.

Section 1(a)(v): Except for substantially conforming applications received by the Planning Building and Environmental Services (PBES) Department prior to the deadline (March 29, 2019), all properties that have new or continued health and safety or significant pre-existing violations to come into immediate compliance with legal entitlements and all applicable County Code requirements. Owners of properties with health and safety or significant



violations shall be required to operate within their existing legal entitlements for one year from the date of the initial Notice of Violation, absent extraordinary circumstances, before a use permit or modification application to remedy the violation(s) may be submitted to PBES. Owners may also be subject to fines or penalties for past and ongoing violations. This provision is intended to and shall require that the environmental impacts of discretionary permit applications shall be assessed against a "baseline" of operations that are within existing legal entitlements, rather than in violation of them. Owners may submit a Use Permit or Modification application to remedy violation(s) during the one-year period while they operate within their legal entitlements, but only if they agree in writing that their legal entitlements or their existing legal operations, whichever is lower, shall be used as the environmental baseline for all CEQA analysis related to the application. Public hearings for such Use Permit or Modification applications shall not be scheduled until the owner has operated within legal entitlements for one year from the date of the Initial Notice of Violation, absent extraordinary circumstance.

For Questions - Please contact:

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