



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Consider a Request from Van Ruiten Family Winery to Waive a \$40,000 Late Performance Charge Associated with the Opening of a Downtown Tasting Room

MEETING DATE: August 1, 2007

PREPARED BY: City Manager

RECOMMENDED ACTION: Grant a request from Van Ruiten Family Winery to waive a \$40,000 late performance fee related to the opening of its downtown tasting room the cellardoor.

BACKGROUND INFORMATION: On June 15, 2005, the City Council approved a Memorandum of Understanding with Van Ruiten Family Winery to allow the winery to connect to the City's industrial wastewater system in exchange for opening a downtown wine tasting room. The agreement recommended that if Van Ruiten winery does not open a tasting room within 18 months of making a connection to the wastewater system, that a fee of \$40,000 be paid for downtown development. The fee was intended to provide an incentive to insure that the tasting room was opened.

During its deliberations, the Council chose to reduce the 18 months to 12 months and retain the \$40,000 penalty.

On November 17, 2005, Van Ruiten connected to the wastewater system. On April 12, 2007, the cellardoor opened at 21 School Street fulfilling Van Ruiten Winery's obligation for a downtown tasting room under the agreement, 17 months after making the connection. Other than timing, Van Ruiten has performed in all other aspects of the agreement.

The agreement achieved the desired results. An attractive downtown tasting room has opened. The cellardoor is achieving a reputation as an outlet for three well known local wineries and a location for pre and post dinner events.

Van Ruiten has been informed of the penalty. Attached is a letter from Van Ruiten Family Winery General Manager Bill Rogan requesting the \$40,000 late fee be waived.

The City incurred no costs related to any delay. Van Ruiten has paid all fees and charges, including a surcharge of 150 percent of wastewater costs.

APPROVED: _____
Blair King, City Manager

FISCAL IMPACT: If the fee is waived the City will forgo \$40,000 in revenue. However, the City has incurred no costs that have not been recovered. All capacity charges have been paid and Van Ruiten is being charged a rate 150 percent higher than the City's standard published rate for industrial waste. The cellardoor is open and is contributing to the vibrancy of downtown.

Blair King, City Manager

Attachments



VAN RUITEN FAMILY WINERY

JUL 09 2007
CITY MANAGER'S OFFICE

July 9, 2007

Mr. Blair King
Office of City Manager
City Hall, 221 W. Pine St.
Lodi, CA 95240

Dear Blair:

In response to your letter dated June 19, 2007, I am requesting an appeal to the \$40,000 fine in accordance with the Memorandum of Understanding between the City and Van Ruiten Winery. Our winery had every intention of opening a downtown tasting room within a 12 month window, however, many obstacles came into play once the location was found. The downtown space we chose is owned by F&M Bank. When we signed the lease, it was an empty building that needed a lot of renovation and work in order to pass city and fire codes. We also had delays in construction due to water leaks that needed to be reviewed and approved for repair by F&M Bank.

At this time, I am asking the City to wave the \$40,000 fee. I realize our opening went past the 12 month timeframe, but we were within the original 18 month timeline of the draft agreement. Van Ruiten Winery would appreciate the City Council's understanding in this matter and consider the wonderful addition the Cellardoor has made to downtown.

Sincerely,


Bill Rogan
General Manager

**Van Ruiten Winery
Industrial Waste Connection Memorandum of Understanding**

THIS AGREEMENT is entered into this 7th day of June, 2005, (the "Effective Date"), between Van Ruiten Family Winery, LLC ("Winery") and the CITY OF LODI, a municipal corporation organized and existing under the laws of the State of California ("City").

RECITALS

This Agreement is predicated upon the following findings:

A. Winery is the owner of a Wine Production Facility located at 340 W. Highway 12, San Joaquin County, California which is outside the corporate limits of the City of Lodi. Winery intends to submit an application to connect and discharge their Industrial Waste to the City's Industrial Waste line. ("Project")

B. Lodi's current municipal code prohibits wastewater service to facilities or properties outside the city limits. (LMC 13.12.150) The City is willing to consider amending its Code to permit acceptance of Winery's Industrial Wastewater based on the terms and conditions of this agreement.

C. The Parties acknowledge that the California Environmental Quality Act may require Environmental Review of this project and that this agreement is not a connection agreement, and does not commit them to enter a connection agreement at some later date, absent compliance with the California Environmental Quality Act.

D. The Parties further acknowledge that a municipality cannot contractually bind itself to amend its municipal code and that this agreement does not bind the City to do so.

E. The Parties finally acknowledge that the connection may be subject to review, condition and approval of the California Regional Water Quality Control Board.

NOW THEREFORE, the parties agree as follows:

1. Definitions. Unless otherwise defined in this agreement, all capitalized terms will have the definitions ascribed to them in Lodi Municipal Code Section 13.12.020.
 - a. "Downtown Lodi" means the area bordered by Church Street, Lodi Avenue, Union Pacific Railroad and Lockeford Street.
2. Consideration of Connection. Lodi will consider amending its Municipal Code to permit Winery to connect to the City's Industrial Waste line on the terms and conditions set forth in this agreement.

3. Terms of Connection. Any connection permitted pursuant to the Agreement shall contain the following minimum terms:
- a. Permit: Winery shall comply with the terms of the Industrial System Discharge Permit to be issued by the City which will include but not be limited to limitations on maximum flow, BOD, ph, TDS and suspended solid concentrations and prohibitions on discharge of hazardous waste in conformance with the City's NPDES Permit.
 - b. Average Daily Flow: Average Daily Flow shall not exceed 1.1 million Gallons per Year at 9,000 mg/L BOD (11,000 mg/L maximum).
 - c. Rate/Surcharge: Winery's rate for discharge shall be set at 150 percent of the City's standard published rate for Industrial Waste.
 - d. Capacity Charge: Winery shall pay a one-time capacity charge based on annual flow and BOD loading prior to connection. Current rates are \$6,260.67 per Million Gallons capacity and \$131.80 per 1,000 lbs of BOD. These rates are subject to change and will be set at the time Winery submits its application to connect to the Industrial Waste line. In addition, applications by Winery for increases in permitted capacity will, if granted, be charged at then current rates.
 - e. Non-Assignment: Winery may not sell capacity or accept wastewater from other locations.
 - f. Downtown Tasting Room: Winery shall open and operate a tasting room in Downtown Lodi during the entire term of its connection to the City's sewer system. The tasting room shall be operated within the following minimum requirements:
 - i) The tasting room shall be at least 500 square feet and have wine available for tasting and sale, wine related merchandise for sale and be open a minimum of 40 hours per week, including Saturday and Sunday.
 - ii) If this condition cannot be met within twelve months of connection, Winery shall pay an annual downtown development and promotional in-lieu fee in the amount of \$40,000.00. The fee shall be retroactive for one year and shall be assessed annually (until such time as the requirements of subsection i of this paragraph has been satisfied) as annually adjusted according to the Bay Area-All Items Consumer Price Index. If condition i above cannot be met within six years of connection, this Agreement will terminate and Winery will be required to make alternate arrangements for its wastewater.
 - g. Annexation. Winery, in consideration for receiving City sewer service, will consent to the annexation to the City of Lodi of the subject property, waives any right to protest the annexation and assigns to the CITY any right to vote on the annexation. Annexation shall occur when and if the

CITY deems the annexation of the subject property feasible and advisable. In the event the annexation is sought by Winery, Winery agrees to pay CITY an amount to cover the subject property's proportionate share of the costs to conduct the annexation. In the event that the Winery does ultimately connect to City service, Winery agrees to enter into a short form memorandum of agreement expressing the obligations of this paragraph in recordable form.

4. Binding Effect of Agreement. Winery's obligations under paragraph three of this Agreement will only be triggered if 1) the Lodi Municipal Code Section is amended to permit Winery to connect to the Industrial Sewer Line; and 2) All other approvals necessary to secure the connection are secured. All other obligations.
5. Reimbursement. Winery shall reimburse the City for all costs incurred by the City in connection with the Project including but not limited to costs associated with securing environmental review of the project, securing California Regional Water Quality Control Board approval of the project, implementing mitigation measures required by the California Environmental Quality Act, and complying with requirements of the Regional Water Quality Control Board in excess of current standards. The City will provide Winery with an estimate of these costs in advance of connection. Winery shall deposit the estimate with the City within 30 days of receiving the estimate. City will bill all costs against the deposit. In the event the deposit is exceeded, Winery shall pay the difference to the City within 30 days of notice. Any excess will be refunded to Winery within 30 days of connection.
6. Construction. Winery shall be solely responsible for acquiring the right of way, permits and constructing the lateral line to connect to Lodi's Industrial Waste line. Once constructed, Winery shall remain solely responsible for the maintenance and repair of its lateral.
7. Relationship of Parties.
 - a. It is understood that the contractual relationship between the City and Winery is such that Winery is an independent contractor and not the agent of the City; and nothing herein shall be construed to the contrary.
 - b. City and Winery agree that nothing contained herein or in any document executed in connection herewith shall be construed as making Winery and City joint venturers or partners.
 - c. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision in this Agreement.
8. No Entitlements Granted. Nothing in this Agreement shall provide Winery with any right to secure approval of any connection or other entitlement. In addition,

Winery agrees that it will have no rights to: select the Environmental Review Consultant, if one is required; or direct the work, response times, recommendations or approvals of the Consultant.

9. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the principal offices of the City and Winery and its representative and Winery's successors and assigns. Notice shall be effective on the date it is delivered in person, or the date when the postal authorities indicate the mailing was delivered to the address of the receiving party indicated below:

Notice to City: City of West Lodi
City Manager
221 W. Pine St
Lodi, CA 95240

Notice to Winery: Van Ruiten Family Winery, LLC
340 West Highway 12
Lodi, CA 95242

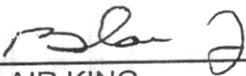
10. Indemnification, Defense and Hold Harmless.

- a. Winery agrees to and shall indemnify, defend and hold the City, its council members, officers, agents, employees and representatives harmless from liability for damage or claims of damage, for personal injury, including death, and claims for property damage which may arise from this agreement.
- b. Winery's obligation under this section to indemnify, defend and hold harmless the City, its council members, officers, agents employees, and representatives shall not extend to liability for damage or claims for damage arising out of the sole negligence or willful act of the City, its council members, officers, agents, employees or representatives. In addition, Winery's obligation shall not extend to any award of punitive damages against the City resulting from the conduct of the City, its council members, officers, agents, employees or representatives.
- c. With respect to any action challenging the validity of this Agreement or any environmental, financial or other documentation related to approval of this Agreement, Winery further agrees to defend, indemnify, hold harmless, pay all damages, costs and fees, if any incurred to either the City or plaintiff (s) filing such an action should a court award plaintiff(s) damages, costs and fees, and to provide a defense for the City in any such action.

IN WITNESS WHEREOF this Agreement has been executed by the parties on the day and year first above written.

CITY OF LODI, a municipal corporation

VAN RUITEN FAMILY WINERY, LLC



BLAIR KING
City Manager



By: John Van Ruiten
Its: Owner

ATTEST:



SUSAN J. BLACKSTON
City Clerk

APPROVED AS TO FORM:



D. STEPHEN SCHWABAUER
City Attorney
Janice Magdich, Deputy