

Proposed Ordinance 2018-0241

King County Council Public Hearing

Written Testimony

June 12, 2019

EPCA, GMVUAC, GV/LHA, and UBCUAC



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Re: Proposed Ordinance 2018-0241: Update to development regulations for wineries, breweries, and distilleries (WBDs)

Honorable King County Councilmembers,

INTRODUCTION

Please accept the Written Testimony herein on the subject Ordinance for your June 12 Public Hearing from the following King County (KC) Rural Area (RA) Unincorporated Area Councils (UACs) / Associations: Enumclaw Plateau Community Association (EPCA); Greater Maple Valley UAC (GMVUAC); Green Valley/Lake Holm Association (GV/LHA); and Upper Bear Creek UAC (UBCUAC). We represent much of KC's Rural Area—north to south.

As you are aware, our councils/associations individually research, prepare, and present win-win-win solutions on issues of interest to KC's RA residents and businesses. In the case of the subject ordinance, in light of its potential far-reaching influence and importance, we worked collaboratively to provide you the Written Testimony herein. In addition, we worked closely with the Friends of Sammamish Valley (FOSV) and Hollywood Hill Association (HHA)—both of which have intimate knowledge of the Sammamish Valley, *raison-d'etre* for and genesis of the proposed Ordinance.

As a result of this more comprehensive collaborative effort and exhaustive review of the proposed Ordinance (Clerk's Vers. 2, 3/13/2019) and the proposed Chair's Conceptual Striker from the Local Services, Regional Roads & Bridges (LSRR&B) Committee (3/8/2019), this Written Testimony is intended to update our past collective comments to the Council's Planning, Rural Service, & Environment (PRE) Committee (6/6/17) and the LSRR&B Committee (11/9/18).

We collectively call for the Council to reject the proposed Ordinance and request the Executive rework it.

BACKGROUND

It is apparent the proposed Ordinance arose from abuses by certain business and/or land owners in the Sammamish Valley's RA and protected Agricultural Production Districts (APDs) that escaped effective KC Code enforcement. The desire of certain property owners in this small area of the county to expand the *commercial uses* of their property far beyond that envisioned under KC's Comprehensive Plan (KCCP) and contrary to the purpose and intent of the RA and APDs firmly must be dealt with, while maintaining the rights and interests of legally operating business owners. KC clearly can manage where such facilities may be located—either as Residential (Home Occupation and/or Home Industry) or Manufacturing land uses under its *existing* regulatory authority (see, e.g., KC Hearing Examiner's decision in the Four Horseman Brewery appeal (File # PREA170313; 10/3/18).

If anything needs to be addressed and fixed in the current KC Code, it would be to remedy the illegal expansion of otherwise permitted and licensed tasting rooms into "*bar and dining establishments.*" Further, KC Code has become, at times, unreasonable, often is misinterpreted, and poorly enforced, to the point where both residents and businesses feel they are in a quandary. With such a fix of *limited* scope, we believe the problems in the Sammamish Valley can be remedied and APD and RA protected—and with them, the elimination of any necessity for such regulatory program as included in the proposed Ordinance. The Council should ask itself: *'Why is the county proposing a massive regulatory program to address a problem that it literally created and further exacerbated through general lack of code enforcement?'*

LEGAL CONCERNS

As written, there are several specific State and County legal issues that render the entire proposed Ordinance both invalid and unenforceable. While it is true local WBD regulations must be consistent with and implement the KCCP and Countywide Planning Policies (CCPs) under the State's Growth Management Act (GMA), such regulations must not conflict with other State general laws including those set forth in *Title 66 RCW—Alcoholic Beverage Control.*

The proposed Ordinance runs afoul of *Title 66 RCW* and the State Constitution in its the requirement that every WBD facility in the unincorporated area must obtain a KC business license is: (a) expressly preempted by *RCW 66.08.120*; (b) a violation of *WA Const. Art. XI, Sect. 11*, because a local WBD facility is prohibited from operating without a local license and is subject, in its absence, to both civil and criminal fines and penalties; and (c) an invalid exercise of regulatory authority as prohibiting an act expressly permitted by State law (*i.e.*, the sale of liquor produced on-site by a State-licensed facility). Because the business license is an *integral* part of the proposed Ordinance and its regulatory program, the Ordinance itself fails to stand apart from it and is invalid *in toto*.

BASIC FLAWS

Below we enumerate some of other key basic flaws in the proposed Ordinance and why it should be rejected:

(1) **Definitions:**

- a. WBD facilities, etc. These must be clearly defined without confusing underlying regulatory language. KC has not attempted to define what constitutes a WBD business in its *existing* codes, but rather relies on reference

to state or federal definitions, which have the authority in this regard. KC does not have the authority to redefine those definitions and its effort to do so is a major flaw in the proposed Ordinance.

- b. Home Occupations. Use of these should *not* be eliminated and replaced by a more restrictive *Residential Accessory Use*, effectively legislatively overruling the 10/3/18 KC Hearing Examiner's decision (again, see File # PREA170313) affirming rights of RA small breweries to conduct business, including having a tasting room, as a Home Occupation (**KCC 21A.30.085**) or as a Home Industry (**KCC 21A.30.090**).
 - c. Access. Further complications include requirements that certain WBD facilities must have direct access to an arterial or public roadway, as this would adversely impact many *existing* legally operated RA breweries and wineries. In much of the KC RA access to an arterial or public road, without the reasonable use of intervening private ways, is factually unavailable.
- (2) **Demonstration Projects and Overlays**: These are not warranted, nor necessary here and, as such, should be eliminated as they serve no useful purpose and threaten the RA and APDs by allowing activities not generally conducive to preserving Rural Character and protecting agricultural lands.
 - (3) **Events**: These cannot be allowed to be so large and occur so frequently that all semblance of Rural Character is diminished for residents and visitors alike. Such major events directly impact traffic, parking, safety, etc.
 - (4) **Retail Sales**: There must be clear *on-site* production requirements to ensure what can only be called "*bars*" are not allowed and that drinking establishments and event centers not function as WBDs. Accordingly, the following statement should be added: "*A WBD may have tastings and sales of products produced on-site only.*"
 - (5) **Violations**: Grace periods—essentially amnesty and forgiveness—for those who directly violated existing laws and zoning restrictions must not be allowed, such as to make a mockery of KC laws and regulations.

CONCLUSIONS

Unfortunately, the proposed Ordinance does not solve the problems it was intended to address. As such, it will not protect RA and APD lands from excessively commercialized retail and industrial uses. This will in turn result in increased traffic on insufficient, poorly maintained roads; creation of virtual parking lots on rural and agricultural lands; safety issues for pedestrians, bicyclists, and motorists; damaging water runoff; and unwarranted lighting and noise pollution.

We find the proposed Ordinance is worse than *existing* KC Code. It contains assertions that it will add "*additional protection for the Agricultural zone*" and that it will enhance "*economic activity in the Rural Area zones while honoring and protecting rural character.*" We do not see these at all. In fact, a few of the things it will actually do are:

- (1) Enable Special Event Centers to evade important regulations;
- (2) Establish very vague definitions of WBDs;
- (3) Establish poor access requirements and increase rural traffic (e.g., see WBD II) and, for certain WBD facilities in the RA, impose direct access requirements to arterials that cannot be met;
- (4) Change RA minimum lot size and setbacks for WBDs;
- (5) Provide permanent waivers for parking requirements for WBD III's;
- (6) Eliminate WBD facilities as either a Home Occupation or Home Industry;
- (7) Likely classify such small home-based businesses as WBD I facilities that would be required to meet more stringent conditions as a Residential Accessory Use or be forced to meet the requirements applicable to either WBD II or III facilities under the Manufacturing Land Use classification; and
- (8) Make otherwise home occupations in the Agricultural zone a temporary use phased out in a maximum of 5 years.

RECOMMENDATIONS

The Council should thoroughly review the proposed Ordinance, reject it, and send it back to the Executive to rework it.

We ask the Executive to include a full SEPA EIS for any proposed substitute Ordinance, if such is in fact the decision made. However, making the necessary minimal changes to *existing* KC Code we recommend should not require any detailed economic and environmental analysis, and should be accomplished and implemented rather quickly.

We desire to continue an open and meaningful dialogue with the Council, the Executive's Office, and other officials. Thank you in advance for your careful consideration of our Written Testimony and the thorough work behind it.

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