



Legislation Text

File #: 2021-0244, **Version:** 2

AN ORDINANCE declaring a one-year moratorium prohibiting the acceptance of applications for or establishment of new or expansion of existing wineries, breweries, distilleries and remote tasting rooms, as primary uses or as home occupations or home industries; and prohibiting temporary use permits for wineries, breweries, distilleries and remote tasting room; establishing a work plan to evaluate the next steps for the regulations regarding these uses; 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 Friends of Sammamish Valley, a Washington nonprofit corporation, A Farm in the Sammamish Valley, LLC, Marshal Leroy d/b/a Alki Market Garden, Eunomia Farms LLC, Olympic Nursery Inc., C-T Corp., Roots of Our Times Cooperative, Regeneration Farms LLC, Hollywood Hill Association, Terry and David R. Orkiolla, Judith Allen and Futurewise 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 board's order"), which granted the petitioners' summary judgment and invalidated most of the substantive sections of the ordinance. Ordinance 19030, Sections 12 through 30, 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 30, 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 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 county declared 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. The moratorium was declared by Ordinance 19122, and was extended

twice, with Ordinances 19217 and 19290.

H. All further board activity, including compliance schedule requirements, remains stayed by the King County superior court, pending resolution of the county's administrative appeal. The superior court reversed the board's decision 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 ("the superior court's order"). On May 14, 2021, the superior court's order was appealed to the Washington state Court of Appeals, Division I. The timing for resolution of the litigation in the Court of Appeals is unknown. The superior court's order leaves the stay in place for the duration of the Court of Appeals proceedings.

I. Due to the Court of Appeals litigation, the county adopted a second renewal of the moratorium with Ordinance 19290, which is set to expire December 23, 2021.

J. The county filed a Motion to Enforce Order, for Partial Remand and to Modify Stay for matter No. 20-2-10245-8 SEA on June 23, 2021, asking the superior court to direct the board rescind the finding of noncompliance and its order of invalidity by June 30, 2021 and update the Washington state departments of Commerce and Ecology that the Board's finding of noncompliance has been rescinded by July 2, 2021.

K. This motion to enforce was necessitated when the Washington state departments of Commerce and Ecology notified the county that because of the plaintiff's appeal has stayed the superior court's ruling of invalidating the board's order, the county is no longer eligible for millions of dollars in state loans and grants. Eligibility for these state moneys is predicated on the county being in compliance with the GMA. With the superior court's ruling, reversing the board's order being stayed, the county appears to be out of compliance, putting at least funding \$106.7 million dollars in state loan and grant funding at risk, including a \$10,000,000 Public Works Board loan with an application due date of July 9, 2021, two Clean Water State Revolving Fund loans totaling \$94,000,000 with loan signing dates in November 2021 and the second quarter of 2022 and an Ecology Model Toxics Control Act grant of \$3,664,942 with a grant agreement finalization date in the third quarter of 2021.

L. The parties have agreed to a proposed settlement that would dismiss all appeals and cross-appeals in the Court of Appeals, allow the superior court's order to go into effect, direct the board to rescind its order, specifically including its finding of noncompliance and Order of Invalidity, except on the issues on which the superior court's order upheld the board and to conduct a hearing on the merits and issue a new decision on an expedited basis. As part of the settlement, county has agreed to declare a one-year moratorium on acceptance of applications for or establishment of new or expansion of existing wineries, breweries, distilleries and remote tasting rooms.

M. In order to meet for the public works loan application deadline, the settlement conditions must be met before July 9, 2021.

N. RCW 36.70A.390 authorizes a moratorium to be declared for one year if a "work plan is developed for related studies providing for such a longer period."

O. It is in the public interest, and is the intent of the county, to declare and establish a one-year moratorium on acceptance of applications for or establishment of new or expansion of existing wineries, breweries, distilleries and remote tasting rooms in order to satisfy the terms of the negotiated settlement and prevent unregulated development while substantive issues before the board are still pending.

P. It is necessary that this ordinance take effect immediately in order to avoid the loss of state loan and grant funding, and in order to effectuate the settlement agreement.

SECTION 2. A. Commencing on December 23, 2021, a moratorium is hereby declared for one year, on the acceptance of applications for or establishment of those that are new or expansion of those that are existing, including applications increasing their size or scope, for the following in unincorporated King County:

1. Wineries, breweries, and distilleries;
2. Remote tasting rooms;
3. Winery, brewery, distillery and remote tasting room home occupations and home industries; and
4. Temporary use permits for wineries, breweries, distilleries and remote tasting room uses.

B. 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.

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

D. During the moratorium, the executive shall evaluate and prepare a report for the next steps for the regulations regarding these uses prohibited by this moratorium. The evaluation report shall be filed with the council at least ninety days before the expiration of the moratorium declared under this ordinance. The executive shall file the evaluation report with the clerk of the council, who shall retain an electronic copy and provide an electronic copy to all councilmembers, the council chief of staff and the lead staff for the local services committee, or its successor. The evaluation report shall include information regarding:

1. A summary of the status of the proceedings before the Growth Management Hearings Board;
2. A summary of code enforcement activities related to the uses prohibited by this moratorium; and
3. Recommendations and a proposed timeline regarding next steps for the county regarding adopting

regulations for the uses prohibited by this moratorium. 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. 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.

SECTION 6. Enactment of this temporary moratorium as an emergency under Section 230.30 of the King County Charter waives certain procedural requirements, including State Environmental Policy Act 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.