

## **Work Plan and Status Update on Litigation Pertaining to Wineries, Breweries, and Distilleries**

**As Required by Ordinance 19721**

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July 30, 2024



**King County**

## I. Contents

II.	Executive Summary .....	3
III.	Report Requirements .....	6
IV.	Recommendation.....	6

## II. Executive Summary

Winery, Brewery, and Distillery (WBD) regulations were updated by King County following a 2010 docket request by the City of Woodinville related to WBDs and a subsequent study conducted by a consultant hired by the County. The Ordinance adopted by the County, which was informed by this study, was appealed to the Growth Management Hearings Board, Central Puget Sound Region in March of 2020, and legal proceedings are presently ongoing.

Ordinance 19721, Section 4 requires the Executive to "complete a work plan for winery, brewery, distillery facility uses subject to this moratorium". This work plan includes the following information:

**Status update on legal proceedings:** The Ordinance that amended WBD regulations was appealed to the Growth Management Hearings Board (GMHB) in March 2020, and an order was issued in May 2020. King County appealed this order to King County Superior Court, who reversed the GMHB's decision in April 2021. Legal proceedings are currently before the Washington State Supreme Court and are ongoing.

**Potential outcomes of litigation:** The Court might find in favor of the County or in favor of the appellants; in either scenario, the Washington State Supreme Court will remand the case to the GMHB.

**Recommendation:** Given the present uncertainty regarding the outcome of litigation, this report recommends a six-month moratorium to allow time for litigation to resolve. Since the outcome and timing of the Washington State Supreme Court's decision is not yet known, there is a risk that the existing moratorium could expire without regulations in place. The proposed moratorium would prevent this from happening.

**Key Historical Context:** In 2010, the City of Woodinville submitted a docket request to King County that would have expanded the Urban Growth Boundary and applied commercial zoning to areas near the Woodinville city limits. The docket request was not approved, and as part of the 2012 Comprehensive Plan Update, the King County Council adopted a work plan item to work with the City of Woodinville on joint recommendations for wine and agriculture industries.<sup>1</sup> A result of this work program item was for the County to hire a consultant to conduct a study of the issues and to prepare a report recommending revisions to regulations.<sup>2</sup>

The resulting report, the King County Sammamish Valley Wine and Beverage Study report, was released in September 2016.<sup>3</sup> While the initial impetus for the report was the rapidly growing wine industry in and around the Sammamish Valley, the report's recommendations encompassed the wine and beverage industry throughout the rural and agricultural areas across King County. The findings of the report include:

- Creating a wine and beverage industry toolkit to improve awareness of adopted rules and regulations;
- Establishing a business license for all wineries, breweries, distilleries, cideries, and remote tasting rooms;
- Allowing for smaller lot-size requirements for small production facilities;
- Continuing to limit retail and commercial activities on agricultural zoned lands, and
- Limiting the negative impacts of wineries and tasting rooms on rural communities.

On April 26, 2018, the King County Executive transmitted a proposed Ordinance and the King County Action Report based on the findings of the King County Sammamish Valley Wine and Beverage Study to the King County Council.<sup>4</sup> The proposed Ordinance added a requirement for adult beverage businesses to obtain a business license, established development standards for adult beverage businesses, and created requirements for business locations and hours of operation. The transmittal report confirmed the County's support of the wine and adult beverage industry in King County and recognized the need to establish a strong foundation for moving the industry into the future while respecting rural and resource communities. Key findings of the report include:

- Clarifying the existing regulations;
- Maintaining the current boundaries and regulatory structure of the Agricultural Production Districts;<sup>5</sup>
- Allowing winery, brewery, and distillery operations generating less traffic and activity on smaller lots and operations generating more traffic and activity on larger lots with direct access to a transportation arterial, and
- Prohibiting wineries, breweries, and distilleries as home occupations and home industries.

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<sup>1</sup> Ordinance 17485, Section 50.P. [\[LINK\]](#)

<sup>2</sup> Ordinance 18239 [\[LINK\]](#)

<sup>3</sup> King County Sammamish Valley Wine and Beverage Study [\[LINK\]](#)

<sup>4</sup> Sammamish Valley Area Wine and Beverage Industry Study [\[LINK\]](#)

<sup>5</sup> Agricultural Production Districts are agricultural lands of long-term commercial significance and are designated in the King County Comprehensive Plan [\[LINK\]](#)

Following review of the report by the Council, Ordinance 19030 was adopted by the Council on December 4, 2019.<sup>6</sup> The Ordinance established updated regulations for wineries, breweries, and distilleries.

On March 4, 2020, Ordinance 19030 was appealed to the Growth Management Hearings Board, Central Puget Sound Region.<sup>7</sup> Subsequently, litigation has continued, with cases being heard by the Growth Management Hearings Board, Division I of the Washington State Court of Appeals, and the Washington State Supreme Court. A Petition for Review accepted December 5, 2023, by the Washington State Supreme Court is currently under consideration, and a decision is expected in early 2025.

**Key Current Context:** To allow time for litigation to resolve, an existing moratorium is in place prohibiting acceptance of applications for establishment of new or expansion of existing wineries, breweries, distilleries, and remote tasting rooms, which will expire in December 2024.<sup>8</sup>

**Report Methodology:** This report is based on review of past legislation and Growth Management Hearings Board and other court documentation.

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<sup>6</sup> Ordinance 19030 [[LINK](#)]

<sup>7</sup> Petition for Review, dated March 4, 2020 [[LINK](#)]

<sup>8</sup> Ordinance 19721 [[LINK](#)]

### III. Report Requirements

Ordinance 19721, Section 4 requires the Executive to "complete a work plan for winery, brewery, distillery facility uses subject to this moratorium." Given the ongoing litigation, detailed above, there are multiple potential outcomes, each of which would require a different response from the County:

- **If the Washington State Supreme Court were to make a decision in favor of the County**, Ordinance 19030, providing regulations for wineries, breweries, and distilleries, would go into effect. In this scenario, if the decision were received before the current moratorium expired (i.e., December 2024) and existing regulations were confirmed by the Court to be acceptable, no additional moratorium would be needed, and the regulations adopted by Ordinance 19030 could be applied. If the decision were to be issued after the current moratorium expired, a moratorium should be put in place to avoid the acceptance of applications for which the applicable review standards would be uncertain.
- **If the Washington State Supreme Court were to make a decision in favor of the appellants**, the County may need to develop new regulations consistent with the court's decision or perform additional SEPA review. The process for developing new regulations would include research and analysis, public engagement, equity review, and a public hearing by the King County Council. Each of these phases of the process would take time, during which it would be uncertain what the applicable regulations for wineries, breweries, and distilleries would be. Therefore, a moratorium should be put in place in this scenario, to avoid the acceptance of applications for which the applicable review standards would be uncertain.
- **In each scenario, the Washington State Supreme Court will remand the case to the Growth Board**, and additional time will be needed to allow resultant Board processes to proceed. Therefore, a moratorium should be put in place, to avoid the acceptance of applications for which the applicable review standards would be uncertain.

Because of the uncertainty regarding the outcome of litigation pertaining to Ordinance 19030, this work plan recommends adopting a six-month moratorium to take effect prior to the expiration of the moratorium presently in place (that is, prior to December 22, 2024). Doing so will prevent applications from being accepted in the event that there are no clear code standards by which to review those applications, as in the scenarios described above.

### IV. Recommendation

Due to ongoing litigation, a new moratorium that continues the existing moratorium prohibiting the acceptance of applications for establishment of new or expansion of existing wineries, breweries, and distilleries and remote tasting rooms is the recommended next action. The outcome and timing of the Washington State Supreme Court's decision is not yet known, and there is a risk that the existing moratorium will expire without regulations in place. Therefore, adopting a six-month moratorium that will take effect prior to the expiration of the moratorium presently in place provides time for the County to decide a course of action in the event that the court makes a decision in favor of the appellants, and to allow for the Board remand process.