

Whatcom County Council

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



Minutes - Draft Minutes

Tuesday, October 10, 2023

6 PM

Hybrid Meeting

HYBRID MEETING (PARTICIPATE IN-PERSON, SEE REMOTE JOIN INSTRUCTIONS AT www.whatcomcounty.us/joinvirtualcouncil, OR CALL 360.778.5010), AGENDA REVISED 10.9.2023

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.

COUNTY COUNCIL

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 6:01 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

FLAG SALUTE

ANNOUNCEMENTS

COUNTY EXECUTIVE'S REPORT

There was no report.

MINUTES CONSENT

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

1. [MIN2023-065](#) Committee of the Whole for September 26, 2023

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

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

Nay: 0

2. [MIN2023-066](#) Regular County Council for September 26, 2023

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

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

Nay: 0

PUBLIC HEARINGS

1. [AB2023-566](#) Resolution to sell county tax title property by negotiation

Buchanan opened the Public Hearing and the following people spoke:

- Markis Dee

Hearing no one else, Buchanan closed the Public Hearing.

Frazey moved and Donovan seconded that the Resolution Requiring a Public Hearing be APPROVED. The motion carried by the following vote:

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

Nay: 0

Enactment No: RES 2023-026

2. [AB2023-575](#) Resolution to sell county tax title property by negotiation

Councilmembers discussed the difference between this and the previous item since they have the same title.

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

Tyler Schroeder, Director of Administrative Services, answered why two of the sales are by negotiation and two are by public auction.

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

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

Nay: 0

Enactment No: RES 2023-027

3. [AB2023-588](#) Resolution to sell tax title property by public auction

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

Frazey moved and Byrd seconded that the Resolution Requiring a Public Hearing be APPROVED. The motion carried by the following vote:

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

Nay: 0

Enactment No: RES 2023-028

4. [AB2023-589](#) Resolution to sell tax title property by public auction

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

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

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

Nay: 0

Enactment No: RES 2023-029

5. [AB2023-605](#) Resolution adopting the 2024-2029 Six-Year Water Resources Improvement Program (WRIP) by the Whatcom County Council (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

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

Donovan moved and Kershner seconded that the Resolution (FCZDBS) Requiring a Public Hearing be APPROVED.

The following people answered questions:

- Gary Stoyka, Public Works Department
- Kraig Olason, Public Works Department
- Paula Harris, Public Works Department

They answered whether funding some of the projects with the stormwater utility has been buying us increased capacity, how that is measured, how the revenue is being spent, whether we can show we are doing more than we would have been doing without the utility, and what the "BES" score means on the Six-Year Water Resources Improvement Program (WRIP) spreadsheet.

Donovan's motion that the Resolution (FCZDBS) Requiring a Public Hearing be APPROVED carried by the following vote:

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

Nay: 0

Enactment No: RES 2023-030

OPEN SESSION

The following people spoke:

- John Ferdon
- Sheerie Keller
- Barry Wenger
- Ginny Pieters
- Doug Karlberg
- Donald Case
- Sheryl Peterson
- Sally Thomas

- Erin Sofinowski and Tyler
- Troy Abel
- Tsena Paulson
- Dan Tucker
- Luke Van't Hoog
- Sarah Gardner
- Susan Kane-Ronning
- Judith Akins
- Kim Walbeck
- Tyson King
- Scott Jones
- Amy Towner
- Vicky Moyle
- Claire Walton
- John Goetz
- Don Chapman
- Bob Anderson
- Kristine Heintz
- Joy Patterson
- Nathan Lowe
- Karl de Jong
- MaryLou Whiteford
- Robert Kody
- Elizabeth Kerwin
- John Wiseman
- Richard Goetz
- Lyle Sorenson
- Louise (last name not audible)
- Eric Scott
- Kai (last name not stated)
- Natalie Chavez
- Nancy Button
- Name not stated
- Dan Malkovich
- Jamie Pearson

Clerk's note: Councilmembers to a short break.

Open Session continued and the following people spoke:

- Alexander Harris
- Brel Froebe
- Maureen Traxler
- Markis Dee
- Jillian Froebe
- Misty Flowers

Hearing no one else, Buchanan closed the Open Session.

CONSENT AGENDA

(From Council Finance and Administrative Services Committee)

Kershner reported for the Finance and Administrative Services Committee and ***moved*** to approve Consent Agenda items one through seven, with item eight (**AB2023-662**) to be voted on separately.

Elenbaas stated he would also like to consider item four (**AB2023-638**) separately.

Councilmembers voted on Consent Agenda item numbers 1-3 and 5-7 (see votes on individual items below).

1. [AB2023-621](#) Request authorization for County Executive to enter into an Interlocal Agreement between Whatcom County and Public Utility District No. 1 of Whatcom County in support of the Broadband infrastructure and implementation project located in Point Roberts in the amount of \$350,000

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

Nay: 0

2. [AB2023-628](#) Request authorization for the County Executive to enter into a contract between Whatcom County and US Imaging, Inc. to create digital images to be imported into the Historic Film Viewer from direct and indirect grantor grantee volumes, in the amount of \$85,000.00

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

Nay: 0

3. [AB2023-630](#) Request authorization for the County Executive to enter into a contract amendment between Code Publishing, LLC and Whatcom County for legal code publishing services, in the amount of \$15,000

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

Nay: 0

4. [AB2023-638](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Ferndale School District to provide funding for behavioral health services, in the amount not to exceed \$498,000

This item was considered separately. See below.

5. [AB2023-643](#) Request authorization for the County Executive to enter into a contract between Whatcom County and the State of Washington Department of Ecology to fund administrative support and action projects for the Whatcom County Marine Resources Committee, in the amount of \$249,000 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

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

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

Nay: 0

6. [AB2023-647](#) Resolution to authorize procurement from or through the US General Services Administration (GSA) cooperative schedules

Kershner reported for the Finance and Administrative Services Committee and moved that the Resolution be APPROVED. The motion carried by the following vote:

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

Nay: 0

Enactment No: RES 2023-031

7. [AB2023-653](#) Request authorization for the County Executive to enter into an agreement between Whatcom County and United States Geological Survey (USGS) to fund the ongoing operation and maintenance of the County's 11 stream gages within the Nooksack River early flood warning system, Jones Creek, and the Sumas River, in the amount of

\$169,470 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

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

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

Nay: 0

8. [AB2023-662](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Whatcom Law Group / Rajeev Majumdar for hearing examiner services through the end of 2023

This item was considered separately. See below.

CONSENT AGENDA ITEMS CONSIDERED SEPARATELY

4. [AB2023-638](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Ferndale School District to provide funding for behavioral health services, in the amount not to exceed \$498,000

Kershner reported for the Finance and Administrative Services Committee and ***moved*** that the Interlocal be AUTHORIZED.

Tyler Schroeder, Director of Administrative Services, answered whether the mental health professional and associate mental health professional can prescribe drugs, and stated nowhere in the contract terms for those positions is the ability to prescribe drugs. He and Satpal Sidhu, County Executive, answered whether these are new positions, whether the funding for them is compliant with requirements in Revised Code of Washington (RCW) 82.14.460 Section 3, and whether they need to find a different fund to fund the contract.

Councilmembers discussed the concern about whether the districts will be able to continue the services if the County funds it for three years (because of a bump in sales tax reserves), whether it is the County's job to fund these positions in schools when schools have their own revenue base, whether the County deciding which districts get this money raises equity issues, and whether there should be language in the contract that addresses parental consent.

Kershner moved to amend Section A of the statement of work to add a subsection 5 that reads:

5. All services to students under 18 years of age will be provided with parental consent.

The motion was seconded by Elenbaas.

Councilmembers discussed the motion and whether it is inconsistent with the State law regarding the age of consent.

Kershner amended her motion to amend Section A of the statement of work to add a subsection 5 that reads:

5. All services to students will be provided with parental consent as defined by the laws of Washington state.

Karen Frakes, Prosecuting Attorney's Office, gave her input on the motion and stated it is pretty innocuous and she spoke about her understanding of the State law.

Councilmembers discussed what State law says and whether the contract would have to come back to the Council if it is re-written.

Schroeder pointed out Section 14 of the contract which says, "14. OTHER PROVISIONS: The District and the County will comply with all applicable Federal and State requirements that govern this agreement."

Kershner withdrew her motion.

Frakes answered and Councilmembers discussed whether the \$10,000 a year in funding for the Ferndale Youth Coalition is in line with the RCW that authorizes the tax, the distribution of the tax, and what it is for since they are not providing mental health treatment services.

Kershner's motion that the Interlocal be AUTHORIZED carried by the following vote:

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

Nay: 2 - Byrd, and Elenbaas

8. [AB2023-662](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Whatcom Law Group / Rajeev Majumdar for hearing examiner services through the end of 2023

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

Byrd answered why he wanted to discuss this separately in committee.

Frazey expressed sympathy for the family of late Hearing Examiner, Michael Bobbink and stated this contract will only go until the end of December.

Rajeev Majumdar, Hearing Examiner Pro Tempore, answered whether he assumed all of the contracts that the late Hearing Examiner had, and how familiar he is with the Growth Management Act, the County's Comprehensive Plan, our land-use policy, and the mitigation measures that we typically use.

He and Karen Frakes, Prosecuting Attorney's Office, answered why Council was not able, in the past, to hear comments about certain pending land issues when the Council was acting as a quasi-judicial body, yet Majumdar sat in on the comments tonight of an issue that could potentially go before the Hearing Examiner.

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

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

Nay: 0

OTHER ITEMS

(From Council Finance and Administrative Services Committee)

1. [AB2023-655](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Whatcom Family YMCA to preserve childcare slots in Whatcom County, in the amount of \$1,500,000

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

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

Nay: 0

2. [AB2023-656](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Bellingham to consolidate previous amendments and extend the term date for the WHAT-COMM Communications Center

Kershner reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED AS AMENDED in

committee. The motion carried by the following vote:

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

Nay: 1 - Byrd

3. [AB2023-666](#) Request approval for the County Executive to enter in to a beneficiary agreement between Whatcom County and the Boys and Girls Clubs of Whatcom County to mitigate COVID-19 pandemic impacts and stabilize childcare services

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

Kayla Schott-Bresler, Strategic Initiatives Special Programs Manager, answered whether the County already gave the Boys and Girls Clubs money to stabilize them, and stated the County gave them \$100,000 in May of 2020. She answered how much this agreement is, whether it is American Rescue Plan Act (ARPA) money, and whether it is the assumption that they will continue to ask for this every year with Proposition Five money. She stated she thinks there is a policy conversation that is going to be had at a later date about the sustainability of the childcare business model in Whatcom County, but she does not think that is going to take the form of specific providers coming in with this type of request. She answered more questions including whether the Boys and Girls Clubs have grown in their ability to serve kids and whether this will keep them from losing childcare slots.

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

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

Nay: 1 - Byrd

(From Council Public Works and Health Committee)

4. [AB2023-592](#) Resolution approving the Samish Water District Comprehensive Sewer Plan

Kershner reported for the Public Works and Health Committee and moved that the Resolution be APPROVED AS AMENDED in committee. The motion carried by the following vote:

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

Nay: 0

Enactment No: RES 2023-032

(From Council Planning and Development Committee)

5. [AB2023-668](#) Resolution amending Resolution 2023-005 to docket an additional Comprehensive Plan/zoning amendment related to allowing propane reload, storage, and distribution facilities as a conditional use under certain conditions in the Agriculture District
- Galloway** reported for the Planning and Development Committee and **moved** that the Resolution be APPROVED.

Elenbaas confirmed that this resolution would be approving to docket the item.

Galloway's motion that the Resolution be APPROVED carried by the following vote:

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

Nay: 0

Enactment No: RES 2023-033

(From Council Committee of the Whole)

6. [AB2023-548](#) Ordinance amending WCC 2.145, Lummi Island Ferry Advisory Committee
- Buchanan** reported for the Committee of the Whole and **moved** that the Ordinance be ADOPTED.

Donovan asked whether they would now be able to start looking at applications for the Ferry Advisory Committee and whether applicants already in the hopper would need to reapply.

Dana Brown-Davis, Clerk of the Council, stated she did not see why they would need to re-apply.

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

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

Nay: 0

Enactment No: ORD 2023-057

(No Committee Assignment)

7. [AB2023-639](#) Resolution establishing regular Council meeting dates for 2024

Dana Brown-Davis, Clerk of the Council, stated it is the same schedule they have followed the last couple years.

Kershner moved and Buchanan seconded that the Resolution be APPROVED. The motion carried by the following vote:

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

Nay: 0

Abstain: 1 - Frazey

Enactment No: RES 2023-034

CONFIRMATION OF EXECUTIVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. [AB2023-642](#) Request confirmation of the County Executive's appointment of Elli Harron to the Agricultural Advisory Committee

Byrd moved and Frazey seconded that the Executive Appointment be CONFIRMED.

Tyler Schroeder, Director of Administrative Services, answered whether this is a re-appointment.

Byrd's motion that the Executive Appointment be CONFIRMED carried by the following vote:

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

Nay: 0

2. [AB2023-658](#) Request confirmation of the County Executive's appointment of Tamara Cooper-Woodrich to the Bellingham/Whatcom County Commission on Sexual and Domestic Violence

Kershner moved and Frazey seconded that the Executive Appointment be CONFIRMED. The motion carried by the following vote:

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

Nay: 0

ITEMS ADDED BY REVISION

1. [AB2023-640](#) Ordinance establishing a task force to develop a Whatcom County Forest Resilience Plan

Galloway reported for the Climate Action and Natural Resources Committee and **moved** that the REVISED SUBSTITUTE Ordinance (as amended in committee) be ADOPTED.

The motion was seconded by Donovan.

Galloway moved to amend Section 2.170.040 of Exhibit A of the revised

substitute ordinance (Permanent Members) so that it reads 11 members (instead of 14).

The motion was seconded by Donovan.

The motion to amend carried by the following vote:

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

Nay: 0

Councilmembers discussed the motion to adopt.

Galloway's motion that the REVISED SUBSTITUTE Ordinance be ADOPTED AS AMENDED carried by the following vote:

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

Nay: 3 - Byrd, Elenbaas, and Kershner

Enactment No: ORD 2023-058

INTRODUCTION ITEMS

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

1. [AB2023-637](#) Ordinance Establishing a New Whatcom County Healthy Children's Fund

Donovan moved and Kershner seconded that the Ordinance be INTRODUCED. The motion carried by the following vote:

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

Nay: 0

2. [AB2023-657](#) Ordinance amending the 2023 Whatcom County Budget, request no. 14, in the amount of \$13,162,440

Donovan moved and Kershner seconded that the Ordinance be INTRODUCED. The motion carried by the following vote:

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

Nay: 0

3. [AB2023-659](#) Ordinance Establishing a Community Priorities Fund and Establishing an Initial Budget for the Community Priorities Fund

Donovan moved and Kershner seconded that the Ordinance be INTRODUCED. The motion carried by the following vote:

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

Nay: 0

4. [AB2023-651](#) Ordinance amending the project budget for the E. Smith/Hannegan Road Intersection Improvements Fund, Request No. 3

Donovan moved and Kershner seconded that the Ordinance be INTRODUCED. The motion carried by the following vote:

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

Nay: 0

5. [AB2023-652](#) Ordinance amending the project based budget for the North Lake Samish Road Bridge No. 7 Replacement Fund, request No. 3

Donovan moved and Kershner seconded that the Ordinance be INTRODUCED. The motion carried by the following vote:

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

Nay: 0

6. [AB2023-648](#) Resolution approving the Whatcom County 2024 Annual Construction Program

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

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

Nay: 0

7. [AB2023-654](#) Resolution authorizing the sale of personal property, pursuant to Whatcom County Code (WCC) 1.10

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

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

Nay: 0

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Councilmembers gave Committee reports and other updates.

ADJOURN

The meeting adjourned at 10:48 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Kristi Felbinger, Minutes Transcription