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Sponsors:	
Attachments:	

1 ..Title

2 AN ORDINANCE declaring a six-month moratorium  
3 prohibiting the acceptance of applications for the  
4 establishment of new or expansion of existing wineries,  
5 breweries, distilleries, and remote tasting rooms, as primary  
6 or accessory uses or as home occupations or home  
7 industries; and prohibiting temporary use permits for  
8 wineries, breweries, distilleries, and remote tasting rooms.

9 ..Body

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,  
13 home rule authority, and the Washington state Growth Management Act, chapter  
14 36.70A RCW ("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 litigation is ongoing.

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 chapter 43.21C RCW ("SEPA") and GMA grounds by Friends of Sammamish  
21 Valley, a Washington nonprofit corporation, A Farm in the Sammamish Valley,

22 LLC, Marshal Leroy d/b/a Alki Market Garden, Eunomia Farms LLC, Olympic  
23 Nursery Inc., C-T Corp., Roots of Our Times Cooperative, Regeneration Farms  
24 LLC, Hollywood Hill Association, Terry and David R. Orkiolla, Judith Allen, and  
25 Futurewise to the Growth Management Hearings Board ("board") and designated  
26 as case number 20-3-0004c. On May 26, 2020, the board, in its Order on  
27 Dispositive Motions for Case No. 20-3-0004c ("the board's May 2020 order"),  
28 invalidated most of the substantive sections of Ordinance 19030, including  
29 Sections 12 through 29, Section 31, and Map Amendments 1 and 2. Ordinance  
30 19030, Sections 12 through 29, and Section 31 include definitions, zoning  
31 conditions, parking restrictions, temporary use permit clarifications, home  
32 occupation and home industry limitations, and a demonstration project.

33 D. With the board's invalidation of parts of Ordinance 19030, the uses  
34 that were defined and regulated as part of that ordinance, including winery,  
35 brewery, distillery facilities and remote tasting rooms, do not have clear  
36 regulations for residents and business owners to comply with, and the county does  
37 not have clear regulations to enforce. That lack of clarity exists for: wineries,  
38 breweries, distilleries, and remote tasting rooms that seek to locate or be  
39 established on a property as a primary or accessory use; wineries, breweries,  
40 distilleries, and remote tasting room home occupation and home industry; and  
41 wineries, breweries, distilleries, and remote tasting rooms that seek to apply for  
42 temporary use permits allowed by the King County Code.

43 E. In order to provide clarity to residents, business owners, and county  
44 permit review and code enforcement staff, the county declared a moratorium that

45 prevents new or expansion of wineries, breweries, distilleries, and remote tasting  
46 rooms as primary or accessory uses, as home occupations, and as home industries  
47 from locating or being established in unincorporated King County, while the  
48 council and executive determined and carried out the next steps in responding to  
49 the board's May 2020 order. The moratorium was declared by Ordinance 19122,  
50 and was extended twice, with Ordinances 19217 and 19290, as a result of ongoing  
51 litigation related to the board's May 2020 order. Ordinance 19290 expired  
52 December 23, 2021.

53 F. As part of a partial litigation settlement associated with the board's  
54 May 2020 order, the county agreed to a new one-year moratorium. Ordinance  
55 19309 adopted a one-year moratorium that commenced on December 23, 2021,  
56 and expired on December 23, 2022.

57 G. After litigation related to the board's May 2020 order was remanded to  
58 the board for additional review, the board issued its Final Decision and Order on  
59 January 3, 2022, and again invalidated Ordinance 19030, Sections 12 through 29,  
60 Section 31, and Map Amendments 1 and 2. The county appealed the board's  
61 January 3, 2022 Final Decision and Order, and the board's January 27, 2022,  
62 Order Nunc Pro Tunc Correcting Scrivener's Errors in Final Decision and Order,  
63 to Division I of the Washington state Court of Appeals.

64 H. The county adopted a new one-year moratorium with Ordinance  
65 19550, that commenced on December 23, 2022, and expired on December 23,  
66 2023. Ordinance 19550 was adopted to prevent vesting of applications for

67 winery, brewery, distillery uses during the Court of Appeals review of the  
68 litigation.

69 I. The Court of Appeals published an opinion on February 27, 2023,  
70 reversing the board's January 2022 order, and remanding it to the board with  
71 instructions to reinstate the SEPA determination of nonsignificance ("DNS") and  
72 enter a finding of GMA and SEPA compliance. The Friends of Sammamish  
73 Valley et al. and Futurewise filed a Motion for Reconsideration on March 20,  
74 2023. The Court of Appeals published a new opinion on June 12, 2023,  
75 responding to the Motion for Reconsideration, again reversing the board's January  
76 2022 order, and remanding it to the board with instructions to reinstate the DNS  
77 and enter a finding of GMA and SEPA compliance.

78 J. On September 8, 2022, following a compliance hearing, the board  
79 issued its Order Finding Continuing Noncompliance and Denying Motion to  
80 Rescind Invalidity. The September 8, 2022, order established a new compliance  
81 deadline of March 6, 2023. The county filed an appeal of the board's September  
82 8, 2022, order to superior court, which was certified for direct review by the Court  
83 of Appeals in October 2022, and the Court of Appeals issued a stay on May 4,  
84 2023, pending issuance of a mandate on the primary litigation. Until the Petitions  
85 for Review are acted on by the Washington state Supreme Court, the May 2023  
86 Court of Appeals stay on the follow up appeal will remain in place; on April 20,  
87 2023, the board, as part of a Second Order Finding Continuing Noncompliance  
88 and Order Granting Partial Stay, granted a stay holding the compliance calendar

89 in abeyance until such time as the pending appeals are resolved or the board  
90 rescinds the board's April 2023 stay order.

91 K. On July 11 and 12, 2023, Futurewise and Friends of Sammamish  
92 Valley and affiliated groups, respectively, filed Petitions for Review with the  
93 Washington state Supreme Court. On December 5, 2023, the Washington state  
94 Supreme Court accepted review and will consider the case. The timing for a  
95 decision by the Washington state Supreme Court is unknown, but is likely to be  
96 up to six months and possibly longer.

97 L. The county adopted another one-year moratorium with Ordinance  
98 19721, which commenced on December 23, 2023 and expires on December 23,  
99 2024.

100 M. Litigation before the Washington state Supreme Court is ongoing.

101 N. It is in the public interest, and is the intent of the county, to declare and  
102 establish a moratorium on acceptance of applications for the establishment of new  
103 or expansion of existing wineries, breweries, distilleries, and remote tasting rooms  
104 for a six-month period in order to prevent unregulated development while  
105 substantive issues before the board and the Washington state Supreme Court are  
106 still unresolved.

107 O. It is necessary that this ordinance take effect immediately in order to  
108 avoid a rush of applications for wineries, breweries, distilleries, and remote  
109 tasting rooms, due to a lack of clarity over what regulations would apply.

110 SECTION 2. A. A six-month moratorium, commencing on December 23,  
111 2024, is declared on the acceptance of applications for the establishment of those

112 that are new, or expansion of those that are existing, including applications  
113 increasing their size or scope, for the following in unincorporated King County:

- 114 1. Wineries, breweries, distilleries;
- 115 2. Remote tasting rooms;
- 116 3. Winery, brewery, distillery, and remote tasting room home  
117 occupations and home industries; and
- 118 4. Temporary use permits for wineries, breweries, distilleries, and  
119 remote tasting room uses.

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

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

133 A. "Remote tasting room" means a facility that is required to be licensed by the  
134 Washington state Liquor and Cannabis Board including, but not limited to, the following

135 non-retail liquor licenses: a craft distillery; a tasting room - additional location for a  
136 winery licensed as a domestic winery; or a microbrewery, including, but not limited to, a  
137 microbrewery operating in accordance with an off-site tavern license subject to the retail  
138 sale limitations for a microbrewery in WAC 314-20-015(1).

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

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

141 1. "Winery" means an establishment primarily engaged in one or more of the  
142 following:

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

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

146 c. blending wines, cider, or brandies;

147 2. "Brewery" is as defined by SIC Industry No. 2082; and

148 3. "Distillery" is as defined by SIC Industry No. 2085.

149 D. "Winery, brewery, distillery, and remote tasting room home occupation and  
150 home industry" means a winery, brewery, distillery, or remote tasting room, or  
151 combination thereof, that is located in a dwelling unit or residential accessory building  
152 and meets the definition of home occupation in K.C.C. 21A.06.610 or the definition of  
153 home industry in K.C.C. 21A.06.605.

154 **SECTION 4. Severability.** If any provision of this ordinance or its application to  
155 any person or circumstance is held invalid, the remainder of the ordinance or the  
156 application of the provision to other persons or circumstances is not affected.