## STAFF REPORT

|  |  |  |  |
| --- | --- | --- | --- |
| **Agenda Item:** |  | **Name:** | Erin Auzins |
| **Proposed No**.: | 2018-0241 | **Date:** | November 28, 2018 |

**SUBJECT**

Proposed Ordinance 2018-0241 would update King County’s development regulations for wineries, breweries and distilleries.

**SUMMARY**

Following a years-long process, the Executive transmitted a Proposed Ordinance and associated Action Plan that would modify the development regulations for wineries, breweries and distilleries. The Proposed Ordinance would add a new business license requirement for these uses; create a new “remote tasting room” use; add new development conditions and permit requirements for wineries, breweries and distilleries; establish two demonstration projects, one for remote tasting rooms and one for tourism district events; and increase citation penalties for violations by these types of businesses.

The Executive’s Action Plan also calls for improved signage for the agricultural production district, for community van and bike share projects, and for improved east-west trail connections in the Sammamish Valley.

The Committee was briefed on the legislation on June 19, 2018 and July 17, 2018. At those briefings, Council staff provided a summary of the Executive’s proposal, a high level overview of the policy questions for Council to consider; a technical-only striking amendment, and a chair’s conceptual striker. At today’s briefing, an updated chair’s conceptual striker will be briefed.

**BACKGROUND**

Wineries and breweries have been uses listed in the permitted use tables since at least the 1993 Zoning Code.[[1]](#footnote-1) The development conditions that apply today were largely adopted in 2003,[[2]](#footnote-2) and standards relating to minimum lot size, maximum building size, special event limitations, and product content were first adopted. Distilleries were first recognized as a land use in 2013.[[3]](#footnote-3) Wineries, breweries and distilleries are 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 have 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. In 2011, a private resident submitted a similar docket request. In each case, the County Executive did not support the proposal, and any changes would have been required to be taken up during a major Comprehensive Plan update. As part of the next such update, in 2012,[[4]](#footnote-4) the Council adopted a work plan item to work with the City of Woodinville on joint recommendations for wine and agriculture industries:

*P.1.  The executive shall work collaboratively with the city of Woodinville to develop joint recommendations for promoting the wine and agriculture industries.*

*2.  In developing these recommendations, the county shall work with the city to analyze and consider the following:*

*a.  Identification of existing and needed transportation infrastructure including traffic safety improvements, roads, sidewalks, parking, trails, tourism buses, signage and way finding;*

*b.  The finite nature and value of agricultural soil resources and the agricultural potential of the APD;*

*c.  The character of the surrounding rural area;*

*d.  Vacant, buildable, and redevelopable land within the existing urban growth area;*

*e.  The adopted Countywide Planning Policies and King County Comprehensive Plan;*

*f.  Input from the public and interested stakeholders, including local businesses and surrounding city and unincorporated area communities;*

*g.  Failing septic systems and pollution in the valley, in conjunction with the report set forth in subsection I of this section; and*

*h.  Nonconforming uses on the unincorporated lands in King County and on the agricultural lands.*

Between 2012 and 2015, Public Health Seattle-King County instituted a pilot program that allowed wine and distillery tasting rooms to apply for an exemption from the annual operating permit. The pilot project was intended as an alternative to a required food permit for these business, and was tested to see if the businesses would still comply with food safety practices. Public Health discovered during the pilot program that only about 50% of the businesses complied and we decided to end the program. For beverage-related businesses that qualified for the pilot program, extensive outreach was conducted via a series of meetings and communications with stakeholders, an evening meeting at the Columbia Winery, and information including FAQs[[5]](#footnote-5) posted to the Food Program website.

When the Public Health decided to end the pilot program, extensive outreach to all known beverage related associations and businesses, such as wineries, tap rooms, and distilleries was conducted in the summer of 2015 to notify them of the change. This included two public meetings, emails, notices via social media, and updates posted to the FAQs on the website.

Following the 2012 Comprehensive Plan work program and the end of the food permit pilot program in 2015, 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 within the Sammamish Valley filed a number of code enforcement complaints for operating in violation of the zoning code and construction without required permits. The Department of Permitting and Environmental Review (DPER), knowing that the Executive would be beginning a study to look at policy recommendations, signed settlement agreements with 20 of the wineries. These settlement agreements acknowledged that aspects of the winery uses were not permitted, that the business owner would not increase non-compliance, and that any life-safety issues would be corrected. In return, DPER would not move forward with any code enforcement process while the Executive’s study was being complete 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, 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)

Since that time, the Executive has been working through 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 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 (Attachment 4) and Proposed Ordinance 2018-0241 to the Council in April 2018.

**ANALYSIS**

**Summary of Changes in Proposed Ordinance**

Proposed Ordinance 2018-0241 would make a number of changes to the development regulations for wineries, breweries and distilleries.

Business license requirement

The Proposed Ordinance would add a new business license requirement for “adult beverage businesses”, which includes “winery, brewery, distillery or cidery, and remote tasting rooms for any of those businesses.” The annual fee for this business license would be $100.

New Definitions

The Proposed Ordinance would establish new definitions for “remote tasting room”, and three types of “winery, brewery, distillery facilities.” The three facility definitions are different based on size, with a Facility I being “very small”, Facility II being “small”, and Facility III not having a size qualifier. In addition, a Facility I would not allow on-site sales or tasting.

Permitted Use Table

The Proposed Ordinance makes modifications to the Manufacturing permitted uses table, where wineries, breweries, and distilleries are regulated today. Within the Manufacturing permitted uses table, the Proposed Ordinance would:

* Add Winery/Brewer/Distillery Facility I to the table, and permit it with development conditions in the RA and UR zones.
* Add Winery/Brewer/Distillery Facility II to the table, and permit it with varying development conditions in the A, RA, UR, NB, CB, RB and I zones. This use would also be allowed with a Conditional Use Permit (and development conditions) in the RA zone.
* Add Winery/Brewer/Distillery Facility III to the table, and permit it as a Conditional Use Permit and with varying development conditions, in the A, RA, UR, NB, CB, RB and I zones.

The development conditions for each of the facility sizes, and in different zones, vary considerably. There is a summary of the changes by zone with a comparison to the existing code in Attachment 5. In general, the development conditions address:

* Minimum lot sizes
* Maximum building sizes
* Allowances for tasting and hours of operation
* Water use
* Product content
* Production requirements
* Facility locations for agricultural lands
* Parking maximums
* Setbacks from Rural Area and Residential zones

Parking Requirements

The parking requirements are proposed to be modified by the Proposed Ordinance. The existing parking requirements for wineries, breweries and distilleries are 0.9 spaces per 1,000 square feet of manufacturing area, plus 1 per 50 square feet of tasting area.

Under the Proposed Ordinance, the parking ratio for the tasting area would be changed to 1 per 300 square feet.

Home Occupation and Home Industry

Home occupations and home industries are regulated based on zoning district, in three sections of Code. The Proposed Ordinance would add wineries, breweries and distilleries, and remote tasting rooms, to the list of specifically prohibited uses in home occupations and home industries.

Special Events/Temporary Use Permit

The Proposed Ordinance includes the following changes for special events and temporary use permits (TUP):

* For Facility II and III in A zones, events are limited to 2 per month and all parking must be accommodated on site or through a plan approved by the director.
* For Facility II and III in RA zones, events are limited to 24 within a one-year period and all parking must be accommodated on site or through a plan approved by the director.
* For Facility II in A and RA zones, consider building occupancy limits and parking limitations during permit review, shall condition the number of guests and shall not be more than 125 guests.
* For Facility III in A and RA zones, consider building occupancy limits and parking limitations during permit review, shall condition the number of guests and shall not be more than 250 guests.
* No events or temporary use permits for facility I, legally nonconforming home occupations, or home industries.
* Facility II and III in all other zones events may be allowed under a TUP for up to 60 days a year.

Demonstration Project A

The first demonstration project proposed by the Executive would allow “remote tasting rooms” within an identified area in the Sammamish Valley near the city limits of Woodinville, and within the Vashon Rural Town. The demonstration project would allow remote tasting rooms with the following regulations:

* One or more remote tasting rooms could operate in a single location
* The approval of the remote tasting rooms would be a Type 1 land use decision.[[8]](#footnote-8)
* Total space for tasting and retail is 1,000 square feet plus storage, restroom, back-of-the-house uses
* Additional 500 square feet of outdoor space allowed
* Direct access to an arterial required
* No production allowed on-site
* Incidental retail sales of products related to products tasted allowed
* Hours of operation are limited to Monday - Thursday 11am-5pm, Friday - Sunday 11am-9pm
* Required to obtain a liquor license from the state
* No events or temporary use permits allowed
* Parking limited to 150 percent of minimum required

Demonstration project A would be in effect for 3 years from effective date of the ordinance, after which DPER would stop accepting applications and the existing remote tasting rooms would become legally nonconforming uses. Annually, DPER would compile a list of applications approved and related code complaints. Based on this data, the Executive may submit additional proposed legislation extending or amending the regulation within the 3 year demonstration project.

Demonstration Project B

The second demonstration project proposed by the Executive would allow “tourism district events” such as weddings and similar uses to be reviewed and conditioned as part of Facility III conditional use permit review within an identified area in the Sammamish Valley, south of city limits and east of State Route 202. The demonstration project would waive the TUP requirement for CUP approved Facility III events. Event uses would be reviewed and approved only as part of a CUP application; CUPs are a Type 2 land use permit.[[9]](#footnote-9) This demonstration project may allow more than 24 events per year, depending on the site-specific review of each application.

Demonstration project B would be in effect for 3 years from effective date of the ordinance, after which DPER would stop accepting applications, and the existing CUPs with the special event allowance would become legally nonconforming. Annually, DPER would compile a list of applications approved and related code complaints. Based on this data, the Executive may submit additional proposed legislation extending or amending the regulations within the 3 year demonstration project.

Citation Penalties

The Proposed Ordinance would modify the citation penalties for wineries, breweries, and distilleries and remote tasting rooms. Under existing code, most code violations are subject to a $100 penalty for the first violation, and $500 for subsequent violations. The Proposed Ordinance would increase the citation penalty for these uses to $500 for the first violation and $1,000 for subsequent violations.

**Policy Considerations**

Applicability of Countywide Regulations

As described in the background section, the transmitted Proposed Ordinance was the result of a years long process to address the proliferation of wineries within the Sammamish Valley. However, except for the demonstration projects, the Proposed Ordinance would apply countywide, and would apply to breweries and distilleries.

The Council may want to consider whether sufficient input from other industries, including breweries and distilleries, has been taken, and whether further input is necessary before code changes are adopted.

Additionally, the Council may want to consider whether the impacts of the proposed changes in other parts of the County have been fully analyzed. For example, a Facility III is required to connect to a Group A or Group B water system. This is a practical requirement for the Sammamish Valley where water is available, but may be more burdensome in other parts of the County that have water supply issues – and/or may not be a necessary requirement for other parts of the County.

Impact on Existing Businesses[[10]](#footnote-10)

Executive staff are aware of 54 wineries, breweries, and distilleries in unincorporated King County. Of those, only 4 are legally permitted today and all 4 would become legally nonconforming under the Proposed Ordinance as transmitted. The other 50 are operating without permits or in violation of the County’s development regulations.

Executive staff estimate that 8 businesses will not be able to comply with the new regulations at their current locations – they all appear to be within Agriculture zoned areas. Of note, lands that have Farmland Preservation Program (FPP) status would not be permitted by the associated covenants to operate a winery, brewery or distillery facility or a remote tasting room on-site. For the businesses that are expected to not be able to comply, DPER states that they will start the enforcement process upon the ordinance becoming effective. DPER staff state that the plan would be to allow the businesses the same 6 month compliance period that other businesses will receive, but these businesses would not receive technical support through the consultant.

Additionally, another 16 businesses do not have direct access to an arterial, which would limit them to the Facility I category (8 of these businesses may be able to apply for a Facility II with a conditional use permit, which is intended to give the director discretion to modify the access requirement). These businesses may need to downsize their operations to comply with the new rules (e.g., size of the facility, hours of operation, tasting area, or number and scale of events).

Enforcement

There are a couple of different ways that enforcement could be an issue with the new ordinance. First, although a statement signed by business owner is required for demonstrating compliance with the product content requirement through the business license, no further evidence is required. This could create a future compliance issue: if a business license is issued based on a signed statement, and then DPER finds later that the business does not meet the product content requirements, DPER would have to start code enforcement proceedings and/or deny a renewal of the license.

Second, the Council approved a $50,000 request in the 2019-2020 biennial budget ordinance.[[11]](#footnote-11) This $50,000 would fund a consultant to perform outreach and provide technical assistance for businesses within the County over a six-month period after the zoning changes are adopted. After this six-month period, enforcement of the provisions would follow DPERs established code enforcement process. The Council may want to take into consideration enforcement of the provisions over the longer term, especially considering the task force recommendations and report initially focused on the Sammamish Valley and the industry and proposed development regulations encompasses the entire County. The County has limited code enforcement resources, in terms of: 1) number of code enforcement officers, 2) ability to obtain voluntary compliance quickly under the code, and 3) ability to get resolution on cases through the judicial system. Further, enforcement of the noise code provisions, is reliant on King County Sheriff’s deputies, which are also limited in resources for unincorporated King County. The proviso for implementation of the ordinance that is included in the 2019-2020 biennial budget ordinance may address this concern.

Third, some of the requirements in the Proposed Ordinance may pose a challenge for enforcement. It is clear how DPER will enforce requirements for minimum lot size and maximum building size through the normal permit and approval process. For other requirements it may be less clear the method for how DPER will ultimately enforce the provision. For example, the legislation proposes hours of operation for tasting rooms. These hours of operation can be listed on an issued permit as a condition, but it may be difficult to enforce this provision, as the County does not have staff available in the evenings and on the weekends to visit these businesses to ensure compliance or respond to complaints in the moment. Depending on the circumstances and staffing resources, code enforcement may be able to issue a citation based on witness statements at a later date.

Remote Tasting Rooms

In the Public Review Draft (PRD), remote tasting rooms were shown being added as a use in the retail table. In the transmitted legislation, this use does not appear in any land use table and is only mentioned in the demonstration project section. In past demonstration projects, the use itself appears in the table, and the development conditions say it is only allowed as part of a demonstration project.

The Council may also want consider whether remote tasting rooms could be allowed in other zones, such as the Commercial zones, as part of this Ordinance. This could be done as a permitted or conditional use, and with or without development conditions.

Special Events and Temporary Use Permits

The Council may want to consider further clarification of the definition of a “special event”. In practice, Executive staff report that it will need to be based on criteria that a DPER inspector could easily see if they visit the site. This could include: events that require tents, portable toilets, or stages on-site; and/or a need for additional parking over the permitted number of maximum spaces. Executive staff indicate that closing during allowed tasting hours for a private event would not trigger a TUP unless it meets the criteria above; however, this criteria is not stated in the Proposed Ordinance. The Council may want to consider whether the criteria should be clear in the Code for what is included within normal business operations, and what is outside of the normal operations that needs a special event TUP.

Demonstration Projects

For demonstration project A, a remote tasting room would be allowed within the Rural Town boundary. When and if the Council makes permanent changes to remote tasting rooms, by allowing them or wineries, breweries and distilleries generally, an amendment to the Vashon-Maury Island Subarea Plan and P-suffix conditions would also be necessary. As a precedent, Council may want to consider whether changes meet their policy goals to allow uses through a demonstration project that would otherwise not be allowed by a P-suffix or Special District Overlay.

Additionally, demonstration project A would allow remote tasting rooms on parcels where the underlying zoning would not allow wineries, breweries and distilleries in any form (Residential zones) elsewhere in the County. The Council may want to consider whether the Vashon-Maury Island portion of the demonstration project should include the entire Rural Town boundary or should be limited to existing nonresidential areas/zones.

The purpose of a demonstration project is to “test and evaluate alternative development standards and processes prior to amending King County policies and regulations.” The Council may want to consider whether the reporting requirements for the demonstration projects, as transmitted by the Executive, provide sufficient evaluation for the Council to make an informed decision on future permanent code changes.

Finally, the Proposed Ordinance states that DPER cannot accept applications after three years from the effective date of the ordinance for the demonstration projects. However, this will still be a codified section of Code after that date, as it doesn’t have an official expiration date. The Council may want to consider making this expiration date more clear, or whether it should expire without further action by the Council.

**Summary of Other Recommendations in Executive’s Action Report**

The Executive’s Action Report called for improvements within the Sammamish Valley, to complement the regulatory changes proposed by the transmitted Proposed Ordinance.

The first are wayfinding Agricultural Production District (APD) signs. DNRP states that they worked with the Roads Services Division (RSD) to come up with some initial designs. DNRP will be taking the designs for the signs to the Agriculture Commission in September 2018 after their summer break ends.  The goal would be to finalize design in the fall, have the RSD sign shop fabricate, and deploy the signs in 2019. DNRP expects the budget impact to be minimal, as RSD had planned on replacing the signs that are in the APDs currently.

The second project is a Community Van project and bike share. Transit states that the Bothell-Woodinville Community Van has been in operation since the fall of 2017.    The County’s annual cost is approximately $41,000 which covers vehicle operations costs (fuel, insurance, etc.), promotion and marketing, and salary for a half-time Community Transportation Coordinator employed by UW-Bothell. The bike share concept did not move forward into planning and implementation.

The third is an east-west trail connection(s) in the Sammamish Valley. DNRP states that King County Parks is managing a study to develop a strategy for a safe crossing of the Eastside Rail Corridor (ERC) at NE 145th Street and a connection to the Sammamish River Trail along the north side of NE 145th Street.  The study is jointly funded by King County Parks and the City of Woodinville, and includes participation by the City and the Woodinville Chamber.  The primary stakeholder outreach will include the owners adjacent to/nearby the crossing, including Chateau Ste. Michelle, Columbia Winery, owners of the Red Hook site (which will be the home of Teatro Zinzanni and a proposed brewpub), and the Willows Lodge/Herbfarm. In addition to serving the future ERC trail, the crossing would provide a safe pedestrian route for visitors of the different food and beverage destinations along NE 145th Street.  The preliminary study will be complete in the fall of 2018, and will provide direction for the next steps in implementation.

The Eastside Rail Corridor (ERC) funding commission also includes City of Woodinville representation and is intended to identify specific opportunities for the trail to benefit from and support nearby business.

Executive staff report that currently, there are no plans to look at similar recommendations/improvements for other areas of the County, but that the demonstration projects could lead to future plans.

**Update on Recent Hearing Examiner Ruling**

On October 3, 2018, the King County Hearing Examiner issued a ruling in response to an appeal filed by a brewery. The Hearing Examiner ruled against DPERs position that home occupations do not permit tasting rooms in conjunction with a production facility (W/B/D). This may mean that more of the existing wineries/breweries/distilleries could be permitted under current code as home occupations, with tasting, limited to the restrictions in the home occupation code, which for the RA zone, are:

1. No more than 20% of the dwelling unit can be devoted to home occupations (including production, storage and tasting)
2. Garage and storage buildings may be used for home occupation, with no explicit square footage limitation.\*
3. Total outdoor areas for home occupation is 440 sf for lots less than 1 acre, and 1% of the lot, up to 5,000 sf for lots one acre or greater.
4. Outdoor storage and parking areas setback 25 feet from property line and screened with landscaping.
5. On-site nonresident employees limited to 3 at the same time.
6. Parking is limited to 1 stall for each nonresident employed on-site, plus 1 stall for customers.
7. Sales are limited to mail order, internet order, accessory items to services provided on-site, and items grown, produced or fabricated on-site. For sites 5 acres or greater, items that support agriculture, equestrian or forestry uses (with some limitations).
8. Use cannot require a change to occupancy type of the structure (usually due to equipment needs).\*\*
9. Use cannot increase vehicular traffic by more than 4 vehicles at any given time.
10. Customer visits and deliveries limited to 8:00 a.m. to 7:00 p.m. on weekdays, and 9:00 a.m. to 5:00 p.m. on weekends
11. Vehicle storage used by the home occupation is allowed, with limitations – 2-4 vehicles depending on lot size, not allowed in the setback, not part of the outdoor storage area above.

\*The Hearing Examiner’s ruling is that the brewery and associated tasting have to be limited-scale service or fabrication activity….subordinate and incidental to the primary use of the site as a residence. This requires limits on the size of the tasting room – as does the various requirements above (no more than 4 vehicles, max 4 parking spaces, maximum outdoor and dwelling unit square feet).

\*\*This may limit distilleries, if the equipment triggers an occupancy change.

The Executive’s proposal would prohibit production facilities and remote tasting rooms as home occupations and home industries. The Council may want to consider whether this is consistent with the Council’s policy goals and the Hearing Examiner’s read of the existing code.

The ruling is included in Attachment 7.

**AMENDMENT**

At today’s briefing, Council staff will brief the Committee on an updated chair’s conceptual striker, which is included in Attachment 8.

**ATTACHMENTS**

1. Proposed Ordinance 2018-0241 with attachments
2. Transmittal Letter
3. Fiscal Note
4. King County Action Report: Sammamish Valley Winery and Beverage Study
5. Council staff summary matrix of substantive changes
6. Public comments received through November 26, 2018
7. Hearing Examiner Decision on Four Horsemen Brewery Appeal
8. Chair’s Conceptual Striker dated November 26, 2018

**INVITED**

1. Jim Chan, Interim Director, DPER
2. Karen Wolf, Senior Policy Advisory, PSB
3. Calli Knight, External Relations Specialist, Executive’s Office
1. Ordinance 10870 [↑](#footnote-ref-1)
2. Ordinance 14781 [↑](#footnote-ref-2)
3. Ordinance 17539 [↑](#footnote-ref-3)
4. Ordinance 17485 [↑](#footnote-ref-4)
5. Here is a link to these FAQs: <https://www.kingcounty.gov/depts/health/environmental-health/food-safety/food-business-permit/~/media/depts/health/environmental-health/documents/food-safety/FAQ-Beverages.ashx> [↑](#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. Type 1 land use decisions are made by the DPER Director, or their designee (usually a product line manager). These decisions do not have public notice and have no administrative appeal to the Hearing Examiner. [↑](#footnote-ref-8)
9. Type 2 land use decisions are made by the DPER Director, or their designee. These decisions do have public notice and have an administrative appeal to the Hearing Examiner. [↑](#footnote-ref-9)
10. See the discussion below on a recent ruling from the Hearing Examiner. [↑](#footnote-ref-10)
11. Ordinance 18835 [↑](#footnote-ref-11)