

Legislation Text

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Clerk 09/15/2022

AN ORDINANCE declaring a one-year moratorium prohibiting the acceptance of applications for 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; and prohibiting temporary use permits for wineries, breweries, distilleries and remote tasting room; and establishing a work plan to evaluate the next steps for the regulations regarding these uses.

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, 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") and designated as case number 20-3-0004c. On May 26, 2020, the board invalidated most of the substantive sections of the ordinance, including Sections 12 through 30, and Map amendments 1 and 2. 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 county appealed the board's May 26, 2020, order to the superior court, and the superior court reversed and remanded back to the board, which once again invalidated Ordinance 19030, Sections 12 through 30, on January 3, 2022. The county's appeal of the board's January 3, 2022, order is currently pending at Division I of the Washington state Court of Appeals. The timing for resolution of the Court of Appeals litigation is unknown. The Board's compliance deadline is July 1, 2022, and the outcome of compliance proceedings is also unknown.

E. 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.

f. 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.

G. The second renewal of the moratorium, Ordinance 19290, expired December 23, 2021.

H. An emergency moratorium was declared for one year by Ordinance 19309, commencing on December 23, 2021.

I. Two proposed ordinances, 2022-0147 and 2022-0148, that would provide clarity regarding regulations for wineries, breweries, distilleries were introduced to the council on March 22, 2022.

J. It is currently uncertain if or when Proposed Ordinances 2022-0147 and 2022-0148 will be adopted.

K. 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."

L. It is in the public interest, and is the intent of the county, to declare and establish an additional one-year moratorium on acceptance of applications for the establishment of new or expansion of existing wineries, breweries, distilleries and remote tasting rooms in order to prevent unregulated development while substantive issues before the board and the Court of Appeals are still unresolved.

SECTION 2. A. Commencing on December 23, 2022, a moratorium is hereby declared for one year, on the acceptance of applications for the 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 approvals 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.

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. A. During the moratorium under this ordinance, the executive shall prepare a work plan consistent with RCW 36.70A.390 listing the action items needed to adopt new regulations and the approximate timeline on which the actions are expected to occur.

B. The executive should electronically file the work plan no later than January 31, 2023, 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 and land use committee, or its successor.

SECTION 5. 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.