



# Whatcom County

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

## Agenda Bill Report

File Number: AB2024-466

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<b>File ID:</b>	AB2024-466	<b>Version:</b>	1	<b>Status:</b>	Approved
<b>File Created:</b>	07/03/2024	<b>Entered by:</b>	CHalka@co.whatcom.wa.us		
<b>Department:</b>	Council Office	<b>File Type:</b>	Resolution		
<b>Assigned to:</b>	Council Committee of the Whole			<b>Final Action:</b>	07/09/2024
<b>Agenda Date:</b>	07/09/2024			<b>Enactment #:</b>	RES 2024-035
<b>Related Files:</b>					

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Primary Contact Email: chalka@co.whatcom.wa.us

### TITLE FOR AGENDA ITEM:

Resolution requesting Whatcom County Superior Court issue a declaratory judgement to determine whether Initiative 2024-01 is procedurally invalid

### SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:

Resolution requesting Whatcom County Superior Court issue a declaratory judgement to determine whether Initiative 2024-01 is procedurally invalid

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### HISTORY OF LEGISLATIVE FILE

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Date:	Acting Body:	Action:	Sent To:
07/09/2024	Council Committee of the Whole	RECOMMENDED FOR APPROVAL	
		Aye: 4 Buchanan, Donovan, Galloway, and Scanlon	
		Nay: 2 Elenbaas, and Stremier	
		Abstain: 1 Byrd	
07/09/2024	Council	APPROVED	
		Aye: 4 Buchanan, Donovan, Galloway, and Scanlon	
		Nay: 2 Elenbaas, and Stremier	
		Abstain: 1 Byrd	

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**Attachments:** Proposed Resolution, Memo, Letter from League of Women Voters

**RESOLUTION NO.** 2024-035

**REQUESTING WHATCOM COUNTY SUPERIOR COURT ISSUE A DECLARATORY  
JUDGMENT TO DETERMINE WHETHER INITIATIVE 2024-01 IS PROCEDURALLY  
INVALID**

**WHEREAS**, Whatcom County Council recognizes the importance of the initiative process granted in the County Charter; and

**WHEREAS**, the Whatcom County Charter Commission, and the Whatcom County Council and the voters of Whatcom County have moved to facilitate greater access to the citizens' initiative process in Whatcom County; and

**WHEREAS**, the initiative process can only be used lawfully and is subject to rules and limitations imposed by the County Charter and State Law; and

**WHEREAS**, Washington Courts have recognized that it is appropriate to evaluate a proposed local initiative to determine whether it is within the limited scope of the local initiative process; and

**WHEREAS**, Washington Courts have recognized that the scope of the citizen initiative process is far more limited at the local level versus the state level; and

**WHEREAS**, Washington Courts have deliberated over distinctions of legislative versus administrative matters that may or may not be the subject of citizen initiatives; and

**WHEREAS**, Whatcom County has an Advisory Memorandum from November 2013 that outlines legal tests and procedures to determine if a local ballot measure is a proper subject for initiative and referendum; and

**WHEREAS**, the Advisory Memorandum states that the only way for the validity of the subject matter of a proposed Initiative to be addressed is in the courts; and

**WHEREAS**, proposed Initiative 2024-01 has apparent defects that a court must adjudicate; and

**WHEREAS**, Initiative 2024-01 appears to be an invalid referendum because it seeks a referendum on a county ordinance but was not supported by sufficient signatures and/or concerns subjects exempt from referendum under the County Charter; and

**WHEREAS**, the petition for Initiative 2024-01 appears to be invalid for violating the petition form requirements of Whatcom County Code 1.08.060.D, which require that the ballot title be inserted in the "We, the undersigned" section of the petition itself, yet it is missing; and

51           **WHEREAS**, Initiative 2024-01 appears to interfere with the County Council’s  
52 exclusive authority to refer measures to the ballot under RCW 29A.04.321; and

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54           **WHEREAS**, Initiative 2024-01 appears to interfere with the County Council’s  
55 exclusive authority over County budgets as recognized by the Washington Supreme Court in  
56 *Protect Public Health v. Freed*, 192 Wn.2d 477 (2018) (removing county initiative from the  
57 ballot for interfering with County Council’s exclusive budgetary authority), and interferes  
58 with the County’s ability to pass a budget in a timely manner; and

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60           **WHEREAS**, proposed Initiative 2024-01 appears to exceed the scope of the initiative  
61 process because its single operative sentence seeks only to repeal Whatcom County  
62 Ordinance 2022-045, which cannot be done by local initiative; and

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64           **WHEREAS**, Ordinance 2022-045 contained two primary components: (1)  
65 temporary/preliminary provisions placing a levy lid lift on the 2022 ballot, and (2)  
66 permanent provisions to take effect if the levy lid lift is enacted, directing levy proceeds  
67 towards children’s well-being and protecting taxpayers by requiring planning and  
68 performance audits; and

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70           **WHEREAS**, the temporary/preliminary provisions of Ordinance 2022-045 have been  
71 superseded by the vote of the people and cannot effectively be repealed; and

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73           **WHEREAS**, the repeal of the permanent provisions in Ordinance 2022-045 would  
74 harm taxpayers by retroactively removing the voters’ restriction on the use of levy proceeds  
75 and accountability measures such as planning and performance audits; and

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77           **WHEREAS**, the repeal of restrictions on the use of levy funds *after the voters have*  
78 *approved the levy* appears to interfere with the statutory scheme governing property taxes,  
79 which authorize a levy lid lift measure to include restrictions on the use of tax proceeds and  
80 allows voters to rely upon the permanence of those restrictions for the life of the levy; and

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82           **WHEREAS**, Section 5.40 of the Whatcom County Charter expressly gives the County  
83 Council a role in evaluating a proposed initiative, and deciding whether to approve or reject  
84 the initiative or to propose a substitute to place before the voters; and

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86           **WHEREAS**, the County Council’s role under the Charter necessarily requires the  
87 County Council to evaluate both the policy and legality of a proposed initiative; and

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89           **WHEREAS**, since the County Charter was enacted in 1978, Washington courts have  
90 confirmed that courts and judges should make the decision on whether a proposed initiative  
91 is legal; and

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93           **WHEREAS**, Initiative 2024-01 has apparent legal defects that must be evaluated for  
94 the County Council to fulfil its duties under the County Charter, and the County Council  
95 believes it is most appropriate for a Court to conduct that legal evaluation; and

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97           **WHEREAS**, ignoring these apparent legal problems would not make them go away,  
98 since initiatives are subject to post-election challenge; and

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100           **WHEREAS,** Courts have determined that pre-election review of local initiatives is  
101 appropriate because placing an invalid initiative on the ballot harms voters and undermines  
102 the initiative process; and

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104           **WHEREAS,** the County Council has the authority to decide which lawsuits the  
105 County will bring; and

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107           **WHEREAS,** the County’s advisory memorandum states that “The Prosecuting  
108 Attorney must file the lawsuit if the County believes that the subject matter of the initiative  
109 or referendum is beyond the scope of the Charter’s powers of initiative or referendum”; and

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111           **WHEREAS,** the County Council believes that Initiative 2024-01 is procedurally  
112 invalid and/or beyond the scope of the initiative power, but recognizes that the Court will  
113 make that final decision; and

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115           **WHEREAS,** in rare occasions in the past, when the County Prosecutor has declined  
116 to take legal action at the direction of the County Council, the County Prosecutor has  
117 approved the County Council’s hiring of outside counsel to do so; and

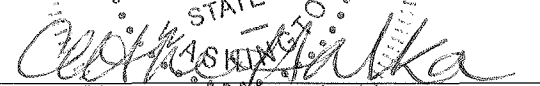
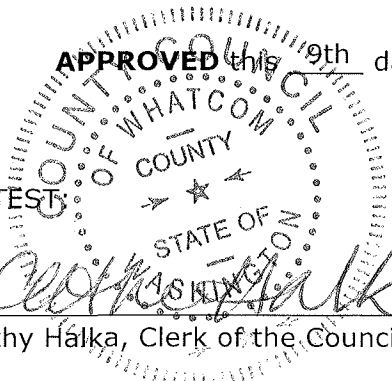
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119           **WHEREAS,** in passing this resolution, neither the County nor the County Council  
120 take a position for or against the policies or merits of Initiative 2024-01.

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122           **NOW, THEREFORE, BE IT RESOLVED** that, in order to protect the interest of the  
123 County, voters, and taxpayers, the County shall bring a declaratory judgment action in  
124 Whatcom County Superior Court to determine whether Initiative 2024-01 is procedurally  
125 invalid and/or exceeds the scope of the local initiative process for the reasons stated in this  
126 resolution; and


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128           **BE IT FINALLY RESOLVED** that if the County Prosecutor is unable or unwilling to  
129 represent the County in bringing this action, the County Council hereby requests that the  
130 County Prosecutor authorize the County Council to retain outside counsel to bring such  
131 action.

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133           **APPROVED** this 9th day of July, 2024.

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138           ATTEST:  
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142           Cathy Hálka, Clerk of the Council



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145           WHATCOM COUNTY COUNCIL  
146           WHATCOM COUNTY, WASHINGTON



147           Barry Buchanan, Council Chair

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149           APPROVED AS TO FORM:  
  
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Civil Deputy Prosecutor