

**WHATCOM COUNTY  
EXECUTIVE'S OFFICE**  
County Courthouse  
311 Grand Ave. Suite #108  
Bellingham, WA 98225



**Satpal Singh Sidhu**  
County Executive

DATE: April 28, 2020  
TO: Honorable County Councilmembers  
FROM: Satpal Singh Sidhu, County Executive  
SUBJECT: Ordinance 2020-021

I write to express my concern over the Council's adoption of Whatcom County Ordinance 2020-021 on April 21, 2020. This ordinance empowers the Health Board to dictate actions of the Whatcom County Health Department during health emergencies. While I fully support the ordinance's goals of promoting effective communication, public notification, and transparency, I cannot endorse a law that violates the provisions of our Charter.

As you are well-aware, the Charter is our county's constitution. We are one of only a few rural counties in the State who have adopted a county constitution. Drafted over forty years ago, the Charter establishes our two branches of government: legislative and executive. It both grants and limits the Council's and the Executive's lawful authority. Accordingly, neither branch may act in contravention of the Charter's provisions. As elected officials we each assumed this duty to the Charter when we took the oath of office.

One of the most basic principles of our County government as a dual-branch system is the separation of powers. Dating back to the founding of our country, separation of powers is a cornerstone that supports our democratic system of checks and balances between the branches. It guards against improper action and abuse of power. In this regard we are different from most Washington counties, who combine the executive and legislative branches into one board of commissioners.

Our Charter first references this vital principle in Article I, Section 1.50. Here the drafters make clear that both branches will "refrain from overextending their authority, as [its] defined in [the] Charter." Article II, Section 2.24 expands on this tenet and specifically addresses the Council. It mandates that the County Council "shall not interfere with the administration of the Executive Branch." And more specifically, Council "shall not give orders to or direct, either publicly or privately, any officer, or employee subject to the direction and supervision of the County Executive, executive branch, or other elected official," including executive offices. The Charter's authority-limiting language is clear. It does not require a reader to infer the intent of these provisions.

The Health Department is an executive department pursuant to Whatcom County Code 24.01.020. And the Department's Administrative Director and the Health Officer are executive officers. WCC 24.01.030(A) and (B). The County Executive is fully responsible for supervising and administering the executive departments, including the Health Department. Article III, Sections 3.22, 3.40; WCC 24.01.020,.030.

In contrast, our County Health Board is a legislative body created by ordinance and codified under WCC 24.01.050. It derives its authority from the Code. The Health Board can enact rules and regulations to preserve, promote, and improve public health and provide for enforcement; set certain fee schedules; and make recommendations to the executive on matters affecting public health. Neither the Code nor the Charter grants the Council or the Health Board any degree of supervisory or administrative authority over the Health Department. Allowing otherwise would violate the Charter and separation of powers.

Ordinance 2020-021 disregards these constitutional limitations. It allows the Health Board to command the actions of an executive department. The Board alone could order and direct the Health Department's information sharing during a health emergency. And it can do this without any input or guidance from the executive branch. By asserting this control, the Council arrogates executive power to itself. This constitutes an intrusion by the legislative branch into the executive's prerogative, it violates the separation of powers doctrine, and is prohibited by our Charter.

It has been suggested that our Charter gives Council the authority to enact this ordinance. During the April 21st council meeting, Section 2.20 was cited as the basis to enact laws which "establish the powers and responsibilities of executive departments." What went unsaid in response to this assertion is that the Charter will always limit lawmaking authority. In other words, general authority under the Code to enact law does not allow the enactment of an unconstitutional or otherwise illegal law. Accordingly, Section 2.20 does not justify or excuse an ordinance that violates the county constitution by granting a legislative body authority to administer and control an executive department, regardless of the extent of that control or direction.

Whatcom County currently faces unprecedented challenges related to the COVID 19 pandemic. I applaud and value your individual and collective commitment to our community during these trying times. Now more than ever, when emotions can impact decision making, the Charter must guide us. While I fully respect the Council's unanimous vote on this resolution, the unanimity itself does not supersede the Charter provisions. I have thus decided not to sign Ordinance 2020-021 because its provisions violate express provisions of the Charter.

Thank you for your consideration of this matter. I look forward to our continued collaborative work serving Whatcom County.

Sincerely,



County Executive

cc: Karen Frakes, Chief Civil Deputy Prosecutor  
Dana Brown Davis, Clerk of the Council  
Chris Quinn, Senior Deputy, Prosecuting Attorney's Office  
Bill Elfo, Sheriff  
Steve Oliver, Treasurer  
Diana Bradrick, Auditor  
Rebecca Xczar, Assessor  
Eric Richey, Prosecuting Attorney