



## Legislation Text

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**File #:** 2023-0451, **Version:** 1

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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 or accessory uses or as home occupations or home industries; and prohibiting temporary use permits for wineries, breweries, distilleries, and remote tasting rooms; establishing a work plan; 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, chapter 36.70A RCW ("GMA"), to establish a moratorium to preclude the acceptance of certain new development applications and preclude the establishment of otherwise allowed uses while the litigation is ongoing.

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, chapter 43.21C RCW ("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 Growth Management Hearings Board ("board") and designated as case number 20-3-0004c. On May 26, 2020, the board, in its Order on

Dispositive Motions for Case No. 20-3-0004c ("the board's May 2020 order"), invalidated most of the substantive sections of Ordinance 19030, including Sections 12 through 29, Section 31, and Map Amendments 1 and 2. Ordinance 19030, Sections 12 through 29, and Section 31 include definitions, zoning conditions, parking restrictions, temporary use permit clarifications, home occupation and home industry limitations, and a demonstration project.

D. 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 or accessory use; wineries, breweries, distilleries, and remote tasting room home occupation and home industry; and wineries, breweries, distilleries, and remote tasting rooms that seek to apply for temporary use permits allowed by the King County Code.

E. 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 or expansion of wineries, breweries, distilleries, and remote tasting rooms as primary or accessory uses, as home occupations, and as home industries from locating or being established in unincorporated King County, while the council and executive determined and carried out the next steps in responding to the board's May 2020 order. The moratorium was declared by Ordinance 19122, and was extended twice, with Ordinances 19217 and 19290, as a result of ongoing litigation related to the board's May 2020 order. Ordinance 19290 expired December 23, 2021.

F. As part of a partial litigation settlement associated with the board's May 2020 order, the county agreed to a new one-year moratorium. Ordinance 19309 adopted a one-year moratorium that commenced on December 23, 2021, and expired on December 23, 2022.

G. After litigation related to the board's May 2020 order was remanded to the board for additional review, the board issued its Final Decision and Order on January 3, 2022, and again invalidated Ordinance

19030, Sections 12 through 29, Section 31, and Map Amendments 1 and 2. The county appealed the board's January 3, 2022 Final Decision and Order, and the board's January 27, 2022, Order Nunc Pro Tunc Correcting Scrivener's Errors in Final Decision and Order, to Division I of the Washington state Court of Appeals.

H. The county adopted a new one-year moratorium with Ordinance 19550, that commenced on December 23, 2022, and expires on December 23, 2023. Ordinance 19550 was adopted to prevent vesting of applications for winery, brewery, distillery uses during the Court of Appeals review of the litigation.

I. The Court of Appeals published an opinion on February 27, 2023, reversing the board's January 2022 order, and remanding it to the board with instructions to reinstate the SEPA determination of nonsignificance ("DNS") and enter a finding of GMA and SEPA compliance. The Friends of Sammamish Valley et al. and Futurewise filed a Motion for Reconsideration on March 20, 2023. The Court of Appeals published a new opinion on June 12, 2023, responding to the Motion for Reconsideration, again reversing the board's January 2022 order, and remanding it to the board with instructions to reinstate the DNS and enter a finding of GMA and SEPA compliance.

J. On September 8, 2022, following a compliance hearing, the board issued its Order Finding Continuing Noncompliance and Denying Motion to Rescind Invalidity. The September 8, 2022, order established a new compliance deadline of March 6, 2023. The county filed an appeal of the board's September 8, 2022, order to superior court, which was certified for direct review by the Court of Appeals in October 2022, and the Court of Appeals issued a stay on May 4, 2023, pending issuance of a mandate on the primary litigation. Until the Petitions for Review are acted on by the Washington state Supreme Court, the May 2023 Court of Appeals stay on the follow up appeal will remain in place; on April 20, 2023, the board, as part of a Second Order Finding Continuing Noncompliance and Order Granting Partial Stay, granted a stay holding the compliance calendar in abeyance until such time as the pending appeals are resolved or the board rescinds the board's April 2023 stay order.

K. On July 11 and 12, 2023, Futurewise and Friends of Sammamish Valley and affiliated groups,

respectively, filed Petitions for Review with the Washington state Supreme Court. On December 5, 2023, the Washington state Supreme Court accepted review and will consider the case. The timing for a decision by the Washington state Supreme Court is unknown, but is likely to be up to twelve months and possibly longer.

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

M. It is necessary that this ordinance take effect immediately in order to avoid a rush of applications for wineries, breweries, distilleries, and remote tasting rooms, due to a lack of clarity over what regulations would apply.

SECTION 2. A. A one-year moratorium, commencing on December 23, 2023, is declared 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, 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, and 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. During the moratorium under this ordinance, the executive shall complete a work plan for winery, brewery, distillery facility uses subject to this moratorium, and:

A. Brief the local services and land use committee or its successor, on the following topics, during a July 2024 committee meeting:

1. the current status of the litigation before the Washington state Supreme Court;
2. the current status of any existing code enforcement cases related to any use subject to this moratorium;
3. an evaluation of the efficacy of the increased penalty provisions adopted by Ordinance 19030 for uses subject to this moratorium; and
4. a recommendation on whether to extend the moratorium declared under this ordinance; and

B. If recommended under subsection A.4. of this section, transmit a proposed ordinance that extends the moratorium declared under this ordinance. The executive shall electronically file, no later than August 1, 2024, any transmittal required by this ordinance 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.

**SECTION 6.**

A. The county 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 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.