

Whatcom County Council

**COUNTY COURTHOUSE
311 Grand Avenue, Ste #105
Bellingham, WA 98225-4038
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Minutes - Final

VIRTUAL MEETING - VIEW ONLINE;

Tuesday, May 5, 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 2 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

ANNOUNCEMENTS

EXECUTIVE'S REPORT

Satpal Sidhu, County Executive, read a report (on file) into the record which included the following topics:

- The good work of the Unified Command
- Approaching Harvest Season for Local farms
- Water adjudication, Agricultural Water Board and Planning Unit
- Holding certain virtual meeting of certain Boards, Commissions and Committees
- Opening of Whatcom County economy

He answered questions about and Councilmembers discussed a draft letter requesting the Governor for a variance on holding virtual meetings of certain Boards, Commissions and Committees and whether the Planning Unit should send their own letter.

Donovan moved to have the Chair of the Council sign a letter with the Executive. The motion was seconded by Frazey.

The following people spoke and answered questions:

- Karen Frakes, Prosecuting Attorney's Office
- Tyler Schroeder, Executive's Office

Councilmembers and staff discussed allowing certain boards and commissions to meet before getting businesses back open, whether the letter had been re-written to reflect concerns expressed to the Executive's Office by Karen Frakes, whether a request should be made for a variance or for an amendment to the proclamation, and what the requested amendment should apply to.

Frakes and Schroeder referred to a letter written by Frakes expressing her concerns about the draft letter as it was written. Schroeder stated the substance of the correspondence from Frakes was that Frakes indicated that the request should not be framed as a variance for Whatcom County but instead it should be a request to change the terms of the proclamation that was just extended that's applicable to local jurisdictions and that it should go both to the Governor and to the legislative leadership because it is a waiver of the Open Public Meetings Act. The limitation of agenda items was adopted as kind of a trade-off for the sacrifice of important public participation provisions in the act. It would be needed to ask for a new interpretation both from the Governor and from the four corners of the Legislature to allow for necessary and routine which is indicated in that proclamation to open some additional public participation and some additional meetings remotely so that they can continue some of the policy discussions that are important for moving forward. The Executive's Office is happy to amend the letter to that effect.

Byrd spoke about what types of meetings he thinks would be appropriate for a virtual format.

Donovan amended his motion to have the Chair of the Council sign a letter with the Executive with the edits as discussed with Ms. Frakes. Frazey agreed to the amended motion.

Frakes and Schroeder answered questions about why there are restrictions on virtual meeting agendas to only address essential matter, and whether there is a way to accommodate public comments in virtual meetings.

Donovan repeated his motion to have the Chair of the Council sign a letter with the Executive with the edits as discussed with Ms. Frakes.

Councilmembers and the other speakers discussed not approving a letter until they have a final copy of it, advocating for opening the community and not just boards and commissions, whether signing the letter could be put off for two weeks, and that sending this letter is not mutually exclusive from sending a letter to open parts of the economy. Frakes will work with the Executive's Office to edit the letter, will consider any proposed changes from Councilmembers and will talk to the Chair about any substantial changes.

The amended motion carried by the following vote:

Aye: 4 - Buchanan, Donovan, Frazey and Browne

Nay: 3 - Byrd, Elenbaas and Kershner

Frakes clarified that as she receives suggested changes from Councilmembers it would not be appropriate to incorporate changes that expand the scope of the letter.

OTHER ITEMS

1. AB2020-116 Update on COVID-19

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

- Unified Command is continuing to explore additional isolation and quarantine facilities and there is currently one guest at the existing facility.
- As it pertains to case investigations, the Health Department is able to make same-day contact with positive cases and they are able to make contact with close contacts of confirmed cases within one to two days.
- The Health Department received a green light to recruit a volunteer administrator. Lautenbach thanked the Public Works Department for donating 400 hours a week of staff time to the Health Department for various functions.
- Health Department staff member James Hayes was awarded the volunteer of the year by Bellingham School District for work he does unrelated to the Health Department to help out the school district.
- The Health Department has more testing capabilities. Northwest Laboratories alone can take 2,400 tests a day. Testing supplies are in place to reach their benchmarks, but what's not in place is the supply of tests themselves. The guidance changes and causes confusion about who should be tested. Currently anyone who has symptoms that are mild or severe and needs medical care or hospitalization should be tested and anyone who has the standard symptoms or symptoms such as headaches, loss of taste or smell, shaking with chills and muscle aches. Peace Health and Northwest Laboratories have more testing capacity just in the last week. The Health Department's role in testing is to test symptomatic people who are health care workers or first responders, close contacts with identified cases, involved in an outbreak or cluster scenario, or even asymptomatic if they have been identified as a close contact with a confirmed case or if there is a risk of exposure related to an outbreak or cluster. They also test people with no insurance.
- Antibody testing is helpful only in that it tells what is happening just

at this moment. If someone tests positive for antibodies there is an assumption that they have an immunity to COVID-19, but they don't know whether that person has full or partial immunity, how long that immunity lasts and whether it is natural immunity or from an exposure. They are exploring a population-based test to get an idea of the actual incidence in the community. This will help with more accurate modeling.

She answered questions about a recent letter from Whatcom County farmers and whether there will be equitable access to resources for testing and for isolation and quarantine for large numbers of farm workers and people who don't have insurance, whether anyone seeking testing is being turned away and whether the population-based test would be done during a certain time period. There are no shortages of testing supplies and personal protection equipment (PPE). The only limitation is getting people in to be tested. She answered questions about people living in close quarters and how they will deal with that as farm workers come to work, where they are at with the Motel 6, what money has been spent and what has been committed, why the guest at the quarantine facility is not in the hospital, whether the cost goes down since there is just one guest, whether we have had to do any involuntary quarantining in Whatcom County, what she knows about private groups in the county setting up quarantine facilities, when they can expect data that would enable them to establish thresholds and goals for the maximum number of positive cases for maintaining hospital availability so that can be shared with the community, how businesses are already learning mitigation measures, the intent of the task force and how much of the spread of the virus is coming from smaller businesses as opposed to larger box stores.

This agenda item was DISCUSSED.

2. AB2020-117 Discussion of strategies related to COVID-19

Buchanan asked if there were any strategies or ideas they would like to discuss and there were none.

This agenda item was DISCUSSED.

3. AB2020-186 Request approval to sign agreement with Washington State Recreation and Conservation Office in order to secure matching funds for the acquisition of a forestry conservation easement on the Kiera-Duffy property through the Purchase of Development Rights (PDR) Program

Donovan moved that the Contract be authorized and Frazey seconded.

Becky Snijder van Wissenkerke, Planning and Development Services Department, gave a staff report on the item and stated it is a time sensitive issue. She answered questions about what the County's contribution would be to the ultimate purchase and when we have to make a decision to pay the County's portion, whether in the future the County might be spending Conservation Futures Funds and not dollars out of the general fund and whether the grants could be sent back if they deem they cannot spend money from the Conservations Futures Fund.

Tyler Schroeder, Executive's Office, answered whether money could be borrowed from this fund and paid back in the future.

Snijder van Wissenkerke answered whether this contract is to secure two development rights. There are two different projects and one is the next agenda item AB2020-187.

Donovan's motion that the Contract be AUTHORIZED carried by the following vote:

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

Nay: 1 - Elenbaas

Absent: 0

4. AB2020-187 Request approval to sign agreement with Washington State Recreation and Conservation Office in order to secure matching funds for the acquisition of a forestry conservation easement on the Squalicum Forest property through the Purchase of Development Rights (PDR) Program

See AB2020-186 for discussion on this item.

Donovan moved and Frazey seconded that the Contract be AUTHORIZED. The motion carried by the following vote:

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

Nay: 1 - Elenbaas

Absent: 0

5. AB2020-193 Request authorization for the County Executive to amend a contract between Whatcom County and Washington State Military for the FY2017 Operation Stonegarden Program grant replaces Revised Attachment 2, Work Plan/Budget including amending the amounts of the budget categories and replacing the approval letter and Personnel Cap Waiver

Doug Chadwick, Under Sheriff, briefed the Councilmembers on the item.

Browne moved and Kershner seconded that the Interlocal be AUTHORIZED.

The motion carried by the following vote:

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

Nay: 0

Absent: 0

6. AB2020-188 Ordinance supporting a thoughtful approach to doing business in Whatcom County during the COVID-19 pandemic

Elenbaas moved that the Ordinance be adopted and Byrd seconded.

Elenbaas updated the Council on why he believes the ordinance should be adopted.

Karen Frakes, Prosecuting Attorney's Office, stated she expressed her opinion on it at the last meeting.

Councilmembers discussed putting the language forward as a letter to the Governor as opposed to an ordinance, the legality of the ordinance, proposing it as a resolution and a letter, whether the Governor's rules are justified, allowing less restriction since there is a failure to communicate on a State and Federal level why people should be doing what we are currently doing, upholding the Constitution, upholding the laws according to Councilmembers' oath of office, listening to the will of the people and support for the intent of the ordinance.

The motion that the Ordinance be adopted FAILED by the following vote:

Aye: 2 - Byrd and Elenbaas

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

Frazey stated if the Public Health Advisory Board resolution (AB2020-210) is approved she would suggest Elenbaas bring a letter forward at the next Council meeting with a resolution to send to the Governor.

Kershner moved to approve the language of the ordinance in letter form. There was not a second.

Councilmembers and Frakes discussed crafting a letter, sending the draft ordinance as it is to the Governor for his consideration with a letter, and translating the ordinance to a letter and combining it with the Public Health Advisory Board resolution (**AB2020-210**) if approved.

Frakes stated she would be willing to be involved in writing the letter.

Kershner amended her motion to ask legal counsel Karen Frakes to support the Council in writing a letter to send to the Governor with the general ideas that are in the proposed ordinance. The motion was seconded by Buchanan.

Councilmembers and Frakes discussed the process of writing a letter and Kershner repeated her motion.

The motion carried by the following vote:

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

Nay: 0

Final action: A motion was approved 7-0 and Elenbaas' motion that the Ordinance be Adopted FAILED by the following vote:

Aye: 2 - Byrd, and Elenbaas

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

Absent: 0

7. AB2020-189 Ordinance providing permitting relief to food establishments

Browne moved that the ordinance be adopted. The motion was seconded by Frazey.

The following people spoke and answered questions:

- Erika Lautenbach, Health Department Director
- Tom Kunesh, Health Department
- Tyler Schroeder, Executive's Office

Councilmembers and staff discussed whether the extension period should be for three months or six months, whether the fees go to the general fund or the Health Department fund, whether the Health Department is providing the service for which they are waiving the fee, and how they figure the extension of the term of the permit.

Buchanan asked Browne if he would be willing to specify which option he would like the motion to pertain to. Browne did not specify an option at this point.

Discussion continued about whether there was a way to know which businesses are open or not, whether the Health Department has been billing businesses since April, needing a definition of effective business since some businesses are still operating effectively, which types of businesses

would be excluded from the extension and being mindful that every time they give one segment of the community a break on costs they are going to have to ask another segment of the community to pick up those costs.

Browne specified the option and **amended** his motion that the Ordinance be adopted with an extension of four months. The motion to adopt with a four-month extension failed for lack of a second.

Buchanan moved that the Ordinance be adopted and that they choose the six-month option. The motion was seconded by Byrd.

Discussion continued about whether they risk having public health and safety issues to the public by extending the permits and whether they are still doing inspections.

Dana Brown-Davis, Clerk of the Council, answered a question about a point of order and confirmed that the motion they just voted for was to adopt the ordinance with the six-month option.

Buchanan's motion that the Ordinance be ADOPTED with the six-month option carried by the following vote:

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

Nay: 0

Absent: 0

Enactment No: ORD 2020-022

8. AB2020-185 Resolution authorizing Whatcom County Executive Satpal Sidhu to act as the authorized representative on behalf of Whatcom County for Washington State Recreation and Conservation Office (Office) Washington Wildlife and Recreation Farmland and Forestland Preservation project grants

Becky Snijder van Wissenkerke, Planning and Development Services Department, gave a staff report and answered whether this is how this has been done in the past.

Donovan moved and Frazey seconded that the Resolution be APPROVED.

Discussion continued with Snijder van Wissenkerke and Tyler Schroeder, Executive's Office, about whether the Council is giving the Executive authority to make any decisions relating to this grant without having to come back to the Council.

Donovan's motion that the Resolution be APPROVED carried by the

following vote:

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

Nay: 1 - Elenbaas

Absent: 0

Enactment No: Res 2020-014

9. AB2020-202 Emergency ordinance establishing a COVID-19 interim economic recovery plan to respond to the economic crisis within Whatcom County caused by the COVID-19 pandemic

Browne moved that the Ordinance be adopted. The motion was seconded by Kershner.

Browne briefed the Council on the proposed ordinance.

Councilmembers discussed the ordinance, how this would work with the proposed Public Health Advisory Board (PHAB) Task Force (AB2020-210), what problem the ordinance is trying to solve and whether it would be better as a resolution.

Erika Lautenbach, Health Department Director, spoke about the differences between the infection control work that the Health Department is doing and economic recovery and development work. The Health Department's role with the PHAB is to level the playing field for small business that do not have resources and provide help to work through any regulatory or financial barriers which is where the economic development piece kicks in.

Councilmembers discussed that this is about aligning and making sure there is no overlap between the roles of the Health Department, the PHAB, the Regional Economic Partnership and others.

Steve Oliver, County Treasurer, stated the ordinance would create an opportunity for the business community and the Health Department to work collaboratively and bring back recommendations to their business peers and to the Council.

Councilmembers continued to discuss the ordinance and its intent.

Tyler Schroeder, Executive's Office, complimented the intent of the ordinance and spoke about the discussion and coordination that has taken place since it was proposed. He suggested that they table the item and then introduce in two weeks and have Don Goldberg, Associate Development

Organization (ADO), come and give an update.

Councilmembers discussed the goal of the ordinance, businesses learning from the past and learning how to do business in new ways, meeting the immediate needs of businesses, and possible amendments to the ordinance language including removing the \$50,000 allocation.

Browne stated he would like to take this up as a regular ordinance in two weeks and to get input from Don Goldberg.

Dana Brown-Davis, Clerk of the Council, answered a question about the process to withdraw the item.

Browne withdrew his motion to adopt ***and moved*** to withdraw the ordinance from the agenda. The motion was seconded by Donovan.

Browne's motion that the Ordinance be WITHDRAWN from the agenda carried by the following vote:

Aye: 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

Nay: 2 - Byrd, and Elenbaas

Absent: 0

10. AB2020-205 Emergency ordinance amending the Whatcom County 2020 Budget in the amount of \$50,000

Donovan moved and Browne seconded that the Ordinance be WITHDRAWN. The motion carried by the following vote:

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

Nay: 0

Absent: 0

11. AB2020-144 Request authorization for the County Executive to enter into a contract between Whatcom County and Sea Mar Community Health Centers to administer the Law Enforcement Assisted Division (LEAD) Program, in the amount of \$288,778

Vanessa Martin, Prosecuting Attorney's Office, briefed the Council on the contract and answered a question about why there is a risk of being out of compliance.

Donovan moved and Buchanan seconded that the Contract be AUTHORIZED. The motion carried by the following vote:

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

Nay: 0

Absent: 0

12. AB2020-141 Request authorization for the County Executive to enter into a Local Agency Agreement between Whatcom County and Washington State Department of Transportation (WSDOT) to obligate federal construction funds for Goshen Road/Anderson Creek Bridge No. 248 Replacement, in the amount of \$450,000
- Tyler Schroeder, Executive's Office, stated it is planned construction. He answered whether the grant accounts for 100% of the \$450,000 obligated by the Local Agency Agreement for preliminary engineering funds.

Frazey moved that the contract be authorized. The motion was seconded by Donovan.

Discussion continued about the amount of money that would come from the Road Fund right now and how many Public Works Department employees it will keep employed or whether it will go out for bid to a contractor.

Jon Hutchings, Public Works Department Director, answered a question about whether the County has in-house expertise to keep the work in-house.

Frazey's motion that the Contract be AUTHORIZED carried by the following vote:

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

Nay: 0

Absent: 0

13. AB2020-143 Request authorization for the County Executive to enter into a Local Agency Agreement between Whatcom County and Washington State Department of Transportation (WSDOT) to obligate federal funding for the Horizontal Alignment Advisory Speed Review Project in the amount of \$110,778

The following people briefed the Council on the Contract:

- Jon Hutchings, Public Works Department Director
- Jim Karcher, Public Works Department

Donovan moved that the Contract be authorized. The motion was seconded by Buchanan.

The speakers and Councilmembers discussed whether the County has problems with people being non-compliant, where we buy the signs from and whether guard rails are made from aluminum.

Karen Frakes, Prosecuting Attorney's Office, and Hutchings answered whether there are restrictions that the County must buy local first, whether that requirement could be put in place and whether we could buy American Aluminum.

Donovan's motion that the Contract be AUTHORIZED carried by the following vote:

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

Nay: 0

Absent: 0

14. AB2020-210 Resolution to convene a Task Force on Employer Infection Control and Social Distancing Guidance

The following people briefed the Council on the resolution and answered questions:

- Erika Lautenbach, Health Department Director
- Chi-Na Stoane, Health Department, and Public Health Advisory Board (PHAB) Chair

Browne moved that the Resolution be approved. The motion was seconded by Frazey.

Councilmembers and the speakers discussed language in the resolution supporting the desire to allow smaller, locally-owned stores to reopen; why a resolution is necessary as opposed to just releasing guidance and asking businesses to voluntarily comply; whether the Health Department has received a lot of calls to complain that businesses or employers are not complying with recommendations and how many of those situations have been traced to disease spread; whether the Health Department has the ability to enforce their recommendations; making sure the goal is to provide resources for business and not creating road blocks; what they hope this task force will accomplish; how many people will be on the task force and why so many have applied; and the task force's goal of creating equality of opportunity, structure for business owners and communication.

Elenbaas moved that the Resolution be amended to add a sixth item to the list in the last paragraph:

6. All recommendations will be forwarded to the Whatcom County Health Board if action is required. The motion was seconded by Byrd.

Councilmembers and the speakers agreed that this is implied in the PHAB's role.

Elenbaas withdrew his motion.

Browne's motion that the Resolution be APPROVED carried by the following vote:

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

Nay: 1 - Elenbaas

Absent: 0

Enactment No: RES 2020-015

INTRODUCTION ITEMS

Kershner moved to introduce items one through eight. The motion was seconded (see votes on individual items below).

- 1. AB2020-194 Ordinance amending the 2020 Whatcom County Budget, request no. 12, in the amount of \$77,641

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

Aye: 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

Nay: 2 - Byrd, and Elenbaas

Absent: 0

Enactment No: ORD 2020-023

- 2. AB2020-195 Ordinance amending the 2020 Whatcom County Budget, request no. 7, in the amount of \$250,000 (Supersedes Ord. No. 2020-008)

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

Aye: 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

Nay: 2 - Byrd, and Elenbaas

Absent: 0

Enactment No: ORD 2020-024

- 3. AB2020-196 Ordinance amending the 2020 Whatcom County Budget, request no. 8, in the amount of \$1,155,821 (Supersedes Ord. No. 2020-012)

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

Aye: 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

Nay: 2 - Byrd, and Elenbaas

Absent: 0

Enactment No: ORD 2020-025

4. AB2020-197 Ordinance establishing the COVID-19 Emergency Response Fund and establishing a budget for the COVID-19 Emergency Response Fund (Supersedes Ord. No. 2020-016)

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

Aye: 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

Nay: 2 - Byrd, and Elenbaas

Absent: 0

Enactment No: ORD 2020-026

5. AB2020-198 Ordinance amending the 2020 Whatcom County Budget, Request No. 10, in the amount of \$3,000,000 (Supersedes Ord. No. 2020-018)

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

Aye: 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

Nay: 2 - Byrd, and Elenbaas

Absent: 0

Enactment No: ORD 2020-027

6. AB2020-199 Ordinance amending the 2020 Whatcom County Budget, request no. 11, in the amount of \$154,946 (Supersedes Ord. No. 2020-020)

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

Aye: 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

Nay: 2 - Byrd, and Elenbaas

Absent: 0

Enactment No: ORD 2020-028

7. AB2020-200 Ordinance authorizing an interfund loan to finance cash flow for COVID-19 emergency response (replaces Ord. No. 2020-015 and Ord. No. 2020-017)

Kershner moved and Donovan seconded that the Ordinance be

INTRODUCED. The motion carried by the following vote:

Aye: 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

Nay: 2 - Byrd, and Elenbaas

Absent: 0

Enactment No: ORD 2020-029

8. AB2020-204 Ordinance (interim) establishing a COVID-19 interim economic recovery plan to respond to the economic crisis within Whatcom County caused by the COVID-19 pandemic

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

Aye: 5 - Browne, Buchanan, Donovan, Frazey, and Kershner

Nay: 2 - Byrd, and Elenbaas

Absent: 0

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Councilmembers discussed adding the Finance and Administrative Services Committee back to the agenda to discuss the budget items, budget being only discussed in Special Committee of the Whole, and acknowledging friends and neighbors who will lose their jobs at the Alcoa plant.

Dana Brown-Davis answered a process question about how to gather feedback on an introduced ordinance.

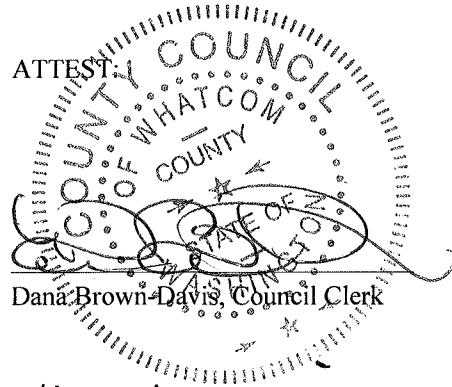
Kershner requested an update from the Administration on the Asian hornet.

Tyler Schroeder, Executive's Office, stated that the WWU Extension may help with that.

ADJOURN

The meeting adjourned at 6:21 p.m.

The County Council approved these minutes on July 7, 2020.



Dana Brown-Davis, Council Clerk

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

Barry Buchanan, Council Chair

Kristi Felbinger, Minutes Transcription