Legislation Details (With Text)

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File created:	3/16/2021	**In control:**	Local Services Committee
On agenda:		**Final action:**	5/25/2021
Enactment date:	6/11/2021	**Enactment #:**	19290
Title:	AN ORDINANCE renewing for six months an existing 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 uses under the King County Code.		
Sponsors:	Rod Dembowski		
Indexes:			
Code sections:			
Attachments:	1. Ordinance 19290, 2. 2021-0134 Amendment 1, 3. Acknowledge-Letter-2021-S-2434, 4. 2021-0134_SR_WBDmoratoriumrenewal2, 5. 2021-0134_Att2_SuperiorCourtOrder, 6. 2021-0134 Acknowledge-Letter-2021-S-2722, 7. 2021-0134 Invoice & Affidavit.pdf, 8. 19290 Invoice & Affidavit - June 30, 2021 Invoice #8082.pdf		

Date	Ver.	Action By	Action	Result
5/25/2021	1	Metropolitan King County Council	Passed as Amended	Pass
4/27/2021	1	Local Services Committee	Recommended Do Pass	Pass
3/16/2021	1	Metropolitan King County Council	Introduced and Referred	

AN ORDINANCE renewing for six months an existing 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 uses under the King County Code.

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 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 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 county is extending 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. On June 23, 2020, in accordance with RCW 36.70A.390, the council adopted Ordinance 19122 as an emergency, declaring a six-month 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 uses under the King County Code.

I. Ordinance 19122 also required 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 report to the council on the evaluation of compliance and status of compliance. The executive transmitted a report that included that evaluation as 2020-RPT0150 in October 2020. The report stated that because the initial moratorium expired on December 23, 2020, and based on the timelines for compliance in the report, "the County will not be able to determine whether regulatory amendments are needed until the first quarter of 2021, which will be after the expiration of the moratorium." The report further states that "it is in the public interest to prevent unregulated winery, brewery, and distillery development until this determination has been made" and recommends that the moratorium be extended for an additional six months.

J. As a result, the council adopted Ordinance 19217, renewing the moratorium for another six months. Since adoption of Ordinance 19217, the county issued a revised SEPA checklist on November 4, 2020, on the

proposed regulations adopted in Ordinance 19030. On January 15, 2021, the county's SEPA responsible official issued a Determination of Nonsignificance based on the revised SEPA checklist.

K. 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.

L. RCW 36.70A.390 authorizes a moratorium to be renewed for one or more six-month periods if a subsequent public hearing is held and findings are made before each renewal.

M. It is in the public interest, and is the intent of the county, to renew the moratorium declared under Ordinances 19122 and 19217 on acceptance of applications for or establishment of new or expansion of existing wineries, breweries, distilleries and remote tasting rooms for an additional six-month period in order to pause unregulated development.

SECTION 2. A. Commencing on June 23, 2021, the moratorium declared under Ordinance 19122, and renewed and extended by Ordinance 19217, is hereby renewed and extended for an additional six months, 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.

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

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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.