

Whatcom County Council Committee of the Whole

COUNTY COURTHOUSE
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Committee Minutes - Draft Minutes

Tuesday, July 9, 2024

2 PM

Hybrid Meeting

HYBRID MEETING - ADJOURNS BY 4:30 PM - MAY BEGIN EARLY
(PARTICIPATE IN-PERSON, SEE REMOTE JOIN INSTRUCTIONS AT
www.whatcomcounty.us/joinvirtualcouncil, OR CALL 360.778.5010); AGENDA
REVISED 7.8.2024

COUNCILMEMBERS

Barry Buchanan
Tyler Byrd
Todd Donovan
Ben Elenbaas
Kaylee Galloway
Jon Scanlon
Mark Stremmler

CLERK OF THE COUNCIL

Cathy Halka, AICP, CMC

Call To Order

Committee Chair Barry Buchanan called the meeting to order at 1:57 p.m. in a hybrid meeting.

Roll Call

Present: 7 - Barry Buchanan, Tyler Byrd, Todd Donovan, Ben Elenbaas, Kaylee Galloway, Jon Scanlon, and Mark Stremler

Announcements

Special Presentation

1. [AB2024-425](#) Presentation from the County Prosecutor on fentanyl-related actions and updates
Eric Richey, Whatcom County Prosecuting Attorney, updated the Councilmembers on what has been done in his office since the recognition of the fentanyl crisis as an emergency and stated they have not changed much because they have always taken fentanyl and other drugs very seriously. He reported on the things they are currently doing, including having a grant-funded prosecutor and staff person designated to solely prosecute drug cases and who is also working on controlled substance homicides, and helping to facilitate bringing Bellingham back in the fold as a full member of the county's drug task force.

He stated they are not prosecuting cases much on simple possession and spoke about the Blake decision and how the Legislature's fix to that fell short. There is not enough treatment in Washington state and the statute does not provide enough penalty to encourage people to even engage in treatment. There are also not enough resources in the Law Enforcement Assisted Diversion (LEAD) program in Whatcom County. He spoke about what they are doing in their office regarding fentanyl in particular and an upcoming trial.

He spoke about data and stated the Health Department, through their Response Systems, is meeting with the Prosecutor's Office this week to talk about how they can arrange to have their computer system mesh with the Prosecutor's and mine data to discover how cases are being handled, determine how the programs are doing, and look at trends.

He answered questions about the Blake decision and about whether he participates in putting together the County's legislative agenda and asking the state for more LEAD resources and more treatment. He stated the Response Systems manager in the Health and Community Services Department has been making requests for the LEAD program to grow.

Scanlon stated it would be helpful for the Legislature to hear from the Prosecutor and Richey spoke about how the state law is helpful in some ways when it comes to seizing drugs.

This agenda item was PRESENTED.

2. [AB2024-434](#) Presentation from the Bellingham Food Bank, Whatcom Food Bank Network, and Twin Sisters Market on funding requests from food insecurity service providers

Mike Cohen, Bellingham Food Bank Executive Director, read from a presentation (on file) and spoke about a \$2 million funding request for food purchases to feed the community. He answered whether the County has been able to support their work in serving babies and children through the Healthy Children's Fund or any other sources of funding, and stated they were a successful grantee of the Healthy Children's Fund which will allow them to buy more diapers and infant formula for the next 18 months. He answered whether they are doing a similar ask to the City of Bellingham or other cities, and stated they are, but do not yet have a commitment from them.

Scanlon stated he wonders if there is a way for a few people to sit down with some of the cities and see how they might collaborate on this, and stated the small city partnership meeting might be a place to do that.

Cohen answered when the American Rescue Plan Act (ARPA) money already allocated to them will be gone and stated it is already gone.

Cat Sieh, Twin Sisters Mobile Market Executive Director, read from a presentation (on file). They are currently facing a program funding deficit after Whatcom Community Foundation Sustainable Whatcom Fund (one of their key funding sources) made its final grants in 2023. They are requesting a total of \$200,000 of one-time funding in order to support programming over the next four market seasons.

Scanlon stated when the Food Systems Committee came and gave a presentation they mentioned this program and the Food Bank Network and asked the Council to support both those programs.

Sieh answered whether they have approached other jurisdictions for funding support, and stated they primarily work in unincorporated areas. They did work with the Port of Bellingham to secure produce for a pop-up market at the Port. They have also sought local, State and Federal funding for their programs, but they feel like they have exhausted most of their other options locally.

Scanlon stated a great thing about this program is that they are connecting the agricultural economy with food security, and the food bank is doing that as well.

Sieh spoke about what is unique about their particular program and the reason it is a mobile market. They bring produce from 18 small local farms and the farmers do not need to be at the market. They also take the financial risk of going into food desert areas.

This agenda item was PRESENTED.

Committee Discussion

1. [AB2024-336](#) Update from the investigative committee assigned to review recent employment law decisions

Buchanan stated they have conducted many interviews and have promised the Council they would come back with a report on what they found. They are trying to figure out what the Council would like to see in that report as well as a scope of work they would be coming up with for an independent review of policies.

Donovan stated what they are trying to glean out of the interviews is a sense of where there are policies that might need to be changed and how to generally get people feeling more positive about how they interact with HR. They would bring that back to Council in the form of a report and would like to know what exactly Council expects that they have in that report. After they have identified what they have heard that might need to be looked at, there would be a Request for Proposal (RFP) for someone who has a specialty in human relations law or human or employment relations to look at the County's processes. He stated the three committee members will need to meet and summarize what they have heard before putting together a report, but first they want to know what Councilmembers want to see in it.

Elenbaas stated that having a report ready in two weeks is going to be virtually impossible because of their schedules.

Scanlon stated he is interested in generally getting more information and would like to have as much of this discussion in public as they can. He understands that there may be a need to have discussion that mentions specific names in an executive session and that may be something they can do in two weeks instead of a report so the Council can get updates on what has been going on. He stated he thinks it is time to get outside help and they could maybe skip the report and go right to doing an RFP.

Donovan answered what his thoughts are on just putting together a scope of work and stated he would get his notes put together.

George Roche, Prosecuting Attorney's Office, answered whether they can have an executive session on something like this, and stated there is the capacity to have an executive session about multiple aspects but the things that belong in a public discussion should take place there.

Galloway spoke about a letter received by Council calling for transparency in the matter and spoke about having a discussion either in public or in an executive session to read the other Councilmembers into the investigation at more depth. She proposed such a discussion in two weeks and stated she agrees with getting outside support.

Councilmembers discussed whether looking into changes in the future is slowing down dealing with what has already happened in the past and the fact that scheduling has been the biggest challenge, whether the committee's report should address what should be fixed looking forward or what went wrong and who is to blame in this instance since they are two different trajectories, a need for getting some answers for what happened in the past, which part they are looking at getting outside help for and the sense from the memo from County employees that they would like an outside audit of our HR processes and policies, the fact that each approach would be a different investigation from an outside perspective, the opinion that the three-person committee has a good understanding of what happened and the need now to come together on how to present it, and whether it would be helpful if they did an executive session so the committee could talk to the other Councilmembers in an unfiltered way and they can talk about the next steps.

Elenbaas stated a recommendation he would make would be to do an RFP to hire someone to review our Human Resources department and make sure we have the appropriate structure in place and to evaluate getting them embedded into the field (departments). He stated they also want to be thoughtful about how they share what they know in order to maintain the trust of employees.

Buchanan stated they have to make sure that employees (especially supervisors) understand reporting requirements, their responsibilities, and their rights to report.

Stremmer stated that what he does not want is for time to heal this. What he

wants to heal this is answers.

Councilmembers discussed having an executive session in two weeks.

This agenda item was DISCUSSED.

2. [AB2024-419](#) Ordinance submitting to the qualified voters of Whatcom County a proposal to repeal Proposition 5

Donovan stated this item was held from the last meeting and he spoke about the versions for their consideration. One (the alternate) has additional whereas statements which he had added to the original ordinance. He also spoke about **AB2024-466**: Resolution requesting Whatcom County Superior Court issue a declaratory judgement to determine whether Initiative 2024-01 is procedurally invalid. That item is on the agenda today under Items Added by Revision below.

Buchanan spoke about how Donovan's alternate version and **AB2024-466** came to be.

Donovan stated if they do nothing, it goes on the ballot and he is concerned that it is trying to do something through the initiative process that should be done with the referendum process. They have asked the Prosecutor to see if they can go to a court to make a decision, prior to putting it on the ballot, about whether someone can repeal something with an initiative (**AB2024-466**).

George Roche, Prosecuting Attorney's Office, stated he views this and **AB2024-466** as distinct legal actions. He went over the Council's three options for this item (**AB2024-419**). They can just send it back to the Auditor as proposed by the citizens, they could exercise their authority to consider alternate ballot proposals, or they can do nothing. That decision-making process is separate from **AB2024-466**. Councilmembers should keep them separate in their decision-making process because they are distinct.

Scanlon asked if it would be possible for them to get a preview of what the Prosecuting Attorney would put on the ballot as the explanatory statement before they consider introducing an ordinance.

Roche stated the ballot title is written, and their initial perspective is that the explanatory statement would read a lot like the ballot title. He answered whether voters would see two items on the ballot or just one if Council were to introduce Donovan's alternate version, and stated he does not think the amendments that Councilmember Donovan made would be considered a

change. The only thing someone could look at and discuss about whether there was a substantive change is the striking of the sections that explain, or act as a placeholder for, where the explanatory statement would be. None of the whereas statements could be considered a change. The alternate version is not making changes to subsection 1 under “Now, Therefore, be it Ordained” with the actual ballot title, so they would not look at that version as an alternative ballot measure.

Scanlon stated that when initiatives are proposed and they end up on the ballot, the “whereas” language ends up in the voter’s guide. He asked what would end up in the voter’s guide for the “whereas” statements if they approve Donovan’s alternate version and whether it would be the text in Councilmember Donovan’s proposal or the text that was submitted by citizens. He stated he would be interested in getting an answer to that question between now and the evening session. He spoke about his concern with some of the “whereas” language that was submitted by citizens. He stated that whatever goes in the voter’s pamphlet ought to be something that is most helpful to voters when they make their decision if this is on the ballot in the fall, and some of that is up to the Council.

Roche answered whether he is still looking for the Council to choose one of the three options as noted above. He reiterated the options and stated his advice to them is not necessarily to walk down any one of those particular roads. He is trying to let them know that the time has come and the procedure for them to decide, and he is happy with any decision they make.

Donovan asked whether the “whereas” statements go on the ballot at all and stated that if they consider his alternate version he would suggest getting rid of what he struck out (subsection 2) and keeping the language exactly as the Prosecutor’s Office gave them in the “Now, Therefore, be it Ordained” section.

Galloway stated she is not going to support the ordinance or the alternate ordinance until they seek some legal clarification to make sure what they are voting on is legally sound. She is not ready to decide on the three options.

Elenbaas stated that no matter what they do, this is going on the ballot. The only thing they can do is submit a competing ballot measure.

Roche answered at what point the Auditor has to move forward if Council has not done anything, and stated he does not think they have ever had their hand forced in that way, but the Auditor has a deadline of August 6 from

publishing to be producing the ballots.

Scanlon stated in the past, the local voter's pamphlet has the complete text of the ordinance that Council passed, so his question is what would end up in that segment of the voter's pamphlet.

Stremmer stated the Auditor's Office gave a sample of what the text would look like in the Certificate of Sufficiency which it sent to the Council Office.

Roche spoke about what might be in the voter's pamphlet and stated his guess is that both versions would be included, but he will confirm that. He spoke about how long it has been since we have had an initiative in the county and stated the county has a bad track record with citizen initiatives that do not actually produce the outcomes that are desired.

This agenda item was DISCUSSED.

3. [AB2024-427](#) Discussion of Docket Item PLN2024-00007, High Impact Industrial uses in Urban Growth Areas, regarding questions posed by the Planning Commission

Cliff Strong, Planning and Development Services Department, briefed the Councilmembers on the memo (on file) which includes two questions to the Council from the Planning Commission. He stated the Council put on the docket to look at the zoning and perhaps amend the High Impact Industrial (HII) zone specifically to disallow other uses similar to ABC Recycling, but the Commission is really hesitant to name what those uses are, especially given that they might impact some of the existing businesses there. The last solution we gave them was to just allow light industrial uses in those few parcels of the Urban Growth Area (UGA) as a temporary fix until the Comprehensive Plan can be finished and we work this out in the long run.

Galloway stated she looks at this in three phases. The first is looking at short term options, and the second is the medium term which is more appropriately done during the Comprehensive Plan process. She has significant concerns about removing industry-zone areas from our lands and would like them to look through the big picture lens of net zero loss on industry lands. She would like to answer where they are adding industry lands if they are taking them away from one area and those big picture conversations need to happen during the Comprehensive Plan process. The third phase, which is more on the horizon, is imagining Bellingham's UGA years into the future and considering how decisions made today will most likely affect the city.

Scanlon stated that some of the intent behind this from when Council discussed it several weeks ago is that, if they were ever to take away HII zone land in a UGA, he would want to make sure they are finding other land in the county to rezone and he did not see that in the memo. He would like to know the process for that and how they would go forward with doing that.

Strong stated there is a working group that is working on identifying other areas that could be zoned industrial.

Scanlon stated he would be interested in learning more about that and he does not want to do anything that impacts existing businesses.

Strong stated he thinks that is where the Planning Commission is coming from. They do not really want to do that either. They have a charge from the Council to do something, but they do not really want to do it.

Byrd stated unless the Council can give more input into what it is looking for so that the Planning Department and Planning Commission have clarity and understand how to move forward, he does not know that they should be discussing the two items added by revision on this agenda regarding a moratorium.

Galloway stated she is not an expert on land use code to know where the pain points might be in terms of something that could slip through the cracks. She too is not sure how to have this conversation without also addressing the items later on the agenda as Councilmember Byrd mentioned, but it seems it would be helpful for the Planning Commission or the Planning Department to point out the areas of deficiency in the code. She stated her gut tells her this code is outdated, but she cannot tell you exactly where it is. The Planning Commission and Planning department are looking for direction from the Council, but she is looking for direction from them as technical experts in this field.

Strong stated they have given the Planning Commission multiple options but he thinks mostly they just really do not want to act on this.

This agenda item was DISCUSSED.

Committee Discussion and Recommendation to Council

1. [AB2024-418](#) Resolution approving a Major Project Permit for the City of Bellingham

The following people briefed the Councilmembers and answered questions:

- Amy Keenan, Planning and Development Committee

- Satpal Sidhu, County Executive
- Kayla Schott-Bresler, Executive's Office

Keenan answered whether this is the same project for which they had an Economic Development Investment (EDI) request from the City of Bellingham (Bear Creek) and stated it is. She answered when the last time was that a major project permit came to the Council and stated it has at least been over sixteen years. She answered what the service area will be and stated it will be the watersheds associated with Squalicum and Bear creeks, some of which is outside of the city limits.

Sidhu spoke about whether the County is looking into the future and doing something similar, and stated there have been discussions between the County, the City of Bellingham, and Whatcom Land Trust about starting that process.

Schott-Bresler stated the Administration is also working with the Planning and Development Services Department on development of an offsite buffer mitigation program which they see as the second phase towards some of these policy objectives, with the wetlands bank being the ultimate long-term goal. Planning will have an update in two weeks on the offsite buffer mitigation program and then the Administration plans to bring forward a budget supplemental for the 2025-2026 biennial budget.

Sidhu stated this wetland bank is not exclusive to Bellingham only. Whatever credits are generated can be used wherever the rules allow, so it is open to everybody. He answered whether this particular item is not tied to any specific proposed projects and stated it is not. He stated they also asked the Department of Ecology whether they could add more land to this project to expand the scope of this wetland bank but it is not allowed, so they will be starting a brand new application with this consortium.

Donovan moved and Scanlon seconded that the Resolution be RECOMMENDED FOR APPROVAL. The motion carried by the following vote:

Aye: 7 - Buchanan, Byrd, Donovan, Elenbaas, Galloway, Scanlon, and Stremler

Nay: 0

2. [AB2024-420](#) Ordinance amending Whatcom County Code 2.02.080, Standing Committees - Membership, to change the membership of all standing council committees from three members to seven

Galloway briefed the Councilmembers and stated this idea came out of their Council retreat. All seven of them are generally in attendance at all

committee meetings so it made sense to change this code.

Buchanan asked if they would go with the same current committee chairs, and Galloway stated that would be her thought.

Cathy Halka, Clerk of the Council, stated that staff would need direction on that through a motion.

Buchanan stated there would be a lag for implementation, should this pass, so they would be looking at August 6 as the first run at it.

Elenbaas stated he is still torn on the pros and cons.

Scanlon stated he supports this proposal because it codifies the way they do business. He thinks this is the way to get to collaboration between different views and it allows for that since it removes the barriers of quorum issues.

Donovan asked whether there is a way to have a chair and two primary members designated for each committee to guarantee that there will always be at least three people who are responsible for the material of that committee.

Elenbaas stated he does not want official actions to be taken during the day.

Councilmembers discussed that all seven of them are generally present at committees now but it may not always be that way, why they cannot just do one general session and deal with items a single time instead of dealing with them twice, that it might be more beneficial to split up the days the committees are on so the groups can take more time, the fact that the proposed code only amends 2.02.080 (membership) and not the power of committees or how they operate, and the fact that it changes the number of Councilmembers that must be present to have a quorum and whether that might be a potential issue going forward.

Donovan moved and Byrd seconded that the Ordinance be RECOMMENDED TO HOLD IN COMMITTEE for two weeks.

Galloway stated she would like to address questions around improving efficiency and to explore what other counties do.

Councilmembers and staff discussed whether two weeks is enough time to get the information Galloway spoke about.

Donovan's motion that the Ordinance be RECOMMENDED TO HOLD IN

COMMITTEE for two weeks carried by the following vote:

Aye: 7 - Buchanan, Byrd, Donovan, Elenbaas, Galloway, Scanlon, and Stremler

Nay: 0

Items Added by Revision

1. [AB2024-466](#) Resolution requesting Whatcom County Superior Court issue a declaratory judgement to determine whether Initiative 2024-01 is procedurally invalid

Clerk's note: There was some discussion of this item in **AB2024-419** above.

Buchanan briefed the Councilmembers and stated this resolution is a result of some of the concerns that various Councilmembers had about the process (initiative or referendum) and about the resolution that is being presented.

Donovan stated this is an ask to get a court to say whether this is something they can legitimately put on the ballot. He has concerns about whether it should be an initiative or a referendum and whether this is interfering with the budget authority of the Council. The only way to sort that out is to get a legal judgment.

Councilmembers discussed a letter received by the Council from the League of Women Voters asking questions about the Charter and whether the correct process was used, a memo written by the Prosecuting Attorney's Office about a decade ago saying that asking a court to look at this is the only option they have, the fact that there are different thresholds for a referendum and an initiative, whether this resolution is ultimately aiming to stop an initiative from happening, the fact that the Prosecuting Attorney declined to take a look at this and whether that is because they did not see a specific legal issue, whether the Council should just update legislation moving forward so that the process to be used is clear, the fact that the Council has three things they can do and whether this is out of the Council's purview, and whether they want to add a date certain for the Prosecutor to authorize the Council to retain outside counsel since this is time-sensitive.

George Roche, Prosecuting Attorney's Office, stated his understanding is that if they were to pass this, the Prosecutor's Office is going to take the position that it creates conflict because they have a duty to represent both the Council and the citizens. The Prosecutor's Office is only going to interject itself into the initiative process if the citizens are clearly invading the Council's power to legislate. He spoke about pre-election versus post-election challenges. He asked whether the resolution should be

directing the Executive to go and have a special prosecutor appointed since that would be more typical and the Council retaining outside counsel might make for a laborious process.

Stremler stated it sounds like the people of Whatcom County are not being heard and that the Council is just trying to be heard.

Galloway stated she does not think taking this to court is a bad thing. It is them making sure the voters are voting on something that is legal. If they can be preventative they can save time, money, and public trust.

Donovan moved and Galloway seconded that the Resolution be RECOMMENDED FOR APPROVAL.

Donovan asked whether the resolution should be authorizing the Executive to retain outside counsel (as opposed to the Council) and whether that would speed things up given the time constraints.

Roche answered why he recommended that it be the Executive, and stated it is typically an executive function to prosecute those actions but he is not ruling out the Council being the client as being an alternative. He spoke about the process for appointment of special prosecutors which operates under State law.

Satpal Sidhu, County Executive, stated this is a legislative matter. He needs to get some more advice to see if this falls under executive action. He stated the Council has the prerogative to order the Executive's Office to do certain things but he does not see that it is directly related to the executive function of the Administration to retain outside counsel for this.

Councilmembers and Sidhu discussed keeping the resolution as it is on that matter (under "Finally be it Resolved"), and the responsibility and role of the Council and the Prosecuting Attorney.

Because of time, Buchanan stated they would be moving the remaining agenda items to the evening meeting.

Donovan's motion that the Resolution be RECOMMENDED FOR APPROVAL carried by the following vote:

Aye: 4 - Buchanan, Donovan, Galloway, and Scanlon

Nay: 2 - Elenbaas, and Stremler

Abstain: 1 - Byrd

- 2. [AB2024-467](#) Ordinance imposing an interim moratorium on the acceptance and processing of applications and permits for new uses in areas zoned heavy impact industrial within a City’s designated urban growth area

This agenda item was NOT ACTED UPON.

- 3. [AB2024-468](#) Ordinance imposing an emergency interim moratorium on the acceptance and processing of applications and permits for new uses in areas zoned heavy impact industrial within a city’s designated urban growth area

This agenda item was NOT ACTED UPON.

- 4. [AB2024-469](#) Resolution requesting the Whatcom County Executive decommission all contracts with the Opportunity Council and Northwest Youth Services relating to the 22 North permanent supportive housing facility

This agenda item was NOT ACTED UPON.

Other Business

There was no other business.

Adjournment

The meeting adjourned at 4:27 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

Cathy Halka, Council Clerk

Barry Buchanan, Council Chair

Kristi Felbinger, Minutes Transcription