

Whatcom County Council Special Committee of the Whole

**COUNTY COURTHOUSE
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Committee Minutes - Draft Minutes

Tuesday, June 13, 2023

2 PM

Hybrid Meeting - Council Chambers/Remote

HYBRID MEETING - (PARTICIPATE IN-PERSON, SEE REMOTE JOIN INSTRUCTIONS AT www.whatcomcounty.us/joinvirtualcouncil, OR CALL 360.778.5010)

COUNCILMEMBERS

Barry Buchanan
Tyler Byrd
Todd Donovan
Ben Elenbaas
Carol Frazey
Kaylee Galloway
Kathy Kershner

CLERK OF THE COUNCIL

Dana Brown-Davis, C.M.C.

Call To Order

Council Chair Barry Buchanan called the meeting to order at 2:04 p.m. in a hybrid meeting.

Roll Call

Present: 7 - Barry Buchanan, Tyler Byrd, Todd Donovan, Ben Elenbaas, Carol Frazey, Kaylee Galloway, and Kathy Kershner

Announcements

Committee Discussion

1. [AB2023-304](#) Justice Project workshop

Buchanan stated they have two pieces to look at today, the Justice Project Needs Assessment Implementation Plan and the Draft Ordinance. They started with the Implementation Plan and Buchanan stated the Incarceration Prevention and Reduction Task Force (IPRTF) had a motion on the table to endorse the Plan as ultimately approved by the County Executive and County Council and sent a letter to the Council.

DISCUSSION OF NEEDS ASSESSMENT IMPLEMENTATION PLAN

Donovan stated this Plan is talking throughout about the total number of beds and not cells and asked whether they are distinguishing how many beds are per cell and whether 430 beds is the same as saying 430 cells.

Tyler Schroeder, Director of Administrative Services, stated it is. The idea is that each cell in the design would have one bed. If and when the Council considers the Ordinance, one way is to include expansion language that refers to the beds, not the cells, so that you limit the number of beds in the facility. He answered questions about how much of the 2004 tax was spent on the Work Center, whether the pie charts on page 49 of the “Draft Implementation Plan 6.13.2023-tracked changes” represent funding per year, where the conceptual cost estimates on page 39 of the Draft Plan came from, and how those are calculated.

Galloway thanked the Task Force. She stated after watching the IPRTF meeting on Monday it seemed there are people who still feel there is work to be done and questions to be answered. She wants to make sure that we had the time to fully incorporate everybody’s suggestions. She is hoping they can discuss that they do not have to finalize the Implementation Plan at the same time that they pass the Ordinance. Most, if not all, of her suggestions have been incorporated but she wanted to highlight the funding

section on page 42 (and 43) and encourage the Council to add in more information on local housing funds. She is also wondering if there are any eligible Emergency Medical Services (EMS) funds that can be included in this as a possible funding source for some of the services that we are looking to do. And finally, she would like to make sure that everything that is in the Ordinance is accurately reflected in the Implementation Plan.

Donovan asked about language on page five of the Plan saying the County Council will address issues, including facility size and facility location, and asked what the timing would be for that. He asked whether the Council thinks they should do that as part of the Implementation Plan or whether it is something that should be dealt with after we ask the voters to vote on something where we do not know yet what the facility is or where it is going to be.

Schroeder stated that is a good question for the Council to consider and stated the proposed draft Ordinance acknowledges the process for that decision to happen.

Frazezy stated she thinks people want to know ahead of time.

Kershner suggested that for size they come up with a formula in the Ordinance or the Plan for how we are going to determine a size. For location, she thinks, if they do not put a location in the Ordinance, they could have parameters that they all agree on. The Stakeholder work group and the listening sessions highly valued a horizontally built jail because it is less expensive to build and operate and we need to have room to expand jail beds or services if necessary.

Elenbaas stated the more defined we are the better chance we have of getting buy-in across the board.

Donovan stated he is inclined to think the same thing and asked whether they could have a formula for finding the base size that it is going to start at and then a formula for when it would expand. He worries if location is left undefined.

Buchanan asked whether they should discuss size and location separately.

Byrd stated it behooves us to have a plan, but leaving things less defined would give us some flexibility. He would, however, like to do it in the right way by saying where we are heading and how we are going to manage things to get there to alleviate taxpayer concerns about whether the tax money they

raise through this initiative is actually going to a new jail facility and will not get spent on something else.

Elenbaas stated he does not consider including location and projected size as being an incredibly detailed plan. He thinks those two details are probably something that most every voter wants to know. He also does not think (as they also heard from the city mayors) that building a new facility that is immediately in booking restrictions is a great idea and they should keep that in mind when they are talking about projected number of beds. He thinks they should include location and projected number of beds with the caveat that they can always expand or retract those used for incarceration.

Frazey stated a lot of things have changed since the last time. If we go with the LaBounty location, we have been emphasizing the campus idea, behavioral health facilities, transitional housing, and all the things that we can do with that the space, so I feel like we can include the location and I think that is important for the voters.

Galloway stated she would suggest they send it back to the Task Force for a couple more months to work on it a little bit more and the Ordinance could outline that timeline.

Donovan asked if the voters would then see the final version of the Plan in a couple months and whether that would still be before the election if this was revised to specify location and/or size.

Galloway spoke about her perspective that there are members of the community who still feel like their voices have not been heard in this process, or have not been sufficiently considered. The Ordinance is the time-sensitive piece so they can pass an Ordinance enabling the ballot measure and setting a timeline and a framework to finalize the Implementation Plan.

Satpal Sidhu, County Executive, stated if they send the Plan back to the IPRTF, it gives the impression that the Plan is not complete. He would suggest that if the Council can come up with a few questions to ask the IPRTF that would be a better process.

Elenbaas stated he feels like it is just time for the Council to make the decisions.

Galloway stated the questions she would ask are that she would like to see a summary table of all the public feedback they had received from the

process that ended on June 11, 2023. She would like to understand which of that feedback did not get included and why. She would also like some assurance that the feedback we incorporate is specifically informed by people with lived experience as well as those communities who are under-represented at these tables and over-represented in our criminal legal system.

Donovan stated he can see referring it back to the group and asking if they think we should put size and location into the Implementation Plan, but he does not want to just keep this process open for more input on something we have been getting a lot of input on.

Schroeder stated the motion that the IPRTF passed on Monday was recognizing that Council was still going to be considering and adding to the Implementation Plan. He is not sure that the Task Force as a whole is able to answer that specific question (about size and location). He thinks it would be something good for consideration in this chamber to make those decisions. The planning team might be a good group to answer Galloway's question about how the feedback was incorporated or not, and there would be value in that. The Implementation Plan is intended to kind of be a living document moving forward, and the Task Force is ready to continue to look at it and adapt to the changing needs moving forward.

Sidhu stated the unsaid feeling in the IPRTF was that the Task Force has done their work and want to leave the flexibility to seven people to do this. The Administration is here to assist and get you the required information to facilitate your decision making.

Schroeder stated if Council wants to have a conversation about size they can go back to the April 25 presentation to Council and talk about what range may be appropriate. He answered a question by Byrd about what his personal thoughts are about whether they should spend more time on the Plan and what level of detail they should include. He stated he does not have a good answer for it. He can recognize the need for clarity to the constituents on the location, and he thinks that people need to recognize that the size does not drive the criminal justice process and some of the incarceration reduction tasks associated with it. He stated I think the priorities of behavioral health, of incarceration reduction programs, and of the work towards the criminal justice process is actually the more important which I think this plan does. He stated when I said 521 [beds] a couple of months ago, there was a lot of kick-back and concern about that number. When we, as a community, talked about 440, there was some concern about that being too small, so somewhere in there is the right answer.

Donovan asked if it would be worth taking a straw vote of the Council on the location so the public knows where they are.

Approximate Timestamp: 43:46

Kershner moved that the Council consider LaBounty as the location for our new correctional facility. The motion was seconded by Frazey.

Donovan asked about the wording of the motion and ***Kershner amended*** her motion to say “select” instead of “consider.”

Elenbaas stated if they can be specific on these key topics that will gain trust, and he feels like location is something that people want to know. He is speaking in favor of the Ferndale location.

Galloway stated we need to avoid the repeat of history and she worries this location has left a bad taste in people’s mouths, so they need to be honest and thoughtful and communicate every detail of it. Her first choice was trying to find a way to do a horizontal design at the Division location but that would have required additional land acquisition which had its own legal challenges. She needs to hear from the community on the LaBounty property before she can fully feel confident in it and we would have to include really strict expansion protocols.

Buchanan stated he has the same concerns. He was excited when he thought they would be able to get the five acres at the Division Street location and that we would be able to do a horizontal facility there and thinks that would have been ideal, but it did not work out. He has the same fear about the LaBounty location but feels it is very important that we consider it.

Frazey stated she supports the motion and the LaBounty location. The fear of jail expansion at the LaBounty location is a real fear, but we can make it clear to the community that we have enough eyes on this that that is not going to occur. She thinks they can paint the vision that this campus will be a place where people will feel supported (with behavioral health and transitional housing) and can be changed and move out into society in a good way.

Buchanan confirmed that the motion is not to consider but to select LaBounty and Kershner stated that is correct.

The motion carried by the following vote:

Aye: 6 - Buchanan, Byrd, Donovan, Elenbaas, Frazey, and Kershner

Nay: 0

Abstain: 1 - Galloway

Approximate Timestamp: 53:12

Councilmembers continued to discuss the Implementation Plan.

Elenbaas stated he would like to define how many beds we are planning to build at the get-go and what will trigger the expansion or conversion.

Schroeder spoke about the formula for construction and expansion in Section 5 (1) (c) of the Executive's Draft Ordinance. He and Councilmembers discussed the need to decide the timeframe for triggering expansion, having the formula defined for the voters, whether the number of beds stated in the Plan now would not be enough and just trigger expansion the second the jail opens, the fact that the 440 beds was used in the Implementation Plan for cost estimates and does not estimate the impact of removing booking restrictions and is the absolute lowest that the community can go, setting diversion goals as well as a percentage on operational capacity, making it clear what the proportion of the bed makeup is (traditional high security, low security, Work Center, behavioral health), making sure the expansion language is clear about whether expansion would be considered both capital expansion and what you might call remodel (adding 2 beds per cell), having a delayed implementation (five years minimum) of that expansion language because of the back-logs, using this tax for the incarceration facility and funding the other things we need in other ways, having the jail big enough to meet the needs of the community, law enforcement, and City mayors, and whether we have data or information on where we should start with determining size.

Scott Korthuis, City of Lynden Mayor, spoke about data they have on jail usage and stated he thinks they can come up with a formula based on past needs, the effectiveness of the incarceration reduction prevention or diversion, and then a factor for potential growth. The 85 percent capacity is a good number to target, though he would prefer a little lower, and they can negotiate the timeframe. He spoke about Councilmember concerns about expansion or building the facility too small. Building too big does not bother him, but building more within five years bothers him. The mayors have committed over \$50 million as kind of a down payment, and for that, they are expecting to be able to use it. He is confident they can generate a formula. Maybe in the Ordinance it can be as general for now as establishing a formula for growth and establishing a formula for the initial size.

Elenbaas stated Councilmember Galloway has a very good point about the backlog and stated maybe we do need to implement a freeze on how long we go before we start looking at the formula that the mayor is speaking of just to work through that backlog. But it is his sense that we also have people we have not had in the system because there is not a place to put them or a prosecutor to prosecute them. Either way, we should define what that is going to be before we ask folks to give us money.

Sidhu stated that three things came to his mind when he started delving into the numbers:

1. What is our current capacity (with allowance for additional behavioral health treatment beds)
2. Population factor (what our population will be over the next 20 years)
3. The 85 percent usage capacity factor

Councilmembers discussed the population factor, what the initiative will be called on the ballot and whether it is a jail initiative anymore, making sure people know the difference in the types of beds (jail or behavioral health treatment beds), and whether a motion from the Council is needed about having a defined formula.

Approximate Timestamp: 1:24:31

Elenbaas moved that we clearly define the equation that we would use for number of beds that will be proposed initially and what triggers expansion as soon as possible.

The motion was seconded by Kershner.

Buchanan clarified whether Elenbaas' motion is for expansion and construction and Elenbaas stated it is.

Councilmembers and Sidhu discussed what should be included in the formula, and recognizing that unused jail facility space could be converted to something else.

The motion carried by the following vote:

Aye: 7 - Byrd, Donovan, Elenbaas, Frazey, Galloway, Kershner, and Buchanan

Nay: 0

DISCUSSION OF ORDINANCE

Approximate Timestamp: 1:31:25

Councilmembers worked off of the “Draft Ordinance 6.13.2023-track changes” and “Galloway/Buchanan Substitute Draft 6.13.2023.”

Christopher Quinn, Prosecuting Attorney's Office, answered whether the Ordinance can be amended by a vote of the Council after it is approved by the voters, without having to go back to the voters.

Councilmembers and staff discussed what part of the Ordinance voters will see on the ballot and in the voter’s pamphlet.

Buchanan spoke about the differences between the two versions.

Kershner moved to approve the Executive's version and then make amendments to include the Buchanan/Galloway substitute version, or the other way around, but Councilmembers did not vote on this motion.

Schroeder stated the Administration will upload a version for introduction (at the next meeting) so they would be happy to get input from the Council and amend that version.

Galloway and Buchanan briefed the Councilmembers on the fourth added whereas statement on page one of the Buchanan/Galloway version, which says:

WHEREAS, it is the intent of the Whatcom County Council, moving forward, to dedicate 100% of this voter approved one-tenth of one percent jail facilities sales and use tax to the construction of a new jail and behavioral health center; and

Buchanan stated the two key advantages of this amendment would be to make the 2004 tax payers feel whole and that we have fulfilled or will fulfill that obligation, and the other one would be that it would free up more money for the other services in the Implementation Plan.

Kershner asked what \$6.5 million is currently being spent on, and where we would get the money to backfill what we are currently spending that money on.

Sidhu, stated we agree that those questions should be addressed. A lot of people feel that it was not handled properly, and we would like to do it in a transparent way. The issue is that the \$6.5 million we get is being spent to

run the Work Center. If you take away that money and put it to a different purpose, it creates a hole. It is up to the Council to decide how they want to fill that hole.

Councilmembers discussed the proposed amendment and the Executive's comments.

Schroeder gave background of the Administration's version regarding this topic and Sidhu spoke about the proposed funding model.

Donovan stated he would suggest an amendment to the proposed added fourth whereas statement as follows:

WHEREAS, it is the intent of the Whatcom County Council, moving forward, to continue to dedicate 100% of this 2004 voter approved one-tenth of one percent jail facilities sales and use tax to the construction and operation of a new jail and behavioral health center; and

Councilmembers, Schroeder, and Sidhu discussed the suggested amendment and whether they need to decide which version they are going to amend.

Approximate Timestamp: 2:03:11

Kershner moved that they work off the Administration's document and amend it with the Buchanan/Galloway amendments that we come up with. The motion was seconded by Byrd.

Sidhu stated their intent is that they will bring all these things incorporated into one document for the June 20th meeting.

Dana Brown-Davis, Clerk of the Council, answered questions about how to move forward on the motions since an Ordinance has not been introduced yet.

The motion carried by the following vote:

Aye: 7 - Donovan, Elenbaas, Frazey, Galloway, Kershner, Buchanan, and Byrd

Nay: 0

Approximate Timestamp: 2:11:43

Donovan moved to amend page six of the "Draft Ordinance 6.13.2023-track changes" to insert the fourth added (blue) whereas statement from the "Galloway/Buchanan Substitute Draft 6.13.2023" version into the same

section of whereas statements (to be the third whereas statement on page six) on the Executive's version but amend it so that it reads:

WHEREAS, it is the intent of the Whatcom County Council, moving forward, to continue to dedicate ~~100%~~ of this 2004 voter approved one-tenth of one percent jail facilities sales and use tax to the construction and operation of a new jail and behavioral health center; and

The motion was seconded by Byrd.

The motion carried by the following vote:

Aye: 6 - Frazey, Galloway, Kershner, Buchanan, Byrd, and Donovan

Nay: 1 - Elenbaas

Elenbaas asked whether they could just focus this tax on what they are constitutionally obliged to provide and seek funds to operate the rest of the Plan from somewhere other than this tax. Where the Ordinance talks about that 50 percent of the new tax is going to go towards behavioral health, that starts to concern me that we are talking about not being able to even build the jail facility and operate it at the same time.

Councilmembers spoke about going through the Ordinance in order.

Donovan asked whether they could, with one motion, take the additional suggestions from the Buchanan/Galloway version between page one and the end of page six and put those into the Executive's draft Ordinance.

Buchanan clarified that some of the language in blue is hyperlinks. The proposed amendments are in light blue.

Kayla Schott-Bresler, Strategic Initiatives Special Programs Manager, said there is no policy problem in taking that feedback and incorporating it.

Approximate Timestamp: 2:18:48

Donovan moved to take the additional suggestions from the Buchanan/Galloway version on page one (where they left off from the last motion) through the bottom of page six and put those into the Executive's draft Ordinance.

The motion was seconded by Buchanan.

The motion carried by the following vote:

Aye: 7 - Frazey, Galloway, Kershner, Buchanan, Byrd, Donovan, and Elenbaas
Nay: 0

Approximate Timestamp: 2:22:33

Donovan stated he has another meeting and has to leave this meeting soon and Councilmembers discussed whether they should schedule another work session.

Sidhu stated between now and June 20th, the Administration will combine the two Ordinances into one version to discuss.

Approximate Timestamp: 2:24:39

Donovan moved to adopt Section three in the Buchanan/Galloway version and that it be put into the Executive's version that they are revising. The motion was seconded by Frazey.

Councilmembers discussed the motion.

Schroeder read from and spoke about Section 5 (1) (d) of the Administration's draft Ordinance which states:

Allows for cost-effective terms of bonding for the construction of the jail and behavioral health facilities by including a sharing of the first four to six years of sales tax revenue. This up-front revenue will reduce the bond size to ensure that in subsequent years a minimum of 50 % of the ongoing county-wide sales tax revenue will be used for other Implementation Plan priorities, and

He spoke about his concerns with the Buchanan/Galloway proposed language.

Councilmembers discussed the difference between the language in the two versions and Buchanan stated it is the timeline.

Kershner stated she likes the Executive's version better and spoke about why she thinks the public will like that version better too.

Buchanan stated that some of his thinking was based on being able to utilize the 2004 tax up front which would free up that 50 percent but we have kind of moved past that now.

Galloway stated she keeps going back to the point that members of our

community want behavioral health and services now and so this tries to set the guardrails for setting aside some funding for that. She spoke about the fiscal argument for starting with the jail and stated for her it is around how we get the community to a yes.

Kershner asked where we would provide the services if we have no facility and stated we need to build that facility and that will restore public trust.

Frazezy stated she has concerns about the bond being affected, and the facilities where we are going to put people. She asked whether it could be 50 percent when the facility opens because that way we have facilities to put people.

Buchanan stated that is what is in the Administration's version.

Schroeder stated the other piece they have not provided is the funding commitment upfront for the first four years with revenues other than the sales tax. It needs to be described to the Council and the public so there is an understanding that it is not one versus the other. It is both, in a complicated funding mechanism and method, and the chart only showed the new sales tax. They will try to provide more detail on what the funding commitment is on Tuesday.

Councilmembers discussed whether it could be phrased so that they are saying it will be a goal in the future, that 50 percent of this tax will go towards diversion type things after the facility is built, the fact that that is (in effect) how the Administration's language in 5 (1) (d) reads, and other thoughts for how to amend the language.

Approximate Timestamp: 2:41:27

Donovan withdrew his motion and Frazey withdrew her second.

Elenbaas stated the word "minimum" in the Executive's language is pretty definitive and he is wondering if they could write it so it is a goal of 50 percent, and he spoke about his suggestion.

Approximate Timestamp: 2:43:05

Elenbaas moved that they remove the word "minimum" in Section 5 (1) (d) of the Executive's draft Ordinance and add "goal" so that it would read:

This up-front revenue will reduce the bond size to ensure that in subsequent years a ~~minimum~~ goal of 50 % of the ongoing county-wide sales tax revenue will be used for other Implementation

Plan priorities, and

Councilmembers, Sidhu, and Schroeder discussed the motion.

The motion failed by the following vote:

Aye: 1 - Elenbaas

Nay: 5 - Galloway, Kershner, Buchanan, Byrd, and Frazey

Out of the Meeting: 1 - Donovan

Approximate Timestamp: 2:49:03

Kershner moved that they add language to Section 5 (1) (d) of the Administration's version from the second paragraph of Section 3 of the Galloway/Buchanan version so that the Administration's version reads:

d. Allows for cost-effective terms of bonding for the construction of the jail and behavioral health facilities by including a sharing of the first four to six years of sales tax revenue. This up-front revenue will reduce the bond size to ensure that in subsequent years a minimum of 50 % of the ongoing county-wide sales tax revenue will be used for other Implementation Plan priorities, such as the construction and operation of behavioral health facilities serving populations outside of the County jail, expansion of incarceration reduction programs, increasing access to community-based behavioral health and substance use disorder treatment services, reentry programs, supportive housing, diversion programs, and accountability measures that monitor progress and inform future planning.

The motion was seconded by Frazey.

The motion carried by the following vote:

Aye: 5 - Kershner, Buchanan, Byrd, Frazey, and Galloway

Nay: 1 - Elenbaas

Out of the Meeting: 1 - Donovan

Approximate Timestamp: 2:52:21

Galloway moved to add the amendment from the first paragraph of Section four of the Buchanan/Galloway version which read:

The Whatcom County Council shall adopt a Justice Project Implementation Plan no later than October 10, 2023

And the amendment in Section 5 (3) (b) which read:

b. The IPRTF shall provide a recommended Implementation Plan to County Council for adoption no later than August 31, 2023,

The motion was seconded by Frazey.

Councilmembers discussed the reasons for the proposed amendments, whether there is any room to move the October date sooner, and whether putting a date on the Plan would take away from it being a living document.

Sidhu stated the IPRTF approved the plan and put a caveat that it may be changed by the Council so if the Council has the intent to change the Implementation Plan, they should do it rather than sending it back to the IPRTF.

Councilmembers discussed the Executive's comments.

Galloway amended her motion to avoid the part about sending it back to the Task Force and just keep the part of "The Whatcom County Council shall adopt a Justice Project Implementation Plan no later than" and then set a date.

Schroeder stated there is time between now and July 11 to hear from some of those members of the Task Force and others from the community that have not felt heard. We talked about having the planning team help provide some background to what comments were submitted and how they were implemented and that would help inform this. The Council could make a decision on July 11 about giving it additional time. He discussed with Councilmembers whether that would change the Ordinance enough to require re-introduction.

Galloway withdrew her motion from the table.

Buchanan stated it will be discussed further later.

Approximate Timestamp: 3:07:22

Councilmembers and Sidhu discussed Elenbaas' earlier concern about the wording of "minimum of 50 percent," and whether it is okay that the ballot language does not have word the "jail" in it.

Approximate Timestamp: 3:13:11

Kershner moved to amend the ballot language where we say "housing" to include the word "SUPPORTIVE" housing so that it would read:

The Whatcom County Council passed Ordinance No. _____ concerning funding for public health, safety, and justice facilities and services. If approved, this proposition would authorize a sales and use tax of two-tenths of one percent (20 cents per \$100) for costs associated with behavioral health, supportive housing, public safety, and criminal justice facilities and 11 Draft 5.23.23 EXEC services, as authorized by RCW 82.14.450. Should this proposition be approved?

The motion was seconded by Galloway.

The motion carried by the following vote:

Aye: 5 - Buchanan, Byrd, Frazey, Galloway, and Kershner

Nay: 0

Out of the Meeting: 2 - Donovan and Elenbaas

Approximate Timestamp: 3:14:51

Kershner moved that the remainder of Buchanan/Galloway recommended amendments be incorporated into the Administration's Ordinance in red when it is introduced so they can continue this work when they see this again to determine if those are going to stick or not.

The motion was seconded by Byrd.

Kershner stated the remaining amendments are on the second half of page seven, and on pages eight and nine.

Schroeder asked about when the next Committee of the Whole meeting will be.

The motion carried by the following vote:

Aye: 5 - Byrd, Frazey, Galloway, Kershner, and Buchanan

Nay: 1 - Elenbaas

Out of the Meeting: 1 - Donovan

Councilmembers and the Clerk discussed how much time they will have to discuss this at the next meeting and that this should be prioritized over other things are not time-sensitive.

This agenda item was DISCUSSED AND MOTION(S) APPROVED.

Items Added by Revision

There were no agenda items added by revision.

Other Business

There was no other business.

Adjournment

The meeting adjourned at 5:23 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Kristi Felbinger, Minutes Transcription