

ORDINANCE NO. 2023-_____

PROVIDING FOR SUBMISSION OF A PROPOSITION TO THE QUALIFIED ELECTORS OF WHATCOM COUNTY PURSUANT TO RCW 82.14.450 AUTHORIZING THE COLLECTION OF A LOCAL SALES AND USE TAX OF TWO-TENTHS OF ONE PERCENT FOR THE PURPOSE OF PROVIDING FUNDS FOR COSTS ASSOCIATED WITH PUBLIC HEALTH, SAFETY, AND JUSTICE FACILITIES AND SERVICES, INCLUDING BEHAVIORAL HEALTH, SUPPORTIVE HOUSING, PUBLIC SAFETY, AND CRIMINAL JUSTICE FACILITIES AND PROGRAMS

WHEREAS, Whatcom County has an opportunity to plan for a criminal legal system that is built to address the root causes of incarceration and designed with rehabilitation as the goal; and

WHEREAS, the [Incarceration Prevention and Reduction Task Force \(IPRTF\)](#), established in 2015 and acting as the Law and Justice Council (LJC) for Whatcom County (as per [RCW 72.09.300](#)), reviews and makes recommendations to safely and effectively reduce incarceration of individuals struggling with mental health and substance use disorders and minimize jail utilization by pre-trial defendants who can safely be released; and

WHEREAS, the IPRTF's [Phase One Report](#) identified challenges with current systems and services, including the need for expansion of the crisis triage facility, jail diversion programs, and behavioral health programs to reduce jail use by people with mental health and substance use disorders; and

WHEREAS, on August 7, 2019, the Whatcom County Council approved [Resolution 2019-036](#), adopting a statement of public health, safety, and justice facility planning principles for Whatcom County; and

WHEREAS, Resolution 2019-036 identified the need to strive for conditions where the cycle of incarceration is broken rather than perpetuated, with continued support and focus on mental health and substance use disorder treatment and diversion rather than incarceration; and

WHEREAS, Resolution 2019-036 identified “the following are inextricable linked: responsible stewardship of public funds, ensuring public safety, and providing adequate countywide behavioral health services”; and

WHEREAS, Resolution 2019-036 established a workplan to develop a public health, safety, and justice facility needs assessment (Justice Project) and prioritize community engagement to guide its development; and

WHEREAS, Resolution 2019-036 recognized that there are multiple deficiencies with the downtown public safety (jail) facility that include life-safety issues and that the cost of addressing the most significant issues are too high to continue into the future and the need for an

appropriately sized replacement facility continues to be the most burdensome and needed capital issue that Whatcom County government faces; and

WHEREAS, Resolution 2019-036 recognized the need to create a funding proposal to address the Justice Project needs assessment, provide a safer, more secure, and healthier environment for those who work, visit, and are incarcerated within the public safety/justice facility, identifying the goal of a future ballot measure; and

WHEREAS, on December 3, 2019, the Whatcom County Council established a Stakeholder Advisory Committee (SAC) to guide the development of a public health, safety, and justice facility needs assessment (as amended, see [Resolution No. 2022-021](#)); and

WHEREAS, the development of a public health, safety, and justice facility needs assessment (Justice Project) was paused in early 2020, due to the COVID-19 public health emergency and restarted in early 2022; and

WHEREAS, on January 2021, the [Anne Deacon Center for Hope \(Crisis Stabilization Center\)](#) opened to provide short-term, in-patient substance use disorder and behavioral health support services, offering 32 beds and doubling the capacity of the triage center it replaced; and

WHEREAS, the SAC held its first meeting on January 20, 2022 and, over the course of a year, the SAC held [10 meetings and additional group discussions](#) to review data, identify gaps in the current community response, and consider what it would take to fill gaps to improve health and public safety; and

WHEREAS, the IPRTF, acting as the LJC, provided support, expertise, and assistance to the SAC throughout its efforts to create the Justice Project Needs Assessment Report; and

WHEREAS, the development of the SAC's Justice Project Needs Assessment sought community feedback through a variety of methods, including:

- A town hall listening session on November 15, 2022,
- A public online [survey](#) with over 1,700 respondents,
- A survey of incarcerated individuals and staff at the Whatcom County jail with 109 respondents,
- [Listening sessions](#) (6) with priority audiences, including people with lived experience in the criminal legal system, tribal members, and immigrants, and
- Informal interviews (8) with immigrant community leaders and Lummi Nation elders; and

WHEREAS, on January 26, 2023, the SAC approved the [Justice Project Needs Assessment Report](#), which

- Establishes a vision, values, and goals, for the criminal legal system in Whatcom County,
- Examines data related to incarceration rates,
- Identifies gaps in the current community response to health and public safety needs, both inside and outside Whatcom County's jail facilities,
- Considers what it would take to fill those gaps in order to improve health and public safety, and
- Makes recommendations to address the community's public health, safety, and justice concerns; and

WHEREAS, the Needs Assessment focuses on three elements of public health, safety, and justice systems that are interrelated:

- Systems, which includes shifts in practices, policies, and funding that facilitate efficient functioning of the criminal legal system, and reduce incarceration and the duration of incarceration,
- Services, which are the supports that need to be in place for people to prevent and reduce involvement in the criminal legal system, and
- Facilities, which include a jail and a variety of residential and non-residential facilities and settings for legal and healthcare treatment and services; and

WHEREAS, the Needs Assessment recognizes two-long standing community needs:

- To have a safe and humane jail that is safe for those in it, with sufficient services needed to support successful community re-entry, and
- To more appropriately respond to lower-level offenses through the provision of incarceration prevention, diversion, and alternative services, including reducing the number of people incarcerated who have behavioral health issues; and

WHEREAS, the Needs Assessment report identifies more specific challenges in Whatcom County's criminal legal system, including:

- Inconsistency in data collection systems and limited publicly available information,
- Insufficient access to mental health and substance use disorder treatment (in-patient and out-patient),
- Limited capacity in effective diversion programs,
- Inadequate jail capacity to meet the needs of incarcerated people with regards to everything from the most basic functions, such as laundry, kitchen, and dining facilities, to enough confidential spaces to receive behavioral and physical healthcare, meet with attorneys, or attend support groups,
- Insufficient affordable housing and permanent supportive housing,
- Inadequate discharge planning, and
- Significant delays in competency restoration services due to the Washington State Department of Social and Human Services' failure to meet constitutional obligations for competency evaluation and restoration services; and

WHEREAS, the Needs Assessment Report identifies needs and recommendations along a continuum, including prevention and diversion, jail-based, re-entry, and post-incarceration; and

WHEREAS, on February 21, 2023, the Whatcom County Council approved [Resolution 2023-006](#), accepting the SAC's Justice Project Needs Assessment Report and identifying the next steps to create a Justice Project Implementation Plan that includes:

- Analysis of potential facilities concepts, including location options and planning level costs,
- Identification of a site and concept for the main jail and service facilities in the community,
- Proposed services and systems efforts and their costs,
- Identification of county departments, community leaders and organizations to lead implementation of the recommendations, and
- A funding approach, including but not limited to elements to be funded through a proposed ballot measure; and

WHEREAS, Resolution 2023-006 identifies that the County Executive shall work with the IPRTF/LJC to develop an Implementation Plan with feedback from priority audiences and the general public; and

WHEREAS, the IPRTF/LJC conducted five (5) workshops to develop a list of project ideas in responding to the recommendations of the Justice Project Needs Assessment; and

WHEREAS, in Spring 2023, seven (7) focus groups and an additional twenty (20) surveys provided feedback from priority audiences including people with lived experience in the criminal justice system, Lummi Nation members, Black, Indigenous, and People of Color (BIPOC) individuals, and Latinx/Hispanic individuals; and

WHEREAS, the Justice Project Needs Assessment Implementation Plan (incorporated herein as Exhibit A) includes fifteen specific action items in the following five categories:

- Ensuring oversight, accountability, and transparency by
 - Establishing a Justice Project Oversight and Planning (JPOP) Committee,
 - Establishing a Finance and Operations Justice Project Advisory Board, and
 - Collecting data to measure progress toward desired outcomes and developing a data dashboard
- Increasing Access to behavioral health services by
 - Addressing workforce shortages in behavioral health services,
 - Building systems to facilitate communication and coordination between organizations, and
 - Increasing the capacity of effective existing programs to divert people from incarceration
- Building the array of facilities needed to promote public health, safety, and justice by
 - Building a 23-hour crisis relief center,
 - Building a new jail and behavioral health treatment center, and
 - Identifying what additional facilities are needed to support people with behavioral health issues at risk of incarceration
- Expanding the capacity of programs to reduce incarceration/re-incarceration by
 - Ensuring people leaving detention and treatment facilities have transportation to a safe destination,
 - Bolstering re-entry support services, and
 - Maintaining and expanding supportive housing programs for people with behavioral health issues and a history of incarceration
- Making system changes with local, regional, state, and federal partners by
 - Continuing to make changes in court systems,
 - Expediting access to competency restoration services, and
 - Advocating for a state waiver to allow use of Medicaid funds to pay for medical, dental, and behavioral health services for incarcerated individuals

WHEREAS, on June 12, 2023, the IPRTF/LJC approved the Justice Project Implementation Plan and recommended the plan to the Whatcom County Council; and

WHEREAS, Whatcom County is committed to promoting community safety, health, and justice, and aims to reduce crime and incarceration through early interventions and long-term investments in people and programs that support prevention, restoration, and accountability; and

WHEREAS, Whatcom County currently invests considerably in diversion, housing, and behavioral health services for individuals at high risk of incarceration, including but not limited to the establishment and ongoing funding of Mental Health Court, Recovery Court, the Ground-Level Response & Coordinated Engagement Program (GRACE), the Law Enforcement Assisted Diversion (LEAD) Program, the Alternative Response Team (ART), transportation services for vulnerable individuals, behavioral health Sheriff deputies and co-responder programs, the City Gate Re-Entry Housing Program, and the Sun House mental health shelter program; and

WHEREAS, to accomplish the Justice Project Implementation Plan, the County Council will need to make significant investments from local funds, including but not limited to the proposed 2023 two-tenths of one percent public health, safety, and justice sales and use tax, the 2004 one-tenth of one percent Sales and Use Tax passed by voters, the County's existing general fund, the behavioral health fund, and housing funds; and

WHEREAS, in 2004, Whatcom County voters approved Proposition No. 1, authorizing a one-tenth of one percent jail facilities sales and use tax under RCW 82.14.350 "to be used solely for costs associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, reequipping and improvement of jail facilities that house inmates being held, charged, or convicted of misdemeanor and felony acts"; and

WHEREAS, from 2005-2022, the jail facilities sales and use tax has collected approximately \$72 million, or about \$4 million per year on average; and

WHEREAS, from 2005-2022, the County has spent the revenue from the jail facilities sales and use tax on minimum security in-custody operations, alternative corrections operations, city jail credit, new jail project funding, jail controls debt service, and minimum-security jail funding; and

WHEREAS, it is the intent of the Whatcom County Council, moving forward, to continue to dedicate this voter approved one-tenth of one percent jail facilities sales and use tax to the construction and operations of a new jail and behavioral health center; and

WHEREAS, significant additional investment is needed to uphold the County's commitment to promoting community safety, health, and justice; and

WHEREAS, RCW 82.14.450 authorizes counties and cities to submit an authorizing proposition to the voters in order to impose a sales and use tax for criminal justice and other purposes; and

WHEREAS, at least one third of moneys collected under the authorized sales and use tax must be used for criminal justice purposes, fire protection purposes, or both; and

WHEREAS, RCW 82.14.450 defines "criminal justice purposes" as provided for in RCW 82.14.340, "such criminal justice purposes of mutual benefit include, but are not limited to, the construction, improvement, and expansion of jails, court facilities, juvenile justice facilities, and services with ancillary benefits to the civil justice system"; and

WHEREAS, money received by a county under RCW 82.14.450 must be shared between the county and the cities as follows: 60 percent must be retained by the county and 40 percent

must be distributed on a per capita basis to cities in the county; and

WHEREAS, in 2005, Whatcom County voters approved a one-tenth of one percent sales tax under RCW 82.14.450 for Emergency Medical Services and criminal justice purposes; and

WHEREAS, Whatcom County intends to utilize the remainder of its revenue collection authority under RCW 82.14.450 to fulfill the commitments in the Justice Project Implementation Plan; and

WHEREAS, Whatcom County and cities within Whatcom County have a shared interest in the criminal justice system as well as revenue collected under RCW 82.14.450 and therefore require a structure for collaboration on an ongoing basis; and

WHEREAS, on June 6th, 2023, the Whatcom County Council received a letter from the mayors of Whatcom County's seven cities recognizing their cities' role and responsibility in supporting this effort, collectively calling on the County to place the sales tax measure on the November ballot; and

WHEREAS, the mayors of the Whatcom County cities requested that the County include specific provisions in this ordinance to eliminate booking restrictions upon the opening of a new jail facility, to authorize facility expansion to provide for additional bed capacity when and if it reaches 85% operational capacity, to identify potential cost-sharing mechanisms for both jail facility construction and design, and to develop a funding strategy that includes opportunities for federal and state appropriations and grants to support the need for increased behavioral health spending; and

WHEREAS, on June 9th, 2023, the Whatcom County Council and Whatcom County Executive received a letter from the City of Bellingham supporting the Implementation Plan and making recommendations to improve the Plan and this ordinance. Those recommendations include but are not limited to increasing accountability, transparency and oversight as well as ensuring a parity of commitment between public health facilities and incarceration facilities. The letter also stated that "the City of Bellingham is prepared to support increased behavioral health facilities and programming subject to new revenue from passage of the ballot measure"; and

WHEREAS, in order to provide funding for costs associated with financing, design, construction, maintenance, and operations of the County jail, and public health, safety, and justice facilities and services, as determined by the Justice Project Implementation Plan, it is deemed necessary and advisable for Whatcom County to submit a ballot proposition to the voters for authorization to impose an additional local sales and use tax of two-tenths of one percent (0.002 or 20 cents per \$100), as authorized by RCW 82.14.450; and

WHEREAS, following passage of a voter-approved proposition for a sales and use tax, the County intends to use a portion of the tax revenue as allowed by the Sales and Use Tax Ordinance to issue general obligation bonds for the planning, design and construction costs of the facilities identified in the Justice Project Implementation Plan; and

WHEREAS, the life of the bonds of the jail and behavioral health facilities may be no more than thirty (30) years, and may expire on or around December 31, 2055. Once the total capital financing costs of the jail and behavioral health facilities have been paid for, the County Council

shall consider, at that time, the repeal of one-half of the two-tenths of one percent sales and use tax.

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that:

SECTION 1 – AUTHORIZATION OF SALES AND USE TAX: a ballot proposition shall be submitted to the qualified electors of Whatcom County pursuant to RCW 82.14.450 to authorize the County Council to fix and impose a local sales and use tax of two-tenths of one percent (0.002 or 20 cents for every \$100) to provide funding for public health, safety, and justice facilities and services, including behavioral health, substance use disorder treatment, supportive housing, public safety, and criminal justice facilities and services as identified and prioritized in the Justice Project Implementation Plan.

SECTION 2 – DEPOSIT OF PROCEEDS: If the Proposition is approved, all of the County’s portion of the proceeds will be deposited into the new Health, Safety & Justice Fund. Any interest generated by the new Health, Safety & Justice Fund shall benefit the same.

SECTION 3 – SALES AND USE TAX PURPOSE: The purpose of the Sales and Use Tax is to provide funds for costs associated with public health, safety, and justice facilities and services, including behavioral health, supportive housing, public safety, and criminal justice facilities and services in accordance with the Justice Project Implementation Plan.

The primary purpose of initial expenditures of the proceeds shall be to construct a jail and behavioral health facilities needed to promote public health and safety. Proceeds shall also support expansion of incarceration reduction programs, access to behavioral health services, re-entry services, supportive housing, diversion, and accountability measures to monitor progress and inform future planning.

SECTION 4 - ELIGIBLE EXPENDITURES: The Whatcom County Council hereby adopts the Justice Project Implementation Plan (Exhibit A). Funds collected under this sales and use tax may be used for any expense consistent with the Implementation Plan, as adopted or as may be amended consistent with Sections 3 and 7, or future implementation plans adopted by the Whatcom County Council.

Cities within Whatcom County with a 2023 population less than 20,000 people may use proceeds from this sales and use tax for any public health, safety, and justice purpose, including but not limited to municipal public safety expenditures, and which use shall not be limited or restricted by the provisions and guidance of the Implementation Plan.

SECTION 5 – INTERJURISDICTIONAL AND STAKEHOLDER COORDINATION:

If this sales and use tax is approved by the voters:

1. The Whatcom County Council directs the Whatcom County Executive to develop and enter into a long-term agreement with the Whatcom County cities governing the distribution of sales and use tax revenue collected. This agreement shall be executed by the County and the cities no later than June 1, 2024. The Executive shall endeavor to develop an agreement that:
 - a. Acknowledges that all tax proceeds will be used for mutually beneficial public health, safety, and justice facilities and services, and
 - b. Provides adequate funding to accomplish the construction of a new jail and

- behavioral health facilities and maximizes utilization of the remainder of sales and use tax proceeds for investments in behavioral health, re-entry, supportive housing, and diversion facilities and services consistent with the Implementation Plan, and
- c. Acknowledges the cities' request to eliminate booking restrictions through the construction of a new, appropriately-sized jail facility based on a fair analysis of jail use, bookings, and population growth, taking into consideration strategic investments to avoid unnecessary incarceration; identifies and develops a mechanism for additional bed capacity if the facility reaches 85% of operational capacity (defined by national standards for a period of eight of the past twelve months); establishes collaborative protocols to utilize other county or regional jails to accommodate the bed needs of the County and cities when needed; and, in a last case scenario, relies on judicial authority to implement booking restriction, and
 - d. Allows for cost-effective terms of bonding for the construction of the jail and behavioral health facilities by including a sharing of the first four to six years of sales tax revenue. This up-front revenue will reduce the bond size to ensure that in subsequent years a minimum of 50 % of the ongoing county-wide sales tax revenue will be used for other Implementation Plan priorities such as the construction and operation of behavioral health facilities serving populations outside of the County jail, expansion of incarceration reduction programs, increasing access to community-based behavioral health and substance use disorder treatment services, re-entry programs, supportive housing, diversion programs, and accountability measures that monitor progress and inform future planning, and
 - e. Recognizes the County and cities' goal to allow the public safety tax allocation to be consistent with RCW 82.14.450(6) as soon as reasonably possible.
2. The Whatcom County Council directs the Whatcom County Executive to include in the long-term agreement with the Whatcom County cities the development of a Finance and Operations Advisory Board, which shall provide financial oversight of the funds collected from this sales and use tax and make recommendations on the finance and operations of the jail, behavioral health, and supportive housing facilities and services. The Finance and Operations Advisory Board shall consist of the Whatcom County Executive, one Whatcom County Councilmember, the Whatcom County Sheriff, the Mayor of Bellingham, one Bellingham City Councilmember, one elected representative from the remaining cities within Whatcom County, two elected representatives from federally recognized tribes within Whatcom County, one municipal law enforcement representative, the chair(s) of the IPRTF/LJC, one individual with lived experience in the criminal justice system, and one representative of the behavioral health system. Meetings of the Board shall be subject to the Open Public Meetings Act.
 3. The IPRTF/LJC shall advise the County and cities on policy matters related to law and justice. The IPRTF/LJC shall coordinate with the Finance and Operations Advisory Board to monitor the progress of the Implementation Plan and for the development of subsequent implementation plans. The Whatcom County Council and Whatcom County Executive shall provide the resources needed for the IPRTF/LJC to fulfill its planning, community consultation, and oversight charge.
 4. The Whatcom County Council directs the IPRTF/LJC to evaluate representation of BIPOC communities and people with criminal justice lived experience in its membership and to update membership, as needed, to ensure adequate representation.

5. The IPRTF/LJC shall further consult BIPOC communities and people with criminal justice lived experience in the progress of the Implementation Plan and future planning efforts. Further, the Whatcom County Executive and the IPRTF/LJC shall consult with the Whatcom Racial Equity Commission on progress and planning efforts, particularly as it relates to data gathered on racially disparate impacts in the Whatcom County criminal justice system.

SECTION 6 – AUTHORITY TO BOND: If approved, the County may issue general obligation bonds to finance planning, design and construction of a jail and behavioral health and supportive housing facilities.

SECTION 7 –SUBSEQUENT IMPLEMENTATION PLANS AND IMPLEMENTATION PLAN AMENDMENTS:

1. No less than every two years, the Whatcom County Executive shall coordinate with the IPRTF/LJC and Finance and Operations Advisory Board to update the Implementation Plan with a detailed Spending Plan for the public health, safety, and justice tax. The spending plan may not impede the County’s ability to pay debt service on facility bonds issued against the tax.
2. No less than every seven years, the Whatcom County Executive shall coordinate with the IPRTF/LJC and Finance and Operations Advisory Board to update the Justice Project Implementation Plan and transmit the Plan to the Whatcom County Council for approval.
3. Implementation plans must be consistent with Section 2 – Sales and Use Tax Purpose and may not impede the County’s ability to pay debt service on facility bonds issued against this tax.
4. This language is not intended to limit the Whatcom County Council’s authority to amend the Implementation Plan through ordinance at any time.

SECTION 8 – OVERSIGHT, ACCOUNTABILITY, AND TRANSPARENCY:

1. The IPRTF/LJC shall monitor progress toward the goals of the Justice Project Implementation Plan and shall provide a written and oral report no less than annually to the Finance and Operations Board and Whatcom County Council. This report shall detail steps taken to achieve the goals of the Implementation Plan; an assessment of progress toward goals; a review of resources needed to further meet goals; and recommendations for any necessary updates to the Implementation Plan and/or Spending Plan.
2. The Finance and Operations Advisory Board shall monitor the spending of the Public Health, Safety, and Justice Tax and provide a written and oral report no less than annually to the IPRTF/LJC and Whatcom County Council on the financial performance of the fund and associated programs. This report shall detail fund revenue; expenditures by Implementation Plan project; resources beyond this sales and use tax invested in Implementation Plan projects; additional resources needed to further meet goals; and recommendations for any updates to the Implementation Plan and/or Spending Plan.

SECTION 9 – BALLOT PROPOSITION SUBMITTAL: The County Auditor shall cause notice of the proposed proposition to be published in accordance with the state constitution and general law and shall submit to the qualified electors of the County the proposition hereinafter

set forth on the ballot of the county-wide general election to be held on November 7, 2023. The Clerk of the Council shall certify that proposition to the County Auditor in substantially the following form:

WHATCOM COUNTY, WASHINGTON

PROPOSITION NUMBER 2023-_____

PUBLIC HEALTH, SAFETY, AND JUSTICE SALES AND USE TAX

The Whatcom County Council passed Ordinance No. _____ concerning funding for public health, safety, and justice facilities and services. If approved, this proposition would authorize a sales and use tax of two-tenths of one percent (20 cents per \$100) for costs associated with behavioral health, supportive housing, public safety, and criminal justice facilities and services, as authorized by RCW 82.14.450. Should this proposition be approved?

_____ Yes

_____ No

SECTION 10 – CORRECTIONS AND EXPLANATORY STATEMENT: The Prosecuting Attorney is authorized to make such minor adjustments to the wording of this proposition as may be required that do not change its substantive meaning and are consistent with the intent of this ordinance, and the Prosecuting Attorney shall prepare an explanatory statement based on this ordinance for use in the Voters Pamphlet.

SECTION 11 – SEVERABILITY: If any provision of this ordinance or its application to any person or circumstance is determined to be invalid, the remainder of the ordinance or its application to other persons or circumstances shall not be affected.

ADOPTED this _____ day of _____, 2023.

ATTEST:

**WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON**

Dana Brown-Davis,
Clerk of the Council

Barry Buchanan,
Council Chair

APPROVED AS TO FORM:

Chief Civil Deputy Prosecutor

Satpal Sidhu, County Executive

Date

EXHIBIT A
JUSTICE PROJECT IMPLEMENTATION PLAN