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June 6, 2019

The Honorable Rod Dembowski, Council Chair  
King County Council  
516 3rd Ave Room 1200  
Seattle, Washington 98104

Dear Chair Dembowski and King County Councilmembers:

**Subject: Futurewise comments on Proposed Ordinance 2018-0241.2 - Regulations for Wineries, Breweries, and Distilleries for the County Council June 12, 2019 public hearing.**

Sent via email to: [council@kingcounty.gov](mailto:council@kingcounty.gov) and by Hand Delivery

Thank you for the opportunity to comment on proposed Ordinance 2018-0241.2 - Regulations for Wineries, Breweries, and Distilleries for the County Council June 12, 2019, public hearing. For almost 30 years, Futurewise has worked to protect our state's natural resources and make our urban areas livable for and available to all. Futurewise works throughout Washington State to support land-use policies that encourage healthy, equitable and opportunity-rich communities, and that protect our most valuable farmlands, forests, and water resources. Futurewise has members and supporters throughout Washington State including King County King County.

Futurewise was a member of the Sammamish Valley Winery and Beverage Industry Study providing feedback and direction during that process. Since that time, we have actively engaged with councilmembers and the executive's office both as a resource and as an advocate to make sure that the council gets this ordinance right. Now that the proposed ordinance is before the Committee of the Whole Futurewise is taking this opportunity to share our thoughts as it moved out of the Local Services, Regional Roads and Bridges Committee. Futurewise recommends that the proposed ordinance not be adopted as written because it will adversely impact agricultural lands, rural areas, and water quality and quantity. Because of these adverse impacts, proposed Ordinance 2018-0241.2 violates Washington's Growth Management Act (GMA).

## **Allowing these uses in the Agricultural Zones violates the Growth Management Act (GMA)**

The Washington State Supreme Court's *Soccer Fields* decision held that King "County was required to assure the conservation of agricultural lands and to assure that the use of adjacent lands does not interfere with their continued use for the production of food or agricultural products."<sup>1</sup> In the *Soccer Fields* decision the Washington Supreme Court also held that "[i]n order to constitute an innovative zoning technique [authorized by

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<sup>1</sup> *King Cty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd. (Soccer Fields)*, 142 Wn.2d 543, 556, 14 P.3d 133, 140 (2000) emphasis in the original.



RCW 36.70A.177] consistent with the overall meaning of the Act, a development regulation must satisfy the Act's mandate to conserve agricultural lands for the maintenance and enhancement of the agricultural industry."<sup>2</sup> Outdoor recreational facilities failed this test and cannot be allowed on agricultural lands because they will remove "designated agricultural land from its availability for agricultural production."<sup>3</sup>

In the *Lewis County* decision, the State Supreme Court built on the *Soccer Fields* decision and concluded that the "County's ordinance allowing residential subdivisions and other non-farm uses within designated agricultural lands undermined the GMA conservation requirement."<sup>4</sup> In the *Kittitas County* decision, the state Supreme Court concluded that many conditional uses allowed on agricultural lands of long-term commercial significance violated the GMA. The conditional uses violated the GMA because "the County has no protections in place to protect agricultural land from harmful conditional uses."<sup>5</sup>

Futurewise does not believe that the wineries, breweries, distilleries or cideries comply with these requirements. Winery/Brewery/Distillery Facility IIs are treated as permitted and conditional accessory uses in Agricultural zones.<sup>6</sup> But the Winery/Brewery/Distillery Facility IIs do not include the protections required by RCW 36.70A.177(2) and (3)(b).<sup>7</sup> There is no requirement that these uses must be consistent with the size, scale, and intensity of the existing agricultural use of the property as RCW 36.70A.177(2)(b)(ii) requires. The allowed 3,500 foot buildings are larger than many buildings in the Sammamish Valley Agricultural 10 zone not to mention other agricultural zones.<sup>8</sup> There is also no requirement that these nonagricultural accessory uses and activities, including new buildings, parking, or supportive uses, shall not be located outside the general area already developed for buildings and residential uses and shall not otherwise convert more than one acre of agricultural land to nonagricultural uses as RCW 36.70A.177(2)(b)(ii) also requires. They also do not protect adjacent agricultural operations; the minimum distances only apply to "adjoining rural area and residential zones."<sup>9</sup>

Winery/Brewery/Distillery Facility IIIs are proposed to be allowed as a freestanding conditional use in the Agricultural zones.<sup>10</sup> They do not have to be accessory to any existing agricultural use.<sup>11</sup> They are similar to the conditional uses found to violate the GMA in the *Lewis County* and *Kittitas County* decisions cited above because with their large building sizes and parking lots they fail to conserve farmland. The Winery/Brewery/Distillery Facility IIIs have no effective protections for adjacent land agricultural uses. The setback only applies to "adjoining rural area and residential zones ...",

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<sup>2</sup> *Soccer Fields*, 142 Wn.2d at 560, 14 P.3d at 142.

<sup>3</sup> *Soccer Fields*, 142 Wn.2d at 562, 14 P.3d at 143.

<sup>4</sup> *Lewis Cty. v. W. Washington Growth Mgmt. Hearings Bd.*, 157 Wn.2d 488, 509, 139 P.3d 1096, 1106 (2006).

<sup>5</sup> *Kittitas Cty. v. E. Washington Growth Mgmt. Hearings Bd.*, 172 Wn.2d 144, 172, 256 P.3d 1193, 1206 (2011).

<sup>6</sup> Proposed K.C.C. 21A.08.080A and Proposed K.C.C. 21A.08.080B.3.

<sup>7</sup> Proposed K.C.C. 21A.08.080B.3.

<sup>8</sup> Proposed K.C.C. 21A.08.080B.3.c; King County Department of Assessments, Parcel Data for Parcel 102605-9030, Parcel 152605-9021, and Parcel 152605-9059 enclosed with the paper version of this letter.

<sup>9</sup> Proposed K.C.C. 21A.08.080B.3.d.

<sup>10</sup> Proposed K.C.C. 21A.08.080A and Proposed K.C.C. 21A.08.080B.12.

<sup>11</sup> Proposed K.C.C. 21A.08.080A and Proposed K.C.C. 21A.08.080B.12.

not agricultural uses.<sup>12</sup> The allowed 8,000 to 16,000 square foot buildings allowed are larger than many buildings in the Sammamish Valley Agricultural 10 zone not to mention other agricultural zones.<sup>13</sup>

In addition, the change contained within the proposed ordinance which allows for 60% of the product to be grown within the Puget Sound Region for five years further undercuts protection for farmland. We do not believe that there should be a five-year period in which these agricultural uses can be impacted with the enforcement coming after changes to the property are made. There are limited agricultural lands and these need to be used for agricultural purposes.

Allowing Winery/Brewery/Distillery Facility IIs and IIIs as accessory and conditional uses as currently drafted will likely price out farmers from the Agriculture zones.<sup>14</sup> Farmers at public hearings have testified that this is already occurring in the Sammamish Valley. Limiting uses in the Agricultural zones reduces incompatible uses in agricultural areas and prevents land speculation from increasing land costs above what farmers can afford.<sup>15</sup>

In summary, the proposed Ordinance 2018-0241.2 failed to protect farmland and adjacent farms. This violates the GMA.

## Allowing these uses in the Rural Zones violates the GMA

“The rural element shall permit rural development, forestry, and agriculture in rural areas.”<sup>16</sup> RCW 36.70A.030(17) provides that “[r]ural development’ refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.” “[T]he requirements for ‘variety’ and ‘compatibility with rural character’ apply to non-residential uses as well as to residential uses.”<sup>17</sup>

The *King County Comprehensive Plan* in Policy R-201 requires that:

King County’s land use regulations and development standards shall protect and enhance the following attributes associated with rural character and the Rural Area:

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<sup>12</sup> Proposed K.C.C. 21A.08.080B.12.d.

<sup>13</sup> Proposed K.C.C. 21A.08.080B.12.a; 102605-9030 King County Department of Assessments, Parcel Data for Parcel 102605-9030, Parcel 152605-9021, and Parcel 152605-9059 enclosed with the paper version of this letter.

<sup>14</sup> Proposed K.C.C. 21A.08.080A and Proposed K.C.C. 21A.08.080B.12.

<sup>15</sup> American Farmland Trust, *Saving American Farmland: What Works* p. 50 (1997) cited pages included with the paper version of this letter.

<sup>16</sup> RCW 36.70A.070(5)(b).

<sup>17</sup> *Vashon-Maury v. King County*, Central Puget Sound Growth Management Hearings Board (CPSGMHB) Case No. 95-3-0008, Final Decision and Order (Oct. 23, 1995), at \*50 of 96, 1995 WL 903209 p. \*45.

- a. The natural environment, particularly as evidenced by the health of wildlife and fisheries (especially salmon and trout), aquifers used for potable water, surface water bodies including Puget Sound and natural drainage systems and their riparian corridors;
- b. Commercial and noncommercial farming, forestry, fisheries, mining, home-occupations and home industries;
- c. Historic resources, historical character and continuity important to local communities, as well as archaeological and cultural sites important to tribes;
- d. Community small-town atmosphere, safety, and locally owned small businesses;
- e. Economically and fiscally healthy Rural Towns and Rural Neighborhood Commercial Centers with clearly defined identities compatible with adjacent rural, agricultural, forestry and mining uses;
- f. Regionally significant parks, trails and open space;
- g. A variety of low-density housing choices compatible with adjacent farming, forestry and mining and not needing urban facilities and services;
- h. Traditional rural land uses of a size and scale that blend with historic rural development; and
- i. Rural uses that do not include primarily urban-serving facilities.<sup>18</sup>

The remote tasting rooms, other than those allowed in designated Rural Towns, and the Winery/Brewery/Distillery Facility IIs and IIIs allowed in the rural area are not consistent with this policy and therefore fail to comply with the GMA. These uses fail to protect the natural environment. For example, these uses are allowed to use well water. “From 2010-2014, 369 new wells (4.5% increase) were added to the already existing 8,227 wells in the Lake Washington and Green-Duwamish basins . . . . A total of 482 miles of streams in the Lake Washington and Green-Duwamish basins are identified as having low streamflow problems . . . .”<sup>19</sup> Low flows reduce available instream habitat and contribute to higher temperatures.<sup>20</sup> Allowing these uses to use well water further depletes instream flows. These uses will also increase impervious surfaces and reduce forest cover. The loss of forest cover is increasing water temperatures and reducing dissolved oxygen, both of which are “known to be significant limiting factors for both juvenile and adult salmon.”<sup>21</sup>

The remote tasting rooms, other than those allowed in designated Rural Towns, and the Winery/Brewery/Distillery Facility IIs and IIIs will not protect and enhance commercial and noncommercial farming, forestry, fisheries, mining, home-occupations and home industries. There is no requirement that any King County natural resources be used in the products produced or sold by these uses in the rural area.<sup>22</sup>

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<sup>18</sup> 2016 King County Comprehensive Plan p. 3-7 (Updated October 29, 2018).

<sup>19</sup> 2016 State of Our Watersheds: A Report by the Treaty Tribes in Western Washington p. 111 last accessed on June 6, 2019 at: <https://nwifc.org/publications/state-of-our-watersheds/> and enclosed with the paper version of this letter.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at p. 108.

<sup>22</sup> Proposed K.C.C. 21A.08.080A, Proposed K.C.C. 21A.08.080B, Proposed K.C.C. 21A.08.080B.

Allowing these uses in the rural area will not protect or enhance the community small-town atmosphere. The benefit to locally owned small businesses is unclear, corporate tasting rooms and Winery/Brewery/Distillery Facility IIs and IIIs are allowed. Except for the uses in Rural Towns, Rural Towns and Rural Neighborhood Commercial Centers will not be protected or enhanced. In fact, these uses could sap the vitality of these areas which are better sites for these types of uses.

These uses are not going to protect or enhance parks, trails, or open spaces. The uses will not provide any housing choices. The uses are also not traditional rural land uses of a size and scale that blend with historical rural development. These uses are larger than many traditional rural uses and are of an urban size and scale.<sup>23</sup> These uses are also of size and in locations that they will likely be primarily serving urban populations.

So, these uses will not protect King County's rural character and so violate the GMA. They cannot be allowed outside the designated Rural Towns.

## Water Availability

Group B water systems shouldn't be allowed to serve these uses. The Sammamish River is closed to new appropriations and permits for ground water appropriations are not allowed under WAC 173-508-030(1) and WAC 173-508-050. Allowing these uses, other than home occupations, to be served by Group B systems unless they have adequate water rights violates these requirements as well as reduces instream flows. Low flows reduce available instream habitat and contribute to higher temperatures adversely impact salmon production and salmon habitats.<sup>24</sup>

## Demonstration Area B

Futurewise is opposed to Demonstration Area B as these are urban uses and shouldn't be allowed in the Rural Areas. We reluctantly can support Demonstration Area A to legalize a number of the tasting rooms, but we don't believe the County should be expanding those opportunities. Tasting rooms are an urban use and cities such as Woodinville have ample available space for just these uses. Expanding these activities will increase runoff onto the farmland in the valley as well as increase pollution in the Sammamish River.

## Parking

Throughout the updated ordinance parking requirements are increased dramatically for all adult beverage uses. We oppose the increased parking requirements. The proposed changes will increase impervious surfaces impacting water quality and doesn't fit within the rural character of the area.

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<sup>23</sup> Proposed K.C.C. 21A.08.080B.3.c; Proposed K.C.C. 21A.08.080B.12.e; King County Department of Assessments, Parcel Data for Parcel 032605-9007 Parcel Data with a 1,139 sq. ft. wine tasting room enclosed with the paper original of this letter.

<sup>24</sup> 2016 *State of Our Watersheds: A Report by the Treaty Tribes in Western Washington* p. 111.

## Permitting Fee and Fines

The basis for the Sammamish Valley Area Wine and Beverage Industry Study is that a number of illegal wineries and tasting rooms. Currently King County isn't enforcing their own regulations and have allowed these illegal uses to continue. Futurewise raises the lack of enforcement within the context of the onetime \$100 fee. We believe that the fee is much too low to support enforcement of these new regulations and the changing requirements overtime within the proposed ordinance.

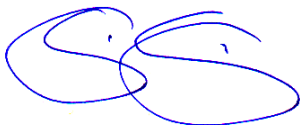
In addition to the application fee being too low, we believe that the penalties should also be increased. The penalties need to be high enough that having an illegal tasting room or winery is discouraged. We suggest that the ordinance increase the fees to make breaking the law a losing proposition.

## Home Occupations

Futurewise is opposed to allowing a yearlong grace period to comply with updated ordinance requirements. The current lack of enforcement has allowed these home occupations to flourish and ignore current laws. All home occupations should abide by new ordinance regulations immediately. In addition, a home occupation land zoned for agriculture needs to meet the requirements for accessory uses in RCW 36.70A.177.

Thank you for considering our comments. If you require additional information, please contact Bryce at telephone 253 249-4430 and email [bryce@futurewise.org](mailto:bryce@futurewise.org) or Tim at telephone 206-343-0681 Ext. 102 and email [tim@futurewise.org](mailto:tim@futurewise.org)

Very Truly Yours,



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Enclosures