



**City of Santa Barbara**  
Community Development

**Memorandum**

DATE: January 24, 2018

TO: Building and Fire Code Board of Appeals

FROM: Andrew Stuffer, Chief Building Official

SUBJECT: Staff Report – 118 State Street Appeal of Denial of Permit

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This is a response to the Chief Building Official's decision to not approve a plan submitted to the City as part of a building permit application for a wine tasting occupancy within the Hotel Californian complex. The floor plan for this permit application depicts the single exit door serving this occupancy. A single exit door is allowed to serve a maximum occupant load of 49 for a drinking establishment such as the one proposed.

Important to this issue is Chapter 10 of the State Building Code (Attachment A), which prescribes maximum occupancy as a function of the floor area divided by an occupant load factor that is based on the proposed use. When the occupant load factor in Chapter 10 of the State Building Code has multiple or conflicting uses that could be applied to a project, the choice of the most appropriate occupant load factor becomes a decision of the Chief Building Official. In cases where wine tasting occupancies have not honored maximum occupant load limitations, the Chief Building Officer and the City Fire Marshal have enforced the State Building Code to avoid overcrowding facilities and resultant fire and safety hazards. Ensuring the safety of the public is the reason that both the Fire Marshal and the Chief Building Official have determined that the lowest appropriate occupant load factor in Chapter 10 of the State Building Code should be applied to drinking and wine occupancies that are not restaurants and that do not have fixed seating.

The proposed floor plan depicts a layout that does not use the lowest appropriate occupant load factor in the State Building Code, resulting in an occupant load greater than 49. City staff offered a solution to the applicant's designer, suggesting that fixed bar seating be installed to reduce the occupant load to 49 or less. The applicant's local code consultant submitted an argument in favor of using higher occupant load factors, but did not acknowledge the numerous overcrowding violations observed by the Santa Barbara Fire Department at wine tasting and drinking establishments in the City. The code consultant did contact a national code expert and ask for his general opinion, which was forwarded to the Chief Building Official; however, when the Chief Building Official contacted the same national code expert and asked him how he would classify a drinking or wine tasting bar without fixed seats in an area of town that has a history of overcrowding, the national code consultant concurred that the use of lower occupant load factors is appropriate in order to ensure public safety. The International Code Council, writers of the model building code used by California, published an exit system training video that closes with a reminder that lower occupant load factors are appropriate in situations where overcrowding is a problem. Lastly, the City Building Official and Fire Marshal are not applying new or different interpretations of the code here, but rather are using the same standards that have been applied to drinking establishments throughout the City's Funk Zone and other entertainment districts. Local architects have designed many of these establishments over the years

and are familiar with occupant load calculations and how to design with these requirements in mind. A departure from these standards, in addition to being inherently unsafe, may pose an equal protection issue for similar occupancies that have adhered to this interpretation of the Chief Building Official and Fire Marshal.

In trying to resolve this situation, the City has offered to enter into a recorded Covenant Agreement with the building owner and tenant limiting the occupant load to 49. At least two versions of a Covenant were accepted by the City and presented to the tenant and building owner in an effort to allow the proposed tenant, Melville Winery, to use the tenant space and proposed bar area without fixed seating. These Covenants limited the occupant load to 49 through a business model that actively monitors the occupant load. This Covenant was only applicable to the Melville Winery tenant and would be null upon a change in tenants. Those proposed Covenants were not accepted, executed, and recorded at the time of the preparation of this report.

For these reasons, both the City Fire Marshal and Chief Building Official agree that the proposed plans depicting a wine tasting occupancy with an occupant load in excess of 49 creates a de facto assembly occupancy under the California Building Code. An assembly requires two exits, equipped with panic hardware and separated by one-third the diagonal of the area served. It follows then that an assembly occupancy (50 or more occupants) served by only one exit door should not be approved.



City of Santa Barbara  
Building and Safety Division

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JAN 10 2018

REQUEST FOR  
APPEALS BOARD HEARING

RECEIVED

Property Address 118 State Street Date 11/27/2017  
APN 033-081-003, 033-81-011, 033-81-013  
Owner's Name Kurt Ammann General Manager for Melville Winery (tenant)  
Owner's Address 5185 East Hwy 246, Lompoc, CA 93436 (Phone) 805-735-7302  
Owner's Email Address kurt@melvillewinery.com

**Decision Being Appealed**

A brief statement specifying order or action protested: see attached letter Nov. 27, 2017 - Nov. 22, 2017

- Further explanation attached.
- Copy of protested notice attached.

A brief statement of the reason the protested order of action should be reversed, modified or otherwise set aside:  
see attached letter Nov. 27, 2017 - Nov. 22, 2017

**Within 30 days you will be given notice of the date of your hearing.**

**Signature**

I certify under penalty of perjury that the foregoing, to the best of my knowledge, is true and correct. I also acknowledge that the Board cannot waive any Code requirements and will only determine the proper application of the code.

Signature Roy W. Harthorn (see attached authorization 11-20-2017)  
*Roy Harthorn*

**Questions**

For further information contact the Building & Safety Division at (805) 564-5485

**Hours:** Monday-Friday \*  
8:30 a.m. to 4:30 p.m.  
\*Closed Alternate Fridays

**Address:** 630 Garden St, Santa Barbara, CA 93101  
**Phone:** (805) 564-5485

melville

November 20, 2017

To Whom It May Concern:

We have retained the code consulting services of Mr. Roy W. Harthorn and hereby authorize him to represent our interest in discussions concerning the approval of our tenant improvement plans with the City of Santa Barbara Building & Safety Division, the Fire Dept., and access any City Administrator's *ACCELERATE* staff or services or as otherwise necessary with the Building & Fire Code Board of Appeals. This includes filing of opinions, code analysis and/or appeal applications and documentation.

Regards-



Kurt Ammann  
General Manager  
Melville Winery  
(805) 735.7302