## STAFF REPORT

|  |  |  |  |
| --- | --- | --- | --- |
| **Agenda Item:** | 4 & 5 | **Name:** | Erin Auzins |
| **Proposed No**.: | 2022‑01472022-0148 | **Date:** | May 11, 2022 |

**SUBJECT**

Proposed Ordinances 2022-0147 and 2022-0148 would update the County's winery, brewery, and distillery (WBD) regulations.

**SUMMARY**

Ordinance 19030 was adopted in December 2019 after a years-long process to review and update the development regulations for wineries, breweries, and distilleries in unincorporated King County. After appeal to the Growth Management Hearings Board, the Board found Ordinance 19030 noncompliant with the Growth Management Act and invalid. There are two Proposed Ordinances before the Committee today, for Discussion and Possible Action.

Proposed Ordinance 2022-0147 (Ordinance 1) would consolidate the requirements for WBDs into one chapter of the code; and would modify the regulations adopted by Ordinance 19030: regulations for WBDs in the A and RA zones countywide, most notably to prohibit WBDs within the A zone; regulations in the RA zone regarding water usage that would apply countywide except for Vashon-Maury Island; repeal remote tasting room demonstration project A; modify the regulations for events and temporary use permits for WBDs; and modify provisions related to definitions, state law references to on-site retail and tasting, nonconforming use status, and WBD land use licenses.

Proposed Ordinance 2022-0148 (Ordinance 2) would amend Ordinance 1, to allow WBDs in the UR zone, to add a separation requirement between WBDs in the RA zone, and to specify a requirement for compliance with the federal Clean Water Act.

There are striking amendments for each of the Proposed Ordinances. The striking amendment for Ordinance 1 includes: streamlining the Findings, modify the development conditions for WBD I, II, and III in the RA zone (parking, septic requirements, incidental sales, historic resources), modifying and clarifying the requirements for function and special events that require temporary use permits, and building permit and business license issuance.

For Ordinance 2, the changes include: engrossing the changes made in Ordinance 1, modifying or clarifying the development conditions for WBD I, II, and III in the RA and UR zones (hours of operation, removing reference to federal laws, separation requirement), allowing wineries in the Industrial zone, and adding UR zone to business license provisions that are applied to the RA zone in Ordinance 1.

**BACKGROUND**

**Prior to Ordinance 19030.** Wineries and breweries have been uses listed in the permitted use tables since at least the 1993 Zoning Code.[[1]](#footnote-1) Prior to Ordinance 19030, the development conditions had not changed since 2003,[[2]](#footnote-2) when standards relating to minimum lot size, maximum building size, special event limitations, and product content were first adopted.[[3]](#footnote-3) Distilleries were first recognized as a land use in 2013.[[4]](#footnote-4) Wineries, breweries, and distilleries were considered the same land use category under the code, and for each zone in which they are allowed (either outright as a permitted use, or with a conditional use permit), they had the same development conditions.

In 2010, the City of Woodinville submitted a docket request that would have expanded the urban growth boundary and established new commercial zoning for an area close to the Woodinville city limits. In 2011, a private resident submitted a similar docket request. In each case, the County Executive did not support the proposal, and as part of the 2012 Comprehensive Plan Update,[[5]](#footnote-5) the Council adopted a work plan item to work with the City of Woodinville on joint recommendations for wine and agriculture industries.

Following the 2012 Comprehensive Plan work program, and as part of the mid-biennial budget supplemental in 2016,[[6]](#footnote-6) the Executive requested, and the Council approved, an appropriation of $75,000 for the Office of Performance, Strategy and Budget to hire a consultant to conduct a “[s]tudy to develop recommendations to improve the interface of the burgeoning wine industry with the surrounding communities. The funding will be used to secure consultant assistance to support the outreach, research and recommendation process. The study will focus on economic development, transportation, land use and agriculture in the Sammamish Valley area, and may also make recommendations for other parts of unincorporated King County as appropriate.”

Around the same time, neighbors of wineries and tasting rooms within the Sammamish Valley filed a number of code enforcement complaints against some of those businesses alleging they were operating in violation of the zoning code and some of them for construction activity without required permits. The Department of Permitting and Environmental Review (DPER) (now the Permitting Division of the Department of Local Services), knowing that the Executive would be beginning a study to look at policy recommendations, offered settlement agreements to all known WBD businesses – whether associated an alleged code violation or not - in unincorporated King County. These settlement agreements stated that the property/business owners acknowledged that aspects of the WBD uses may not be permitted, that the business owner would not increase any non-conformance, and that any life-safety issues would be corrected. In return, DPER would not move forward with any code enforcement process for any alleged violations while the Executive’s study was being completed and before any legislative changes were considered and adopted by the Council.

Following approval of the budget supplemental request, the Executive formed a stakeholder group of Sammamish Valley wineries, agricultural interests, and the Cities of Woodinville and Redmond. The consultant performed stakeholder interviews and held five meetings with the stakeholders to review the goals and priorities, agricultural industry needs and issues, wine industry needs and issues, the issues with the existing development regulations, transportation issues, and potential policy changes and infrastructure improvements. The consultant also held an open public meeting and used an online public comment tool. The stakeholder group and consultant provided a series of policy recommendations in their final report, issued in September 2016.[[7]](#footnote-7)

Between September 2016 and April 2018, the Executive worked on a series of proposed policy changes, as well as on improvements within the Sammamish Valley (shuttle van, trail connections, signage). A public review draft of the Executive's proposed regulations was issued in June 2017, outlining an initial proposal for public comment. After reviewing and considering the feedback on the public review draft, the Executive transmitted a final report and [Proposed Ordinance 2018-0241](https://mkcclegisearch.kingcounty.gov/LegislationDetail.aspx?ID=3488987&GUID=C06F6D4A-A59E-422E-AF8B-AF39AD24762B&Options=ID|Text|&Search=19030) (enacted as Ordinance 19030) to the Council in April 2018.

**Ordinance 19030.** Ordinance 19030 was adopted in December 2019, after seven Committee meetings, a town hall meeting and two public hearings at full Council. Ordinance 19030 substantively modified the regulations for WBDs in several ways, including:

* Establishing a county business license to aid in enforcement of the land use regulations.
* Changing the structure of the regulations from a two-tiered approach to a three-tiered approach. The former code regulated WBDs as either a permitted use or a conditional use, while Ordinance 19030 adopted regulations for production WBD I (very small), WBD II (small), and WBD III. Establishing WBD I, II and IIIs in the Manufacturing Land Uses permitted use table with varying development conditions for each zone and size of facility; more stringent conditions were adopted for the A and RA zones to reflect the need to protect those lands as required by the King County Comprehensive Plan and Washington State Growth Management Act (GMA). In general, the development conditions in the A and RA zone:
* Maintained, reduced, and established minimum lot sizes
* Maintained or reduced maximum building sizes
* Specified additional limitations on on-site tasting and retail sales
* Required water hookup for WBD IIIs
* Required access to an arterial or public roadway
* Established an on-site grow requirement for products in the A zone and eliminated a requirement in the RA zone for sourcing in Puget Sound counties.
* Established minimum on-site production requirements
* Established requirements for locating facilities on agricultural lands
* Modified parking minimums and maximums
* Maintained and added parking areas to setbacks from Rural Area and Residential zones
* Established maximum impervious surfaces
* Establishing a new "remote tasting room" use to mirror state licensing in the CB and RB zones, including within the CB zone of the Vashon and Fall City Rural Towns.
* Establishing a 3-year demonstration project to test whether remote tasting rooms could be an allowed use in the Rural Area zone.
* Prohibiting WBDs and remote tasting rooms as home occupations and home industries.
* Modifying temporary use permits (TUP) for WBD-related events, with stricter limits in the A and RA zone than for other zones, such as limiting events for breweries and distilleries to 2 per month (A zone) or 24 per year (RA) zone, and setting a maximum guest size that did not exist previously. Adding triggers for Permitting to easily identify when a TUP is required. Establishing an exemption from TUP requirements for certain existing WBDs in the RA zone including those that had at least 8 acres in lot size and had access to a principal arterial or state highway, and where the County did not object to issuance of the state liquor license.
* Increasing citation penalties for code violations by WBDs and remote tasting rooms.

*SEPA Review.* As is the case for most development regulations, State Environmental Policy Act (SEPA) review was required for Ordinance 19030 prior to adoption. A SEPA checklist was prepared, dated April 24, 2019. Based on that checklist, the SEPA Responsible Official issued a Determination of Nonsignificance on April 26, 2019. After the public comment period on the threshold determination, the SEPA Responsible Official issued a June 10, 2019 memo summarizing the comments received and concluded that "none of the comments have identified unmitigated environmental impacts of the limited code changes that would result in a more than likely probable significant impact." After additional public process, including two public hearings at full Council and two committee meetings that occurred after the SEPA Responsible Official's June 10, 2019 memo, the Council adopted Ordinance 19030 with amendments responding to public comments.

One question frequently raised during review of Ordinance 19030 was how many properties in the A and RA zones would be able to, in theory, establish WBD IIs based on the changes to the minimum lot sizes. Under Ordinance 19030, the minimum lot size for WBD IIs is 2.5 acres in the RA zone, which is lower than the minimum lot size allowed for smaller WBD uses under the former code. The former code did not have a minimum lot size for WBDs with less than 3,500 square feet of floor area in the A zone. There was concern that this lower lot size would create opportunity for a substantially higher number of WBDs than was previously allowed. However, the minimum lot size reduction for WBD IIs was coupled with other changes, most notably, a requirement for direct access to either a public road or an arterial that limits the number of lots that could theoretically become a WBD II under Ordinance 19030. In addition, as noted below, home occupation WBDs were allowed on nearly any A or RA zoned parcel, which is reflected in the tables below.

Recent GIS analysis shows that **more properties could establish a WBD under the former code (the code in place prior to Ordinance 19030) than under Ordinance 19030**, when the access requirement is also taken into account. Table 1 shows a summary of this high-level analysis for the RA zone.

Table 1a includes information in the RA zone excluding Vashon-Maury Island. Under the former code, all properties in the RA zone (over 47,000) could have attempted to establish a home occupation WBD, and over 10,000 properties in the RA zone could have attempted to establish a WBD with a lot size of over 4.5 acres with no access requirement.

Under 19030, under 6,000 properties in the RA zone could attempt to establish a WBD II, even with the lower minimum lot size, due to the access requirement.

**Table 1a. GIS analysis of parcels available for WBDs II – RA zone**

|  |
| --- |
| **King County minus Vashon-Maury Island - RA zone** |
|   | **Less than 2.5ac** | **2.5ac to less than 4.5ac** | **4.5ac or more** | **All properties** |
| All properties | 32,662 | 4,498 | 10,247 | 47,407 |
| Accessible by a public road (inc. arterial) | 21,041 | 1,948 | 3,732 | 26,721 |
| Accessible by arterial | 4,441 | 970 | 2,021 | 7,432 |
| * 47,407 properties could have attempted to establish a home occupation WBD prior to 19030
* 10,247 properties could have attempted to establish a WBD II prior to 19030
* 5,680 (1,948 plus 3,732) properties could attempt to establish a WBD II under 19030
 |
| **Table 1b. GIS analysis of parcels available for WBDs II – RA zone**  |
| **Vashon-Maury Island - RA zone** |
|   | **Less than 2.5ac** | **2.5ac to less than 4.5ac** | **4.5ac or more** | **All properties** |
| All properties | 5,059 | 803 | 1,557 | 7,419 |
| Accessible by a public road (inc. arterial) | 2,947 | 432 | 884 | 4,263 |
| Accessible by arterial | 1,077 | 218 | 506 | 1,801 |
| * 7,419 properties could have attempted to establish a home occupation WBD prior to 19030
* 1,557 properties could have attempted to establish a WBD II prior to 19030
* 1,316 (432 plus 884) properties could attempt to establish a WBD II under 19030
 |

|  |
| --- |
| **Table 1c. GIS analysis of parcels available for WBDs II – A zone** |
| **King County minus Vashon-Maury Island - A Zones** |
|   | **Less than 2.5ac** | **2.5ac to less than 4.5ac** | **4.5ac or more** | **All properties** |
| All properties | 1,049 | 332 | 2,135 | 3,516 |
| Accessible by a public road (inc. arterial) | 722 | 180 | 1,203 | 2,105 |
| Accessible by arterial | 325 | 104 | 858 | 1,287 |
| * 3,516 properties could have attempted to establish a home occupation WBD prior to 19030
* 2,135 properties could have attempted to establish a WBD II prior to 19030
* 1,383 (180 plus 1,203) properties could attempt to establish a WBD II under 19030
 |

|  |
| --- |
| **Table 1d. GIS analysis of parcels available for WBDs II – A zone** |
| **Vashon-Maury Island - A Zones** |
|   | **Less than 2.5ac** | **2.5ac to less than 4.5ac** | **4.5ac or more** | **All properties** |
| All properties | 4 | 4 | 17 | 25 |
| Accessible by a public road (inc. arterial) | 1 | 2 | 14 | 17 |
| Accessible by arterial | 1 | 1 | 12 | 14 |
| * 25 properties could have attempted to establish a home occupation WBD prior to 19030
* 17 properties could have attempted to establish a WBD II prior to 19030
* 16 (2 plus 14) properties could attempt to establish a WBD II under 19030
 |

*Table Notes:*

* *These are estimates using available GIS data.*
* *Arterials are line features in ArcGIS. Parcels were selected based on an intersect with the Arterial feature line with a 50 ft tolerance. 50 ft was used because rights-of-way are typically 80-100 ft wide. The arterial feature is not a centerline, and there may be parcels that are accessible by arterial but not picked up in this analysis. The file is TNet (transportation network) with principal, minor, and collector selected.*
* *Public roads are also line features in ArcGIS. The file used is Roadlog, which captures all unincorporated and maintained streets. Parcels were selected based on an intersect with the feature line with a 35 ft tolerance. These roads usually have a smaller right-of-way than arterials.*

**Litigation Related to Ordinance 19030.** Ordinance 19030 was challenged on SEPA and GMA grounds by petitioners that included Friends of Sammamish Valley, Futurewise, and other farming interests (FOSV, et al.) to the Central Puget Sound Growth Management Hearings Board. On May 26, 2020, the board issued its Order on Dispositive Motions for Case No. 20-3-0004c (May 2020 order), which granted the petitioners' summary judgment and invalidated most of the substantive sections of Ordinance 19030. Ordinance 19030, Sections 12 through 30, and map amendments 1 and 2, which were Attachments A and B to Ordinance 19030, were also invalidated by the Board. Ordinance 19030, Sections 12 through 30, include definitions, zoning conditions, parking restrictions, temporary use permit clarifications, home occupation and home industry limitations and a demonstration project.

The May 2020 order was primarily focused on SEPA. The Board concluded that the analysis contained in the April 2019 SEPA checklist was insufficient to support the SEPA Threshold Determination of Nonsignificance issued in April 2019. The Board set a compliance schedule requiring additional compliance action by the County with a November 2020 deadline. As part of the May 2020 order, the uses that were defined and regulated as part of the ordinance were invalidated, including WBDs and remote tasting rooms. The County then did not have clear regulations for residents and business owners to comply with and for the County to enforce. As a result, the County adopted a moratorium on June 23, 2020,[[8]](#footnote-8) prohibiting establishment or expansion of WBDs and remote tasting rooms. The Council also adopted a motion the same day,[[9]](#footnote-9) asking the Executive to develop a new SEPA checklist in response to the Board's Order, and to issue a new, amended or addended threshold determination, in response to the May 2020 order.

In tandem with the work on the new SEPA checklist and threshold determination, the County also filed an appeal of the Board's May 2020 order in King County Superior Court. As part of this, the County requested and the Superior Court granted a stay on all further board activity, including compliance schedule requirements, pending resolution of the County's Superior Court appeal. The Superior Court reversed the Board's May 2020 order on April 16, 2021, by its Order Granting King County's Appeal From an Order of the Central Puget Sound Region Growth Management Hearings Board (Superior Court's April 2021 order).

After an appeal by the petitioners to the Court of Appeals, a settlement agreement regarding the Court of Appeals, which included adoption of Ordinance 19309 declaring a one-year moratorium on WBD uses through December 23, 2022, and settlement discussions between the County and the petitioners, the Board held a hearing on the merits of the FOSV, et al., appeal to Ordinance 19030 on November 17, 2021.

On January 3, 2022, the Board issued its Final Decision and Order for Case No. 20-3-0004c (Board's January 2022 order), which granted the petitioners' appeal and invalidated Ordinance 19030 Sections 12 through 30, and map amendments 1 and 2, which were Attachments A and B to Ordinance 19030. These sections included definitions, zoning conditions, parking requirements, temporary use permit clarifications, home occupation and home industry limitations, and a demonstration project. The Board's January 2022 order also remanded Ordinance 19030 to the County. The board named thirteen issues that led to the invalidity order, including issues with the April 2019 SEPA checklist, insufficient protection of agricultural lands, noncompliance with the County's Comprehensive Plan policies, and incompatibility of remote tasting room demonstration project overlay A.

On January 28, 2022, the county appealed the Board's January 2022 order in King County Superior Court. On March 7, 2022, the Superior Court agreed to transfer the case to the Court of Appeals. The timing for a decision on the litigation in the Court of Appeals is unknown at this time.

The Council is considering policy changes to the provisions adopted in Ordinance 19030 while litigation is ongoing.

**ANALYSIS**

A detailed comparison of the former code (prior to Ordinance 19030), Ordinance 19030, and Proposed Ordinances 2022-0147 (Ordinance 1) and 2022-0148 (Ordinance 2) is attached to this staff report.

**Proposed Ordinance 2022-0147 (Ordinance 1) Summary.** Proposed Ordinance 2022-0147 would make substantive changes from those adopted in Ordinance 19030.

*WBDs in A/RA zone countywide.* Proposed Ordinance 2022-0147 would make the following changes for the A and RA zones that would apply in all unincorporated areas:

1. Prohibit all WBDs in A zone.
2. Add 75-foot interior lot line setback for WBDs and associated impervious surfaces from A zone properties (this applies to WBDs in RA, NB, CB, RB and I zones).
3. For WBD IIIs in RA zone, require a minimum lot size of 10 acres when the floor area exceeds 5,000 sf (decreased from 6,000 sf in Ordinance 19030).
4. Require 3 stages of production on-site, including 2 active stages for WBD II and III in RA. A summary of the steps in production for winery, brewery and distillery uses is included as an attachment to this staff report.
5. For on-site retail and tasting for WBD IIs and IIIs in RA zone:
	1. Modify language to say "limited to products produced on-site, as provided in subsection X.X (on-site production requirements) except as provided in RCW/WAC citations" for state license exemptions related to this requirement.
	2. Maximum floor area: 20% (decreased from 30%).
	3. Tasting hours: 11am to 8pm daily where they are specified (WBD II, III in RA zone in all unincorporated areas). In Ordinance 19030, hours of operation are 11am to 7pm on weekdays and 11am to 9pm on weekends.
6. Create a specific requirement/cross reference to comply with the King County Surface Water Design Manual and the Stormwater Code in K.C.C. Title 9 for WBD II and III in RA.

*WBDs in RA zone, excluding Vashon-Maury Island.* Proposed Ordinance 2022-0147 would make the following changes that would apply to all RA zones in unincorporated areas except for those on Vashon-Maury Island:

1. Prohibit WBD II distilleries in closed basins.
2. Require a Group A or B water hookup for WBD IIs.

*Remote Tasting Rooms.* Proposed Ordinance 2022-0147 would repeal Remote Tasting Room Demonstration Project A.

*Events/Temporary Use Permits.* Proposed Ordinance 2022-0147 would make the following changes related to special events and TUPs:

1. Remove exemption from TUP requirements for specific existing WBD IIs and IIIs in RA.
2. Reduce event size and frequency for WBD IIs and IIIs in RA zone to 1 event/month, 75 guests maximum for WBD IIs, 125 guests maximum for WBD IIIs.
3. Allow for functions that are related to the production of WBDs (i.e. tours, paint and sips, private tastings, bottle release, etc.). Add restrictions for functions and events by prohibiting those that require portable toilets, stages, require traffic control, or use on-site parking that exceeds the maximum allowed. Requires a temporary use permit for any event that exceeds the permitted building occupancy, uses off-site parking, uses tents or canopies, or extend beyond the hours of operation.

*Other changes.* Proposed Ordinance 2022-0147 would make these additional changes:

1. Move all requirements for WBDs to a new chapter.
2. Remove reference to state law for retail/tasting for commercial zones in all unincorporated areas.
3. Remove compliance period from business licenses.
4. Modify language regarding documentation of nonconforming status, in order to clarify what would be considered a legal nonconforming use.
5. Modify definitions and development conditions to remove general references to state law regarding on-site tasting and retail sales.
6. Remove efficacy evaluation, which asked for the Executive to track implementation of the regulations and report back on how permitting and code enforcement of 19030 occurred, and asked for specific recommendations on citations, parking requirements, hours of operation, temporary use permit triggers, product content requirements in the A zone, and the agricultural accessory use language.
7. Restrict issuance of the initial business license until all required building or change of use permits are issued. Allow for one initial license without a building permit, issued for a maximum of 6 months, for existing businesses.
8. Change the name of the business license from “adult beverage business license” to “WBD land use business license.” Add statement that business license is to assist in enforcement of the County's land use regulations.

*SEPA review for Ordinance 1.* The changes in Proposed Ordinance 2022-0147 are not anticipated to require additional SEPA analysis, as they were contemplated in the November 2020 updated SEPA checklist and subsequent SEPA Threshold Determination of Nonsignificance issued in January 2021. The SEPA Responsible Official would need to finalize the SEPA review process based on the public comments received on the January 2021 threshold determination, prior to the full Council taking action on the Proposed Ordinance.

**Proposed Ordinance 2022-0148 (Ordinance 2) Summary.** Proposed Ordinance 2022-0148 would amend the regulations in 2021-0147 (Ordinance 1), with additional substantive changes, including:

1. Allow WBD Is, IIs, and IIIs in UR zone with the same development conditions as in the RA zone (does not effect Vashon-Maury Island, as there is no UR zoning there).
2. Add separation requirement for WBD IIs and IIIs in RA and UR zones: Any lot line of a lot having any area devoted to a WBD use shall be one thousand feet or more from any lot line of any other lot having any area devoted to a WBD use.
3. Require compliance with the federal Clean Water Act for WBD IIs in the RA and UR zones.

*SEPA review for Ordinance 2.* The changes in Proposed Ordinance 2022-0148 are anticipated to require additional SEPA analysis, as they were not contemplated in the November 2020 updated SEPA checklist and subsequent SEPA Threshold Determination of Nonsignificance issued in January 2021. Because of the reforms to the County's SEPA process that were made as a result of the litigation for Ordinance 19030, SEPA review cannot be completed in time and these changes would need to be adopted after the July 1, 2022 Board compliance deadline.

**Council Considerations.** The Council may want to consider the following as the Committee and full Council deliberate on the proposed changes.

Liquor license conflict preemption. In addition to the County's requirements under the Growth Management Act and constitutional considerations, state law specifically prohibits regulations that conflict with the Washington State Liquor and Cannabis Board's licensing requirements.

The conflict preemption restriction comes from state law (in particular, after the "PROVIDED," the restriction on regulations that conflict with the RCW or WAC) (highlight added):

**RCW 66.08.120**

**Preemption of field by state—Exception.**

No municipality or county shall have power to license the sale of, or impose an excise tax upon, liquor as defined in this title, or to license the sale or distribution thereof in any manner; and any power now conferred by law on any municipality or county to license premises which may be licensed under this section, or to impose an excise tax upon liquor, or to license the sale and distribution thereof, as defined in this title, shall be suspended and shall be of no further effect: PROVIDED, That municipalities and counties shall have power to adopt police ordinances and regulations not in conflict with this title or with the regulations made by the board.

When considering the limitations on production and on-site tasting and sales, the Council should keep this statute in mind. In particular, the state liquor licenses for WBDs have allowances for the business to sell products from other WBDs, and to sell food and nonalcoholic beverages. The RCW and WAC allowances cited in the Proposed Ordinance are found in Attachment 7 to this staff report.

Parcel analysis. Attachment 8 to this staff reports shows analysis done by Council staff to evaluate how many WBDs could theoretically establish for two specific areas. It compares the former code (that in place prior to Ordinance 19030), Ordinance 19030, and Proposed Ordinances 2022-0147 and 2022-0148.

For the Sammamish Valley Area, under the three scenarios:

* Former code would theoretically allow up to 62 WBDs
* Ordinance 19030 would theoretically allow up to 36 WBDs
* Proposed Ordinances 2022-0147/8 would theoretically allow less than 10 WBDs

For the Novelty Hill Area,[[10]](#footnote-10) under the three scenarios:

* Former code would theoretically allow up to 132 WBDs
* Ordinance 19030 would theoretically allow up to 57 WBDs
* Proposed Ordinances 2022-0147/8 would theoretically allow less than 11 WBDs

Notably, there are only 3 parcels in the Sammamish Valley area and 8 parcels in the Novelty Hill area that are currently vacant and could comply with the lot size, access, and/or 75-foot setback requirements for WBD I, II, or III. For new WBD IIs and IIIs, there is a higher likelihood that they would be developed on vacant land rather than existing land developed as another use, particularly because of the prohibition on home occupations and home industries that is maintained in these Proposed Ordinances. Although the theoretical maximums would allow additional WBDs, the demand for additional WBDs may not exist to develop up to those maximums.

Enforcement of Former Code. Councilmembers have asked about enforcement of the former code throughout the last six years. Executive staff have provided information that outlines their concerns with enforcement of the code that was in place prior to Ordinance 19030 (references to "current code" mean the code in place prior to Ordinance 19030):

After deliberation at the County Council, Executive staff was asked to provide context for what would happen if the county were to abandon the proposed code update and just enforce the current code. Below is an attempt to catalogue ambiguities in the current code and the problems that would remain unsolved if a code update was not implemented:

**Product Content Requirement:**

The current code requires that any winery, brewery, or distillery must make 60% of their product content with products grown in Puget Sound Counties.

As of today, only a small handful of known businesses are meeting that requirement. Many wineries in the unincorporated areas ship their grapes in from areas in eastern Washington where grapes can be grown more easily.

Although most businesses would not be able to comply with code, enforcing the product content rule would be difficult, because tracking and proving product content would often require processes outside of Permitting staff’s capabilities and implicates the interstate commerce clause in its enforceability.

**Home Occupation/Home Industry:**

Current code as it relates to home occupation and home industries is very vague and does not address wineries, breweries, or distilleries whatsoever. The home occupation code as written did not anticipate these types of businesses and therefore did not contemplate issues of tastings and eating and drinking establishments. Because of this ambiguity, code enforcement has found over the years that many winery, brewery, and/or distillery businesses operating as home occupations are not legally established, meaning no one is actually living on-site. Constitutional limits on enforcement and search of residences adds to the enforcement challenges for home occupations and home industries.

Conversely, residents who want to start a winery, brewery, or distillery business find the code vague and confusing to comply with, leading to businesses having to go to the hearing examiner for clarity on what exactly the code means and does in relation to their specific business model. If current code were to be enforced, the loopholes and challenges for well-meaning business owners would remain unresolved.

**Fines:**

According to Title 23, fines for when a winery, brewery, or distillery business violates the current code are very low. For businesses that cannot come into compliance with the current code and/or businesses that violate the county’s code governing the operation of WBDs, it is often cheaper for them to just pay the fine than do the work with Permitting to become a lawful business.

If the current code were to be enforced, fines for businesses that violate county code would remain low and would not incentivize businesses to work to become compliant or relocate. Conversely, businesses who have invested the time and resources to become compliant with code had to work harder and pay more money than those who choose to remain in violation of the code, leaving a major equity issue unaddressed.

**Impacts of these businesses on surrounding communities:**

Currently, the code is unclear about the hours a winery or adult beverage business can conduct tastings and/or hold events. The current code is also unclear about whether or not a winery or adult beverage business can operate on a private driveway shared with other neighbors, within a cul-de-sac in a residential zone, and how many people are allowed for special events like concerts, weddings, and fundraisers. Because the code lacks specificity in these areas, the impacts on surrounding communities have been and remain significant. If current code were to be enforced businesses located in these areas may continue to operate at a size and scale that is not appropriate for the rural and agriculturally zoned areas. In the same vein, businesses seeking to operate legally would be stuck with the same ambiguity that makes it difficult to do just that.

**Agricultural Production Districts (APD):**

One of the main recommendations that came out of the stakeholder group process was to maintain protections for the APD by not changing current code OR creating more restrictive code for winery and adult beverage businesses looking to locate on agricultural land. The current code allows for 60% of product content to be grown in Puget Sound Counties, rather than on the agricultural land itself. The current code also allows for home occupations and home industries to be located on APD properties. If current code were to be enforced, businesses could continue to locate on agricultural land with no incentive to actually put the land into production. These businesses could also act as home occupations or home industries, which the King County Agricultural Commission and many farmers and environmental organizations do not support.

**Processing Requirements:**

Current code does not address or define processing requirements for winery and adult beverage businesses, meaning that no actual production is required to happen on-site. If current code were to be enforced, winery and adult beverage businesses would not be required to conduct any stage of production for their product on-site, allowing a number of businesses to essentially operate as urban-scale event venues.

**Business License:**

Current code does not require a winery or adult beverage business to get a county business license, making it difficult for Permitting to track the number of businesses that have proliferated in the over 15 years since the current code was written. Because we have a complaint-based model for code-enforcement, it remains challenging for our code enforcement officers to track where and when new businesses are beginning to operate. If current code were to be enforced, a winery and/or adult beverage business in King County would need to obtain a liquor license from the LCB, but no license for land use purposes. It is also worth noting that the LCB's practice is to issue state licenses over the objections of the local jurisdiction based on zoning, further complicating enforcement.

One additional note on the former code: for home occupations in the RA zone, there is no minimum lot size or 75-foot setback requirement, meaning nearly any property could establish a home occupation WBD. Additionally, outbuildings are not limited in size. Although there are some limitations on traffic generation, a home occupation WBD could have the size and intensity of a larger facility with fewer restrictions and the impacts of a home occupation WBD could be greater than a WBD III under Ordinance 19030 or under the two Proposed Ordinances before the Committee today.

Comprehensive Plan. The [King County Comprehensive Plan](https://kingcounty.gov/depts/executive/performance-strategy-budget/regional-planning/king-county-comprehensive-plan.aspx) is the guiding policy document for land use in unincorporated King County; all development regulations are required to be consistent with the Comprehensive Plan. As noted in the Findings of the Proposed Ordinances, there are numerous Comprehensive Plan policies that pertain to the WBD zoning regulations. For example, Chapter 3 of the Comprehensive Plan includes policies that require protection of agricultural land and rural character, and Chapter 10 of the Comprehensive Plan includes policies that require rural economic development of a size and scale compatible with the rural area. The County's current Comprehensive Plan was adopted in 2016, with amendments most recently in 2020.

The County's next GMA-mandated update, to incorporate changes made in state law, the Multicounty Planning Policies, and the 2021 Countywide Planning Policies, is required to be adopted by December 31, 2024.

**AMENDMENT**

Councilmember Perry has made draft striking amendments available for both Proposed Ordinances, they are included in Attachments 3 and 4 to this staff report.

**DRAFT Striking Amendment to PO 2022-0147.** The draft striking amendment to Ordinance 1 would make the following changes:

*Substantive Changes*

1. For WBD I in the RA zone, modifies the off-street parking requirements to match what is required for WBD II and III (minimum 0.9 spaces per 1,000 square feet of manufacturing area, maximum 150% of the minimum).
2. For WBD I in the RA zone, removes requirement for commercial septic system.
3. For WBDs in historic structures, require that the WBD be entirely within the historic structure to be eligible for the larger floor area allowance.
4. For WBD II and III in the RA zone, limits the square footage of area for incidental sales to 20% of the tasting and sales area.
5. For WBD II and III in the RA zone, limits the percentage of incidental sales to 20% of annual gross sales on a 3-year average, and require documentation of compliance with this requirement with the land use business license.
6. For WBD II and III in the RA zone, requires documentation of the on-site production and on-site tasting and retail sales conditions with the land use business license.
7. For WBD I, II, and III in the RA zone, allows for a conditional use permit to reduce the 75' setback subject to specific criteria.
8. Allows up to two portable toilets with events requiring a temporary use permit, and requires a temporary use permit for any event that uses portable toilets.
9. Allows the initial land use business license for existing WBDs for 12 months, with 6-month extensions if the business has taken substantial steps to obtain building permits.
10. Adds a requirement for the Executive to contact known WBD businesses with information regarding the changes made by this ordinance and PO 2022-0148 (Ordinance 2) and to develop materials for technical assistance for WBD businesses.
11. Adds a requirement for the Executive to evaluate components of the WBD regulations.
12. Delays the effective date of the ordinance until Proposed Ordinance 2022-0148 (Ordinance 2) is adopted.

*Clarifying Changes*

1. Streamlines the Findings to better reflect the provisions in this ordinance.
2. For WBDs in the RA zone, requires that the stages of production are in addition to a production WBD license from the state.
3. For WBD II in the RA zone, a WBD use is required to get a CUP to be eligible for access to and from a public roadway.
4. Differentiates between on-site functions, and on-site events that require a temporary use permit.
5. States that the requirement for a WBD to obtain required building permits prior to issuance of the land use business license applies to the permits required to establish the use, not future expansions or alterations.
6. Allows the initial land use business license for existing WBDs to be issued before building permit issuance, if life safety requirements are met.
7. Differentiates between a legal nonconforming or vested use, for purposes of issuing the land use business license.
8. States that the WBD land use business license is subject to the appeal to the hearing examiner in accordance with K.C.C. 20.22, not Title 6.

*Technical Changes*

1. Corrects and updates cross references.
2. Corrects typos.

**DRAFT Striking Amendment to PO 2022-0148.** The draft striking amendment to Ordinance 2 would make the following changes:

*Substantive Changes*

1. For WBD II and III in the RA and UR zones, modifies the hours of operation for tasting and sales from 11am to 8pm to 11am to 6pm.
2. For WBD II and III in the RA zone, removes a reference to compliance with the federal Clean Water Act.
3. Allows WBD III wineries in the Industrial zone.

*Clarifying Changes*

1. For WBD II and III in RA and UR zones, the separation requirement applies between WBD sites (which could include multiple lots) and not individual lots, and only for those that are in the RA and UR zones. Establishes requirements to direct which uses are considered to be "first in line" in the event multiple WBDs have similar vesting timeframes, for this requirement.

*Technical Changes*

1. Engrosses the changes made in the Striking Amendment to PO 2022-0147, Version 1.

**Title Amendments.** There will be title amendments for both Proposed Ordinances to conform the titles to the changes made in the striking amendments. They will be available at the May 24, 2022 Committee meeting.

**Schedule for Review.** The current schedule for finalizing and publishing amendments ahead of the May 24, 2022 Committee meeting is as follows:

|  |  |
| --- | --- |
| May 17End of Day | Striking amendment direction due to staff |
| May 19End of day | Striking amendment finalized and distributed |
| May 20End of day  | Line amendment direction due to staff |

The schedule and amendment deadlines for full Council is shown in Attachment 9 to this staff report.

A public hearing notice has been issued for the June 14, 2022 full Council meeting. The public hearing notice is Attachment 10 to this staff report; note that if Councilmembers raise amendment concepts during the Local Services and Land Use Committee, these concepts can be considered at the full Council adoption.

**INVITED**

* Calli Knight, External Relations Director, Executive's Office
* Jim Chan, Division Director, Permitting, Department of Local Services
* Cristy Craig, Senior Deputy Prosecuting Attorney, Prosecuting Attorney's Office
* Lena Madden, Senior Deputy Prosecuting Attorney, Prosecuting Attorney's Office
* Darren Carnell, Senior Deputy Prosecuting Attorney, Prosecuting Attorney's Office

**ATTACHMENTS**

1. Proposed Ordinance 2022-0147 and its attachment (Ordinance 1, modify 19030)
2. Proposed Ordinance 2022-0148 (Ordinance 2, modify Ordinance 1)
3. DRAFT Striking Amendment to PO 2022-0147
4. DRAFT Striking Amendment to PO 2022-0148
5. Summary Table Comparison – Former Code, Ordinance 19030, and PO 2022-0147/8 with DRAFT Striking Amendment changes, updated April 28, 2022
6. Steps in Production for Alcohol Making
7. RCW and WAC Allowances for Production Licenses
8. Parcel Analysis Information
9. Schedule for Adoption – updated May 4, 2022
10. Public Hearing Notice for June 14, 2022 full Council for Proposed Ordinance 2022-0147

**Information regarding the Proposed Ordinances, including meeting materials, public notices, and a public comment form, can be found at this website:** [**https://kingcounty.gov/council/issues/winery-code.aspx**](https://kingcounty.gov/council/issues/winery-code.aspx)**.**

1. Ordinance 10870 [↑](#footnote-ref-1)
2. Ordinance 14781 [↑](#footnote-ref-2)
3. There were some changes in 2007 with Ordinance 15974, and allowances for WBDs in commercial zones was added in 2010 with Ordinance 16950 [↑](#footnote-ref-3)
4. Ordinance 17539 [↑](#footnote-ref-4)
5. Ordinance 17485, Section 50.P. [↑](#footnote-ref-5)
6. Ordinance 18239 [↑](#footnote-ref-6)
7. Link to report: <https://www.kingcounty.gov/~/media/depts/executive/performance-strategy-budget/regional-planning/Sammamish-Study-Area/CAISammValleyWineBeverageStudyFINAL-091216.ashx?la=en> [↑](#footnote-ref-7)
8. Ordinance 19122 [↑](#footnote-ref-8)
9. Motion 15649 [↑](#footnote-ref-9)
10. There was written public comment about this area submitted at the March 22, 2022 LSLU Committee meeting that stated that 43 properties could be eligible for WBD II or III under Proposed Ordinances 2022-0147/8. Council staff attempted to but could not conduct an apples-to-apples comparison, as the analysis submitted at Committee did not consider the full proposal under Proposed Ordinances 2022-0147/8 (notably the 1,000 ft separation requirement for WBD II and III), and excluded some properties that could theoretically meet the requirements for a WBD II or III. The written public comment also did not compare the analysis to what was allowed under Former Code, which allowed any parcel to establish a home occupation WBD with no limit on square footage. [↑](#footnote-ref-10)