



Signature Report

Ordinance 19309

Proposed No. 2021-0244.2

Sponsors Balducci

1 AN ORDINANCE declaring a one-year moratorium
2 prohibiting the acceptance of applications for or
3 establishment of new or expansion of existing wineries,
4 breweries, distilleries and remote tasting rooms, as primary
5 uses or as home occupations or home industries; and
6 prohibiting temporary use permits for wineries, breweries,
7 distilleries and remote tasting room; establishing a work
8 plan to evaluate the next steps for the regulations regarding
9 these uses; and declaring an emergency.

10 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

11 SECTION 1. Findings.

12 A. King County has authority, pursuant to constitutional police powers, home
13 rule authority and the Washington state Growth Management Act, including chapter
14 36.70A RCW ("the GMA"), to establish a moratorium to preclude the acceptance of
15 certain new development applications and preclude the establishment of otherwise
16 allowed uses while the county studies related land use issues.

17 B. Ordinance 19030 established updated regulations for winery, brewery,
18 distillery facilities and remote tasting rooms in unincorporated King County.

19 C. Ordinance 19030 was challenged on State Environmental Policy Act

20 ("SEPA") and GMA grounds by Friends of Sammamish Valley, a Washington nonprofit
21 corporation, A Farm in the Sammamish Valley, LLC, Marshal Leroy d/b/a Alki Market
22 Garden, Eunomia Farms LLC, Olympic Nursery Inc., C-T Corp., Roots of Our Times
23 Cooperative, Regeneration Farms LLC, Hollywood Hill Association, Terry and David R.
24 Orkiolla, Judith Allen and Futurewise to the Central Puget Sound Growth Management
25 Hearings Board ("the board"). The petitioners filed a summary judgment motion with the
26 board, claiming the SEPA process undertaken by the county before adoption of the
27 ordinance had been insufficient. On May 26, 2020, the board issued its Order on
28 Dispositive Motions for Case No. 20-3-0004c ("the board's order"), which granted the
29 petitioners' summary judgment and invalidated most of the substantive sections of the
30 ordinance. Ordinance 19030, Sections 12 through 30, and Map Amendments 1 and 2,
31 which were Attachments A and B to Ordinance 19030, were invalidated by the board.
32 Ordinance 19030, Sections 12 through 30, include definitions, zoning conditions, parking
33 restrictions, temporary use permit clarifications, home occupation and home industry
34 limitations and a demonstration project.

35 D. The board's order was primarily focused on SEPA. The board concluded that
36 the analysis contained in the SEPA checklist was insufficient to support the SEPA
37 determination of nonsignificance. The board set a compliance schedule requiring
38 additional action by the county with a November 2020 deadline.

39 F. With the board's invalidation of parts of Ordinance 19030, the uses that were
40 defined and regulated as part of that ordinance, including winery, brewery, distillery
41 facilities and remote tasting rooms, do not have clear regulations for residents and
42 business owners to comply with, and the county does not have clear regulations to

43 enforce. That lack of clarity exists for: wineries, breweries, distilleries and remote tasting
44 rooms that seek to locate or be established on a property as a primary use; wineries,
45 breweries, distilleries and remote tasting rooms that seek to locate or be established as a
46 home occupation or home industry; and wineries, breweries, distilleries and remote
47 tasting rooms that seek to apply for temporary use permits allowed by the King County
48 Code.

49 G. In order to provide clarity to residents, business owners and county permit
50 review and code enforcement staff, the county declared a moratorium that prevents new
51 wineries, breweries, distilleries and remote tasting rooms as primary uses, as home
52 occupations and as home industries from locating or being established in unincorporated
53 King County, while the council and executive determine and carry out the next steps in
54 responding to the board's order. The moratorium was declared by Ordinance 19122, and
55 was extended twice, with Ordinances 19217 and 19290.

56 H. All further board activity, including compliance schedule requirements,
57 remains stayed by the King County superior court, pending resolution of the county's
58 administrative appeal. The superior court reversed the board's decision on April 16,
59 2021, by its Order Granting King County's Appeal From an Order of the Central Puget
60 Sound Region Growth Management Hearings Board ("the superior court's order"). On
61 May 14, 2021, the superior court's order was appealed to the Washington state Court of
62 Appeals, Division I. The timing for resolution of the litigation in the Court of Appeals is
63 unknown. The superior court's order leaves the stay in place for the duration of the Court
64 of Appeals proceedings.

65 I. Due to the Court of Appeals litigation, the county adopted a second renewal of

66 the moratorium with Ordinance 19290, which is set to expire December 23, 2021.

67 J. The county filed a Motion to Enforce Order, for Partial Remand and to Modify
68 Stay for matter No. 20-2-10245-8 SEA on June 23, 2021, asking the superior court to
69 direct the board rescind the finding of noncompliance and its order of invalidity by June
70 30, 2021 and update the Washington state departments of Commerce and Ecology that
71 the Board's finding of noncompliance has been rescinded by July 2, 2021.

72 K. This motion to enforce was necessitated when the Washington state
73 departments of Commerce and Ecology notified the county that because of the plaintiff's
74 appeal has stayed the superior court's ruling of invalidating the board's order, the county
75 is no longer eligible for millions of dollars in state loans and grants. Eligibility for these
76 state moneys is predicated on the county being in compliance with the GMA. With the
77 superior court's ruling, reversing the board's order being stayed, the county appears to be
78 out of compliance, putting at least funding \$106.7 million dollars in state loan and grant
79 funding at risk, including a \$10,000,000 Public Works Board loan with an application
80 due date of July 9, 2021, two Clean Water State Revolving Fund loans totaling
81 \$94,000,000 with loan signing dates in November 2021 and the second quarter of 2022
82 and an Ecology Model Toxics Control Act grant of \$3,664,942 with a grant agreement
83 finalization date in the third quarter of 2021.

84 L. The parties have agreed to a proposed settlement that would dismiss all
85 appeals and cross-appeals in the Court of Appeals, allow the superior court's order to go
86 into effect, direct the board to rescind its order, specifically including its finding of
87 noncompliance and Order of Invalidity, except on the issues on which the superior court's
88 order upheld the board and to conduct a hearing on the merits and issue a new decision

89 on an expedited basis. As part of the settlement, county has agreed to declare a one-year
90 moratorium on acceptance of applications for or establishment of new or expansion of
91 existing wineries, breweries, distilleries and remote tasting rooms.

92 M. In order to meet for the public works loan application deadline, the settlement
93 conditions must be met before July 9, 2021.

94 N. RCW 36.70A.390 authorizes a moratorium to be declared for one year if a
95 "work plan is developed for related studies providing for such a longer period."

96 O. It is in the public interest, and is the intent of the county, to declare and
97 establish a one-year moratorium on acceptance of applications for or establishment of
98 new or expansion of existing wineries, breweries, distilleries and remote tasting rooms in
99 order to satisfy the terms of the negotiated settlement and prevent unregulated
100 development while substantive issues before the board are still pending.

101 P. It is necessary that this ordinance take effect immediately in order to avoid the
102 loss of state loan and grant funding, and in order to effectuate the settlement agreement.

103 SECTION 2. A. Commencing on December 23, 2021, a moratorium is hereby
104 declared for one year, on the acceptance of applications for or establishment of those that
105 are new or expansion of those that are existing, including applications increasing their
106 size or scope, for the following in unincorporated King County:

- 107 1. Wineries, breweries, and distilleries;
- 108 2. Remote tasting rooms;
- 109 3. Winery, brewery, distillery and remote tasting room home occupations and
110 home industries; and
- 111 4. Temporary use permits for wineries, breweries, distilleries and remote tasting

112 room uses.

113 B. An application shall not be accepted and a building permit, occupancy permit,
114 department of public health approval, other development permits or approval of any kind
115 shall not be issued for any of the purposes or activities prohibited by the moratorium.
116 Any applications for land use approvals or other permits that are accepted as a result of
117 error or by use of vague or deceptive descriptions during the moratorium are null and
118 void and without legal force or effect. All vested and otherwise lawfully established
119 uses, structures or other developments may continue to be maintained, repaired and
120 redeveloped consistent with K.C.C. 21A.32.020 through 21A.32.055, so long as the use is
121 not expanded, under the terms of the land use regulations in place at the time the use was
122 established.

123 C. Within sixty days of the effective date of this ordinance, the council shall hold
124 a public hearing on the moratorium.

125 D. During the moratorium, the executive shall evaluate and prepare a report for
126 the next steps for the regulations regarding these uses prohibited by this moratorium. The
127 evaluation report shall be filed with the council at least ninety days before the expiration
128 of the moratorium declared under this ordinance. The executive shall file the evaluation
129 report with the clerk of the council, who shall retain an electronic copy and provide an
130 electronic copy to all councilmembers, the council chief of staff and the lead staff for the
131 local services committee, or its successor. The evaluation report shall include information
132 regarding:

133 1. A summary of the status of the proceedings before the Growth Management
134 Hearings Board;

135 2. A summary of code enforcement activities related to the uses prohibited by
136 this moratorium; and

137 3. Recommendations and a proposed timeline regarding next steps for the
138 county regarding adopting regulations for the uses prohibited by this moratorium.

139 SECTION 3. The definitions in this section apply throughout this ordinance
140 unless the context clearly requires otherwise.

141 A. "Remote tasting room" means a facility that is required to be licensed by the
142 Washington state Liquor and Cannabis Board including, but not limited to, the following
143 non-retail liquor licenses: a craft distillery; a tasting room - additional location for a
144 winery licensed as a domestic winery; or a microbrewery, including, but not limited to, a
145 microbrewery operating in accordance with an off-site tavern license subject to the retail
146 sale limitations for a microbrewery in WAC 314-20-015(1).

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

148 C. "Winery, brewery, distillery" means:

149 1. "winery" means an establishment primarily engaged in one or more of the
150 following:

151 a. growing grapes or fruit and manufacturing wine, cider, or brandies;

152 b. manufacturing wine, cider or brandies from grapes and other fruits grown
153 elsewhere; and

154 c. blending wines, cider or brandies;

155 2. "brewery" is as defined by SIC Industry No. 2082; and

156 3. "distillery" is as defined by SIC Industry No. 2085.

157 D. "Winery, brewery, distillery and remote tasting room home occupation and

158 home industry" means a winery, brewery, distillery or remote tasting room, or
159 combination thereof, that is located in a dwelling unit or residential accessory building,
160 and meets the definition of home occupation in K.C.C. 21A.06.610 or the definition of
161 home industry in K.C.C. 21A.06.605.

162 SECTION 4. Severability. If any provision of this ordinance or its application to
163 any person or circumstance is held invalid, the remainder of the ordinance or the
164 application of the provision to other persons or circumstances is not affected.

165 SECTION 5. The county council finds as a fact and declares that an emergency
166 exists and that this ordinance is necessary for the immediate preservation of public peace,
167 health or safety or for the support of county government and its existing public
168 institutions.

169 SECTION 6. Enactment of this temporary moratorium as an emergency under
170 Section 230.30 of the King County Charter waives certain procedural requirements,
171 including State Environmental Policy Act review under chapter 43.21C RCW and K.C.C.

172 chapter 20.44, notice to the state under RCW 36.70A.106 and published notice under
173 K.C.C. 20.18.110.
174

Ordinance 19309 was introduced on 6/22/2021 and passed as amended by the Metropolitan King County Council on 6/22/2021, by the following vote:

Yes: 7 - Ms. Balducci, Mr. Dembowski, Ms. Lambert, Mr. McDermott, Mr. Upthegrove, Mr. von Reichbauer and Mr. Zahilay
Excused: 2 - Mr. Dunn and Ms. Kohl-Welles

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Claudia Balducci, Chair

ATTEST:

Melani Pedroza, Clerk of the Council

APPROVED this ____ day of _____, _____.

Dow Constantine, County Executive

Attachments: None