



Legislation Text

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Clerk 10/06/2022

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 or accessory 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("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 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 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 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.

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 determine and carry 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.

G. After litigation related to the board's May 2020 order was remanded 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 has 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. A hearing on this appeal was held by the Court of Appeals on September 21, 2022, and the timing for a decision by the Court of Appeals litigation is unknown.

H. 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; the appeal is pending.

I. The council is considering two proposed ordinances, Proposed Ordinances 2022-0147 and 2022-0148, that would modify regulations for wineries, breweries, distilleries. It is uncertain if or when Proposed Ordinances 2022-0147 and 2022-0148 will be adopted by the council.

J. 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." This ordinance establishes such a work plan.

K. 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 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, and the council continues to deliberate on winery, brewery, distillery facility regulations as a result.

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. "Board, the" means the Central Puget Sound Growth Management Hearings Board.

B. "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).

C. "SEPA" means the State Environmental Policy Act.

D. "Temporary use permit" is as defined in K.C.C. 21A.06.1275.

E. "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.

F. "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 county shall complete the following work plan:

A.1. For the purposes of the work plan, the decision on the county's appeal in the is anticipated to be issued in early 2023. If the decision from the court of appeals is later, the executive is authorized, with consultation and collaboration with the council, to adjust the work plan according to the terms of the decision, any appeals of the decision, and any further action by the board.

2. The work plan in this section is also anticipated to include future work by the county, if required in response to the terms of the court of appeal's decision or any further appeals, and to include any further action required by the board. If no legislative work is needed, then only the portions of the work plan described in subsections C. and G.2. of this section, and the associated report for that work described in subsection D. of this section will be completed. This work plan should not be interpreted to assume any specific action or outcome by the SEPA review process or legislative review process.

B.1. Council staff will complete a SEPA checklist for the provisions in Proposed Ordinances 2022-0147 and 2022-0148, including any known amendment concepts known by council staff and any recommendations shared by the executive that is required by this section.

2. Council staff will request environmental review required under K.C.C. 20.44.020.B. based on the

SEPA checklist developed under this subsection B. no later than June 30, 2023.

3. The executive's SEPA Responsible Official will complete the SEPA review process, including issuing a threshold determination. The work plan assumes an environmental impact statement is not required, additional time may be needed if an environmental impact statement is required. In that case, the work plan after this point would be on-hold until the environmental impact statement is complete. The SEPA Responsible Official expects to complete the SEPA review process based on the June 2023 SEPA checklist and issue the threshold determination by the end of September 2023.

C. The executive shall, in collaboration and coordination with the council, develop a winery, brewery, distillery environmental evaluation report which includes the following topics, at a minimum:

1. Interior lot line setback requirements for winery, brewery, distillery facilities, including likely environmental impacts of interior lot line setbacks and associated impervious surface limits on critical areas, surface water management, and other natural environment elements. The evaluation should include a comparison analysis of other similar uses allowed in K.C.C. Title 21A in the RA zone and the setbacks required for them, evaluation of the setbacks for the uses and activities regulated by the code in place prior to Ordinance 19030, by Ordinance 19030 and by Proposed Ordinances 2022-0147 and 2022-0148, comparison of various proposed setbacks, including seventy-five, fifty and twenty-five feet, and evaluation of the winery, brewery, distillery interior lot line setback necessary to implement the policies of the Comprehensive Plan regarding preservation of rural character, protection of farmland, protection of critical areas and water quality, and support of rural economic development. The executive shall develop recommended changes needed to address any identified likely impacts related to the uses and activities regulated in Ordinance 19030 or Proposed Ordinances 2022-0147 and 2022-0148;

2. Functions and events for winery, brewery, distillery facilities, including the criteria for obtaining a temporary use permit, the requirements for functions and events that are proposed for the uses and activities regulated in Proposed Ordinances 2022-0147 and 2022-0148, and the intensity of likely impacts based on the

types of functions and events held by wineries, breweries, distilleries, including mitigation measures or prohibitions for those more intense likely impacts. The executive shall recommend any changes needed to address any identified likely impacts related to the uses and activities regulated in Ordinance 19030 or Proposed Ordinances 2022-0147 and 2022-0148; and

3. Based on available data, a qualitative analysis on the likely impacts of winery, brewery, distillery uses on the county's obligation to protect threatened and endangered salmonid species. Recommend any changes needed to address any likely impacts related to the uses and activities regulated in Ordinance 19030 or Proposed Ordinances 2022-0147 and 2022-0148.

D. The executive shall electronically file a winery, brewery, distillery moratorium work plan report that includes the winery, brewery, distillery environmental evaluation report required in subsection C. of this section, and the analysis of resources needed to implement the adopted winery, brewery, distillery regulations required in subsection G.2. of this section, no later than June 1, 2023, with the clerk of the council, who shall retain the original 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.

E. The local services and land use committee or its successor will deliberate on the proposals in Proposed Ordinances 2022-0147 and 2022-0148, and the report described in subsection D. of this section, and make a recommendation to the council at the committee's September 2023 meeting.

F. Council staff will issue a public hearing notice, and executive and council staff will coordinate on whether any additional SEPA review is needed, and if so, complete it, between the committee recommendation and council public hearing, which will be scheduled for the second week in November 2023.

G.1. The council will take action on the proposals in Proposed Ordinances 2022-0147 and 2022-0148 no later than the fourth week of November 2023. The new winery, brewery, distillery facility regulations will take effect no later than December 23, 2023.

2.a. The executive shall prepare technical assistance materials for winery, brewery, distillery

businesses in time to use them once the new regulations take effect.

b. The executive shall develop a winery, brewery, distillery administration plan that shall include draft technical assistance materials that the permitting division will use to administer the adopted winery, brewery, distillery regulations, which may be the winery, brewery, distillery regulations adopted in Ordinance 19030, the proposals in Proposed Ordinances 2022-0147 and 2022-0148, some combination of winery, brewery, distillery regulations in these ordinances, or other regulations that are developed through the council's deliberations on Proposed Ordinances 2022-0147 and 2022-0148. The plan shall also include an analysis of what resources will be used to administer the winery, brewery, distillery regulations, including staffing, consultant, technological or other resources. If additional resources are necessary, the analysis shall include the rationale and proposed use of the additional resources, and the executive may transmit an appropriations ordinance that requests those additional resources.

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.