

Whatcom County Council

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



Minutes - Final

**Tuesday, July 13, 2021
6 PM
Virtual Meeting**

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

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

Buchanan announced the following:

The Council is accepting applications to fill 3 vacancies on the Drayton Harbor Shellfish Protection District Advisory Committee. The vacancy must be filled by someone with a direct interest in the district. If you are interested in filling this vacancy and meet the qualifications, please let us know at 360-778-5010 or email the council at Council@co.whatcom.wa.us.

COUNTY EXECUTIVE'S REPORT

Satpal Sidhu, County Executive, stated he did not have a report.

MINUTES CONSENT

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

1. [MIN2021-053](#) Committee of the Whole for June 29, 2021

Kershner moved and Donovan 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. [MIN2021-054](#) Regular County Council for June 29, 2021

Kershner moved and Donovan 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

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

1. [AB2021-363](#) Ordinance amending the Whatcom County Code and Comprehensive Plan, requiring a site-specific geotechnical analysis when mineral extraction is proposed within 500 feet of a gas or petroleum transmission pipeline

Josh Fleischmann, Planning and Development Services Department, briefed the Councilmembers.

Buchanan opened the Public Hearing and the following person spoke:

- Kyler Danielson

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

Fleischman and Royce Buckingham, Prosecuting Attorney's Office, answered questions about the comments of the speaker, where the responsibility for pipeline integrity lies, whether the process for reviewing an application and veto powers should be included, and the process and rights for appeals.

Councilmembers discussed the item and whether a determination in favor of the miner would be increasing the County's liability.

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

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

Nay: 0

Absent: 0

Abstain: 1 - Byrd

Enactment No: ORD 2021-040

2. [AB2021-370](#) Ordinance adopting Whatcom County Code Chapter 16.50 Commercial Property Assessed Clean Energy and Resiliency (C-PACER) Program within Whatcom County

Donovan gave an explanation of the program and answered whether it

applies to residential property.

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

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

Councilmembers discussed the motion.

Frazey'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 2021-041

OPEN SESSION (20 MINUTES)

The following people spoke:

- Brien Thane
- Trevor Smith
- Brent Jones
- Markis Dee Stidham
- Christopher Watrobka
- Rod Roth
- Natalie Chavez
- Shean Halley
- Denise Jones
- Jean Purcell
- Enoch Mann
- Misty Flowers

Hearing no one else, Buchanan closed the Open Session.

CONSENT AGENDA

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

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

1. [AB2021-383](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Island County for Mini-Chain Services in the amount of \$5,359.00

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

2. [AB2021-385](#) Request authorization for the County Executive to award Bid #21-31 and enter into a subsequent contract between Whatcom County and Foss Maritime for the annual drydocking, repair and maintenance of the Whatcom Chief ferry, in the amount of \$773,839

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. [AB2021-387](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the Washington Association of Sheriffs and Police Chiefs for Registered Sex Offender Address and Residency Verification Program, in the amount of \$139,688.00

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

4. [AB2021-391](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Ecology for litter cleanup activities, in the amount of \$71,100

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

5. [AB2021-399](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Snohomish Health District for participation in the North Sound Regional Youth Marijuana Prevention and Education Program, in the amount of \$27,000

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

6. [AB2021-400](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Skagit County for participation in the North Sound Regional Youth Marijuana Prevention and Education Program, in the amount of \$27,000

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. [AB2021-346](#) Ordinance amending the project budget for the Silver Lake Park Improvement Fund, request no. 3

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 2021-042

2. [AB2021-365](#) Ordinance amending the Whatcom County Budget, request no. 11, in the amount of \$5,728,416

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

Councilmembers discussed the motion.

Donovan moved to amend the proposal to have the \$525,000 from the Affordable & Supportive Housing Fund (1406) be replaced with American Rescue Plan Act Fund (ARPA) dollars. The motion was seconded by Kershner.

Councilmembers discussed the motion to amend and whether the ARPA funds should be used without having a plan for them first and how the funds are tracked, and the following people also spoke and answered questions:

- Tyler Schroeder, Executive's Office
- Satpal Sidhu, County Executive
- Anne Deacon, Health Department

The motion to amend carried by the following vote:

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

Nay: 2 - Elenbaas and Byrd

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

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

Nay: 2 - Byrd, and Elenbaas

Absent: 0

Enactment No: ORD 2021-043

3. [AB2021-375](#) Ordinance amending Whatcom County Code 2.98, Point Roberts Community Advisory Committee, to revise membership

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

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

Nay: 1 - Elenbaas

Absent: 0

Enactment No: ORD 2021-044

4. [AB2021-393](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Commerce for resources to assist people who are experiencing homelessness obtain and maintain housing stability, in the amount of \$6,335,182

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

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

Nay: 0

Absent: 0

Abstain: 1 - Elenbaas

5. [AB2021-397](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and City of Lynden for Economic Development Investment (EDI) loan and grant funding to support the West Front Street Arterial Improvement Project, in the amount of \$2,000,000

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

6. [AB2021-398](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and Washington State Department of Social and Health Services for the administration of developmental disabilities services, in the amount of \$4,125,535

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

7. [AB2021-401](#) Request authorization for the County Executive to enter into a purchase and sale agreement for the acquisition of 5.9 acres of undeveloped property adjoining Squires Lake Park in the amount of \$90,000

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

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

Nay: 2 - Byrd, and Elenbaas

Absent: 0

(From Council Committee of the Whole)

8. [AB2021-360](#) Ordinance to establish an independent review of the community response to the COVID-19 Pandemic

Buchanan reported for the Committee of the Whole and stated there is a substitute version as revised in committee.

Browne moved and Frazey seconded that the SUBSTITUTE Ordinance be ADOPTED. The motion carried by the following vote:

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

Nay: 1 - Elenbaas

Absent: 0

Enactment No: ORD 2021-045

(No Committee Assignment)

9. [AB2021-392](#) Request approval of a motion to authorize Chief Civil Deputy Prosecutor Karen Frakes to vote on behalf of Whatcom County in favor of the Fifth Amended Joint Chapter 11 Plan of Reorganization of Purdue Pharma L.P. and its Affiliated Debtors in re: Purdue Pharma, et al. Case No. 19-23649 (RDD), United States Bankruptcy Court of the Southern District of New York

Karen Frakes, Prosecuting Attorney's Office, briefed the Councilmembers and stated that she recommends that they approve the plan.

Frazey moved and Kershner seconded that the Request for Motion be Approved.

Browne thanked Frakes for her work.

Frazey's motion that the Request for Motion be APPROVED carried by the following vote:

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

Nay: 0

Absent: 0

EXECUTIVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. [AB2021-384](#) Request confirmation of the County Executive's reappointments of David Warren and Daniel Larner to the Bellingham-Whatcom Public Facilities District

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

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

Nay: 0

Absent: 0

ITEMS ADDED BY REVISION

There were no agenda items added by revision.

INTRODUCTION ITEMS

Browne moved to introduce items one and two. The motion was seconded by Donovan (see votes and discussion on individual items below).

1. [AB2021-403](#) Ordinance adopting amendments to the Whatcom County Comprehensive Plan and Whatcom County Code relating to the Cherry Point UGA fossil fuel facilities, renewable fuel facilities, piers, SEPA, greenhouse gas emissions, and other matters

Browne moved and Donovan seconded that the SUBSTITUTE Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING.

Karen Frakes, Prosecuting Attorney's Office, answered how the changes in the substitute version of AB2021-403 are considered non-substantive.

Tyler Schroeder, Executive's Office, and Frakes walked through the email describing the changes in the proposed substitute.

Browne's motion that the SUBSTITUTE Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING carried by the following vote:

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

Nay: 0

Absent: 0

Enactment No: ORD 2021-046

2. [AB2021-405](#) Ordinance requesting that the Whatcom County Auditor include the question of establishing a Birch Bay Library Capital Facility Area to finance a new library facility in Birch Bay on the ballot at the November general election

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

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

Nay: 0

Absent: 0

Enactment No: ORD 2021-049

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Buchanan reported for the Committee of the Whole Executive Session.

Donovan moved and Browne seconded the following motion from Committee of the Whole Executive Session:

The County Council met in executive session concerning the lawsuit Fred A. Pulphus, Plaintiff v. Compass Health, a Washington Corporation, Whatcom County, Whatcom County Sheriff's Office, and Wendy Jones, Defendants, Snohomish County Superior Court Case No. 21-2-01395-31.

Pursuant to Whatcom County Code 2.56, the Council hereby finds the following:

- A. Wendy Jones was acting in a matter in which the county had an interest;
- B. Wendy Jones was acting in the discharge of a duty imposed or authorized by law;
- C. Wendy Jones 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 carried by the following vote:

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

Nay: 0

Councilmembers continued to give committee reports.

Dana Brown-Davis, Clerk of the Council, reported on the process to appoint a District Court Judge and the discussion regarding reopening Council operations to the public.

Frazezy confirmed that the executive session with the judges will be on July 27, 2021.

Councilmembers discussed other business including cannabis code amendments, YouTube censoring Council meetings, putting together a video template to put in place of a censored video to redirect viewers to a different posting of the video, scheduling a discussion about the YouTube issue, and the retirement of the Health Department's John Wolpers.

Satpal Sidhu, County Executive, spoke about the Ordinance to establish an independent review of the community response to the COVID-19 Pandemic and an upcoming farmers parade in Lynden on July 17, 2021.

ADJOURN

The meeting adjourned at 8:23 p.m.

The County Council approved these minutes on July, 27, 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