



February 27, 2017

To: Washington County Board of Commissioners

From:  Andy Back, Manager  
Planning and Development Services

Subject: **A-ENGROSSED LAND USE ORDINANCE NO. 815 –  
An Ordinance Amending the Community Development Code Relating to  
Wineries Legislation**

**STAFF REPORT**

**For the March 7, 2017 Board of Commissioners Hearing**  
*(The public hearing will begin no sooner than 10:00 am)*

**I. STAFF RECOMMENDATION**

Conduct the third public hearing for A-Engrossed Ordinance No. 815. At the conclusion of the hearing, order additional engrossment of the ordinance to reflect the changes described in this staff report and shown in Attachment A.

Conduct hearings for the B-Engrossed Ordinance on March 28 and April 18, 2017, and direct staff to provide mailed notice of proposed changes consistent with requirements of Chapter X of the County Charter.

**II. BACKGROUND**

At the October 25, 2016 public hearing on A-Engrossed Ordinance No. 815, the Board directed that the hearing be continued to March 7, 2017. Continuation was intended to allow time for staff discussion with the Oregon Winegrowers Association (OWA) regarding their written testimony dated October 24, 2016.

Within the testimony, OWA indicated that draft standards of A-Engrossed Ordinance No. 815 were generally consistent with state law, except for one, which they felt exceeded the County's authority.

Early this year, staff met with OWA's Government Affairs Director and associated representatives of four wineries, and spoke with OWA's attorney. The Analysis section below discusses proposed revision of the ordinance to address OWA's concern.

### III. ANALYSIS

Senate Bill (SB) 841, adopted into Oregon Revised Statute (ORS) 215, pertains to activities at wineries on exclusive farm use lands (EFU/AF-20). The bill specifically allows application of conditions related to number of event attendees, hours of event operation, access and parking, traffic management, sanitation and solid waste for **agritourism and other commercial uses at Standard Wineries** – activities that require a license or permit separate from the winery permit.

The bill does not clearly address whether those conditions could/should also apply to wine-related activities that are allowed through the Winery permit itself (no separate license/permit required), such as tasting room activities and winemaker dinners. Since statute is unclear, staff considered whether or not to apply them in such cases, and consulted DLCD before making the recommendation to apply these conditions to wine-related activities allowed through the winery permit.

OWA's testimony states:

*...Although the County's proposed Ordinance 815 largely adheres to the Legislature's intent in SB 841, we are concerned that some of the County's proposed regulations exceed the County's authority under state law. Specifically, the County's proposed rules allow the County to regulate the hours of operation of tasting rooms at permitted use wineries, as well as the number of people that may visit these wineries for basic retail and marketing activities. See proposed CDC 430-145.4 B.*

*This provision exceeds the County's authority under state law because SB 841 does not allow these conditions on basic tasting room operations. The Oregon Supreme Court has held that counties may not place conditions on permitted uses in the EFU zone beyond those imposed by state law...*

Upon further review, staff believes that these provisions are not essential and can be deleted from the proposed ordinance. SB 841 requires that the County **shall** apply to winery permits, "regulations of general applicability for the public health and safety." Counsel suggests that this requirement, also reflected in proposed CDC standards, would allow application of conditions like those above to the winery permit and to wine-related activities allowed through it, as needed for public health and safety. Staff therefore recommends deletion of Section 430-145.4 B, as shown below:

430-145.4

*In addition to producing and distributing wine, wineries may conduct activities consistent with 430-145.4 A. through E., ~~F~~ below, as applicable.*

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~~*B. Conditions related to number of event attendees, hours of event operation, access and parking, traffic management, sanitation and solid waste may be applied.*~~

Consistent with SB 841, the language deleted above would remain elsewhere in the filed ordinance where it applies only to *agritourism and commercial activities* at Standard Wineries.

OWA has indicated that the proposed deletion addresses their concerns.

#### **IV. SUMMARY OF RECOMMENDED B-ENGROSSMENT**

As shown in Attachment A:

- *Delete draft CDC Section 430-145.4 B. (See page 12)*
- *Revise numbering as shown elsewhere in the exhibit, made necessary by the deletion*
- *Make additional minor formatting changes*

#### *List of Attachments*

The following attachment identified in this staff report is provided:

Attachment A: Proposed Amendments to A-Engrossed Ordinance No. 815

Section 430-145 (Wineries) and related sections of the COMMUNITY DEVELOPMENT CODE relating to wineries, are amended to reflect the following:

**1. SECTION 340 – EXCLUSIVE FARM USE DISTRICT (EFU)**

**340-4 Uses Permitted Through a Type II Procedure**

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340-4.1 Permitted Uses which are exempt from Section 340-4.3:

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T. Winery - Section 430-145.4-

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Y. Agritourism events on seven (7) to eighteen (18) days per calendar year at a standard winery described under 430-145.1 (Section 430-145.5 C).

340-4.2 Permitted Uses which are subject to Section 340-4.3:

A. Commercial Activities in Conjunction with Farm Use, including the processing of farm crops into biofuel not permitted under ORS 215.203(2)(b)(L) or as described in Section 340-4.1 D. - Section 430-33. Commercial activities in conjunction with farm use are not allowed in conjunction with a marijuana crop. See Section 430-145.9 regarding wineries that are processed under Section 430-33 as commercial activities in conjunction with farm use.

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F. Home Occupation - Section 430-63. Applications to renew a home occupation do not have to address Section 340-4.3 if that section was addressed in a prior application. A home occupation on high-value farmland shall be operated in the dwelling or other buildings normally associated with uses permitted in the district. A home occupation shall not unreasonably interfere with other uses permitted on surrounding land in the EFU, EFC and AF-20 Districts. A bed and breakfast facility at a winery described under 430-145.1 or 430-145.2 may be processed as a home occupation subject to Section 430-63 (Section 430-145.4 C D).

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340-4.3 Required Findings:

The proposed use will not:

- A. Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; nor
- B. Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.  
An applicant may demonstrate that these standards for approval will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

**340-5 Uses Which May be Permitted Through a Type III Procedure**

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340-5.2 Uses which may be allowed subject to Section 340-5.3:

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- N. Agritourism events on more than twenty-five (25) days per calendar year at a large winery described under 430-145.2 (Section 430-145.6 B).
- O. Restaurant open to the public for more than twenty-five (25) days per calendar year at a large winery described under 430-145.2 (Section 430-145.7 B).

340-5.3 Required Findings:

- A. The proposed use is compatible with farm uses described in Oregon Revised Statutes, Chapter 215;
- B. The proposed use does not interfere seriously with “accepted farming practices” as defined in ORS 215.203(2)(c) on adjacent lands devoted to farm use;
- C. The proposed use does not materially alter the stability of the overall land use pattern of the area; and
- D. The proposed use will not:
  - (1) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
  - (2) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

An applicant may demonstrate that these standards for approval will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

## 2. SECTION 344 – AGRICULTURE AND FOREST DISTRICT (AF-20)

### 344-4 Uses Permitted Through a Type II Procedure

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#### 344-4.1 Permitted Uses which are exempt from Section 344-4.3:

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T. Winery - Section 430-145.4.

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Y. Agritourism events on seven (7) to eighteen (18) days per calendar year at a standard winery described under 430-145.1 (Section 430-145.5 C).

#### 344-4.2 Permitted Uses which are subject to Section 344-4.3:

A. Commercial Activities in Conjunction with Farm Use, including the processing of farm crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or as described in Section 344-4.1 D. - Section 430-33. Commercial activities in conjunction with farm use are not allowed in conjunction with a marijuana crop. See Section 430-145.9 regarding wineries that are processed under Section 430-33 as commercial activities in conjunction with farm use.

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F. Home Occupation - Section 430-63. Applications to renew a home occupation do not have to address Section 344-4.3 if that section was addressed in a prior application. A home occupation on high-value farmland shall be operated in the dwelling or other buildings normally associated with uses permitted in the district. A home occupation shall not unreasonably interfere with other uses permitted on surrounding land in the EFU, EFC and AF-20 Districts. A bed and breakfast facility at a winery described under 430-145.1 or 430-145.2 may be processed as a home occupation subject to Section 430-63 (Section 430-145.4 C D).

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**344-5 Uses Which May be Permitted Through a Type III Procedure**

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344-5.2 Uses which may be allowed subject to Section 344-5.3:

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N. Agritourism events on more than twenty-five (25) days per calendar year at a large winery described under 430-145.2 (Section 430-145.6 B).

O. Restaurant open to the public for more than twenty-five (25) days per calendar year at a large winery described under 430-145.2 (Section 430-145.7 B).

344-5.3 Required findings:

- A. The proposed use is compatible with farm uses described in Oregon Revised Statutes, Chapter 215;
- B. The proposed use does not interfere seriously with “accepted farming practices” as defined in ORS 215.203(2)(c) on adjacent lands devoted to farm use;
- C. The proposed use does not materially alter the stability of the overall land use pattern of the area; and
- D. The proposed use will not:
  - (1) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
  - (2) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

An applicant may demonstrate that these standards for approval will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

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**3. SECTION 346 – AGRICULTURE AND FOREST DISTRICT (AF-10)**

**346-4 Uses Which May be Permitted Through a Type III Procedure**

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346-4.1 Uses which may be allowed:

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- S. Winery - May include accessory tasting room and incidental sales - Section 430-145.82.

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**4. SECTION 348 – AGRICULTURE AND FOREST DISTRICT (AF-5)**

**348-4 Uses Which May be Permitted Through a Type III Procedure**

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348-4.1 Uses which may be allowed:

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- R. Winery - May include accessory tasting room and incidental sales - Section 430-145.82.

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**5. SECTION 350 – RURAL RESIDENTIAL FIVE ACRE MINIMUM DISTRICT (RR-5)**

**350-4 Uses Which May be Permitted Through a Type III Procedure**

350-4.1 Uses which may be allowed:

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- O. Winery - May include accessory tasting room and incidental sales – Section 430-145.82.

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**6. SECTION 352 – RURAL COMMERCIAL DISTRICT (R-COM)**

**352-3 Uses Which May Be Permitted Through a Type II Procedure**

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352-3.1 Permitted Uses:

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Y. Winery, including a tasting room and sales - Section 430-145.82.

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**7. SECTION 354 – RURAL INDUSTRIAL DISTRICT (R-IND)**

**354-3 Uses Permitted Through a Type II Procedure**

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354-3.1 Permitted Uses:

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Q. Winery, including an accessory tasting room and incidental sales - Section 430-145.82.

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**8. SECTION 356 – LAND EXTENSIVE INDUSTRIAL DISTRICT (MAE)**

**356-3 Uses Permitted Through a Type II Procedure**

356-3.1 The following uses are permitted subject to the specific standards for the use set forth below and in applicable Special Use Sections of Section 430, as well as the intent and purpose and the general standards for the District, the Development Standards of Article IV and all other applicable standards of the Code. Approval may be further conditioned by the Review Authority pursuant to Section 207-5. A waiver of the right to remonstrate against commonly accepted farm or forest practices shall be recorded for each permitted use.

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R. Winery - May include accessory tasting room and incidental sales - Section 430-145.82.

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## 9. SECTION 430 – SPECIAL USE STANDARDS

In addition to the requirements of Sections 400 through 425, the following special use standards are provided for specific uses. Additional or amended special use standards that are applicable in the North Bethany Subarea of the Bethany Community Plan are located in Section 390, North Bethany Subarea Overlay District.

### 430-33 Commercial Activities in Conjunction with Farm Use

Commercial activities are limited to providing products and services essential to the practice of commercial agriculture. For wineries that are reviewed under Section 430-33 as commercial activities in conjunction with farm use, see also Section 430-145.9.

A commercial activity in conjunction with farm use includes, but is not limited to, processing facilities which convert harvested agricultural crops from their natural state into new products, i.e., drying, freezing, canning, etc. In addition, the preparation and storage of a product which includes significant amounts of agricultural crops not raised by the operator of the storage facility shall also be considered a commercial activity...

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### 430-63 Home Occupation

A home occupation is a lawful activity carried on within a dwelling by a member or members of the family who occupy the dwelling, where the occupation is secondary to the use of the dwelling for living purposes and the residential character of the dwelling is maintained. Bed and breakfast facilities serving five (5) or fewer persons are permitted as a Type I Home Occupation in all districts except the Institutional, EFU, EFC and AF-20 Districts (Section 430-63.1 C does not apply to bed and breakfast facilities). Pursuant to Section 430-145.4 C D, a bed and breakfast facility serving five (5) or fewer persons, in association with and on the same tract as a winery described under 430-145.1 or 430-145.2, is permitted as a Type II Home Occupation in the EFU and AF-20 Districts (Section 430-63.2 D.(2) does not apply). Bed and breakfast facilities serving more than five (5) persons are subject to the standards of Section 430-19 - Boarding House (including Bed and Breakfast facilities for more than five (5) persons). A home occupation shall not be conducted on a site that includes an accessory dwelling unit, from either the primary dwelling unit or the accessory dwelling unit, except as allowed under Section 201-2.18 (CDC Section 430-117.1 J);

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430-63.2 Home Occupation - Type II

A Type II Home Occupation shall:

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D. Including storage of materials and products, occupy:

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(2) Outside the UGB

- (a) Not more than one thousand (1000) square feet or twenty-five (25) percent of a dwelling or lawful accessory structure, whichever is greater; or
- (b) An area exceeding the above maximums by up to ten (10) percent, when requested by an applicant with a disability.

For purposes of Section 430-63.2 D(2), a “dwelling” includes the basement and attached garage. Areas used only for storage of farm equipment or farm vehicles are not considered as part of the maximum allowed home occupation space.

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**430-145 Winery**

Wineries are structures where the grapes ~~or other fruits or produce~~ of the applicant or others may be processed and converted to wine, bottled, blended, stored, sold at wholesale or directly to a consumer for consumption off or on the premises.

Vineyards are fields where grapes are grown.

Wineries that may be established under 430-145.8 in rural districts other than EFU or AF-20 are as described above, except that qualification as a winery may be based on processing and above noted activities using fruits or produce other than grapes.

As used in Section 430-145:

**Agritourism 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. Agritourism and other commercial events allowed at EFU/AF-20 wineries by ORS 215 differ from

provisions that the state allows counties to adopt for agritourism and other commercial events in connection with other farm uses.

**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.

430-145.1 In the EFU and AF-20 Districts, aA winery~~;~~, as described by ORS 215.452 (considered for the purposes of this Code as a “standard winery”),~~;~~ may be established as a permitted use in the EFU and AF-20 Districts-subject to findings and evidence establishing compliance with ~~the following standards~~A or B, below, and the standards of Section 430-145.3:

- A. ~~The winery produces a Maximum~~maximum annual production is ~~of~~ less than fifty thousand (50,000) gallons of wine annually and ~~that~~:
- (1) Owns an on-site planted vineyard of at least fifteen (15) acres;
  - (2) Owns a contiguous planted vineyard of at least fifteen (15) acres;
  - (3) Has and provides proof of an executed a long-term contract for the purchase of all of the grapes from at least fifteen (15) acres of a planted vineyard contiguous to the winery; or
  - (4) Obtains grapes from any combination of (1), (2), or (3) of this subsection.
- B. ~~The winery produces Maximum~~ annual production is at least fifty thousand (50,000) gallons and ~~no more than one hundred thousand (100,000) gallons and that~~of wine annually and:
- (1) Owns an on-site planted vineyard of at least forty (40) acres;
  - (2) Owns a contiguous planted vineyard of at least forty (40) acres;
  - (3) Has and provides proof of an executed a long-term contract for the purchase of all the grapes from at least forty (40) acres of a planted vineyard contiguous to the winery;
  - (4) Owns an on-site planted vineyard of at least fifteen (15) acres on a tract of at least forty (40) acres and owns at least forty (40) additional acres of vineyards in Oregon that are located within fifteen (15) miles of the winery site; or
  - (5) Obtains grapes from any combination of (1), (2), ~~or~~(3), or (4) of this subsection.
- C. ~~A winery described in Section 430-145.1 A. or B. shall allow only the sale of:~~

- ~~(1) — Wines produced in conjunction with the winery; and~~
  - ~~(2) — Items directly related to wine, the sales of which are incidental to retail sale of wine on-site. Such items include those served by a limited service restaurant, as defined in ORS 624.010.~~
- ~~D. — Prior to the issuance of a permit to establish a winery under Section 430-145.1, the applicant shall show that the vineyards, described in Section 430-145.1 A. and B, have been planted or that the contract has been executed as applicable.~~
- ~~E. — Standards imposed upon a winery shall be limited solely to each of the following for the sole purpose of limiting demonstrated conflicts with farming or forest practices on adjacent lands:~~
- ~~(1) — Establishment of a setback of at least one hundred (100) feet from all property lines for the winery and all public gathering places, except as allowed through CDC Section 435 (Variances and Hardship Relief); and~~
  - ~~(2) — Provision of direct road access, including safety and operational considerations and the standards of Section 501-9.3, internal circulation and parking.~~
    - ~~(a) — Internal access shall be based upon the maximum number of people at the tasting room or restaurant, including times of special events. Access shall be approved by the appropriate fire marshal.~~
    - ~~(b) — On-site parking requirements shall be based upon the maximum number of employees at the winery, the size of the tasting room and/or restaurant, and the expected number of visitors.~~
    - ~~(c) — On premise temporary parking shall be available for special winery events.~~
    - ~~(d) — A festival permit (Section 430-135.1 E.) shall be required for special events in excess of one (1) day.~~
  - ~~(3) — The review authority shall also apply, when applicable, the standards of Sections 421 (Flood Plain and Drainage Hazard Area Development), Section 422 (Significant Natural Resources), and other standards regarding geologic hazards, airport safety, and other regulations for resource protection acknowledged to comply with any statewide planning goal respecting open spaces, scenic and historic areas and natural resources.~~
- ~~F. — Findings shall be made to demonstrate compliance with the standards of Section 430-145.1.~~

- ~~G. A winery, which does not comply with the standards of Section 430-145 A. or Section 430-145 B., may be approved as a Commercial Activity in conjunction with Farm Use (Section 430-33) upon demonstration of compliance with the applicable review criteria.~~

430-145.2 In the EFU and AF-20 Districts, a winery as described by ORS 215.453 (considered for the purposes of this Code as a “large winery”) may be established as a permitted use subject to findings and evidence establishing compliance with the following standards and those indicated under 430-145.3:

- A. The winery has produced annually, at the same or a different location, at least one hundred fifty thousand (150,000) gallons of wine in at least three (3) of the five (5) calendar years before the winery is established under CDC Section 430-145.2; and
- (1) Owns and is sited on a tract of eighty (80) acres or more, at least fifty (50) acres of which is a planted vineyard; and
- (2) Owns at least eighty (80) additional acres of planted vineyards in Oregon that need not be contiguous to the acreage described under Section 430-145.2.A(1), above.

430-145.3 In the EFU and AF-20 Districts, to limit demonstrated conflicts with accepted farming or forest practices on adjacent lands, approval to establish a winery as described under either Section 430-145.1 (standard winery) or 430-145.2 (large winery) as a permitted use, is subject to findings and evidence demonstrating:

- A. Establishment of a setback of at least one hundred (100) feet from all property lines for the winery and all public gathering places, except as allowed through CDC Section 435 (Variances and Hardship Relief);
- B. Provision of parking for all activities or uses of the lot, parcel, or tract on which the winery is established. Winery parking requirements shall be based on the maximum number of employees at the winery, the size of the winery and associated facilities, and the expected number of visitors;
- C. Provision of direct road access, including safety and operational considerations and the standards of Section 501-9.3;
- D. Provision of internal circulation, based upon the maximum number of people at the winery and associated facilities, including times of special events. Access shall be approved by the appropriate fire marshal;
- E. Compliance with standards of Section 421 (Flood Plain and Drainage Hazard Area Development) and other standards regarding geologic hazards, solar access, and airport safety, when applicable;

- F. Compliance with standards of Section 422 (Significant Natural Resources) and other regulations for resource protections acknowledged to comply with any statewide goal respecting open spaces, scenic and historic areas and natural resources, when applicable; and
- G. Compliance with regulations of general applicability for the public health and safety, including Environmental Health (Health and Human Services) requirements and applicable requirements of Section 501-9 (Limited Application of the Public Facility and Service Standards Outside the UGB).

430-145.4 In addition to producing and distributing wine, wineries may conduct activities consistent with 430-145.4 A through E ~~F~~, below, as applicable.

- A. The gross income of the winery from the sale of incidental items or services provided pursuant to Sections 430-145.4 B ~~C~~(3) and (4), ~~D E~~(1), and ~~E F~~(1) and (2), below, may not exceed twenty-five (25) percent of the gross income from the on-site retail sale of wine produced in conjunction with the winery.

The County may require a written statement, prepared by a certified public accountant, that certifies compliance with this requirement for the previous tax year, with application submittal and/or for periodic submittal as a condition of approval.

- ~~B. Conditions related to number of event attendees, hours of event operation, access and parking, traffic management, sanitation and solid waste may be applied.~~

~~B. C.~~ Through winery establishment under either Section 430-145.1 (standard winery) or 430-145.2 (large winery), a winery may:

- (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) Host charitable activities for which the winery does not charge a facility rental fee;
  - (4) 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, including food and beverages that are:
    - (a) 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
    - (b) Served in conjunction with an activity authorized by Section 430-145.4 B C(2) or (3).
- C. D. Subject to submittal and approval of an application for a Type II home occupation permit via CDC Section 430-63, wineries established under 430-145.1 (standard winery) or 430-145.2 (large winery) may operate a bed and breakfast facility in association with the winery and on the same tract as the winery, and may:
  - (1) Prepare two (2) meals per day to the registered guests of the bed and breakfast facility; and
  - (2) Serve the meals at the bed and breakfast facility or at the winery. As an alternative to the above, the applicant may request bed and breakfast approval through Type II Room and Board provisions of Section 340-4.2 N or 344-4.2 N.
- D. E. In addition to activities allowed under 430-145.4 B C and C D, above, a winery established under Section 430-145.1 (standard winery) may:
  - (1) Carry out agritourism or other commercial events on the tract occupied by the winery subject to Section 430-145.5, below;
  - (2) 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 Section 430-145.4 B C(4) or D E(1). Food and beverage services authorized under this subsection 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.

E. F. In addition to activities allowed under 430-145.4 B C and C D, a winery established under Section 430-145.2 (large winery) may:

- (1) Provide services, including agritourism or other commercial events, hosted by the winery or patrons of the winery, at which wine produced in conjunction with the winery is featured, subject to CDC 430-145.6, below;
- (2) 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, including food and beverages served in conjunction with an activity authorized by Section 430-145.4 E F(1), above;
- (3) Operate a restaurant, as defined in ORS 624.010, in which food is prepared for consumption on the premises of the winery, subject to requirements of Section 430-145.7, below.

430-145.5 Standards for agritourism or other commercial events on a tract occupied by a winery described under 430-145.1 (standard winery):

A. The winery may carry out up to eighteen (18) days of agritourism or other commercial events annually on the tract occupied by the winery, subject to the following:

- (1) If the winery conducts agritourism or other commercial events authorized under CDC Section 430-145.5.A (pursuant to ORS 215.452), the winery may not also conduct agritourism or other commercial events addressed under ORS 215.213 (11);
- (2) Agritourism or other commercial events and services, including marketing and sale of food, beverages, and incidental items in conjunction with these, must be:
  - (a) Directly related to the sale or promotion of wine produced in conjunction with the winery;
  - (b) Incidental to the retail sale of wine on-site.
- (3) Income cap requirements described under Section 430-145.4 A apply, including certification of compliance from a certified public accountant;

(4) Conditions related to number of event attendees, hours of event operation, access and parking, traffic management, sanitation and solid waste may be applied;

(5) A license pursuant to 430-145.5 B and/or a permit pursuant to 430-145.5 C is required, whichever is applicable.

B. Events on the first six (6) days of the eighteen (18) day limit per calendar year must be authorized by the County through a renewable license that has a term of five (5) years. The County's decision on a license under Subsection 430-145.5 B is not a land use decision as defined in ORS 197.015.

C. Events on days seven (7) through the maximum of eighteen (18) per calendar year must be authorized by the Current Planning Section, via approval of an application for a renewable multi-year permit that has a term of five (5) years, subject to:

(1) Type II land use review to determine conditions necessary to ensure compliance with 430-145.5 C(3), below;

(2) Evidence that a license, as required under 430-145.5 B, was obtained for events on the first six (6) days of the eighteen (18) day limit;

(3) As necessary to ensure that agritourism 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 County may impose conditions on the license related to:

(a) The number of event attendees;

(b) The hours of event operation;

(c) Access and parking;

(d) Traffic management;

(e) Noise management; and

(f) Sanitation and solid waste.

430-145.6 Standards for agritourism or other commercial events on a tract occupied by a winery described under 430-145.2 (large winery):

A. Through winery establishment under 430-145.2 (large winery), a winery may:

- (1) On twenty-five (25) days or fewer per calendar year, provide services including agritourism or other commercial events hosted by the winery or patrons of the winery, subject to the following:
  - (a) Wine produced in conjunction with the winery is featured;
  - (b) Agritourism or other commercial events and services, including marketing and sale of food, beverages, and incidental items in conjunction with these, must be:
    - (i) Directly related to the sale or promotion of wine produced in conjunction with the winery;
    - (ii) Incidental to the retail sale of wine on-site;
  - (c) Income cap requirements described under Section 430-145.4 A apply, including certification of compliance from a certified public accountant;
  - (d) Conditions related to number of event attendees, hours of event operation, access and parking, traffic management, sanitation and solid waste may be applied.

B. If a winery established under 430-145.2 (large winery) provides for agritourism or other commercial events on more than twenty-five (25) days in a calendar year, the winery shall obtain approval from the Current Planning Section via application for a permit subject to the following:

- (1) Type III land use review;
- (2) In addition to any other requirements, the County may approve a permit application if the County finds that the authorized activity:
  - (a) Is incidental and subordinate to the retail sale of wine produced in conjunction with the winery;
  - (b) Does not materially alter the stability of the land use pattern in the area; and
  - (c) Complies with all provisions of ORS 215.296, including but not limited to requirements that the proposed use will not force a significant change in or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. An applicant's findings may demonstrate that these standards will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

(3) Conditions related to number of event attendees, hours of event operation, access and parking, traffic management, sanitation and solid waste may be applied;

(4) If the County issues a permit under 430-145.6 B, for operation of agritourism or other commercial events on more than twenty-five (25) days per calendar year, the County shall review the permit at least once every five (5) years and, if appropriate, may renew the permit.

430-145.7 Standards for a restaurant on a tract occupied by a winery established under 430-145.2 (large winery):

A. A winery, through establishment under 430-145.2 (large winery), may:

(1) On twenty-five (25) days or fewer per calendar year, operate a restaurant as defined in ORS 624.010, in which food is prepared for consumption on the premises of the winery, subject to the following:

(a) Wine produced in conjunction with the winery is featured;

(b) Marketing and sale of food and beverages in conjunction with the restaurant is:

(i) Directly related to the sale or promotion of wine produced in conjunction with the winery;

(ii) Incidental to the retail sale of wine on-site;

(c) Conditions related to number of event attendees, hours of event operation, access and parking, traffic management, sanitation and solid waste may be applied.

B. If a winery established under 430-145.2 (large winery) operates a restaurant that is open to the public for more than twenty-five (25) days in a calendar year, the winery shall obtain a permit from the Current Planning Section subject to the following:

(1) Type III land use review;

(2) In addition to any other requirements, the County may approve a permit application if the County finds that the authorized activity:

(a) Is incidental and subordinate to the retail sale of wine produced in conjunction with the winery;

(b) Does not materially alter the stability of the land use pattern in the area; and

(c) Complies with all provisions of ORS 215.296, including but not limited to requirements that the proposed use will not force a significant change in or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. An applicant's findings may demonstrate that these standards will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

(3) A person may not have a substantial ownership interest in more than one (1) winery operating a restaurant under ORS 215.453.

(4) Conditions related to number of event attendees, hours of event operation, access and parking, traffic management, sanitation and solid waste may be applied;

(5) If the County issues a permit under 430-145.7 B, for operation of a restaurant on more than twenty-five (25) days per calendar year, the County shall review the permit at least once every five (5) years and, if appropriate, may renew the permit.

430-145.~~82~~ A winery in the AF-10, AF-5, RR-5, Rural Commercial, Rural Industrial and MAE Districts may be established as a permitted use via Current Planning approval of an application subject to the following standards:

A. Comply with all state and federal requirements;

B. Have an access based upon the maximum number of people expected at the tasting room, including times of special events. Access shall be approved by the appropriate fire marshal;

C. Parking requirements shall be based on:

(1) ~~Be based upon t~~The maximum number of employees at the winery; and

(2) The size of the tasting room and expected visitors;

D. ~~On premise~~On-site temporary parking shall be available for special winery events; and

E. A festival permit (Section 430-135.1 E.) shall be required for special events in excess of one (1) day.

430-145.9 Wineries and/or activities at wineries as Commercial Activities in Conjunction with Farm Use (Section 430-33)

- A. The County may authorize the siting of a winery in the EFU or AF-20 District pursuant to the standards that apply to a Commercial Activity in Conjunction with Farm Use (CDC Section 430-33) or other law, via Current Planning approval of a permit application subject to the following:
- (1) The winery:
    - (a) Does not qualify for siting under CDC Section 430-145.1 (standard winery) or 430-145.2 (large winery) (ORS 215.452 or 215.453); or
    - (b) Seeks to carry out uses or activities that are not authorized by CDC Section 430-145.4 through 7 (or are not otherwise authorized by ORS 215.452 or 215.453).
  - (2) The gross income of the winery from any activity other than the production or sale of wine shall not exceed twenty-five (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;
  - (3) Conditions related to number of event attendees, hours of event operation, access and parking, traffic management, sanitation and solid waste may be applied.
- B. The County may authorize a winery described in Subsection 430-145.2 (large winery) to sell or deliver items or provide services not described within 430-145.4 A, 430-145.4 B C(4), or 430-145.6 A under the criteria for Commercial Activities in Conjunction with Farm Use (CDC Section 430-33) or other provisions of law, subject to Current Planning approval of a permit application. Conditions related to number of event attendees, hours of event operation, access and parking, traffic management, sanitation and solid waste may be applied.

430-145.10 Lawful continuation of certain winery-related uses or structures in the EFU or AF-20 district

- A. A use or structure that exists on June 28, 2011 may be lawfully continued, altered, restored or replaced pursuant to CDC Section 440 (or as otherwise allowed by ORS 215.130) if the use or structure is located on the same tract as a winery established under ORS 215.213 (1)(p) (a winery described in ORS 215.452 or 453/CDC Section 430-145.1 or 2) that produced more than two hundred fifty thousand (250,000) gallons of wine in calendar year 2010.

- B. A winery established under ORS 215.213 (1)(p) (a winery described in ORS 215.452 or 453/CDC Section 430-145.1 or 2) that produced more than one hundred fifty thousand (150,000) gallons and not more than two hundred fifty thousand (250,000) gallons of wine in calendar year 2010 does not require a permit under CDC Section 430-145.9 A (ORS 215.213 (2)(c)), but must comply with all provisions of CDC Section 430-145 that apply to wineries described under 430-145.1 (standard winery) (ORS 215.452) except the annual production requirements.
- C. A use or structure that is lawfully established at a winery that exists on June 28, 2013, including events and activities that exceed the income limit imposed by CDC Section 430-145.4 A (ORS 215.452), may be continued, altered, restored or replaced pursuant to CDC Section 440 (or as otherwise allowed by ORS 215.130).
- D. Subsections 430-145.10 A and C do not affect the lawful continuation, alteration, restoration or expansion of the winery sited on the same tract.

## 10. SECTION 440 – NONCONFORMING USES AND STRUCTURES

A nonconforming use is a structure or use of land which does not conform to the provisions of this Code or Comprehensive Plan lawfully in existence on the effective date of enactment or amendment of this Code or Comprehensive Plan. It is the intent of this Section to allow and regulate existing uses and structures that were lawfully established and are not now in conformance with the applicable regulations of this Code.

The purpose of this Section is to generally encourage the discontinuance of nonconforming uses and structures or changing of nonconforming uses and structures to conforming or more conforming uses or structures. However, it is not the purpose of this Section to force all nonconforming uses or structures to be eliminated or brought into conformance with existing standards, or to discourage the continued nonconforming use of land for single family dwellings. Except in industrial, institutional, and commercial districts other than Neighborhood Commercial (NC), it is the intent of this Section to allow the owner of a structure used as a single family dwelling to alter or replace the structure consistent with state law, LCDC administrative rules and the applicable provisions of this Code.

Nonconforming uses that have a lesser impact on the immediate area have fewer restrictions than nonconforming uses with greater impacts. Nonconforming commercial and industrial uses in residential and farm or forest districts have more rigorous review criteria than these uses have in commercial and industrial districts in order to protect the livability and character of residential and farm or forest districts. In contrast, nonconforming single dwelling units in residential and farm or forest districts have fewer review standards because residential uses are permitted in these districts and these uses do not represent a major disruption to the immediate area. The intent

of this Section in reviewing alterations to nonconforming single dwelling units in the EFU, EFC and AF-20 Districts is to review only those things that adversely affect resource based activities which are the basis for the use restrictions in these districts. See Section 430-145.9 for additional information on wineries and associated activities at wineries that may be nonconforming.

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