

Summary of Existing Winery Ordinance Regulations Pertaining to Food Service at a Winery

**Handout for Winery Ordinance Update Meeting #2 – Food Service
December 13, 2012 (11:00-1:00 pm)**

Santa Ynez Valley Marriot, Jockey Room, 555 McMurray Rd., Buellton, CA

Listed below are some facts and existing regulations pertaining to food service at wineries that you may want to consider as you make your comments.

Summary of “food service” facts:

- Laws and regulations pertaining to the preparation of food are complex and the type of “food service” includes a broad spectrum of options.
- The California Health and Safety Code regulates the preparation of food, not the sale of food.
- Environmental Health and Safety, a Division of the County’s Public Health Department, enforces the State’s food law. A summary of laws and regulations pertaining to food service at wineries will be posted on the website prior to the December 13th meeting.
- What may be allowed by state food laws, may not be allowed by zoning regulations.

Summary of Winery Ordinance (zoning) regulations pertaining to food service:

- The existing winery ordinance is nearly silent on the topic of “food service”.
- The term “food service” is not explicitly defined in the existing winery ordinance.
- The definition of a Tasting Room allows for the sale of merchandise, wine related items and other products that “reflect or enhance the character or theme of the winery” (Section 35.110.020).
- The definition of Winery includes the “retail sales of related promotional items” (Section 35.110.020).
- The primary focus of the tasting room shall be “the marketing and sale of the wine produced on the winery premises” (Section 35.42.280.D.7.c).
- “Food service” is briefly mentioned in the Application Requirements section of the winery ordinance. For example, if you are proposing to provide food service it needs to be described in the application. (Section 35.42.280.E.7).

Winery Ordinance
Environmental Health Clarification Notes

1. No food service/Wine Tasting rooms

Exempt from definition of a food facility 113789(c)(5) “Premises set aside for wine tasting , as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, that comply with Section 118375, regardless of whether there is a charge for the wine tasting, if no other beverage, except for bottles of wine and prepackaged non-potentially hazardous beverages, is offered for sale for onsite consumption and no food, except for crackers, is served.”

Note* If a winery is pouring wine other than their own label, then they are considered a bar and will have to meet requirements of a food facility.

Note* Routine inspections and the issuance of a health permit will not be required for businesses that meet the following criteria:

** No more than ten (10) square feet of floor space is devoted to the storage and display of non-potentially hazardous commercially produced fully labeled prepackaged food/beverage product. (EHS Food Permit Exemptions Policy #4000.008)

2. Food Service/Private Event: No permit required because it is closed to the general public and/or not advertised for public attendance. For example, a wedding, anniversary or birthday party is generally a private event.

3. Cottage Food Operation (CFO)

A Cottage Food Operation is a new category of food operation that has been created by the California Homemade Food Act. The new law allows the preparation and sale of certain low risk foods from a prescribed list in a home kitchen. A detailed discussion follows:

CFO Defined: An enterprise that has not more than the amount in gross annual sales specified, is operated by a cottage food operator, and has not more than one full-time equivalent cottage food employed, not including a family member or household member of the cottage food operator, within the registered or permitted area of a private home where the cottage food operator resides and where cottage food products are prepared or packaged for direct, indirect, or direct and indirect sales to consumers.

The CFO must not have more than:

\$35,000 gross annual sales in the calendar year 2013

\$45,000 gross annual sales in the calendar year 2014

Commencing in 2015, and each subsequent year thereafter, the CFO must not have more than \$50,000 in gross annual sales in the calendar year.

There are two types of CFOs:

“**Class A**”, which is an operation that may engage only in direct sales of cottage food products from the CFO. A Class A CPO is required to complete a self-registration checklist; however, are not subject to initial or annual inspections.

“**Class B**”, which is an operation that may engage in both direct sales and indirect sales of cottage food products from the CFO. A Class B CPO will be issued a permit based on initial inspection of the home kitchen and will be subject to not more than one inspection per year subsequently.

Direct Sales: means a transaction between a cottage food operation operator and a consumer, where the consumer purchases the cottage food product directly from the cottage food operation. Direct sales include, but are not limited to:

1. Holiday bazaars, or other temporary events such as bake sales or food swaps
2. Farm stands
3. Certified Farmers’ Markets
4. Community supported agriculture subscription
5. Transactions occurring in person in the CFO

Indirect Sales: means an interaction between a cottage food operation, a third-party retailer, and a consumer, where the consumer purchases cottage food products made by the cottage food operation from a third-party retailer that holds a valid permit.

Indirect sales include, but are not limited to, sales made to retail shops or to retail food facilities where food may be immediately consumed on the premises.

Note*Potentially Hazardous Food (PHF) as defined in California Retail Food Code 113871(a):

A PHF means a food that requires time or temperature control to limit pathogenic micro-organism growth or toxin formation.

So, some types of foods have this ability to support rapid and progressive growth of infectious and toxin-producing microorganisms.

Examples of non-PHF’s would typically be crackers, cookies, chips, candy.

Examples of PHF’s would be meat, dairy products, cut melons, cooked rice.

The bacterial growth control with these types of foods correlates with the amount of water activity (A_w) which is scientifically proven to be < 0.85 and will not support rapid bacterial growth. Disease causing bacteria can only grow in foods that have a $A_w > 0.85$.

To give you an example of how A_w works with food product:

A fresh chicken has 60% water by volume, and its A_w is approximately .98. The same chicken, when frozen, still has 60% water by volume but its A_w is now 0. Water activity is measured on a scale from 0-1.0.

The following list of non-PHF’s, has been approved and adopted by the state for sale in a CPO: (The State Public Health Officer may add or delete food products to or from the list)

-Baked goods without cream, custard, or meat fillings, such as breads, biscuits, churros, cookies, pastries and tortillas

- Candy, such as brittle and toffee
- Chocolate-covered non-perishable foods, such as nuts and dried fruit
- Dried fruit
- Dried pasta
- Dry baking mixes
- Fruit pies, fruit empanadas, and fruit tamales
- Granola, cereals, and trail mixes
- Herb blends and dried mole paste
- Honey and sweet sorghum syrup
- Jams, jellies, preserves, and fruit butter that comply with the standard describe in Part 150 of Title 21 of the Code of Federal Regulations.
- Nut mixes and nut butters
- Popcorn
- Vinegar and mustard
- Roasted coffee and dried tea
- Waffle cones and pizelles

4. Pre-packaged food prepared off-site

Will generally require a health permit depending on the type of food and the quantity (10 square foot policy) For example, cold sandwiches from an approved source will require commercial NSF-approved refrigeration and minor remodel to the facility. Since there is no “food preparation involved this will not generate the requirement for a 3 compartment sink if the food is sold to the consumer as a prepackaged product.

Approved Source defined in Cal Code 113735: A food source allowed under **Article 3 of Chapter 4**, or a producer, manufacturer, distributor, or food facility that is acceptable to the enforcement agency base on a determination of conformity with applicable laws, or, in the absence of applicable laws with current public health principles and practice and generally recognized industry standards that protect public health.

A food pre-packaged food product would have to be either from a permitted facility (state or local) and/or registered or permitted as a cottage food. All prepackage food requires proper labeling, as prescribed in the Sherman Food, Drug, and Cosmetic Law, to include but not limited to the following:

- Name /address of the manufacturer
- Common or usual name of the product
- List of ingredients in descending order of predominance if made from 2 or more ingredients
- Net weight
- Allergens according to the Federal Food Drug and Cosmetic Act which requires specific allergens be listed:
 - Milk and milk products
 - Eggs-
 - Fish
 - Soy

- Shellfish
- Peanuts
- Tree Nuts
- Wheat Proteins

Government agencies at all levels closely monitor and regulate food supplies to protect the public from foodborne illness (FBI). These agencies at the federal, state, and local levels are concerned with the protection of the food supply available to consumers. The fundamental concern of all these agencies is the safety and wholesomeness of the food supply as it reaches the customers.

Pre-packaged food must be from an approved source commercially produced fully labeled.

Two types pre-packaged foods:

1. Potentially hazardous
2. Non-potentially hazardous

5. **Mobile Food Facilities (MFFs)**

A health permit is required and these types of food facilities (not roach coaches) can range from a hot dog cart to a vehicle in which the food is prepared inside the unit. If permitted, there will be a decal sticker on the back of the vehicle with the current year's date (indicating when the permit will expire). The MFF will need to be within 200 feet of a fully plumbed restroom with approved hand wash facilities if parked for more than one hour.

Approved hand wash facilities include the following:

- Hot and cold running water (between 100°F and 108°F)
- Single use dispensed paper towels
- Dispensed soap

EHS will collect a required paper work before issuing a permit:

- Application with contact information and fee
- Commissary letter which indicates where vehicle will be stored and serviced for cleaning and where food will be stored and/or prepared
- Copy of vehicle registration and Driver's License
- Restroom commissary
- Sales locations(s)

6. **On-Site Food Preparation**

Health permit will be required

Plan review and approval prior to construction or remodel

Full commercial kitchen

Water and septic approval/evaluation required if not on sewer or district water

Depending on the extent of food preparation, will determine the type and amount of equipment required.

For example:

Preparing cheese plates would require commercial refrigeration, approved floors, walls, ceilings, lighting, 3 compartment sink, handwash sink, janitor's mop sink, prep table.

Cutting fruit and preparing cheese plates: as above but now include a food preparation sink which must drain by indirect means into a floor sink.

Cutting fruit, preparing cheese plates and frying duck livers: as above but now add a mechanical exhaust ventilation system to remove grease vapors, smoke, steam or odors.