

DAVIS WRIGHT TREMAINE LLP

Winery Land Use Permitting Matrix

A Legal Resource Provided by Davis Wright Tremaine LLP
and the Oregon Winegrowers Association

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Davis Wright Tremaine LLP is a full service law firm providing services to the wine industry in the areas of mergers and acquisitions and other business transactions, land use and real estate, alcohol regulatory and licensing, intellectual property, employment, and litigation.

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Winery Related Land Use Permits Available in EFU Zones

Permit Type	Minimum Acreage	Wine Production	Facilities	Wine Promotional and Marketing Activities	Other Events	Food Service	Income Limit	Other Requirements/ Limits
Permitted Use Winery (ORS 215.452)	15/40-acre onsite or adjacent vineyard (see Wine Production).	50,000 gallons/year maximum if <40 vineyard acres. No minimum production. No production maximum if ≥40 acres.	Mandatory onsite production. May have tasting room, kitchen facilities, & other guest amenities.	Wine retail, tastings, tours, wine club functions, and other wine marketing activities allowed without limit.	Events where the promotion and sale of wine are secondary (agri-tourism or commercial events) are limited to up to 18/year (e.g. weddings, facility rentals); subject to income limit. Additional permitting requirements for Willamette Valley wineries.	Food service is permissible as long as service does not amount to a café or eating establishment (restaurant). See adopted guidance: https://www.oregon.gov/olcc/LIC/docs/SB841_FoodServiceGuidance.pdf .	Sale of incidental items or services (e.g., food service, agri-tourism, commercial events) may not exceed 25 percent of winery's gross income from on-site wine sales (includes DTC, online sales, and onsite sales). May have to provide compliance report to county upon request or condition.	Parking, setbacks, health & safety, other miscellaneous. Counties may not impose additional limits, except for agri-tourism or commercial events in the Willamette Valley.
Large Winery (ORS 215.453)	80 acre property with > 50 acre vineyard + 80 additional vineyard acres in Oregon (unlike permitted use winery, additional 80 acres does not need to be adjacent).	Minimum of 150,000 gallons/year in 3 of 5 years prior to seeking permit. No maximum limit.	See Permitted Use Winery. May also have restaurant facilities.	See Permitted Use Winery.	Up to 25/year agri-tourism or commercial events where incidental to the sale of wine onsite (e.g. weddings, facility rentals); subject to income limit. No additional permitting required.	Full restaurant, subject to additional permitting requirements if > 25 days/year.	See Permitted Use Winery.	See Permitted Use Winery.
Farm Crop Processing Facility	Onsite vineyards, no minimum acreage.	No production minimum or maximum.	Must not exceed 10,000 SF for wine processing.	None allowed.	None allowed.	None allowed.	None.	At least ¼ of crops processed must be grown onsite.
Farm Stand	Onsite agricultural production, no minimum acreage.	No production allowed.	Farm stand may not be designed occupancy as residence or for activities other than the sale of farm crops; no structure for banquets, public gatherings, or public entertainment.	May sell and taste wine (see Other Events).	Fee-based activity to promote the sale of the farm crops sold at the farm stand are allowed subject to income limit.	Food may be allowed if associated with farm stand retail or fee-based activity; subject to income limit.	Income from sale of incidental items and promotional activity limited to 25 percent of total annual sales.	Structure may not be used for public gatherings, strict application. Most activities take place outside or in tents. Limited indoor activities.

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Commercial Activity in Conjunction with Farm Use	Onsite vineyard, no minimum acreage.	No limit in state law, but county may impose limit.	No limit in state law, but county may impose limit.	No limit in state law, but county may impose limit.	State law requires connection and benefit to local vineyards; county may impose further limits.	No limit in state law, but county may impose limit.	Subject to 25 percent income limit under ORS 215.452.	Must satisfy farm impacts test (ORS 215.296). County may impose additional limits.
Agri-tourism/ Commercial Events Permits	Generally requires some onsite vineyards or agricultural production.	No production allowed*	Permit may not be used to authorize new permanent structures.	Wine sales may be permitted, types of activities or events are approved on a case by case basis.	Three types of approvals: single event permit; 1-6 events/year permit; or up to 18 events/year permit (e.g., concerts, facility rentals, festivals, weddings). Must be incidental & subordinate to farm use.	No limit, generally outside catering used. Does not authorize permanent on-site kitchen facilities.	None.	Varying degrees of scrutiny depending on the number of events. Must provide adequate parking, sanitation, and minimize impacts to surrounding farmland (ORS 215.296). Recent DLCD rule changes make this less likely to be permitted, especially for CACFU wineries.

Summary of General Winer-Related Permits and Approvals

Permit/Authorization	Agency	Covered Activities	Transfers	Other Triggers	Notes
Land Use Approval	County jurisdiction	Varies, depending on the activities to be conducted. See Winery-Related Land Use Approvals.	Check permit conditions to see if it is personal (attached to the owner) or runs with the land.		
Water Supply – Exempt Groundwater Well Use	Oregon Water Resources Department	Up to 5,000 gallons/day for industrial or commercial use and/or up to 15,000 gallons/day for domestic use. May not be used for agricultural irrigation. Cannot use exempt well to store water for future use.			

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Water Supply – Water Right (Irrigation)	Oregon Water Resources Department	A water right is required to irrigate crops. Comes with specific place of use, acreage, and point of diversion (well or pump on a stream).	If certificated, the water right automatically transfers with the property. If not, needs an assignment.		
Water Supply – Water Right (Industrial/Commercial)	Oregon Water Resources Department	A water right is required for industrial commercial purposes (winery/tasting room) when use exceeds the exempt groundwater exception of 5,000 gallons/day.	If certificated, the water right automatically transfers with the property. If not, needs an assignment.		
Wastewater Disposal – General WPCF 1400-A	Oregon Department of Environmental Quality	Covers wineries that beneficially reuse process wastewater for land application and produces less than 82,000 gallons per day. Wineries are exempt if produce less than 6,000 cases of wine per year.	Not transferable.		Even if exempt because under the 6,000 cases per year threshold, a winery will be required to obtain a permit if the winery activity adversely affects the environment. Operating under a waste management plan is often a good option to avoid this trigger.
Wastewater Disposal – General WPCF 1400-B	Oregon Department of Environmental Quality	This permit covers wineries whose process wastewater flow does not exceed 82,000 gallons per day and is discharged by either beneficial land application, an evaporative pond, or subsurface disposal system. Wineries are exempt if produce less than 6,000 cases of wine per year.	Not transferable.		Even if exempt because under the 6,000 cases per year threshold, a winery will be required to obtain a permit if the winery activity adversely affects the environment. Operating under a waste management plan is often a good option to avoid this trigger.
Stormwater Management – General 1200-Z (Operating Industrial Facilities)	Oregon Department of Environmental Quality	Covers discharges of stormwater to surface water or to conveyance systems that discharge to surface waters.	Not transferable.		Winery operations are industrial in nature. Unless covered, the crush pad and other outside operations will require compliance with the General 1200-Z permit. To avoid coverage if operations do not discharge, a winery may work with a consultant to obtain a "No Exposure Certification."
Stormwater Management – General 1200-C (Construction)	Oregon Department of Environmental Quality	Required for any construction activity, materials or equipment staging and stockpiling that will disturb one or more acres of land, or less than an acre but part of a common plan that will ultimately disturb one or more acres of land.	Not transferrable.	Also required for construction activities that may discharge stormwater to surface waters that may be a significant contributor of pollutants or cause an exceedance of water quality standard.	

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Food Processing License – Combination Facilities	Oregon Department of Agriculture (ODA) and Oregon Health Authority (OHA)	ODA requires that any stand-alone wine production facilities hold a Food Processing license in order to produce, bottle, and store wine on the property. Any tasting room or “by the glass” pours on the property are covered under the same Food Processing license. https://www.oregon.gov/oda/s_hared/Documents/Publications/FoodSafety/FoodProcessingWarehousingLawsRegs.pdf	Not transferable.	ODA requires any winery that operates an off-site tasting room separate from its primary production facility to hold a Retail Food Establishment license in conjunction with the Food Processing license. https://www.oregon.gov/oda/s_hared/Documents/Publications/FoodSafety/RetailFoodLawsRegs.pdf	If the wine production facility also has food service with the tasting room, then that is considered a combination facility. The predominant activity will determine which whether the investigation is handled by ODA or OHA. https://www.oregon.gov/oda/s_hared/Documents/Publications/FoodSafety/CombinationFacilities.pdf
Drinking Water System Certification – Small Water System Operator	Oregon Department of Agriculture and Oregon Health Authority	Wineries on a non-municipal water system (e.g., groundwater well) that serve 10 or more individuals per day requires a drinking water certification.			ODA/OHA are monitoring land use applications at the county level to identify new wineries that may trigger the drinking water certification requirements. New groundwater well and piping systems must comply with construction standards. Expanded wineries are also having to retroactively comply with construction standards.



Oregon Winegrowers
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