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November 9, 2020

Sent via email (darren.carnell@kingcounty.gov; *cristy.craig@kingcounty.gov)*

Office of the King County Prosecuting Attorney
Civil Division, Land Use Section
Attn: Darren Carnell and Cristy Craig
W400 King County Courthouse
516 Third Avenue
Seattle, WA 98104

RE: KCPA Declaration of Law-free Zone for Unlawful WBD Facilities

Dear Mr. Carnell and Ms. Craig:

As you know, I am counsel for Friends of Sammamish Valley (FOSV) and ten other agricultural entities and supporters in *FOSV et al. v. King County*, a Washington Growth Management Hearings Board (GMHB) proceeding concerning King County Ordinance 19030. As you also know, because you appeared for King County in that proceeding, the GMHB invalidated the Ordinance in a May 26, 2020 Order. The GMHB Order explicitly required that the County "take actions to come into compliance" with the State Environmental Policy Act (SEPA) and the Growth Management Act (GMA). Unfortunately, the six months since the Board's Order have been typified by studied inaction.

A contract for preparation of a SEPA Checklist on Ordinance 19030, many months in formulation, is only just underway. Further, it is for preparation of a SEPA Environmental Checklist for Ordinance 19030, rather than more GMA compliant legislation. The time will come for a legal reckoning on this County approach.

An even more immediate concern, however, is the County's shifting blame to the GMHB as an excuse for the County's affirmative refusal to apply currently applicable regulations. This refusal is epitomized in an August 27, 2020 8:46 AM email from John Taylor, Director of the King County Local Services Department, to FOSV's Executive Director, Serena Glover. Director Taylor states in responding to a FOSV inquiry about enforcement against a particularly egregious violator:

> At this point everything including the permit application and license appeal is on hold pending the outcome of that decision **as we do not have a code to enforce per the Prosecuting Attorney's Office.** [Emphasis added]

Similar responses have also been received by FOSV officers from various County staff. This is blatant misinformation. The GMHB invalidation of Ordinance 19030 did not enjoin the County from Code enforcement. Nor did it erase from the County Code provisions that Ordinance 19030 repealed and replaced. Those prior provisions are now back in effect. See, e.g. *Boeing Co. v. State*, 74 Wash. 2d 82, 442 P.2d 970 (1968).

The inquiry that elicited Director Taylor's response concerned the Tenhulzen property (formerly owned by Larone Holdings/Sal Leone). The land uses and construction activity on this property are unlawful under the Code provisions currently in effect and would be unlawful even if Ordinance 19030 were in effect. There have been many Code complaints about this operation over the years and currently because:

- The 1.48-acre RA-2.5 parcel is not large enough to accommodate a "winery, brewery, distillery" under either the version of King County Code 21A.08.080 currently in effect or under Ordinance 19030 even if it were in effect. It is also not within the Ordinance 19030 Demonstration Project Overlay A which allowed remote tasting rooms.

- There are still at least 2 separate "drinking places" (bars/tasting rooms) and/or retail "liquor stores" operating on this RA-2.5 property, selling for onsite consumption or carryout alcoholic beverages produced elsewhere. This is clearly not permitted under, inter alia, King County Code 21A.08.070.

- In January 2020, property owner Tenhulzen leased space to a new tenant called Good Brewing Co. which started operating a bar on the property on Feb 1, 2020, selling beer produced in the City of Woodinville warehouse district as well as a rotating menu of wines produced elsewhere. In a new violation, on which the County has looked the other way, the operation now also advertises a food truck on the property. https://goodbrewingco.com/brewpub-food-menu .

- The Tenhulzen property owner continued to ramp up commercially-oriented construction, despite the pandemic, constructing a boardwalk connecting the RA property to the City of Woodinville Tourist District and building on-site what appears to be a large stage. A previously required fence between the City of Woodinville and this property, designed to discourage foot traffic along the edge of the road in the RA zone, has also been removed. All of this activity is clearly visible from the road and the next-door property.

Similarly, the Matthews/Tenor wine business operation continues in blatant violation of the law, again with apparent impunity:

- Matthews/Tenor's production winery is in Walla Walla. Bottled wine produced there is stored in their City of Woodinville warehouse district location and is transported weekly to the Matthews bar, located in an RA-2.5 SO zone, to sell retail for on-site consumption and take away.

- These retail activities would have violated Ordinance 19030 which did not allow bars or remote tasting rooms in the RA outside of DPO A. The current Matthews operation also violates the currently effective Code provisions which specify clearly that sales in the RA must be of beverages produced on-site.

- Matthews septic permit authorizes a limited system not designed for and without the capacity for an actual wine production facility, which requires vast quantities of water. It is designed only for use by a toilet, sink, and dishwasher. The permit materials in fact explicitly specify "NO PRODUCTION/BATHROOM SINK ONLY." Under their current waste management system, they are not allowed to have a winery at their RA-2.5 SO facility, even if they wanted to actually build a real production winery at that location.

- The Matthews waste management system is also inadequate for their current retail activities. Numerous complaints filed with the King County Health Department regarding waste management, hot water, food handling, etc. have not been addressed.

- The full Matthews facility continues to be used unlawfully for retail sales, which violates both the Ordinance 19030 30% retail square footage limit, had the Ordinance remained in effect, and even more egregiously violates the Code prohibitions currently in effect.

- Matthews continues to allow other retail activities at their RA-2.5 SO location. Most recently on September 17 and again on October 1 they hosted a Seafood Pop Up Shop selling frozen seafood.

All of the foregoing have been brought to the County's attention, on the record, time and time again. The violations described are neither subtle nor minor. Yet, the County's responses have ranged from confused to tepid – and now to purposefully noncognizant of its own Code.

KCPA has three lawyers assigned to trying to resurrect Ordinance 19030 (two were assigned to its unsuccessful defense before the GMHB). Meanwhile, as illustrated by the examples cited above – which are just two among the nine violators in the Sammamish Valley – the County is practicing malignant neglect instead of decisively moving to abate active egregious violations. The small, but impactful, group of readily identifiable violator businesses interloping in Rural and Agricultural areas neither comply with (now-invalidated) Ordinance 19030, nor the currently in effect Code regulations the Ordinance would have replaced.

Director Taylor's August 27, 2020 email adds a new dimension to this irresponsible record – an affirmative and palpably incorrect KCPA assertion that "we do not have a code to enforce." This invitation to lawlessness can only be interpreted as KCPA's passive-aggressive retaliation against the GMHB and the successful Petitioners for daring to question Ordinance 19030.

It is past time for the County, including KCPA, to step up. As a first step, KCPA must make clear in writing to both County staff and the public that there is a Code to enforce. While the County may argue that it has some discretion in enforcement matters, the current position that there is no Code to enforce is inaccurate, irresponsible, and contrary to law.

Second, the County must take effective, decisive enforcement action against egregious violators such as those cited in this letter. The foundation for such action is recognition that longstanding laws governing alcoholic beverage related land uses in King County remain unchanged by Ordinance 19030, which was invalidated. Delay, dithering, and denial must stop. Concerted, consistent, comprehensive enforcement action is long overdue.

Please advise immediately confirming that the laws in effect prior to the adoption of Ordinance 19030 have been and are now back in effect and that enforcement action will be taken.

Meanwhile FOSV reserves all rights.

Sincerely,

EGLICK & WHITED PLLC

Peter J. Eglick

cc: client
Tim Trohimovich