



Legislation Text

File #: 2020-0226, Version: 1

AN ORDINANCE declaring a six-month moratorium prohibiting the establishment of new or expansion of existing wineries, breweries, distilleries and remote tasting rooms, as primary uses or as home occupations or home industries; prohibiting temporary use permits for wineries, breweries, distilleries and remote tasting room uses under the King County Code; directing the executive to evaluate the necessary steps to comply with the Central Puget Sound Washington State Growth Management Hearings Board's Order regarding Ordinance 19030; and reporting to the council on the evaluation of compliance and status of compliance; and declaring an emergency.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings.

A. King County has authority, pursuant to constitutional police powers, home rule authority and the Washington state Growth Management Act, including chapter 36.70A RCW ("the GMA"), to establish a moratorium to preclude the acceptance of certain new development applications and preclude the establishment of otherwise allowed uses while the county studies related land use issues.

B. Ordinance 19030 established updated regulations for winery, brewery, distillery facilities and remote tasting rooms, in unincorporated King County.

C. Ordinance 19030 was challenged on State Environmental Policy Act ("SEPA") and GMA grounds by Futurewise and a neighborhood group to the Central Puget Sound Growth Management Hearings Board ("the board"). The petitioners filed a summary judgment motion with the board, claiming the SEPA process

undertaken by the county before adoption of the ordinance had been insufficient. On May 26, 2020, the board issued its Order on Dispositive Motions for Case No. 20-3-0004c ("the order"), which granted the petitioners' summary judgment and invalidated most of the substantive sections of the ordinance. Ordinance 19030, Sections 12 through 31, and map amendments 1 and 2, which were Attachments A and B to Ordinance 19030, were invalidated by the board. Ordinance 19030, Sections 12 through 31, include definitions, zoning conditions, parking restrictions, temporary use permit clarifications, home occupation and home industry limitations and a demonstration project.

D. The board's order also remanded the ordinance to the county to take actions to bring the ordinance into compliance.

E. The board's order was primarily focused on SEPA. The board concluded that the analysis contained in the SEPA checklist was insufficient to support the SEPA determination of nonsignificance. The board set a compliance schedule requiring additional action by the county with a November 2020 deadline.

F. With the board's invalidation of parts of Ordinance 19030, the uses that were defined and regulated as part of that ordinance, including winery, brewery, distillery facilities and remote tasting rooms, do not have clear regulations for residents and business owners to comply with, and the county does not have clear regulations to enforce. That lack of clarity exists for: wineries, breweries, distilleries and remote tasting rooms that seek to locate or be established on a property as a primary use; wineries, breweries, distilleries and remote tasting rooms that seek to locate or be established as a home occupation or home industry; and wineries, breweries, distilleries and remote tasting rooms that seek to apply for temporary use permits allowed by the King County Code.

G. In order to provide clarity to residents, business owners and county permit review and code enforcement staff, the council is establishing a moratorium that prevents new wineries, breweries, distilleries and remote tasting rooms as primary uses, as home occupations and as home industries from locating or being established in unincorporated King County, while the council and executive determine and carry out the next

steps in responding to the board's order.

H. It is in the public interest that any development regulations are consistent with the King County Comprehensive Plan and the GMA. This ordinance also requires the executive to begin the process of complying with the board's order, and complete additional actions "to come into compliance with RCW 43.21C.030 and chapter 197-11 WAC."

I. It is in the public interest to establish a moratorium on acceptance of applications for development of wineries, breweries, distilleries and remote tasting rooms for a six-month period in order to pause unregulated development.

J. It is necessary that this ordinance take effect immediately in order to avoid a rush of applications for new or expanded development of wineries, breweries, distilleries and remote tasting rooms on properties in unincorporated King County.

SECTION 2. A.1. A six-month moratorium commencing upon the effective date of this ordinance is declared on the acceptance of applications for the establishment of new or the expansion of existing, including applications increasing the size or scope of, the following in unincorporated King County:

- a. wineries, breweries, and distilleries;
- b. remote tasting rooms;
- c. winery, brewery, distillery and remote tasting room home occupations and home industries; and
- d. temporary use permits for wineries, breweries, distilleries and remote tasting room uses.

2. An application shall not be accepted and a building permit, occupancy permit, department of public health approval, other development permits or approval of any kind shall not be issued for any of the purposes or activities prohibited by the moratorium. Any applications for land use approvals or other permits that are accepted as a result of error or by use of vague or deceptive descriptions during the moratorium are null and void and without legal force or effect. All vested and otherwise lawfully established uses, structures or other developments may continue to be maintained, repaired and redeveloped consistent with K.C.C. 21A.32.020

through 21A.32.055, so long as the use is not expanded, under the terms of the land use regulations in place at the time the use was established.

3. Within sixty days of the effective date of this ordinance, the council shall hold a public hearing on the moratorium.

B. During the moratorium, the executive shall evaluate and provide a plan for how to comply with the remand requirements of the Central Puget Sound Growth Management Hearings Board's Order on Dispositive Motions for Case No. 20-3-0004c ("the board's order"). The evaluation and plan, and either a motion approving the evaluation and plan or an ordinance that extends the moratorium to reflect the recommendations in the evaluation and plan, shall be transmitted to the council at least sixty days before the expiration of the moratorium. The evaluation and plan shall include recommendations on:

1. The steps that are necessary to come into compliance with the board's order;
 2. The existing or supplemental resources the executive would need to comply with the board's order;
- and
3. A timeline for compliance with the board's order.

C. All required reports shall be transmitted in the form of a paper original and an electronic copy filed with the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers, the council chief of staff, the chief policy officer and the lead staff for the local services committee, or its successor.

SECTION 3. The definitions in this section apply throughout this ordinance unless the context clearly requires otherwise.

A. "Remote tasting room" means a facility that is required to be licensed by the Washington state Liquor and Cannabis Board including, but not limited to, the following non-retail liquor licenses: a craft distillery; a tasting room - additional location for a winery licensed as a domestic winery; or a microbrewery, including, but not limited to, a microbrewery operating in accordance with an off-site tavern license subject to

the retail sale limitations for a microbrewery in WAC 314-20-015(1).

B. "Temporary use permit" is as defined in K.C.C. 21A.06.1275.

C. "Winery, brewery, distillery" means:

1. "winery" means an establishment primarily engaged in one or more of the following:

- a. growing grapes or fruit and manufacturing wine, cider or brandies;
- b. manufacturing wine, cider or brandies from grapes and other fruits grown elsewhere; and
- c. blending wines, cider or brandies;

2. "brewery" is as defined by SIC Industry No. 2082; and

3. "distillery" is as defined by SIC Industry No. 2085.

D. "Winery, brewery, distillery and remote tasting room home occupation and home industry" means a winery, brewery, distillery or remote tasting room, or combination thereof, that is located in a dwelling unit or residential accessory building, and meets the definition of home occupation in K.C.C. 21A.06.610 or the definition of home industry in K.C.C. 21A.06.605.

SECTION 4. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

SECTION 5. A. The county council finds as a fact and declares that an emergency exists and that this ordinance is necessary for the immediate preservation of public peace, health or safety or for the support of county government and its existing public institutions.

B. Enactment of this temporary moratorium as an emergency under Section 230.30 of the King County Charter waives certain procedural requirements, including SEPA review under chapter. 43.21C RCW and K.C.C. chapter 20.44, notice to the state under RCW 36.70A.106 and published notice under K.C.C. 20.18.110.