

November 21, 2019

Comments

EPCA, GMVUAC, GV/LHA, and UBCUAC



November 21, 2019

To: King County Council: Claudia Balducci claudia.balducci@kingcounty.gov; Rod Dembowski rod.dembowski@kingcounty.gov; Jean Kohl-Welles jeanne.kohl-welles@kingcounty.gov; Reagan Dunn reagan.dunn@kingcounty.gov; Kathy Lambert kathy.lambert@kingcounty.gov; Dave Upthegrove Dave.Upthegrove@kingcounty.gov; Larry Gossett Larry.Gossett@kingcounty.gov; Joe McDermott joe.mcdermott@kingcounty.gov; and Pete von Reichbauer Pete.vonReichbauer@kingcounty.gov

Re: Striker to Proposed Ordinance 2018-0241.2, Dated September 16, 2019: *Update to development regulations for wineries, breweries, and distilleries (WBDs)*

Honorable King County Councilmembers,

EXECUTIVE SUMMARY

Please accept the detailed comments herein on the subject Striker from the following King County (KC) Rural Area Unincorporated Area Councils (UACs) and Unincorporated Area Associations (UAAs): 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 from the Snohomish County line to the Pierce County line.

The proposed Ordinance, in its current form, will have *sweeping long-term consequences throughout King County's Rural Area*. Rural Area citizens do not want to see Retail Establishments such as Remote Tasting Rooms, Winery/Brewery/Distillery (WBD) facilities operating as Bars and/or Event Centers, etc. that will result in major impacts to rural character and quality of life.

The proposed Ordinance has gone through many iterations, resulting in unnecessary complexities, flaws, and loopholes. Consequently, we call on the Council to reject the proposed Ordinance outright and for the County to implement the simplest and best solution—enforce *current* County Code.

INTRODUCTION

Our UACs/UAs individually and collectively research, prepare, and present win-win-win solutions on issues of interest to KC's Rural Area residents and businesses. In the case of the proposed Ordinance, in light of its potential far-reaching influence and importance, we worked collaboratively to provide you these comments, which are intended to update our past collective comments over the past 2 1/2 years to the: Council on 6/12/19; Council's Local Services, Regional Roads & Bridges (LSRR&B) Committee on 11/9/18; and Council's Planning, Rural Service, & Environment (PRE) Committee on 6/6/17.

Unfortunately, many of the same flaws remain that have been enumerated in the past in our writings and by many members of the Public. We call on the Council to carefully consider the concerns, conclusions, and recommendation we detail herein.

BACKGROUND

The genesis of all the time and effort the Council has put into this endeavor is the past and ongoing abuses of County code by certain business and/or landowners in the Sammamish Valley's Rural Area and protected Agricultural Production Districts (APDs). Clearly, 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 Rural Area and APDs firmly must be dealt with, while maintaining the rights and interests of *legally operating* business owners.

As the Council knows, King County 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 Horsemen Brewery appeal, File # PREA170313; 10/3/18).

The bottom line comes down to a very simple question: *Why is the County proposing a massive regulatory program to address a problem that it literally created, and further exacerbated, through inconsistent code enforcement?*

CONCERNS

We see several concerns regarding the proposed Ordinance:

- (1) The County’s stated intent for this Ordinance is to clarify *existing* code, but this is not achieved. The proposed Ordinance is far more complex, unnecessarily so, than *existing* code, thus making it more opaque and all the harder to interpret and to administer. Sales would no longer be limited to products produced on-site (ref.: County Code **21A.08.070 Retail land uses**), thus opening the door for bars, taverns, and liquor stores to be sited across the County’s Rural Area and APDs. *Existing* code is clear in that WBDs are legal and limited in what they can sell to what is produced on site.
- (2) Instead of preventing large growth, this allows for larger operations, not smaller in the Rural Area and APDs.
- (3) Events cannot be allowed to be so large and occur so frequently (e.g., up to 24 large events annually for WBD Facilities II and III) that all semblance of Rural Area character is diminished for residents and visitors alike. Such major events directly impact traffic, parking, safety, quality of life, etc. Exempting Special Events from Temporary-Use Permits (TUPs), through Councilman Dunn’s Amendment (adopted at the 10/7/19 Committee-of-the-Whole Committee meeting), sets a bad precedent and could encourage further code violations, such as unlimited events throughout the Rural Area. In fact, the proposed Amendment itself appears to violate the State’s Growth Management Act (GMA) by placing a completely incompatible use in the Rural Area. The language that “(t)he parcel use a principal arterial” is too loose and can be interpreted that “principal arterials” will be used somewhere along the way to travel to and from the event. Even if tightened, at some time in the future, when (not if) the County’s Department of Local Services, Roads Division, updates its arterial maps and definitions, lower level roads could be elevated to “principal arterials,” thus opening up even more of the Rural Area to such unlimited events. Consequently, Councilman Dunn’s Amendment should be removed.
- (4) Key definitions (e.g., “production,” “finishing,” “grandfathering,” etc.) are described in such a way as to be open to wide interpretations and will surely lead to future legal battles. For example, “production” should be defined as all the steps to produce the final product. It should be made clear that a “winery,” as applied by these codes relating to the Rural Areas, refers to a “production winery”—thus, *all* 3 steps the State Liquor & Cannabis Board (LCB) identifies with wine production should be required to occur on-site: “Crushing,” “Fermentation,” and “Barrel or Tank Aging.”
- (5) Ingredient sourcing requirements for WBD facilities on A-zoned parcels has been improved to state 60% must be grown on-site. However, it does not provide any mechanism for verification and we know of none that exists for this purpose—current code states: “60% from Puget Sound counties.”
- (6) Demonstration Projects & Overlays (DPOs) are not warranted, nor necessary, and, as such, should be eliminated. They serve no useful purpose and threaten the Rural Area and APDs by allowing activities not generally conducive to preserving Rural Character and protecting agricultural lands.

LEGAL ISSUES

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 facility regulations must be consistent with and implement the KCCP and Countywide Planning Policies under the 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 because its 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*.

CONCLUSIONS

The proposed Ordinance (including Councilman Dunn’s Amendment) does not solve the problems it was originally intended to address. Consequently, it will not protect Rural Area and APD lands from excessively commercialized retail and industrial uses and will result in:

- (1) Increased traffic on roads the County *already* does not have the funds to maintain;
- (2) Creation of parking woes on rural and agricultural lands;
- (3) Safety issues for pedestrians, bicyclists, and motorists along winding, narrow one-lane roads;
- (4) Unmitigated damaging water runoff; and
- (5) 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 enhance “*economic activity in the Rural Area zones while honoring and protecting rural character.*” This is not the case! In fact, a few of the things it actually will do are:

- (1) Eliminate future WBD facilities as either a Home Occupation or Home Industry;
- (2) Remove the Retail Sales provision limited to products produced on-site;
- (3) Enable Special Event Centers to evade important regulations;
- (4) Establish very vague definitions associated with WBD facilities;
- (5) Establish poor access requirements and increase rural traffic;
- (6) For WBD facilities change Rural Area minimum lot size and increase allowable building sizes;
- (7) For some WBD facilities provide permanent waivers for parking requirements; and
- (8) Permanently convert 13 Rural Area parcels to retail urban-use drinking establishments (DPO A).

Each of these—either standing alone or taken together—will result in benefit to the few and hardship for the many. *Why would the County even consider enacting such an Ordinance?* Further, why would the County, in trying to solve a problem it created in the Sammamish Valley by both misinterpretation of code and inconsistent code enforcement, and which easily can be solved by enforcing *existing* KC Code, enact a “*solution*” that will impact the *entire* Rural Area?

RECOMMENDATION

The Council should reject the proposed Ordinance.

We desire to continue an open and meaningful dialogue with the Council, the Executive’s Office, and other County officials. Thank you for your careful consideration of our comments.

Bob Meeks
bobmeeks100@gmail.com
 President, EPCA

Steve Hiester
steve.Hiester@oldcastle.com
 Chair, GMVUAC

Gwyn Vukich
gvukich@msn.com
 President, GV/LHA

Nancy Stafford
nm.staff@outlook.com
 Chair, UBCUAC

cc: Dow Constantine, KC Executive: dow.Constantine@kingcounty.gov
 John Taylor, Director, KC Dept. of Local Services (DLS): john.taylor@kingcounty.gov
 David Daw, External Relations Manager, KC Community Service Areas: ddaw@kingcounty.gov
 Jim Chan, Asst. Director, KC DLS Permitting: jim.chan@kingcounty.gov
 Karen Wolf, Sr. Policy Analyst, KCEO/PSB: karen.wolf@kingcounty.gov
 Ivan Miller, KC Comprehensive Planning Manager: ivan.miller@kingcounty.gov
 Erin Auzins, Supervising Legislative Analyst, KC Council Policy Staff: erin.Auzins@kingcounty.gov
 Melani Pedroza, Clerk of the Council: clerk.council@kingcounty.gov