

D R A F T

SUMMARY

Allows winery to be sited on land zoned for mixed farm and forest use. Modifies provisions authorizing uses of winery on land zoned for exclusive farm use, including agri-tourism and other commercial events.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to wineries on land zoned for resource uses; creating new provisions; amending ORS 215.237, 215.452 and 215.453 and section 6, chapter 679, Oregon Laws 2011; repealing section 11, chapter 679, Oregon Laws 2011; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 11, chapter 679, Oregon Laws 2011, is repealed.

SECTION 2. ORS 215.452, as amended by sections 3 and 3a, chapter 679, Oregon Laws 2011, is amended to read:

215.452. (1) A winery may be established as a permitted use **on land zoned for exclusive farm use** under ORS 215.213 (1)(p) and 215.283 (1)(n) [*in an area zoned for exclusive farm use*] **or on land zoned for mixed farm and forest use** if the winery produces wine with a maximum annual production of:

(a) Less than 50,000 gallons and:

(A) Owns an on-site vineyard of at least 15 acres;

(B) Owns a contiguous vineyard of at least 15 acres;

(C) Has a long-term contract for the purchase of all of the grapes from at least 15 acres of a vineyard contiguous to the winery; or

(D) Obtains grapes from any combination of subparagraph (A), (B) or (C)

1 of this paragraph; or

2 (b) At least 50,000 gallons and the winery:

3 (A) Owns an on-site vineyard of at least 40 acres;

4 (B) Owns a contiguous vineyard of at least 40 acres;

5 (C) Has a long-term contract for the purchase of all of the grapes from
6 at least 40 acres of a vineyard contiguous to the winery; or

7 (D) Obtains grapes from any combination of subparagraph (A), (B) or (C)
8 of this paragraph.

9 [(2) A winery described in subsection (1) of this section may:]

10 [(a) Market and sell wine produced in conjunction with the winery, in-
11 cluding the following activities:]

12 [(A) Wine tours;]

13 [(B) Wine tastings in a tasting room or other location at the winery;]

14 [(C) Wine clubs; and]

15 [(D) Similar activities conducted for the primary purpose of promoting wine
16 produced in conjunction with the winery; and]

17 [(b) Market and sell items directly related to the sale or promotion of wine
18 produced in conjunction with the winery, the marketing and sale of which is
19 incidental to retail sale of wine on-site, including food and beverages served
20 by a limited service restaurant, as defined in ORS 624.010.]

21 **(2) In addition to producing and distributing wine, a winery estab-**
22 **lished under this section may:**

23 **(a) Market and sell wine produced in conjunction with the winery.**

24 **(b) Conduct operations that are directly related to the sale or mar-**
25 **keting of wine produced in conjunction with the winery, including:**

26 **(A) Wine tastings in a tasting room or other location on the**
27 **premises occupied by the winery;**

28 **(B) Wine club activities;**

29 **(C) Winemaker luncheons and dinners;**

30 **(D) Winery and vineyard tours;**

31 **(E) Meetings or business activities with winery suppliers, distribu-**

1 **tors, wholesale customers and wine-industry members;**

2 **(F) Winery staff activities;**

3 **(G) Open house promotions of wine produced in conjunction with**
4 **the winery; and**

5 **(H) Similar activities conducted for the primary purpose of pro-**
6 **moting wine produced in conjunction with the winery.**

7 **(c) Market and sell items directly related to the sale or promotion**
8 **of wine produced in conjunction with the winery, the marketing and**
9 **sale of which is incidental to on-site retail sale of wine, including food**
10 **and beverages:**

11 **(A) Required to be made available in conjunction with the con-**
12 **sumption of wine on the premises by the Liquor Control Act or rules**
13 **adopted under the Liquor Control Act; or**

14 **(B) Served in conjunction with an activity authorized by paragraphs**
15 **(b) or (d) of this subsection.**

16 **(d) Carry out agri-tourism or other commercial events on the tract**
17 **occupied by the winery subject to subsections (5), (6), (7) and (8) of this**
18 **section.**

19 **(e) Host charitable activities for which the winery does not charge**
20 **a facility rental fee.**

21 **(3) A winery may include on-site kitchen facilities licensed by the**
22 **Oregon Health Authority under ORS 624.010 to 624.121 for the prepara-**
23 **tion of food and beverages described in subsection (2)(c) of this sec-**
24 **tion. Food and beverage services authorized under subsection (2)(c) of**
25 **this section may not utilize menu options or meal services that cause**
26 **the kitchen facilities to function as a café or other dining establish-**
27 **ment open to the public.**

28 **(4) The gross income of the winery from the sale of incidental items**
29 **or services provided pursuant to subsection (2)(c) to (e) of this section**
30 **may not exceed 25 percent of the gross income from the on-site retail**
31 **sale of wine produced in conjunction with the winery. The gross in-**

1 come of a winery does not include income received by third parties
2 unaffiliated with the winery. At the request of a local government with
3 land use jurisdiction over the site of a winery, the winery shall submit
4 to the local government a written statement that is prepared by a
5 certified public accountant and certifies the compliance of the winery
6 with this subsection for the previous tax year.

7 (5) A winery may carry out up to 18 days of agri-tourism or other
8 commercial events annually on the tract occupied by the winery.

9 (6) For events described in subsection (5) of this section for a winery
10 in the Willamette Valley:

11 (a) Events on the first six days of the 18-day limit per calendar year
12 must be authorized by the local government through the issuance of
13 a renewable multi-year license that:

14 (A) Has a term of five years; and

15 (B) Is subject to an administrative review to determine necessary
16 conditions pursuant to subsection (7) of this section.

17 (b) The local government's decision on a license under paragraph
18 (a) of this subsection is not:

19 (A) A land use decision, as defined in ORS 197.015, and is not subject
20 to review by the Land Use Board of Appeals.

21 (B) A permit, as defined in ORS 215.402 or 227.160.

22 (c) Events on days seven through 18 of the 18-day limit per calendar
23 year must be authorized by the local government through the issuance
24 of a renewable multi-year permit that:

25 (A) Has a term of five years; and

26 (B) Is subject to an administrative review to determine necessary
27 conditions pursuant to subsection (7) of this section.

28 (d) The local government's decision on a permit under paragraph
29 (c) of this subsection is:

30 (A) A land use decision, as defined in ORS 197.015, and is subject
31 to review by the Land Use Board of Appeals.

1 **(B) A permit, as defined in ORS 215.402 or ORS 227.160.**

2 **(7) To ensure that agri-tourism or other commercial events on a**
3 **tract occupied by a winery are subordinate to the production and sale**
4 **of wine and do not create significant adverse impacts to uses on sur-**
5 **rounding land, the local government may impose conditions on a li-**
6 **cence or permit issued pursuant to subsection (6) of this section**
7 **related to:**

8 **(a) The number of event attendees;**

9 **(b) The hours of event operation;**

10 **(c) Access and parking;**

11 **(d) Traffic management;**

12 **(e) Noise management; and**

13 **(f) Sanitation and solid waste.**

14 **(8) A local government may charge a fee for processing a license**
15 **or permit under subsections (6) and (7) of this section. A fee may not**
16 **exceed the actual or average cost of providing the applicable licensing**
17 **or permitting service.**

18 [(3)] **(9) A winery operating under this section shall provide parking for**
19 **all activities or uses of the lot, parcel or tract on which the winery is es-**
20 **tablished.**

21 **(10) A local government may authorize a winery allowed under this**
22 **section to carry out uses or activities that are commercial activities**
23 **in conjunction with farm use authorized and approved under ORS**
24 **215.213 (2)(c) or 215.283 (2)(a) or under other provisions of law.**

25 [(4)] **(11) Prior to the issuance of a permit to establish a winery under this**
26 **section, the applicant shall show that vineyards described in subsection (1)**
27 **of this section have been planted or that the contract has been executed, as**
28 **applicable.**

29 [(5)] **(12) A local government shall [adopt findings for each of] apply the**
30 **standards described in this subsection. Standards imposed on the siting of a**
31 **winery shall be limited solely to each of the following for the sole purpose**

1 of limiting demonstrated conflicts with accepted farming or forest practices
2 on adjacent lands:

3 (a) Establishment of a setback of at least 100 feet from all property lines
4 for the winery and all public gathering places **unless the local government**
5 **grants an adjustment or variance allowing a setback of less than 100**
6 **feet;** and

7 (b) Provision of direct road access and internal circulation.

8 [(6)] **(13)** A local government shall apply:

9 (a) Local criteria regarding floodplains, geologic hazards, the Willamette
10 River Greenway, solar access and airport safety;

11 (b) Regulations **of general applicability** for the public health and safety;
12 and

13 (c) Regulations for resource protection acknowledged to comply with any
14 statewide goal respecting open spaces, scenic and historic areas and natural
15 resources.

16 [(7)(a) *A local government may issue a permit for a winery operating under*
17 *this section to host outdoor concerts for which admission is charged, facility*
18 *rentals or celebratory events if the local government issued permits to wineries*
19 *operating under this section in similar circumstances before August 2, 2011.*]

20 [(b) *A local government may not issue a permit for a winery operating un-*
21 *der this section to host outdoor concerts for which admission is charged, fa-*
22 *cility rentals or celebratory events if the local government did not issue permits*
23 *to wineries operating under this section in similar circumstances before August*
24 *2, 2011.*]

25 **(14) As used in this section:**

26 (a) **“Agri-tourism or other commercial events” includes outdoor**
27 **concerts for which admission is charged, educational, cultural, health**
28 **or lifestyle events, facility rentals, celebratory gatherings and other**
29 **events at which the promotion of wine produced in conjunction with**
30 **the winery is a secondary purpose of the event.**

31 (b) **“On-site retail sale” includes the retail sale of wine in person**

1 at the winery site, through a wine club or over the Internet or tele-
2 phone.

3 **SECTION 3.** (1) A local government may authorize the siting on
4 land zoned for exclusive farm use of a winery that does not qualify for
5 siting under ORS 215.452 or 215.453 as a commercial activity in con-
6 junction with farm use under ORS 215.213 (2)(c) or 215.283 (2)(a) or
7 under other provisions of law.

8 (2) If a county authorizes the establishment of a winery on land
9 zoned for exclusive farm use or mixed farm and forest use under pro-
10 visions of law other than ORS 215.452 or 215.453 after the effective date
11 of this 2013 Act, the gross income of the winery from any activity
12 other than the production or sale of wine may not exceed 25 percent
13 of the gross income from the on-site retail sale of wine produced in
14 conjunction with the winery. The gross income of a winery does not
15 include income received by third parties unaffiliated with the winery.

16 **SECTION 4.** ORS 215.237 is amended to read:

17 215.237. If a winery sited on land zoned for exclusive farm use **or mixed**
18 **farm and forest use** under ORS 215.452 conducts **agri-tourism or other**
19 **commercial events authorized in ORS 215.452 (5), the winery may not**
20 **conduct agri-tourism or other commercial** events or activities authorized
21 by ORS 215.213 (11) or 215.283 (4).[, *the winery may not conduct events or ac-*
22 *tivities, if any, that are:]*

23 [(1) Authorized by ORS 215.452; and]

24 [(2) Subject to the conditional approval of a county.]

25 **SECTION 5.** Section 6, chapter 679, Oregon Laws 2011, is amended to
26 read:

27 **Sec. 6.** (1) A use or structure that is lawfully established at a winery
28 located in an exclusive farm use zone and that exists on [*the effective date*
29 *of this 2011 Act*] **August 2, 2011**, including events and activities that exceed
30 the income limit imposed by ORS 215.452, may be continued, altered, restored
31 or replaced pursuant to ORS 215.130.

1 **(2) A use or structure that is lawfully established at a winery lo-**
2 **cated in an exclusive farm use zone and that exists on the effective**
3 **date of this 2013 Act, including events and activities that exceed the**
4 **income limit imposed by ORS 215.452, may be continued, altered, re-**
5 **stored or replaced pursuant to ORS 215.130.**

6 [(2)] **(3)** [*Subsection (1) of this section does*] **Subsections (1) and (2) of**
7 **this section do** not affect the lawful continuation, alteration, restoration
8 or replacement of the winery sited on the same tract.

9 **SECTION 6.** ORS 215.453, as amended by section 5a, chapter 679, Oregon
10 Laws 2011, is amended to read:

11 215.453. (1) A winery may be established as a permitted use **on land**
12 **zoned for exclusive farm use** under ORS 215.213 (1)(p) or 215.283 (1)(n) [*in*
13 *an area zoned for exclusive farm use*] **or on land zoned for mixed farm and**
14 **forest use** if:

15 (a) The winery owns and is sited on a tract of 80 acres or more, at least
16 50 acres of which is a vineyard;

17 (b) The winery owns at least 80 additional acres of planted vineyards in
18 Oregon that need not be contiguous to the acreage described in paragraph
19 (a) of this subsection; and

20 (c) The winery has produced annually, at the same or a different location,
21 at least 150,000 gallons of wine in at least three of the five calendar years
22 before the winery is established under this section.

23 [(2) *A winery described in subsection (1) of this section may:*]

24 [(a) *Market and sell wine produced in conjunction with the winery, in-*
25 *cluding the following activities:*]

26 [(A) *Wine tours;*]

27 [(B) *Wine tastings in a tasting room or other location at the winery;*]

28 [(C) *Wine clubs; and*]

29 [(D) *Similar activities conducted for the primary purpose of promoting wine*
30 *produced in conjunction with the winery;*]

31 **(2) In addition to producing and distributing wine, a winery de-**

1 scribed in subsection (1) of this section may:

2 (a) Market and sell wine produced in conjunction with the winery.

3 (b) Conduct operations that are directly related to the sale or mar-
4 keting of wine produced in conjunction with the winery, including:

5 (A) Wine tastings in a tasting room or other location on the
6 premises occupied by the winery;

7 (B) Wine club activities;

8 (C) Winemaker luncheons and dinners;

9 (D) Winery and vineyard tours;

10 (E) Meetings or business activities with winery suppliers, distribu-
11 tors, wholesale customers and wine-industry members;

12 (F) Winery staff activities;

13 (G) Open house promotions of wine produced in conjunction with
14 the winery; and

15 (H) Similar activities conducted for the primary purpose of pro-
16 moting wine produced in conjunction with the winery.

17 [(b)] (c) Market and sell items directly related to the sale or promotion
18 of wine produced in conjunction with the winery, the marketing and sale of
19 which is incidental to retail sale of wine on-site, including food and
20 beverages served by a limited service restaurant, as defined in ORS 624.010,
21 wine not produced in conjunction with the winery and gifts; *[and]*

22 [(c)] (d) Provide services, including private events, hosted by the winery
23 or patrons of the winery, at which wine produced in conjunction with the
24 winery is featured, that:

25 (A) Are directly related to the sale or promotion of wine produced in
26 conjunction with the winery;

27 (B) Are incidental to the retail sale of wine on-site; and

28 (C) Are limited to 25 days or fewer in a calendar year[.]; **and**

29 (e) **Host charitable activities for which the winery does not charge**
30 **a facility rental fee.**

31 (3)(a) The gross income of the winery from the sale of incidental items

1 pursuant to subsection [(2)(b)] **(2)(c)** of this section and services provided
2 pursuant to subsection [(2)(c)] **(2)(d)** of this section may not exceed 25 per-
3 cent of the gross income from the on-site retail sale of wine produced in
4 conjunction with the winery.

5 (b) At the request of a local government with land use jurisdiction over
6 the site of a winery, the winery shall submit to the local government a
7 written statement, prepared by a certified public accountant, that certifies
8 compliance with paragraph (a) of this subsection for the previous tax year.

9 (4) A winery operating under this section:

10 (a) Shall provide parking for all activities or uses of the lot, parcel or
11 tract on which the winery is established.

12 (b) May operate a restaurant, as defined in ORS 624.010, in which food
13 is prepared for consumption on the premises of the winery.

14 (5)(a) A winery shall obtain a permit from the local government if the
15 winery operates a restaurant that is open to the public for more than 25 days
16 in a calendar year or provides for private events occurring on more than 25
17 days in a calendar year.

18 (b) In addition to any other requirements, a local government may ap-
19 prove a permit application under this subsection if the local government
20 finds that the authorized activity:

21 (A) Complies with the standards described in ORS 215.296;

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

24 (C) Does not materially alter the stability of the land use pattern in the
25 area.

26 (c) If the local government issues a permit under this subsection for pri-
27 vate events, the local government shall review the permit at least once every
28 five years and, if appropriate, may renew the permit.

29 (6) A person may not have a substantial ownership interest in more than
30 one winery operating a restaurant under this section.

31 (7) Prior to the issuance of a permit to establish a winery under this

1 section, the applicant shall show that vineyards described in subsection (1)
2 of this section have been planted.

3 (8) A local government shall require a winery operating under this section
4 to provide for:

5 (a) Establishment of a setback of at least 100 feet from all property lines
6 for the winery and all public gathering places; and

7 (b) Direct road access and internal circulation.

8 (9) A local government shall apply:

9 (a) Local criteria regarding floodplains, geologic hazards, the Willamette
10 River Greenway, solar access and airport safety;

11 (b) Regulations for the public health and safety; and

12 (c) Regulations for resource protection acknowledged to comply with any
13 statewide goal respecting open spaces, scenic and historic areas and natural
14 resources.

15 (10) The local government may authorize a winery described in subsection
16 (1) of this section to sell or deliver items or provide services not described
17 in subsection [(2)(b) or (c)] **(2)(c) or (d)** or (3) of this section under the cri-
18 teria for a commercial activity in conjunction with farm use under ORS
19 215.213 (2)(c) or 215.283 (2)(a) **or under other provisions of law.**

20 (11)(a) A local government may issue a permit for a winery operating
21 under this section to host outdoor concerts for which admission is charged,
22 facility rentals or celebratory events if the local government issued permits
23 to wineries operating under this section in similar circumstances before
24 August 2, 2011.

25 (b) A local government may not issue a permit for a winery operating
26 under this section to host outdoor concerts for which admission is charged,
27 facility rentals or celebratory events if the local government did not issue
28 permits to wineries operating under this section in similar circumstances
29 before August 2, 2011.

30 (12) As used in this section, “private events” includes, but is not limited
31 to, facility rentals and celebratory gatherings.

1 **SECTION 7. This 2013 Act being necessary for the immediate pres-**
2 **ervation of the public peace, health and safety, an emergency is de-**
3 **clared to exist, and this 2013 Act takes effect on its passage.**

4
