

# **Whatcom County Council**

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



## **Minutes - Draft Minutes**

**VIRTUAL MEETING - VIEW ONLINE**

**Tuesday, April 21, 2020**

**1 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 1 p.m. in a virtual meeting.

### ROLL CALL

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

**Absent:** None

### FLAG SALUTE

### ANNOUNCEMENTS

### EXECUTIVE REPORT

Satpal Sidhu, County Executive, read a memo into the record (on file).

Bill Elfo, Sheriff, updated the Council on the plan to change the organizational structure of the Incident Command System from a Unified Command to a single Incident Commander and a Deputy Incident Commander which will improve decision making and communication, cut down on inconsistencies, and only require two people on rotation as opposed to 12. The Incident Commander will be Scott McCreery, Emergency Management Director from the Port of Bellingham and also currently serving as the Planning Chief in the Unified Command. The Deputy Incident Commander will be Andy Day from the Bellingham Fire Department. The transition will take place on Thursday, April 22, 2020. The Incident Commander will report to the Executive Committee and the Executive will link in with the Policy Committee to keep everyone informed. Looking to the future and long-term strategies, they may consider adding someone with economic background to do forecasting and make predictions.

The following people spoke and answered questions:

Tyler Schroeder, Executive's Office

Brad Bennett, Administrative Services Department

Steve Oliver, County Treasurer

Councilmembers and staffed discussed a project-based budget of 1.6 million dollars for a County financial system replacement which is currently on hold and could be returned as a mitigation measure to the General Fund with Council approval; two projections of the General Fund

cash flow balance - one falling below five million dollars in September of this year if mitigation measures are not put in place and the other taking mitigation into consideration; the projections for loss of revenue; what actions were taken in response to revenue loss in the recession of 2009; how much money was saved at that time and actions being taken now being similar to those in 2009.

The County won't have additional good information on revenue for this year until later in the year. The State has delayed the filing for sales tax revenue so it is a big unknown at this point. As far as property tax is concerned, they used their best judgment for how much will be coming in. They figured we would have two really bad months and then would start climbing out of the hole, but until they get some real data they don't know what they are up against. The Administration will continue to look at the projections and assumptions as time goes on and continue asking departments where their revenues are and how they are moving forward.

Bennett answered whether assumptions about department-related revenues are based on what we know has been lost so far and whether they take into account things like the proposed ordinance providing permitting relief to food establishments which would decrease revenue. They have been talking to the departments to find out what is going on right now and it's been somewhat encouraging but they won't know until they have some actual numbers. They looked line by line at revenues and knew the revenue from permits would be down but did not coordinate with the Health Department for that estimate. They project that fee for service activities will be the most impacted. He stated they did not look specifically at the overall percentage of the reduction in revenue and the overall forecasted change in expenses but have instead focused on how to keep the organization solvent throughout the year.

Councilmembers and Bennett discussed focusing on cash flow, that the estimates may be too optimistic, that numbers from the 2007-2008 recession may prove to be inaccurate, planning for a more significant hit, and a current estimate that revenues will be down by nine million dollars.

Oliver spoke about measures taken in the last recession and stated the mitigation actions outlined today by the Executive were just the initial steps they took back then. We will not know if this response will be adequate until we have more information and there will likely be more incremental steps taken as we get more economic and financial data. If the County exerts as much effort on economic recovery as we are now on the COVID-19 pandemic there will be some heavy lifting in our community to

get the economy back moving.

Councilmembers and Schroeder discussed looking at the possibility of reallocating expenses or projects so that they are investing in things such as Public Works projects that are going to have a larger economic impact on and stimulus to our economy; the formation of an internal work group made up of representatives from the Finance, Treasurer's, Public Works and other Departments which will come back to the Council with additional projections and information when it becomes available; sending questions to that group through Schroeder; whether the work group could be expanded to include some Councilmembers; figuring out thresholds and what actions should be taken if they occur and then putting a plan in place; Councilmembers identifying what the goals are as it relates to budgeting and what they want to achieve so the administration has that information as guidance when they are looking at projects; being cautious to not base assumptions on March and April since the community stockpiled supplies during that time meaning an economic drop-off would come later in April and May; factoring in the possibility that things may be running at half speed for the next 18 months; maybe working on these issues in the Finance and Administrative Services Committee; and the amounts of the General Fund and the overall County budgets and how they relate to estimated revenue loss.

## **OTHER ITEMS**

1. [AB2020-116](#) Update on COVID-19

Erika Lautenbach, Health Department Director, updated the Council on the following:

- Health Department support of the transition to a Single Incident Command structure.
- Unified Command operational period objectives which will be sent to Council via email.
- The testing strategy of the Health Department. Supplies are more available and testing labs have the ability to take more tests than before, they are working with private providers to be able to test everyone who is showing any kind of symptoms and the Health Department is still doing drive-by testing. The Health Department can not take on more capacity due to limited staffing and resources.
- Training of environmental health and other Health Department staff to do more contact investigations and to reach out to more “concentric circles” of people than just those who have been in contact with someone who has tested positive for COVID-19 including people who have been exposed to someone who has been

exposed to someone else who has been exposed to a positive case. This is labor intensive but needed so they are trying to ramp up staffing. They have contacted the State and the State is working to assist in the effort.

- The role of the Public Health Advisory Board Task Force which is to provide businesses with technical assistance to encourage and promote social distancing and infection control. This is work that will begin as early as next week.
- Conversations with the State about what is to come on May 4th and hopefully hearing more from the Governor on steps toward recovery.

She answered questions about the purpose of the Public Health Advisory Board Task Force, how many members should be in that group; whether some may not have direct experience in operating a business; how they will choose who will be in the group; the need for another group that will talk about what re-opening will look like and how she sees those two groups working together; an economic recovery group already formed within the Unified Command which will look at broad economic impacts and how it compares with the advisory board; getting a document from the Health Department that outlines the mission of each of the groups and what boundaries they will work within; and who is on the current economic recovery group at the Unified Command. Don Goldberg from the Port of Bellingham is the chair of that group.

**This agenda item was DISCUSSED.**

2. [AB2020-117](#) Discussion of strategies related to COVID-19

The following people spoke and answered questions:

John Gargett, Division of Emergency Management  
Erika Lautenbach, Health Department Director  
Tara Sundin, Unified Command  
Brad Bennett, Administrative Services Department  
Tyler Schroeder, Executive's Office  
Steve Oliver, County Treasurer

Gargett and Lautenbach discussed with Councilmembers the work of the Economic Impact Task Force which was set up as a result of the 158 different responses to a Small Business Association (SBA) declaration for our county. The task force generally works outside of direct Unified Command and is chaired by Port of Bellingham's Don Goldberg. He answered question about the plans for agriculture and construction trades.

Lautenbach and Gargett answered questions about a Facebook & Carnegie Mellon University COVID-19 Symptom Map which is mapping data across the country and shows what percentage of people have flu or COVID-19-like symptoms and how the data from that study relates to the County's projections; whether we are getting information from the hospital on their capacity levels; how much of our spread has come from interactions at businesses that are currently open and whether our mitigation measures are successful. There are a number of ways that businesses have been working to keep customers and employees safe. The Health Department is noticing changes in behavior and attitudes about the Stay Home Stay Healthy order and it is a concern.

Gargett summarized the status of the Motel 6 which was purchased as a quarantine and isolation facility. As of today all necessary contracts are in place, six rooms are ready to be occupied, three are set aside for medical staff and office work, a guard shack and a fence are in place, they are waiting for an order of additional mattress covers so additional rooms can be opened up, the cost of security cameras was exorbitant so those were put on hold, McDonalds has been contracted with to provide food on Sundays, and fridges and microwaves have been ordered but are on back order.

Councilmembers and the speakers discussed why the County has contracted for the expenses but only has six rooms open and whether those rooms are filled. Many contracts have been written based on the number of occupants, but some expenses such as staffing and security for the facility will be a constant. The facility will be operational as of April 22, 2020 but they don't expect a high amount of people coming in the next couple of days. The challenge to opening more rooms has been procuring the needed supplies and the strategies for getting them have changed daily. The goal is to get rooms ready in blocks of ten rooms at a time as the need requires, starting with 20 rooms. They discussed why more rooms are not available; whether the County will be able to recoup the money they are putting into the motel later; the possibility of asking for donations of the needed supplies; what costs will be reimbursed by FEMA and the timeline for reimbursement; how to more rapidly open the remaining rooms or whether the facility should be open at all, whether there is an alternative plan if there are only six people being served; whether the hospital will contribute resources and financing to the facility; whether the Motel is just a COVID-19 facility; and whether, if the hospital does have plenty capacity, we could pause the contracts for food and other expenses until those things would be needed.

**This agenda item was DISCUSSED.**

3. [AB2020-163](#) Ordinance amending the 2020 Whatcom County Budget, request no. 9, in the amount

of \$261,127 (revised from original proposed amount to include only essential items)  
There was no staff report on this item.

**Browne moved** and Donovan seconded that the Ordinance be adopted.

Tyler Schroeder, Executive's Office, answered questions about whether this item is essential and whether there are potential projects that would be shovel-ready if the County receives stimulus money, whether the Northwest Annex is currently housing the Planning and Development Services Department and whether the plan is to bring that existing building to the ground. The plan for a new building would be to have 30,000 square feet of office space which could potentially house other departments as well. There is also a round-a-bout project which is on the six-year plan for Public Works. Potential uses for the office space might include the Planning and Development Services Department, the Health Department, the Road Department of Public Works, or a satellite Sheriff's Office facility. The dollars would allow for capital planning research and planning to determine answers to that question. He answered whether this project is one of many included in a list of \$250,000,000 worth of projects, whether any property that might be freed up by moving departments could be sold, and whether the Facilities Department has been considered for this location.

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

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

**Nay:** 1 - Elenbaas

**Absent:** 0

Enactment No: ORD 2020-019

4. [AB2020-167](#) Request authorization for the County Executive to amend a contract between Whatcom County and U.S. Department of Agriculture, Forest Services Baker Lake overtime patrols modifying the Annual Operating Plan in the amount of \$21,900.00 for 2020 with estimated period beginning May 1, 2020 and ending September 30, 2020 and updates to the contact information for Whatcom County

**This agenda item was WITHDRAWN.**

5. [AB2020-168](#) Ordinance amending the Whatcom County 2020 Budget, Request No. 10, in the amount of \$3,000,000

**This agenda item was WITHDRAWN.**

6. [AB2020-169](#) Ordinance authorizing an interfund loan to finance cash flow for COVID-19

emergency response

**This agenda item was WITHDRAWN.**

7. [AB2020-171](#) Request authorization for the County Executive to enter into a grant agreement between the Whatcom County Flood Control Zone District and the Department of Ecology, in the amount of \$7,550,000 (Council acting as the Whatcom County Flood Control Zone District Board of Supervisors)

**Kershner moved and Donovan seconded that the Contract (FCZDBS) be AUTHORIZED. The motion carried by the following vote:**

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

**Nay:** 0

**Absent:** 0

8. [AB2020-172](#) Request authorization for the County Executive to award bid #20-17 and enter into a contract between Whatcom County and Combined Construction, Inc. for the Flynn Road Fishtrap Creek Bridge No. 51 Repair Project in the amount of \$38,434.50

**Donovan moved** and Frazey seconded that the Bid Award be Authorized.

The following people spoke:

Tyler Schroeder, Executive's Office

Jon Hutchings, Public Works Department Director

Hutchings briefed the Council on the item and stated that spending these dollars in order to be able to present to the stimulus opportunities an aggressive capital program so that people can be put to work on these projects is an important component of the whole economic recovery conversation. All of these contracts require that contractors present a COVID-19 response plan. He answered whether money from the Road Fund can be transferred to the General Fund. Road funds cannot be transferred to the General Fund but there is some ability for other funds to borrow from the Road Fund. He answered where the Flynn Road Fishtrap Creek Bridge is and explained why the work is necessary, whether this request anticipates the reduced revenues coming in from the gas tax, and how they might be looking at supplementing this budget to spend as much as possible on Public Works projects to kickstart the economy. Public Works has a preliminary stimulus project list put together at the request of the Executive.

**Donovan's motion that the Bid Award be AUTHORIZED carried by the following vote:**

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



**Nay:** 0

**Absent:** 0

9. [AB2020-177](#) Emergency ordinance amending the 2020 Whatcom County Budget, request no 11, in the amount of \$154,946

*Frazey moved* and Browne seconded that the Emergency Ordinance be adopted.

Tyler Schroeder, Executive's Office, briefed the Council on the Emergency Ordinance and stated this item is connected to AB2020-179 which is up for Introduction.

Councilmembers discussed why there are two ordinances for consideration.

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

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

**Nay:** 0

**Absent:** 0

Enactment No: ORD 2020-020

10. [AB2020-173](#) Ordinance establishing a process for information to be disclosed to the Division of Emergency Management, the County Executive, the County Health Board and the public during a public health emergency

Donovan asked about which version they would be considering.

*Browne moved* to amend the ordinance in the Agenda Packet to incorporate the changes he proposed in a version which he emailed to the Council (on file as Browne's Proposed Edits for Consideration 4.21.2020). The motion was seconded by Donovan.

Councilmembers discussed the motion to amend.

Buchanan stated a point of order that there needs to be a motion to adopt the ordinance first before amending it.

*Browne withdrew* his motion to amend *and moved* that the ordinance be adopted. The motion was seconded by Donovan.

*Browne moved* to amend the ordinance in the agenda packet to incorporate the changes he proposed in a version which he emailed to the Council (on file as Browne's Proposed Edits for Consideration 4.21.2020). The motion

was seconded by Donovan.

Councilmembers discussed why the Administrative Director should be removed, the role of the Health Board and the proposed amendments, and who the Administrative Director is.

The motion to amend carried by the following vote:

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

**Nay:** 1 - Elenbaas

**Byrd moved** to amend the ordinance to remove the requirement of a super majority vote from Whatcom County Code 24.01.040 section C subsection (ii) in Exhibit A:

(ii) provide a brief daily update to the public in a format and level of detail as approved by the ~~super~~-majority vote of the County Health Board.

The motion was seconded by Elenbaas.

Councilmembers discussed the intent of the vote being a super majority as opposed to just a majority and the reasons to remove the requirement.

**Byrd withdrew** his motion to amend.

**Byrd moved** to amend the ordinance to remove section D in Exhibit A. The motion was seconded by Kershner.

Councilmembers discussed the motion, a recommendation to strike the section by the Executive Office (on file as Executive's Additional Proposed Edits for 4.21.2020), the reasons why it should be stricken and the intent of Councilmember Browne in including the section.

Tyler Schroeder, Executive's Office, spoke about why the Executive's Office recommended to strike section D. They were not sure what the drafter intended.

The motion to amend carried by the following vote:

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

**Nay:** 0

Byrd asked about section C subsection (i) and who decides what's relevant information and Councilmembers discussed the language and the intent of the section.

***Kershner moved*** to amend section C subsection (i):

- (i) disclose all **relevant** information **which, in the opinion of requested by** the emergency management division, County Executive, or County Health Board, **that** is required to perform their respective duties effectively.

The motion was seconded by Donovan.

The motion to amend carried by the following vote:

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

**Nay:** 0

Byrd stated he thought the intent of the ordinance was to provide more transparency and more access to the information so that information would flow to the community as well as the councilmembers. He acknowledged a concern that the number of questions asked by councilmembers may have caused additional workload on the Health Department staff. That could have been alleviated if councilmembers had direct access to information without having to go through the Health Department. He asked about adding a third subsection to section C that would say these parties would all have access to the systems or the information to get the information directly so they wouldn't have to go through the Health Department for every question.

Councilmembers discussed the motion and the fact that the Council does not have direct access to any of the other department systems and that personally protected information may be in that system.

Satpal Sidhu, County Executive, stated that Whatcom is a Charter County but that may be an argument to be a Commissioner County. He also spoke about the Council in the roles of the Health Board and the Flood Control Zone Board of Supervisors. Information should be available when Council requests it but changing the code is not necessary.

Councilmembers and Sidhu discussed that none of the information the Health Board will gain from the ordinance is information above and beyond what they would be able to get with a public records request, it just sets the time frame so that information gets to them in a timely manner in an emergency; that the Council is not trying to tell the Health Department what they should be doing; whether the Executive has more privilege to information than the Council; and the division of powers as stated in the Charter.

***Elenbaas moved*** to call the question. The motion was seconded by Frazey.

The motion to call the question carried by the following vote:

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

**Nay:** 1 - Byrd

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

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

**Nay:** 0

**Absent:** 0

Enactment No: ORD 2020-021

## **INTRODUCTION ITEMS**

1. [AB2020-179](#) Ordinance amending the 2020 Whatcom county Budget, request no. 11, in the amount of \$154,946

Buchanan asked if this item still needs to be introduced since the emergency ordinance was just adopted (AB2020-177). Tyler Schroeder, Executive's Office, stated the Administration will need it to be introduced so that they can make the ordinance permanent.

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

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

**Nay:** 0

**Absent:** 0

## **REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES**

1. [AB2020-188](#) Ordinance supporting a thoughtful approach to doing business in Whatcom County during the COVID-19 pandemic

**Elenbaas** brought forward an emergency ordinance and **moved** that the Emergency Ordinance be adopted. He read the ordinance into the record. The motion was seconded by Kershner.

Elenbaas explained the reason for proposing the ordinance. He stated that councilmembers need to have the political will to do the right thing to help the people in their district.

Karen Frakes, Prosecuting Attorney's Office, stated the ordinance is in direct violation of the governor's proclamation. Regardless of political will you simply don't have the power to do something like this. It is illegal and whether this is a resolution or an ordinance there are problems with it

because the Council would be directing people basically to disregard the Governor's proclamation by supporting a resolution that's worded in this way.

Councilmembers and Frakes discussed knowing what mitigation measures work; the fact that the County does not have the power to supersede the Governor's proclamation; other jurisdictions that have attempted similar resolutions; why local businesses that offer like goods to those listed in the ordinance are not allowed to be open; who decided what projects were safe to do and what guidance was used; whether it is too soon to open businesses; whether the Governor's orders are following lawfulness and whose shoulders it falls on to do the right thing; conveying to the Governor what councilmembers think is important to do; making sure there are systems in place first for businesses so that they can open safely; and the need for a plan for how things will move forward and how businesses will reopen.

The motion that the Emergency Ordinance be adopted failed by the following vote:

**Aye:** 2 - Elenbaas, Byrd

**Nay:** 5 - Frazey, Kershner, Browne, Buchanan and Donovan

*Elenbaas moved* to introduce the ordinance as a regular ordinance. The motion was seconded by Donovan.

**Elenbaas' motion that the regular Ordinance be INTRODUCED carried by the following vote:**

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

**Nay:** 0

**Absent:** 0

2. [AB2020-189](#) Ordinance providing permitting relief to food establishments

*Byrd moved* to adopt AB2020-189 which was sent via email to Councilmembers. The motion was seconded by Frazey.

Councilmembers discussed options for the ordinance including an Executive Order.

Cathy Halka, Council Office Legislative Analyst, answered a question about the Executive Order and Satpal Sidhu, County Executive, stated he had indicated that he would sign it.

Councilmembers, Tyler Schroeder, Executive's Office, and Frakes discussed the ordinance and the process for adopting it. The Executive would sign the Executive Order and then the Council would follow up with the ordinance which could be introduced today or on May 5, 2020.

**Byrd withdrew** his motion to adopt as a point of order and **moved** that it be introduced. The motion was seconded by Frazey.

**Byrd's motion that the Ordinance be INTRODUCED carried by the following vote:**

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

**Nay:** 0

**Absent:** 0

#### REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES CONTINUED

**Browne** stated he emailed a version of AB2020-173 that had scrivener's errors and **moved** to reconsider the ordinance. The motion was seconded by Donovan.

Kershner stated her previous motion to amend is not reflected in the corrected ordinance. She read her motion to amend section C subsection (i):

- (i) disclose all **relevant** information ~~which, in the opinion of~~ **requested** by the emergency management division, County Executive, or County Health Board, that is required to perform their respective duties effectively.

Cathy Halka, Council Office Legislative Analyst, stated that no change needs to be made to the ordinance. The only word that didn't get transcribed is the word "that."

Frakes stated no action is required.

**Browne withdrew** his motion to reconsider.

#### Report from Committee of the Whole

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

I hereby **move** to approve defense and indemnification of: Bill Elfo, Wendy Jones, Stuart Andrews, Adam Miller, Cheryl Cardinal, Matt Turner, Jason McDonald, Matthew Charroin, Time Kiele, Jeffery Hindman, Violet Ignashova, Miriah Brown, and Joshua Farmer, named in Cooper as personal

representative of the Estate of Paula Jefferson, et al. v. Whatcom County, et al. Whatcom County Superior Court Cause No. 20-2-00581-37.

The motion was seconded by Browne.

The motion carried by the following vote:

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

**Nay:** 0

**ADJOURN**

The meeting adjourned at 4:50 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WA

\_\_\_\_\_  
Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Barry Buchanan, Council Chair

\_\_\_\_\_  
Kristi Felbinger, Minutes Transcription