

Whatcom County Council

**COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
(360) 778-5010**



Minutes - Final

**VIRTUAL MEETING (TO PARTICIPATE, SEE INSTRUCTIONS AT
www.whatcomcounty.us/joinvirtualcouncil OR CALL 360.778.5010); AGENDA**

REVISED 4.19.2021 & 4.20.2021

Tuesday, April 20, 2021

6 PM

Virtual Meeting

COUNCILMEMBERS

Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Ben Elenbaas
Carol Frazey
Kathy Kershner

CLERK OF THE COUNCIL

Dana Brown-Davis, C.M.C.

COUNTY COUNCIL

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 6:02 p.m. in a virtual meeting.

ROLL CALL

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

Absent: None

FLAG SALUTE

ANNOUNCEMENTS

COUNTY EXECUTIVE'S REPORT

Satpal Sidhu, County Executive, reported on the following:

- National volunteer week
- Administrative professional's appreciation day acknowledgements
- COVID-19 vaccination progress in Whatcom County and doses available this weekend at the Community Vaccination Clinic
- The George Floyd trial verdict and the formation of a Racial Equity Commission
- The State budget and how it can help bolster the Whatcom County economy for the next couple years

MINUTES CONSENT

Donovan moved to accept the minutes consent items. The motion was seconded by Byrd (see votes on individual items below).

1. [MIN2021-030](#) Health Board for March 30, 2021

Donovan moved and Byrd seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:

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

Nay: 0

Absent: 0

2. [MIN2021-031](#) Committee of the Whole Executive Session for April 6, 2021

Donovan moved and Byrd seconded that the Minutes Consent be

APPROVED BY CONSENT. The motion carried by the following vote:

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

Nay: 0

Absent: 0

3. [MIN2021-032](#) Committee of the Whole for April 6, 2021

Donovan moved and Byrd seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:

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

Nay: 0

Absent: 0

4. [MIN2021-033](#) Regular County Council for April 6, 2021

Donovan moved and Byrd seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:

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

Nay: 0

Absent: 0

PUBLIC HEARINGS

1. [AB2021-171](#) Ordinance granting Trans Mountain Pipeline (Puget Sound) LLC, a non-exclusive franchise for pipeline facilities

Council staff played a short instructional video about how to speak at the meeting.

Andrew Hester, Public Works Department, briefed the Councilmembers.

Buchanan opened the Public Hearing and the following person spoke:

- Phil Sharpe

Hearing no one else, Buchanan closed the Public Hearing.

Byrd moved and Elenbaas seconded that the SUBSTITUTE Ordinance Requiring a Public Hearing be ADOPTED.

Councilmembers discussed the motion and why this item was not discussed in a Committee with the following people:

- Dana Brown-Davis, Clerk of the Council
- Christopher Quinn, Prosecuting Attorney's Office

Councilmembers discussed the motion and the process for considering this and other franchise agreements.

Brown-Davis stated that this is a substitute ordinance and Quinn briefed the Councilmembers on the substitute.

Byrd's motion that the SUBSTITUTE Ordinance Requiring a Public Hearing be ADOPTED carried by the following vote:

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

Nay: 0

Absent: 0

Abstain: 1 - Donovan

Enactment No: ORD 2021-020

2. [AB2021-193](#) Ordinance establishing a speed limit on Northshore Road

Doug Ranney, Public Works Department, briefed the Councilmembers.

Buchanan opened the Public Hearing and, hearing no one, closed the Public Hearing.

Byrd moved and Frazey seconded that the Ordinance Requiring a Public Hearing be ADOPTED.

Councilmembers discussed the item with staff.

Byrd's motion that the Ordinance Requiring a Public Hearing be ADOPTED carried by the following vote:

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

Nay: 0

Absent: 0

Enactment No: ORD 2021-021

3. [AB2021-195](#) Ordinance establishing a speed limit on several roads in the Wisner Lake Area

Doug Ranney, Public Works Department, briefed the Councilmembers.

Buchanan opened the Public Hearing and, hearing no one, closed the Public

Hearing.

Byrd moved and Kershner seconded that the Ordinance Requiring a Public Hearing be ADOPTED. The motion carried by the following vote:

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

Nay: 0

Absent: 0

Enactment No: ORD 2021-022

4. [AB2021-230](#) Ordinance imposing an interim moratorium on the acceptance and processing of permit applications for new or expanded recreational cannabis growing and/or processing facilities which are proposed to operate outdoors or in greenhouses
- Mark Personius, Planning and Development Services Department Director, briefed the Councilmembers.

Buchanan opened the Public Hearing and the following people spoke:

- Rainbow Medicine Walker
- Mark Ambler
- Holly Koon
- Carson Warner

Hearing no one else, Buchanan closed the Public Hearing.

Donovan moved and Browne seconded that the SUBSTITUTE Ordinance Requiring a Public Hearing be ADOPTED.

Councilmembers discussed the motion, the difference between this ordinance and the similar ordinance adopted at the last regular County Council meeting, whether the industry should police itself, and whether the problem is with enforcement.

The following people answered questions:

- Karen Frakes, Prosecuting Attorney's Office
- Mark Personius

Dana Brown-Davis, Clerk of the Council, stated this is a substitute version.

Donovan's motion that the SUBSTITUTE Ordinance Requiring a Public Hearing be ADOPTED carried by the following vote:

Aye: 5 - Browne, Buchanan, Byrd, Donovan, and Frazey

Nay: 2 - Elenbaas, and Kershner

Absent: 0

Enactment No: ORD 2021-023

OPEN SESSION (20 MINUTES)

Council staff played a short instructional video about how to speak at the meeting.

The following people spoke:

- Mark Ambler
- Markis Dee Stidham
- Tom Doran
- Nancy Bergman
- Misty Flowers
- Barbara Powers
- Natalie Chavez
- Eve Smason-Marcus
- Sanja Pisker
- Melissa Wisener

Browne spoke about the number of programs for homeless individuals in Whatcom County.

CONSENT AGENDA

(From Council Finance and Administrative Services Committee)

Browne reported for the Finance and Administrative Services Committee and ***moved*** to approve Consent Agenda items one through three.

Councilmembers discussed and voted on those items (see votes on individual items below).

1. [AB2021-229](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Western Washington University to provide planning support for the Whatcom County Natural Hazards Mitigation Plan 2021 update, in the amount of \$49,254

Browne reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:

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

Nay: 1 - Elenbaas

Absent: 0

2. [AB2021-236](#) Request authorization for the County Executive to award bid #21-09 and enter into a contract between Whatcom County and Granite Construction, Inc. for hot mix asphalt prelevel at various locations in an amount not to exceed \$438,649.00

Browne reported for the Finance and Administrative Services Committee and moved that the Bid Award be AUTHORIZED BY CONSENT. The motion carried by the following vote:

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

Nay: 1 - Elenbaas

Absent: 0

3. [AB2021-250](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Fire Protection District No. 11 to establish a gurney use agreement

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

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

Nay: 1 - Elenbaas

Absent: 0

OTHER ITEMS

(From Council Finance and Administrative Services Committee)

1. [AB2021-206](#) Ordinance closing Law Library/Elections Remodel Fund 376

Browne reported for the Finance and Administrative Services Committee and moved that the Ordinance be ADOPTED. The motion carried by the following vote:

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

Nay: 0

Absent: 0

Enactment No: ORD 2021-024

2. [AB2021-207](#) Ordinance closing the East Whatcom Regional Resource Center Construction Fund

334

Browne reported for the Finance and Administrative Services Committee and moved that the Ordinance be ADOPTED. The motion carried by the following vote:

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

Nay: 0

Absent: 0

Enactment No: ORD 2021-025

3. [AB2021-215](#) Ordinance amending the 2021 Whatcom County Budget, request no. 6, in the amount of \$583,944

Browne reported for the Finance and Administrative Services Committee and **moved** that the Ordinance be ADOPTED.

Councilmembers discussed the motion.

Browne's motion that the Ordinance be ADOPTED carried by the following vote:

Aye: 4 - Browne, Buchanan, Donovan, and Frazey

Nay: 3 - Byrd, Elenbaas, and Kershner

Absent: 0

Enactment No: ORD 2021-026

4. [AB2021-223](#) Request authorization for the County Executive to enter into an interlocal agreement amendment between Whatcom County and the Washington State Department of Health to fund various public health services, in the amount of \$2,928,061 for a total amended contract amount of \$15,145,319

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED. The motion carried by the following vote:

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

Nay: 0

Absent: 0

5. [AB2021-225](#) Request authorization for the County Executive to enter into interlocal agreement amendment #1 to Interlocal Funding Agreement with the City of Bellingham for support of US Geological Survey's Development of the Coastal Storm Modeling System (COSMOS) across the Whatcom County Shoreline

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED. The motion carried by the following vote:

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

Nay: 0

Absent: 0

6. [AB2021-231](#) Request authorization for the County Executive to enter into a Local Agency Agreement & Project Prospectus between Whatcom County and Washington State Department of Transportation for Marine Drive (Locust Ave to Alderwood Ave) Reconstruction and Bicycle/Pedestrian Improvement in the amount of \$2,509,695

Browne reported for the Finance and Administrative Services Committee and **moved** that the Contract be AUTHORIZED.

Jon Hutchings, Public Works Department Director, answered a question.

Browne's motion that the Contract be AUTHORIZED carried by the following vote:

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

Nay: 0

Absent: 0

7. [AB2021-239](#) Request approval for the County Executive to enter into an Interagency Agreement with Western Washington University to Support Coordination of Climate Change Planning Efforts funded through a Washington Dept of Commerce grant in the amount of \$20,000

Browne reported for the Finance and Administrative Services Committee and moved that the Agreement be AUTHORIZED. The motion carried by the following vote:

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

Nay: 1 - Elenbaas

Absent: 0

8. [AB2021-246](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Chuckanut Health Foundation to create recommendations on the establishment of a countywide Racial Equity Commission in the amount of \$90,000

Browne reported for the Finance and Administrative Services Committee and **moved** that the Contract be AUTHORIZED.

Satpal Sidhu, County Executive, answered where the funding for this item is coming from and what the funding will provide, the scope of the work for the commission, and the Council's role in the scope and in creating the commission.

Councilmembers discussed the motion and Sidhu and Browne shared personal experiences.

Browne's motion that the Contract be AUTHORIZED carried by the following vote:

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

Nay: 0

Absent: 0

9. [AB2021-247](#) Request authorization for the County Executive to enter into an interlocal agreement with the City of Bellingham to support, develop and fund a process to create recommendations on the establishment of a county-wide Racial Equity Commission in an amount not to exceed \$45,000

Browne reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED. The motion carried by the following vote:

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

Nay: 0

Absent: 0

(From Committee of the Whole)

10. [AB2021-209](#) Resolution regarding permanent affordability of childcare in Whatcom County
Buchanan reported for the Committee of the Whole and *moved* to approve the letter as amended in Committee. The motion was seconded by Browne.

The motion carried by the following vote:

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

Nay: 0

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

ITEMS ADDED BY REVISION

1. [AB2021-255](#) Appointment to the Business and Commerce Advisory Committee - Higher Education vacancy, applicant(s): Eva Schulte

Frazey moved and Browne seconded that the Council Appointment Requiring Introduction be INTRODUCED.

Dana Brown-Davis, Clerk of the Council, answered questions.

Frazey's motion that the Council Appointment Requiring Introduction be INTRODUCED carried by the following vote:

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

Nay: 0

Absent: 0

ITEMS ADDED BY REVISION

[AB2021-227](#) Ordinance imposing an interim moratorium on the acceptance and processing of applications and permits for new or expanded facilities in the Cherry Point urban growth area, the primary purpose of which would be the shipment of unrefined fossil fuels not to be processed at Cherry Point

Donovan moved and Frazey seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:

Aye: 5 - Browne, Buchanan, Byrd, Donovan, and Frazey

Nay: 2 - Elenbaas, and Kershner

Absent: 0

Enactment No: ORD 2021-029

INTRODUCTION ITEMS

Donovan moved to introduce items one through three. The motion was seconded by Byrd (see votes on individual items below).

Kershner moved to refer AB2021-244 to the Public Works and Health Committee. The motion was seconded by Byrd.

Dana Brown-Davis, Clerk of the Council, stated that item was discussed in committee today.

Kershner withdrew her motion.

1. [AB2021-243](#) Ordinance ordering the closure of a portion of Manley Road to motorized vehicular traffic

Donovan moved and Byrd seconded that the Ordinance Requiring a Public

Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:

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

Nay: 0

Absent: 0

Enactment No: ORD 2021-027

2. [AB2021-244](#) Resolution adopting the Whatcom County Americans with Disabilities Act (ADA) Transition Plan within the Public Rights-of-Way

Donovan moved and Byrd seconded that the Resolution Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:

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

Nay: 0

Absent: 0

Enactment No: RES 2021-016

3. [AB2021-245](#) Resolution supporting a Community Development Block Grant (CDBG) Public Services Grant application

Donovan moved and Byrd seconded that the Resolution Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:

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

Nay: 0

Absent: 0

Enactment No: RES 2021-017

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Buchanan reported for the Committee of the Whole Executive Session.

Donovan read the following *motion* from Committee of the Whole Executive Session.

I hereby move to approve defense and indemnification of Chris Freeman and Caleb Erickson, named as defendants in *Anderson as Personal Rep. of Estate of Kirk Powless, et al. v. Whatcom County, et al.*, US District Court for the Western District of Washington No.

2:20-cv-01125.

The motion carried by the following vote:

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

Nay: 0

Karen Frakes, Prosecuting Attorney's Office, stated the whole motion was not read as it did not include the findings.

Byrd reread the entire motion and **moved** the following:

I hereby move to approve defense and indemnification of Chris Freeman and Caleb Erickson, named as defendants in *Anderson as Personal Rep. of Estate of Kirk Powless, et al. v. Whatcom County, et al.*, US District Court for the Western District of Washington No. 2:20-cv-01125.

The County Council met in executive session concerning the lawsuit Anderson as Personal Representative of Estate of Kirk Powless, et al. v. Whatcom County, et al., US District Court for the Western District of Washington No. 2:20-cv-01125. Pursuant to Whatcom County Code 2.56, the Council hereby finds the following:

- A. Chris Freeman and Caleb Erickson were acting in a matter in which the county had an interest;
- B. Chris Freeman and Caleb Erickson were acting in the discharge of a duty imposed or authorized by law;
- C. Chris Freeman and Caleb Erickson acted in good faith. The officers, officials, agents or employees will be defended and indemnified pursuant to and consistent with the provisions in WCC Chapter 2.56.

The motion was seconded by Donovan.

Councilmembers discussed the motion and Dana Brown-Davis, Clerk of the Council, stated they need to vote to reconsider the original motion.

Buchanan moved to reconsider Donovan's original motion. The motion was seconded by Byrd.

The motion to reconsider carried by the following vote:

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

Nay: 0

The motion as stated by Tyler Byrd and seconded by Donovan carried by the following vote:

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

Nay: 0

Councilmembers continued to give committee reports and spoke about other issues including concerns about HIPPA compliance as it relates to COVID-19 information released over the phone.

Tyler Schroeder, Executive's Office, answered a question about reports that states that have lifted mask mandates have lower case rates of COVID-19.

ADJOURN

The meeting adjourned at 9:05 p.m.

The County Council approved these minutes on May 4, 2021.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Kristi Felbinger, Minutes Transcription

SIGNED COPY ON FILE