

AB2026-276

Authority of council to submit tax proposition to the voters

From: Kimberly Thulin

Sent: Friday, March 27, 2026 4:01 PM

To: Barry Buchanan <BBuchana@co.whatcom.wa.us>; Ben Elenbaas <BElenbaa@co.whatcom.wa.us>; Elizabeth Boyle <EBoyle@co.whatcom.wa.us>; Jessica Rienstra <JRienstr@co.whatcom.wa.us>; Jon Scanlon <JScanlon@co.whatcom.wa.us>; Kaylee Galloway <KGallowa@co.whatcom.wa.us>; Mark Stremmler <MStremle@co.whatcom.wa.us>

Cc: [REDACTED]

Subject: Ballot proposition ordinance proposal RCW 82.14.345

As requested at council meeting this week, I have forwarded my initial response when asked Tuesday whether council can have the RCW 82.14.345 tax measure placed on the ballot. See, email chain below. Upon closer review of the applicable statutes and chapter framework, I am correcting this analysis as detailed here.

The legislature passed RCW 82.14.345 to give legislative bodies the opportunity to impose an additional stackable tax *without* voter approval subject to meeting the requirements of RCW 43.101.540(3). RCW 82.14.345 does not also give the voters the legal authority to impose this tax via a ballot proposition. To interpret otherwise, would fail to give meaning to the plain language the legislature did include in this statute, affirmatively giving council legal authority to submit an authorizing proposition to the voters but not until after June 30 2028. This is consistent with the legislatures intention to tie this additional tax to the requirements of RCW 43.101.540(3) and corresponding law enforcement grant money, pursuant to RCW 82.14.345 (c).

This is also consistent with the powers and limitations of Charter counties. The county's broad power means that generally the county may legislate as it sees fit, so long as it does so within the confines of

the state and constitutional law; one such limitation is that a county may not tax without the express authorization from the legislature. *King County v. King County Water Districts*, 194 Wash.2d 830, 453 P.3d 681 (2019). Moreover, “[r]eferendum rights do not exist when power has been statutorily delegated to the legislative authority.” *Snohomish County v. Anderson*, 123 Wn.2d 151, 868 P.2d 116 (1994). Here, the legislature has expressly delegated the decision of whether to impose or not impose this additional criminal justice tax, to council. Correspondingly, voters have been delegated the right by the legislature to repeal such decision, if they so choose, by referendum pursuant to RCW 82.14.340.

While council cannot pass an authorizing ordinance to have voters legally decide whether to impose this additional tax via ballot, council does retain the legal authority to pass a resolution or ordinance to authorize a nonbinding advisory ballot seeking voter input whereby council could indicate its intention to impose or not impose this additional tax based on voter direction, following an election.

Conclusion: Council does not have the authority to pass an ordinance to have the voters authorize via ballot the imposition of this additional criminal justice tax.

In doing my due diligence, I consulted with MRSC lawyers to confirm my corrected analysis is sound.

Thank you for your patience as I worked through this issue.

Kimberly

From: Kimberly Thulin

Sent: Tuesday, March 24, 2026 4:55 PM

To: [REDACTED]

Cc: Mark Stremle <MStremle@co.whatcom.wa.us>; Kirsten Smith <KSmith@co.whatcom.wa.us>

Subject: RE: Question for tonight - Crim Just Sales tax

RCW 82.14.345 gives County Council until June 30 2028 the authority to authorize a sales a use tax for criminal justice purposes. If council has not voted to authorize the imposition of this tax by June 30 2028, the county may submit an authorizing proposition to the county voters for approval. Notwithstanding this language, council is not foreclosed from authorizing the voters to authorize this tax instead of approving as a council body. See, RCW 82.14.450. RCW 82.14.450 statutorily authorizes council to submit an authorizing proposition (In accordance with the terms of the Chapter), to county voters for the general election pursuant to RCW 82.14.450 so long as the ballot measure clearly states the purposes for which the proposed sales and use tax will be used (purpose as defined in 82.14.345). This could however, impact when funds are collected/can be used.

I did not look further into timing/specific next steps but can do so, if additional information/follow up is requested.

Kimberly

From: Kimberly Thulin

Sent: Monday, April 6, 2026 1:17 PM

To: Barry Buchanan <BBuchana@co.whatcom.wa.us>; Ben Elenbaas <BElenbaa@co.whatcom.wa.us>; [REDACTED] Elizabeth Boyle <EBoyle@co.whatcom.wa.us>; Jessica Rienstra <JRienstr@co.whatcom.wa.us>; Jon Scanlon <JScanlon@co.whatcom.wa.us>; Kaylee Galloway <KGallowa@co.whatcom.wa.us>; Mark Stremler <MStremle@co.whatcom.wa.us>

Cc: [REDACTED]

Subject: AB2026-276 Discussion of authority of council to submit tax proposition to the voters **DO NOT REPLY ALL OR FORWARD **ATTY CLIENT CMU

On Friday, Division One of the Court of Appeals issued its unpublished Opinion in *Tim Koetje v. Protect Whatcom Kids/Whatcom County* (Slip. Op. 87627-9-1). The decision discusses in part, local initiative powers. Consequently, the court's analysis is relevant to the agenda item on for discussion tomorrow regarding a proposed ordinance to submit a ballot proposition to let the voters decide whether to impose an additional sales and use tax pursuant to RCW 82.14.345. As I previously opined based on legal review, this proposal falls outside council's legal authority. This is not a policy judgment, it is a legal constraint that I am required to inform council of. The relevant analysis in the Opinion states:

“The local initial power is more limited than the statewide initiative power.” *Jewels Helping Hands v. Hansen*, 4 Wn.3d 665, 686, 567 P. 3d 19 (2025). “[L]ocal initiatives can accomplish only what falls within the scope of their authorized power.” *Id.* A local initiative exceeds its scope “ if it (1) is administrative’....instead of ‘legislative in nature’ or (2) affects issues delegated by the State to a local government’s ‘legislative authority’ rather than to the local government as a ‘municipal entity.’ *Id.* at 686-87(quoting *Freed*, 192 Wn.2d at 483).

Slip. Op. at 6. This analysis outlines the parameters within which a county may exercise initiative or referendum powers; further confirming that council does not have the legal authority to refer the additional sales and use tax to the voters because the applicable tax statute reflects the state delegated the authority to impose this tax to the county's ‘legislative authority’ not to the county as a municipal entity. RCW 82.14.345 (1). Thus, an ordinance placing a referendum on the ballot for voters to decide whether to impose this tax would exceed council's authority. See also, *State v. ex rel. Guthrie v. City of Richland*, 80 Wn.2d 382, 384, 494 P.2d 990 (1972) (Where the state legislature enacts a general law that grants such authority to the legislative body of a city, the exercise of that authority by the legislative body is not “subject to repeal, amendment or modification by the people through the initiative or referendum procedure.”)

This information is provided to council to further inform the discussion tomorrow and should not be interpreted as weighing in on policy considerations of this proposal.

[REDACTED]

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