

## ORDINANCE

### A ZONING ORDINANCE TEXT AMENDMENT TO SECTIONS 3-318.17-18, 5-1810, 6-102, AND 15-300 RELATED TO FARM WINERIES

WHEREAS, the Fauquier County Zoning Ordinance regulates Farm Wineries; and

WHEREAS, Fauquier County seeks to update its regulations related to Farm Wineries to make them consistent with changes to the Code of Virginia related to Farm Wineries; and

WHEREAS, Fauquier County recognizes the agricultural nature of Farm Wineries and seeks to protect agricultural uses as provided by the Code of Virginia, and also to promote successful Farm Wineries as an important component of the County's agricultural economic base; and

WHEREAS, the Code of Virginia permits localities to regulate impacts of Farm Winery activities and events which (a) are not "usual and customary" and (b) which are "usual and customary" where there is "substantial impact to the health, safety and welfare of the public;" and

WHEREAS, the consumption of alcohol by its nature introduces public health, safety, and welfare concerns which are historically and legitimately within the province of government regulation; and

WHEREAS, Fauquier County seeks to protect the general health, safety and welfare of the public from substantial impacts by assuring that narrow, winding, or otherwise inadequate rural roads found throughout the County are not forced to accommodate more traffic from Farm Winery activities and other events than they can safely handle; and

WHEREAS, taking into consideration that the goal of Farm Winery events is to market and sell wine to consumers, it is reasonably foreseeable that some drivers may be unfamiliar with the rural roads on which a farm winery is located, and that consumption of even small quantities of wine may be sufficient to impair drivers on unfamiliar, winding roads, particularly after sunset or when fatigued; and

WHEREAS, Fauquier County seeks to protect the general health, safety and welfare of the public from substantial impacts by assuring that parcels can adequately handle the size, types and frequency of activities occurring at Farm Wineries without creating potential impacts related to water quality, noise and other elements of public health, safety and welfare, taking into consideration that Fauquier's rural parcels range in size from less than one acre to hundreds or thousands of acres, just as existing Farm Wineries in the County operate on parcels ranging from 10 acres to 175 acres in size; and

WHEREAS, on November 13, 2008, the Board of Supervisors initiated the proposed text amendment; and

WHEREAS, the Planning Commission unanimously recommended approval of a revised version of the text amendment on August 27, 2009, after holding a work session on the proposed amendment on February 17, 2009 and public hearings on the issue on April 30, 2009; May 28, 2009; and July 30, 2009; and

WHEREAS, the Fauquier County Board of Supervisors held a work session on the proposed text amendment on October 8, 2009 and public hearings on the proposed amendment on October 8, 2009; November 12, 2009; December 10, 2009; January 14, 2010; July 14, 2011; and August 11, 2011; and

WHEREAS, adoption of the attached amendment to Sections 3-318.17-18, 5-1810, 6-102, and 15-300 of the Fauquier County Zoning Ordinance supports good zoning practice, convenience and the general welfare; now, therefore, be it

ORDAINED by the Fauquier County Board of Supervisors this 11<sup>th</sup> day of August, 2011 That Sections 3-318.17-18, 5-1810, 6-102, and 15-300 be, and are hereby, amended as follows:

	SITE	RC	RA	RR -2	V	R -1	R -2	R -3	R -4	T H	G A	M D P	C -1	C -2	C- 3	C V	I-1	I-2
PLAN																		
<b>3-318 AGRICULTURE (CATEGORY 18)</b>																		
<del>17. Winery with Special Events, Major</del>	X	SE	SE	SE														
<del>18. Winery with Special Events, Minor</del>	X	-SP	-SP	-SP														
<u>17. Farm Winery</u>		P	P															
<u>18. Farm Winery with Additional Events Pursuant to Section 6-102.1 (1)(H&amp;I)</u>	X	A/ SE	A/ SE															

**5-1300 Definitions**

FARM WINERY: An agricultural use licensed as a farm winery pursuant to Virginia Code § 4.1-207 and operating as a farm winery pursuant to Virginia Code § 4.1-100, to include the growing and harvesting of grapes, manufacture of wine and the accessory uses authorized pursuant to Section 6-102.1 of the Zoning Ordinance.

WINE TASTING AND CONSUMPTION: Sampling, by the general public, of wines and purchase of wine by the glass or bottle to drink on-site.

FARM WINERY EVENT: Activities held at a FARM WINERY for the purpose of marketing wine, including (a) wine education seminars, wine luncheons or dinners featuring wine and food pairings, wine fairs and festivals; (b) weddings or other private business or social gatherings where the FARM WINERY’s wines

are featured and served in conjunction with the event; and (c) fundraisers, charity events, entertainment or theme events where a specific starting time (other than the FARM WINERY's normal opening time) is advertised or otherwise stated in any promotion or advertisement. FARM WINERY EVENTS shall by definition also include:

- WINE TASTING AND CONSUMPTION each day it occurs or continues beyond 7:00 p.m. Sunday through Thursday except holiday-weekend Sundays and 9:00 p.m. Friday, Saturday and holiday-weekend Sundays. For purposes of this provision, "continues beyond" means wine or food is served or music or other entertainment continues or starts.
- any activity where food is served pursuant to Section 6-102.1(C)(ii).
- any activity where the FARM WINERY is closed to the general public or where a cover charge is collected.

~~**WINERY WITH SPECIAL EVENTS, MINOR OR MAJOR:** An event or activity held at a winery to promote a wine product, by holding such uses as private parties, meals, and wine-related festival.~~

~~**6-102** Permitted Accessory Uses~~

~~27. Deleted. The sale of wine for on-site consumption of wine produced by the winery.~~

~~**6-102.1** Permitted Accessory Uses at Farm Wineries~~

1. The following uses and activities shall be considered by-right accessory uses at Farm Wineries authorized pursuant to Section 3-318(17) and shall be allowed upon approval of a zoning permit pursuant to Section 13-500 of the Ordinance, subject to the use limitations set forth in this Section 6-102.1:
  - A. The sale, tasting and consumption of wine as authorized under a Farm Winery license issued by the Commonwealth of Virginia.
  - B. Retail sales and shipment of wine, and the storage, warehousing and wholesaling of wine in accordance with a Farm Winery license issued by the Commonwealth of Virginia and applicable federal law.
  - C. The provision of food for on-site consumption, subject to the following limitations:
    - i. Finger foods and similar snacks may be served in conjunction with Wine Tasting and Consumption;
    - ii. Other food, including meals, may be served no more than three times a week in conjunction with authorized Farm Winery Events, provided that such food is either:
      - prepared off-site by a licensed caterer or
      - prepared on-site in a properly licensed/permitted mobile food establishment that is temporarily placed on the property only during a Farm Winery Event;
    - iii. In no case shall food be provided which results in a FARM WINERY having to be licensed as a *food establishment* under the Code of Virginia.

- D. Incidental retail sales shall be limited to wine-related items and locally produced artisanal goods, subject to the following limitations:
- i. The sales of non-wine-related items shall not exceed 10 percent of gross retail merchandise sales (including wine) at the Farm Winery;
  - ii. All display and sales of the goods shall occur indoors, except outdoor sales may occur in conjunction with an authorized Farm Winery Event occurring outdoors;
  - iii. Locally produced artisanal goods shall mean food, art, craft and home goods which are hand-produced within Virginia.

E. The provision of on-site Farm Winery tours;

F. Private personal gatherings held by the Farm Winery owner who resides at the Farm Winery where wine is not sold or marketed at such event, and payment (or consideration in lieu of payment) is not received for the event, and further provided that such private gathering is not otherwise regulated pursuant to the provisions of this Ordinance.

G. Farm Winery Events pursuant to the rules below:

- i. Farm Wineries licensed or having an ABC license pending prior to approval of this Ordinance (August 11, 2011).

Step 1: Determine Level of Farm Winery

Step 2: Determine Allowable Events Based on Level of Farm Winery

<u>Acres</u> <small>(May be in multiple lots, if contiguous and under same ownership)</small>	<u>Access on a Collector or Higher Classification Street</u>	
	<u>No</u>	<u>Yes</u>
<u>Up to 24</u>	<u>Level A</u>	<u>Level B</u>
<u>25-49</u>	<u>Level B*</u>	<u>Level C</u>
<u>50 and Over</u>	<u>Level B*</u>	<u>Level D</u>

\*Any winery 25 acres or larger not on a collector or higher classification street, but with a commercial entrance installed per VDOT requirements shall be increased to a LEVEL C

	<u>Maximum Number of Total Attendees Allowed at Event and Frequency of Event Allowed</u>		
	<u>Unlimited</u>	<u>1/Week</u>	<u>1/Year</u>
<u>Level A</u>	<u>25</u>	<u>50</u>	<u>100</u>
<u>Level B</u>	<u>35</u>	<u>75</u>	<u>200</u>
<u>Level C</u>	<u>50</u>	<u>150</u>	<u>300</u>
<u>Level D</u>	<u>75</u>	<u>175</u>	<u>500</u>

- ii. Farm Wineries licensed or having an ABC license pending after approval of this Ordinance (August 11, 2011).

No by-right Farm Winery Events shall be allowed if the winery is on a lot 10 acres or less in size or if the parcel on which the Farm Winery is located does not have direct access to a public street. For purposes of this provision, a private access easement shall not be considered “direct access to a public street” unless the easement is exclusive to the Farm Winery parcel.

All other Farm Wineries licensed after approval of this Ordinance shall be allowed the level of by-right Farm Winery Events established by the tables below:

Step 1: Determine Level of Farm Winery

Any Farm Winery where events occur within 500 feet of a private residence not on winery property, shall be Level A. Otherwise:

<u>Acres</u> <small>(May be in multiple lots, if contiguous and under same ownership)</small>	<u>Access on a Collector or Higher Classification Street</u>	
	<u>No</u>	<u>Yes</u>
<u>Up to 24</u>	<u>Level A</u>	<u>Level B</u>
<u>25-74</u>	<u>Level B</u>	<u>Level C</u>
<u>75+</u>	<u>Level C</u>	<u>Level D</u>

Step 2: Determine Allowable Events Based on Level of Farm Winery

	<u>Maximum Number of Total Attendees Allowed at Event and Frequency of Event Allowed</u>		
	<u>Unlimited</u>	<u>1/Week</u>	<u>1/Year</u>
<u>Level A</u>	<u>25</u>	<u>50</u>	<u>100</u>
<u>Level B</u>	<u>35</u>	<u>75</u>	<u>200</u>
<u>Level C</u>	<u>50</u>	<u>150</u>	<u>300</u>
<u>Level D</u>	<u>75</u>	<u>175</u>	<u>500</u>

H. Additional Farm Winery Events, up to twice the frequency authorized in Subsection G, above, may be authorized by the Zoning Administrator by Administrative Permit, for a period not to exceed one year, provided no substantiated complaints have been received by the County during the prior year and that no other violations of County, State or Federal regulations have been documented. The Zoning Administrator may re-approve this increase on an annual basis, upon application by the Farm Winery.

I. Larger or more frequent Farm Winery Events than those authorized by Subsections G and H, above, may be authorized by Special Exception pursuant to Sections 3-318.18 and 5-1810:

2. Use Limitations for all Permitted Accessory Uses (including by-right Farm Winery Events) at Farm Wineries:

A. Noise: Sound generated by outdoor amplified music shall not be audible at or beyond the property line of the Farm Winery. Outdoor amplified music shall include music emanating from an open or temporary structure. In addition, no noise shall exceed the noise limits set forth in Section 9-700.

B. Lighting: Lighting shall be fully shielded as set forth in Section 9-1005 and shall comply with the general requirements set forth in Sections 9-1006.4 and 9-1006.7.

C. Any structure to be utilized as part of the Farm Winery shall be located a minimum of 300 feet from all lot lines, except that any existing structure for which the County has issued a permit for Farm Winery use prior to adoption of these provisions (August 11, 2011) which does not meet the 300 foot setback requirement may be expanded provided the addition is no closer to all lot lines than the existing structure.

D. All Farm Winery Events shall end by 10:00 p.m. Sunday through Thursday except holiday-weekend Sundays and 11:00 p.m. Friday, Saturday and holiday-weekend Sundays. For purposes of this provision, "end" means that all activities are concluded and all customers have departed.

- E. All Farm Wineries shall keep records of attendance at the Farm Winery and Farm Winery Events and this information shall be made available to the Zoning Administrator upon request, and shall be subject to verification by audit at the discretion of the Zoning Administrator.
- F. All Farm Wineries electing to sell non-wine related items as authorized pursuant to Subsection (D)(i), above, shall keep records of the percentage of gross merchandise sales occurring on-site at the Farm Winery in such a format that the percentage of sales attributable to the incidental retail allowed pursuant to Subsection D(i), above, is demonstrated. This information shall be made available to the Zoning Administrator upon request, and shall be subject to verification by audit at the discretion of the Zoning Administrator.
- G. If a Farm Winery has been cited within the prior year for violations of any Zoning Ordinance provision or State or Federal regulation, authorization for the Additional Farm Winery Events listed in Subsection (1)(H&I), above, may be suspended by the Zoning Administrator for a period of time up to one year, upon a finding by the Zoning Administrator that: 1) uncorrected violations exist, or 2) repeated violations of regulations have occurred. The Zoning Administrator shall notify the Farm Winery in writing of the suspension of authorization for Farm Winery Events. Any Farm Winery where Additional Farm Winery Events have been refused pursuant to the Zoning Administrator's discretion under Subsection (1)(H), above, or suspended pursuant to this section may seek Special Exception approval to allow such Farm Winery Events pursuant to Section 5-1810.2.
- H. The following uses/activities are specifically prohibited at Farm Wineries:
  - Restaurants
  - Hot Air Balloons
  - Fireworks
  - Grocery or Convenience Stores

5-1810

**Standards for Additional Farm Winery Events Authorized Pursuant to Section 6-102.1(1)(H&I)**

- 1. The specific standards for Class A, B and C events set forth in Sections 5-914, 5-915 and 5-916 shall apply to all Special Exceptions granted for Farm Winery Events, with the specific standards to be utilized determined based on the size of the proposed event(s).
- 2. The use limitations for accessory Farm Winery uses set forth in Section 6-102.1 shall pertain to all additional Farm Winery Events approved by Administrative Permit or Special Exception and cannot be waived as part of the approval. Where such limitations are more restrictive than the general limitations for Class A, B and C events, the more restrictive provisions shall apply.

**Additional Standards for Winery with Special Events, Major and Minor, in the RA, RC, and RR-2 Zoning Districts**

- 1. Such a use shall have frontage on a major collector (or higher) as designated in the Comprehensive Plan unless the Board of Supervisors or the Board of Zoning Appeals

- finds that the type and amount of traffic generated by the facility is such that it will not cause an undue impact on the neighbors or adversely affect safety of road usage.
2. ~~Any retail sales conducted on the property shall be accessory and incidental to the permitted activity. At least thirty (30) days prior to holding the event, the holder of the Special Permit or Special Exception for the property upon which the event will be held shall provide to the Zoning Administrator the name, address, and a contact person for each individual, group, association, partnership, or corporation which is expected to conduct retail sales at the event.~~
  3. ~~Major events are those with more than 150 attendees, but not more than 2,500 attendees per event, and are limited to two (2) within a calendar year. Minimum lot size for major events is forty (40) acres.~~
  4. ~~Minor events are those that allow less than 150 attendees per event, and are limited to fifteen (15) within a calendar year. Minimum lot size for minor events is twenty five (25) acres.~~
  5. ~~No structure used for or in conjunction with this use shall be located within fifty (50) feet of any lot line.~~
  6. ~~The Special Permit or Special Exception holder for a minor or major event shall provide adequate security, emergency services, traffic control, sanitation and refreshment services at every event. At least thirty (30) days prior to holding the event, the holder of the Special Permit or Special Exception permit for the property on which the event will be held, shall provide to the Zoning Administrator written proof, including copies of any permits or licenses, if required, from the following agencies that control traffic, security, emergency services, and on-site sanitary and refreshment facilities are adequate for the size and type of event:~~
    - a. ~~Fauquier County Sheriff's Office~~
    - b. ~~Virginia Department of Transportation~~
    - c. ~~Fauquier County Emergency Services Coordinator~~
    - d. ~~Fauquier County Health Department~~
  7. ~~The Special Permit or Special Exception permit shall be granted for a period of three (3) years and after such time, the holder may apply to have the permit renewed for additional five (5) year periods. The procedure for renewal shall be the same as specified in Section 5-009 above. After an initial five (5) year renewal, an applicant may request, and the BZA or Board of Supervisors may grant, a renewal for a period of greater than five (5) years, including an indefinite period. If such a renewal is granted, the holder of the Special Permit or Special Exception permit shall submit to the BZA or Board of Supervisors once every five (5) years thereafter, a report documenting that the use of the property as approved by the Special Permit or Special Exception is in full compliance with all requirements of law with respect to the maintenance and conduct of the use with all of the requirements and standards of this Ordinance, and with all conditions of the Special Permit or Special Exception that were designated in issuing the same. If at any time the BZA or Board of Supervisors determines that the use of the property is not in compliance, it may initiate action to revoke the Special Permit or Special Exception in accordance with Section 5-015 above.~~