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To: Whatcom County Council

Re: BERK consulting report

Honorable Councilmembers

I want to start by saying I remain very proud of our County employees, our Health Department and the thousands of community and business members who stepped up in response to the Pandemic.

However, in order to be better prepared for the next disaster there are several key areas where we can and must improve. This was the underlying purpose of why this report was commissioned. I am sure you want the report to be comprehensive and reflect the unique circumstances in Whatcom County rather than be “cookie cutter”. To that end I hope the final report includes a review / response to the following points, as I don’t believe it will be complete or useful unless these issues have been fully researched and analyzed.

I hope you find these comments helpful.

Executive Summary

The clear stated purpose of this report was to help us be prepared for the next major new national/global disaster. The one lesson of the Pandemic is we gained a deep understanding of how to manage future pandemics. Another is disease management is but one part of dealing with a pandemic, it quickly morphs into issues such as food and housing security, unemployment and economic survival, access to education, childcare, and medical services. COVID-19 was the cause, but it impacted almost every aspect of society, not just public health.

What we remain under-prepared for is the next disaster, the one we have no experience with, and cannot expect others to come to our aid, such as a widespread attack on our national power grid or telecommunications infrastructure. Unfortunately, the review and recommendations are written from the perspective the next crisis will also be “health related”. It is not what we asked for, which limits its value.

Furthermore, the report has several factual errors and lacks a depth of inquiry on several key structural issues. It is too superficial to be able to produce actionable recommendations. I hope the Council actively identifies and addresses these deeper issues in the Whatcom County Comprehensive Emergency Management Plan update you will be doing this year.

The key opportunities for improvement as I see are:

Information sharing – and maintenance of public trust.

Emergency responders, the community and their elected representatives have a right to know what is happening. Restrict information and you lose the public trust. Lose the public trust and you lose the belief: *"We're in this together!"*

From the very beginning some members of the leadership of Unified Command withheld information from elected officials including the County Council/Health Board (CCHB), city officials and at times, other members of Unified Command. I understand this was one of the key reasons several member agencies ultimately ceased participating in Unified Command

This is hardly a new problem, as the author concludes in the book *The Great Influenza*, a definitive study of the pandemic that hit the world 100 years ago. *"The final lesson of 1918, a simple one yet one most difficult to execute, is that...those in authority must retain the public's trust. The way to do that is to distort nothing, to put the best face on nothing, to try to manipulate no one. Lincoln said that first, and best. A leader must make whatever horror exists concrete. Only then will people be able to break it apart."*

Our number one priority should be to not repeat this mistake during future emergencies.

Competent leadership – Resource resilience

The Incident Command/Unified Command system is modeled on a military style chain of command. This should work well provided the military discipline of providing extensive training, testing and vetting before people are placed in positions of authority is also followed. While the initial people who assumed leadership roles were often quite competent, those assigned to replace them often had little to no experience in managing the tasks and began making decisions without adequate review of the history related to their responsibilities.

The assumption behind the National Incident Management System (NIMS) is when one community is in trouble, their neighboring community will help, but the Pandemic has taught us there can be trouble so vast that we are left to fend for ourselves. We need to build a deep bench of both people with the traditional skills required of emergency management, plus skills not normally found on the NIMS list, such as manufacturing, social media expertise, data analysis, and non-electronic means of mass communication.

Clarity of roles, responsibilities, and authorities – who has authority and how much.

The Incident Command/Unified Command system is built on the premise the subject matter expert of the root cause of the problem leads Unified Command. This is fine for an incident with localized impact such as a fire or flood, but a Pandemic is a much larger multi-faceted event that few people have the breadth of knowledge to be able to manage all the pieces. Furthermore, being a subject matter expert does not mean a person is comfortable or competent at leading a large organization, particularly if they have never managed a large group of people before.

Clarity on this issue becomes more pressing when you consider that in the case of failure of our energy infrastructure the subject matter expert would likely be a manager from Puget Sound Energy. Should this person's authority extend to all aspects of the emergency response or just the section related to restoring the electricity grid?

There were frequent disagreements as to whom had decision making authority over key policy issues – the communities elected representatives who serve on the CCHB or members of Unified Command. Many of the members of Unified Command were neither elected officials nor even government employees, some served only a few shifts in leadership positions before returning to their regular jobs, yet they had the authority to create and present the CCHB with policy decisions and expected funding for them.

The process within Unified Command was very opaque, which naturally led some of those who were elected to review and approve funding these requests, to seek to be a part of the information flow in order to make more informed decisions.

Information sharing

The people want and expect their elected leaders to have the information needed to serve them. One of the key goals of this report is to help ensure that in the future every elected official and resident of Whatcom County shall have timely access to the information they decide they need to fight the next big community battle.

The most significant omission in the BERK report is it does not address why key information was intentionally withheld from the elected policy makers and how this can be prevented from occurring again in the future.

Unified Command was staffed by members of our community, most of whom were either unelected and/or not employed by any branch of government. Many of them were volunteers and we remain grateful for their help. However, some senior members of Unified Command assumed their role gave them the authority to restrict access to information to other members of Unified Command and elected officials (County and City). While it was appropriate to withhold personal patient health information, it was completely inappropriate to withhold other information that was readily available to elected officials in other jurisdictions, distributed by the WA State DOH, or through the media.

Any limitation or delay in providing any elected official in Whatcom County with information they feel they need to represent the citizens that elected them or otherwise do their job – directly interferes with the people's faith in their elected leaders and by extension the "continuity of government".

To deny or delay requests for information from Councilmembers was a breakdown in the rule of law, to exclude the Council/Health Board from key policy decisions was a breakdown in the chain of command. The negative impact of the policy decision made by Unified Command (to decide what and how information would be shared to whom), without the CCHB's knowledge was a root cause of almost every difficulty that followed and undermined the premise that "*We're in this together!*".

The County Council's right to be informed is built into the foundation of our laws.

1. RCW 70.05.070 (4) requires the Health Officer to “*Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of health within his or her jurisdiction*”. The law requires the Health Officer to provide information, it does not empower them to withhold information (HIPPA protected personal health information is an exception)
2. Section 2.21 of the Whatcom County Charter grants the Council the right to “...*make investigations into the affairs of the County and the conduct of any County department, office or agency and for this purpose may subpoena witnesses, administer oaths, take testimony and require the production of evidence and may invoke the aid of any court of competent jurisdiction to carry out such powers ...*”
3. Elected officials have access to all the same information available to the public under RCW 42.56 the Public Records Act. and section 1.32 of the County Code. To deny or delay access is contrary to letter and the spirit of the County Charter, County Code and State law.
4. Under “Assignment of Department Specific Responsibilities” of the Whatcom County Comprehensive Emergency Management Plan it says the Sheriff shall
 - “5. *Ensure the County Executive and County Council is kept informed of the situation and the actions being taken to address the situation.*”
5. The Council amended County Code Section 24.01.040 (C) to (1) provide further clarity of the county emergency management division, county executive, and county health board's right to receive information and (2) the authority of the communities elected representatives to determine policy about what would be disclosed to the public

Recommendation: Clearly reinforce the obligation of everyone involved in Emergency Management of their obligations to keep ALL county and city elected officials fully informed of any situation that affects the jurisdiction they represent.

A simple test could be applied:

- (a) If information was used to make a request to an elected official to approve an expenditure or justify a decision, it must be referenced and made available on request,
- (b) If a court would likely determine the information is disclosable under RCW 42.56 then it must automatically be immediately released to an elected official upon request.

Competent leadership

The chain of command is only as good as the people who sit in the appointed roles. Some in Unified Command were excellent, some were not. Some had absolutely zero qualifications or experience related to the roles they were assigned to. Some served a few shifts and were then recalled to their regular jobs.

One of the common consequences of people assuming leadership roles when they have little leadership experience or subject matter knowledge is the tendency to micromanage, which often leads to more competent volunteers leaving out of frustration. One example was how Unified Command handled Donations. This was listed under “Noted Success” on the report

Volunteers, donations, and personal protective equipment (PPE). WUC successfully mobilized and coordinated volunteers and set up an effective donations process. Interviewees noted no concerns with meeting their PPE needs.

However, the more complete story was Donations likely succeeded because it operated away from the Emergency Operations center and was initially staffed by volunteers from the Labors Union. It was only successful up until members of Unified Command with no logistics experience decided to micromanage the process. Paid social media promotions was replaced with a single press release buried within the website, Donations was instructed to get written preapproval from Unified Command before responding to any emails. Not surprisingly the flow of donations went from a flood to a trickle.

How do we build a deep bench of skilled volunteers who are already subject matter experts in areas such as logistics, communications, marketing, social media, and manufacturing to cover the areas we will need to be able to fill locally during the next global emergency?

It is the responsibility of the elected City & County council members vet and approve through a public process, vacant elected positions all the way up to District Court Judge or County Executive. Yet no City & County councils had a role in who participated in the leadership positions in what was likely the most important county authority to be formed in a generation.

Who gets to have input on who is appointed to each leadership position? Perhaps most importantly, what is the mechanism to replace a person who proves unable to fill the role effectively?

Clarity – Policy roles

The voters want the people who are accountable to them - their elected leaders, to be making the policy decisions. Not someone else they don't know how to identify or cannot reach.

While the County Health Director frequently met with CCHB, the leader of Unified Command only met with the CCHB about 6 times during all of 2020. Rarely if ever, did he raise pending policy issues. By comparison councilmembers/commissioners in neighboring counties said they frequently met with their Health Officer / Leader of Unified Command (often weekly) and were actively involved in policy formation.

There were several occasions where key policy decisions related to issues that were the subject of significant concern between CCHB members and the people they represented were made without the knowledge or participation of CCHB. The two that stood out were:

1. In the beginning the emergency healthcare community was desperately short of PPE. The community's most important partner during the crisis was our only local hospital, Peace Health. They needed help with the collection of Hand Sewn Masks (HSM) etc. produced by the many great volunteers that stepped forward. The community united around the project. However, chaos arose when volunteers delivered HSMs direct to ER staff at the hospital.

Peace Health requested that the Donations Branch of Unified Command assist with the collection and sterilization. The Donations Branch established a very tight controlled process and received permission to proceed from senior staff of Unified Command. Days later the leadership of Unified Command became strangely fearful of litigation (even though it was a CDC approved practice). This fear proved greater than the concern of people working with no protection, so Donations was instructed to immediately cease assisting Peace Health.

Some members of Unified Command later privately expressed their dismay at the decision, and asked for assistance in getting masks to health care workers

Ironically, 2 days later Dr. Fauci promoted the use of HSMs and the Federal government later identified them as an essential component to economic recovery. Unified Command relented and reversed its ban and tried to manage the collection of HSM but the community had already lost trust in Unified Command's ability to handle HSM's.

2. Early on neighboring jurisdictions set up free mass COVID testing centers. Our constituents increasingly demanded to know why there was not a similar facility in Whatcom County. The CCHB was given various excuses, none of which made sense to the CCHB. We were told someone had made a policy decision not to establish a local testing facility because they were uncomfortable about potential legal liability of preauthorizing blank requisition forms, even though this was standard practice in other jurisdictions. This continued until a visit was made to the Skagit facility and the issue was pursued again with Unified Command. A Whatcom testing center was started a few days later and has been operating successfully ever since.

Clarity - Authority

As the Council goes through the process of updating the Whatcom County Comprehensive Emergency Management Plan it may help to know it was originally created by copying another jurisdiction's plan, it is imperfect and inadequate. It defines a very limited role for the County Council which members of Unified Command may have interpreted as granting them the authority to control who received information and set policy.

Under "Proclamation of Emergency" it says: "*The County Executive or in his/her absence, the Whatcom County Deputy Executive or in the absence of both, the Executive Pro Tempore of the County Council has the authority to make a Proclamation of Emergency for Whatcom County.*"

The flaw is in the absence of the Executive this clause delegates authority directly to the Deputy Executive rather than the Executive Pro Tempore. This violates Section 3.25 of the County Charter

Under “Emergency Authority” it says: “*The County Executive or in his/her absence, the Whatcom County Deputy Executive may promulgate orders and regulations to protect life, property or to preserve public order and safety.*”

Again, this violates Section 3.25 of the County Charter as it directs the next in line of succession to be the Deputy Executive rather than the Executive Pro Tempore

*For the record, throughout COVID the county had an excellent Deputy Executive. However, at the start of COVID we had a new elected County Executive who could have chosen to hire a new Deputy. Under the current rules, in the absence of the County Executive a person with no government experience or elected authority could have assumed control over our emergency response.

Under “Assignment of Department Specific Responsibilities” it says the County Council will:

1. *Exercise the powers provided to the Whatcom County Sheriff.*
2. *Develop strategic goals, objectives and policies.*
3. *Ensure that sufficient administrative powers and duties have been delegated to the Whatcom County Sheriff to allow an effective operational response to disruptive events.*
4. *Consider ratifying the County Executive’s findings of emergencies.*
5. *Ensure the filling of County Council vacancies that may occur.*

This part of the plan reinforces the Council’s responsibility for “goals, objectives and policies”

Yet under “Direction and Control” these are more narrowly written as

“The Whatcom County Council’s responsibilities include:

- *Filling vacancies of elected officials as provided in the Whatcom County Charter*
- *Appropriating money to meet emergency expenditure needs”*

However, the County Council cannot be expected to approve large amounts of funding for decisions made with little public process or oversight, particularly when they have been specifically denied access to the information, policy and decision-making process that initiated the funding requests.

This section of the Emergency Management plan needs to be amended to make it clear:

1. *The Whatcom County Council / Health Board retains its policy making role in an emergency.*
2. *A representative of the Whatcom County Council must be a full participant in Incident Command/Unified Command’s executive leadership.*
3. *The Council representative must report back to the full Council on the policy issues raised to enable debate (in public or executive session as appropriate)*
4. *The Whatcom County Council must have full access to all information within Incident Command/Unified Command’s (that would ultimately be disclosable under the Open Public Meetings Act. or by county code)*

Data analysis

One of the positions that should be created and staffed during future major events is a professional data analyst that Unified Command, the CCHB and others can pose questions in order to establish local trend data to assist with our response. The following example explains how it could be used

Eventually COVID vaccinations became available and were (correctly) intended to be allocated based on vulnerability. However, by March 2021 people 65+ were struggling to get vaccinated in Whatcom County while others in their 30's were finding it easy to get vaccinated in King County because of daily surpluses. Our constituents grew increasingly frustrated demanding to know why they could easily get vaccines in other counties but not in Whatcom.

An analysis of the state vaccine Data as at 3/18/2021 from the WA DOH website showed these vaccines were being allocated based on the counties percentage of the total state population and not by the counties percentage of the population groups in need. The net result was by 3/18/2021 King County (with a younger average population) had received 266,859 more doses than they qualified for (by age group) and Whatcom County (a retirement community) had been short changed 30,364 doses.

Had this analysis been done early we could have rightly made a case that the State needed to increase Whatcom County's allocation of vaccines to correspond with number of residents who qualified for the vaccine