

Whatcom County Council

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



Minutes - Draft Minutes

Tuesday, September 27, 2022

6 PM

Hybrid Meeting

HYBRID MEETING (PARTICIPATE IN-PERSON, SEE REMOTE JOIN INSTRUCTIONS AT www.whatcomcounty.us/joinvirtualcouncil, OR CALL 360.778.5010)

COUNCILMEMBERS

Barry Buchanan
Tyler Byrd
Todd Donovan
Ben Elenbaas
Carol Frazey
Kaylee Galloway
Kathy Kershner

CLERK OF THE COUNCIL

Dana Brown-Davis, C.M.C.

COUNTY COUNCIL

CALL TO ORDER

Council Chair Todd Donovan called the meeting to order at 6:02 p.m. in a hybrid meeting.

ROLL CALL

Present: 7 - Barry Buchanan, Tyler Byrd, Todd Donovan, Ben Elenbaas, Carol Frazey, Kaylee Galloway, and Kathy Kershner

Absent: None

FLAG SALUTE

ANNOUNCEMENTS

COUNTY EXECUTIVE'S REPORT

There was no Executive report.

MINUTES CONSENT

Byrd moved to accept the minutes consent items. The motion was seconded by Buchanan (see votes on individual items below).

1. [MIN2022-055](#) Committee of the Whole Executive Session for September 13, 2022

Byrd moved and Buchanan seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:

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

Nay: 0

Absent: 0

2. [MIN2022-056](#) Committee of the Whole for September 13, 2022

Byrd moved and Buchanan seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:

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

Nay: 0

Absent: 0

3. [MIN2022-057](#) Regular County Council for September 13, 2022

Byrd moved and Buchanan seconded that the Minutes Consent be APPROVED BY CONSENT. The motion carried by the following vote:

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

Nay: 0

Absent: 0

PUBLIC HEARINGS

Council staff played a short instructional video about how to speak at the meeting.

1. [AB2022-489](#) Ordinance adopting various amendments to WCC Title 20, Zoning; Chapter 20.51 - Lake Whatcom Watershed Overlay District and Chapter 20.71 - Water Resource Protection Overlay District, and other references to the Department of Ecology Stormwater Manual

Cliff Strong, Planning and Development Services Department, spoke about “Exhibit A with Additional Proposed Amendments from PDS 9.27” (on file) and briefed the Councilmembers on the suggested change.

Donovan opened the Public Hearing and the following people spoke:

- Jim Hanson
- Michael Feerer
- Alexander Harris
- Wendy Harris
- Brel Froebe

Hearing no one else, Donovan closed the Public Hearing.

Frazey moved and Galloway seconded that the Ordinance Requiring a Public Hearing be ADOPTED.

Frazey moved to amend the Ordinance to retain the use of the word "impervious" where used in the Section 20.71.300 in Exhibit A. The motion was seconded by Elenbaas.

The motion to amend carried by the following vote:

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

Nay: 0

Frazey's motion that the Ordinance Requiring a Public Hearing be ADOPTED AS AMENDED carried by the following vote:

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

Nay: 0

Absent: 0

Enactment No: ORD 2022-061

2. [AB2022-493](#) Resolution approving the Whatcom County Six-year Transportation Improvement Program for the years 2023-2028

Jim Karcher, Public Works Department, briefed the Councilmembers on item B5, the North Lake Samish Road/Bridge No. 107 replacement project, and stated they received updated cost information from their structural consultant and they discovered that they missed showing some revenue that they received from the Samish Water District related to relocating their sanitary sewer line to the new bridge. Ultimately, they are going to be taking advantage of \$8.3 million in Federal bridge replacement funds and will reflect these new revised numbers in the final Six-Year Transportation Improvement Program (TIP) Resolution (see “Revised Staff Hearing - After Hearing” on file).

Donovan opened the Public Hearing and the following people spoke:

- Wendy Harris

Hearing no one else, Donovan closed the Public Hearing.

Kershner moved and Buchanan seconded that the Resolution Requiring a Public Hearing be APPROVED.

Councilmembers and staffed discussed the proposed changes and how to proceed with a motion and Dana Brown-Davis, Clerk of the Council, suggested they accept staff’s recommendations because they are not changing the order of the items.

Kershner moved and Buchanan seconded to accept Jim’s (staff) items presented tonight to be included in the Six-Year TIP.

The motion carried by the following vote:

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

Nay: 0

Clerk’s note: Donovan began to speak about Open Session but then went back and took a vote on the main motion for this item.

Kershner's motion that the Resolution Requiring a Public Hearing be APPROVED AS AMENDED carried by the following vote:

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

Nay: 0

Absent: 0

Enactment No: RES 2022-040

OPEN SESSION

The following people spoke:

- Cynthia Ripke-Kutsagoitz
- Michael (last name not audible)
- Meredith Hayes
- Vernon Damani Johnson
- Heather Powell
- Mike Kaufman
- Josh Fish
- Vesla Tonnessen
- Markis Dee
- Kevin Clark
- Name not given
- Mary Stidham
- Sherman Polinder
- Helga DeLiban
- Lindy McDonough
- Name not given
- Patty (last name not given)
- Robert Bystrom
- Natalie Chavez
- Hannah (last name not given)
- Klaus Klix
- Kai Clark
- Daniel Harm
- Doug Gustafson
- Carly Lloyd
- Devon Kaminski
- Brel Froebe
- Wil Henkel

- Misty Flowers
- Sarah Gardam
- Sophie McMahon
- Susan (last name not given)
- Gail Adderly
- Wendy Harris
- Sara Rose
- Melissa Wisener
- Cliff (last name not given)
- Judith Akins

Hearing no one else, Donovan closed the Open Session.

Clerk's note: Councilmembers took a short break.

CONSENT AGENDA

(From Council Finance and Administrative Services Committee)

Byrd reported for the Finance and Administrative Services Committee and ***moved*** to approve Consent Agenda items two through sixteen.

Councilmembers and staff discussed that Consent Agenda item number one was recommended with amendments and should be pulled from consent and considered separately.

Councilmembers voted on items two through sixteen (see votes on individual items below).

1. [AB2022-463](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Michael Bobbink for hearing examiner services

This item was considered separately. See below after the Consent Agenda.

2. [AB2022-502](#) Request authorization for the County Executive to enter into an interlocal amendment between Whatcom County and the City of Ferndale to extend the term of the Jail Use Agreement until December 31, 2023

Byrd reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

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

Nay: 0

Absent: 0

- 3. [AB2022-503](#) Request authorization for the County Executive to enter into an interlocal amendment between Whatcom County and the City of Blaine to extend the term of the Jail Use Agreement until December 31, 2023

Byrd reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

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

Nay: 0

Absent: 0

- 4. [AB2022-504](#) Request authorization for the County Executive to enter into an interlocal amendment between Whatcom County and the City of Lynden to extend the term of the Jail Use Agreement until December 31, 2023

Byrd reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

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

Nay: 0

Absent: 0

- 5. [AB2022-506](#) Request authorization for the County Executive to enter into a grant agreement between Whatcom County and the Washington State Department of Ecology for the 2021-2023 Biennial Stormwater Capacity Grant in the amount of \$50,000

Byrd reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:

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

Nay: 0

Absent: 0

- 6. [AB2022-509](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the Port of Bellingham for construction costs associated with the Bellingham Shipping Terminal Clean Power/Telecom project in the amount of \$1,125,000

Byrd reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion

carried by the following vote:

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

Nay: 0

Absent: 0

7. [AB2022-512](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Ferndale for the construction of an emergency water intertie in the amount of a \$525,000 grant and a \$325,000 loan

Byrd reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

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

Nay: 0

Absent: 0

8. [AB2022-513](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Ferndale for the construction of a Booster Station on Church Road in the amount of \$250,000

Byrd reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

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

Nay: 0

Absent: 0

9. [AB2022-514](#) Request authorization for the County Executive to enter into an interlocal agreement between Whactom County and the City of Ferndale for the construction of a Metalworks Skatepark in the amount of \$200,000

Byrd reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

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

Nay: 0

Absent: 0

10. [AB2022-515](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Lynden for repair and construction of the City's Community Center in the amount of \$300,000

Byrd reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

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

Nay: 0

Absent: 0

11. [AB2022-516](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Lynden for the Grover Street Pavement improvement project in the amount of \$500,000

Byrd reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

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

Nay: 0

Absent: 0

12. [AB2022-517](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Lynden for the construction of a trail connector project in the amount of \$500,000

Byrd reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

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

Nay: 0

Absent: 0

13. [AB2022-518](#) Request authorization for the County Executive to enter into an interlocal agreement between Whatcom County and the City of Lynden for the construction of the South Park Street water and street improvement project in the amount of a \$387,500 grant and a \$562,500 loan

Byrd reported for the Finance and Administrative Services Committee and moved that the Interlocal be AUTHORIZED BY CONSENT. The motion carried by the following vote:

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

Nay: 0

Absent: 0

14. [AB2022-523](#) Resolution approving the 2023 Lodging Tax allocations as recommended by the Lodging Tax Advisory Committee

Byrd reported for the Finance and Administrative Services Committee and moved that the Resolution be APPROVED. The motion carried by the following vote:

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

Nay: 0

Absent: 0

Enactment No: RES 2022-041

15. [AB2022-525](#) Request approval for the County Executive to authorize purchase of 10 Stryker Power Load systems from vendor Stryker, in an amount not to exceed \$265,594

Byrd reported for the Finance and Administrative Services Committee and moved that the Bid Award be AUTHORIZED BY CONSENT. The motion carried by the following vote:

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

Nay: 0

Absent: 0

16. [AB2022-530](#) Request authorization for the County Executive to enter into a contract amendment between Whatcom County and BERK Consulting, Inc. for the COVID-19 Pandemic Response Review project in the amount of \$2,288

Byrd reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED BY CONSENT. The motion carried by the following vote:

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

Nay: 0

Absent: 0

CONSENT AGENDA ITEM CONSIDERED SEPARATELY

1. [AB2022-463](#) Request authorization for the County Executive to enter into a contract between Whatcom County and Michael Bobbink for hearing examiner services

Byrd reported for the Finance and Administrative Services Committee and moved that the Contract be AUTHORIZED.

Byrd moved to amend the contract to remove the word “rare” (from the last bullet point on Exhibit A).

The motion to amend carried by the following vote:

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

Nay: 0

Abstain: 1 - Galloway

Byrd reported for the Committee and **moved** to extend the contract for two years with a six percent increase in year one and an additional six percent in year two.

The motion carried by the following vote:

Aye: 4 - Kershner, Buchanan, Donovan, and Frazey

Nay: 2 - Byrd and Elenbaas

Abstain: 1 - Galloway

Byrd's motion that the Contract be AUTHORIZED AS AMENDED carried by the following vote:

Aye: 4 - Buchanan, Donovan, Frazey, and Kershner

Nay: 2 - Byrd, and Elenbaas

Absent: 0

Abstain: 1 - Galloway

OTHER ITEMS

(From Council Finance and Administrative Services Committee)

1. [AB2022-485](#) Ordinance amending the Whatcom County Budget, request no. 13, in the amount of \$2,081,283

Byrd reported for the Finance and Administrative Services Committee and moved that the Ordinance be ADOPTED. The motion carried by the following vote:

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

Nay: 0

Absent: 0

Enactment No: ORD 2022-062

2. [AB2022-487](#) Ordinance amending the project based budget for the Courthouse Building Envelope Fund, request no. 4

Byrd reported for the Finance and Administrative Services Committee and moved that the Ordinance be ADOPTED. The motion carried by the following vote:

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

Nay: 0

Absent: 0

Enactment No: ORD 2022-063

(From Council Committee of the Whole)

3. [AB2022-454](#) Ordinance amending Whatcom County Code to restructure the Public Health Advisory Board

Donovan reported for the Committee of the Whole and moved that the SUBSTITUTE Ordinance be ADOPTED. The motion carried by the following vote:

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

Nay: 2 - Byrd, and Elenbaas

Absent: 0

Enactment No: ORD 2022-064

COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

1. [AB2022-469](#) Appointment to fill a vacancy on the Climate Impact Advisory Committee, applicant(s): Fletcher Wilkinson, Tracy Petroske, Irena Lambrou, and Derek Gremban

Elenbaas stated he would like to nominate Derek Grembban.

Councilmembers and staff discussed whether they can accept a nomination if they do not have an application.

Elenbaas moved to hold this item for two weeks and reopen applications. The motion was seconded by Kershner.

Dana Brown-Davis, Clerk of the Council, asked if he could *amend the motion* to say as soon as possible instead of two weeks and Elenbaas agreed.

Elenbaas's motion that the Council Appointment Requiring Introduction be HELD IN COUNCIL carried by the following vote:

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

Nay: 0

Absent: 0

(Motion approved to hold and reopen applications)

ITEMS ADDED BY REVISION

There were no agenda items added by revision.

INTRODUCTION ITEMS

Buchanan stated he would like to vote on Introduction item number one separately.

Buchanan moved to introduce items two through three. The motion was seconded by Frazey (see votes on individual items below).

- 1. [AB2022-521](#) Ordinance adding a new Chapter 2.107 to the Whatcom County Code to create a Whatcom Racial Equity Commission

This item was considered separately. See below.

- 2. [AB2022-529](#) Ordinance approving a system of rates and charges for the Whatcom County Conservation District

Buchanan moved and Frazey seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:

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

Nay: 1 - Elenbaas

Absent: 0

- 3. [AB2022-510](#) Ordinance authorizing acquisition of certain property rights by eminent domain for the County’s E. Smith Road and Hannegan Road Intersection Improvements Project

Buchanan moved and Frazey seconded that the Ordinance Requiring a Public Hearing be INTRODUCED FOR PUBLIC HEARING. The motion carried by the following vote:

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

Nay: 1 - Elenbaas

Absent: 0

INTRODUCTION ITEMS CONSIDERED SEPARATELY

1. [AB2022-521](#) Ordinance adding a new Chapter 2.107 to the Whatcom County Code to create a Whatcom Racial Equity Commission

Buchanan referred to proposed language that Council received from Christopher Quinn, Prosecuting Attorney's Office, today via email to replace the first paragraph of Section 2.107.070 as follows:

“An Appointment Committee consisting of one staff representative for Whatcom County appointed by the County Executive, one staff representative for the City of Bellingham appointed by the Mayor of Bellingham, and four community representatives recommended by the County Executive and approved by the County Council shall be established to 1) review applications for appointed Commission positions 2) evaluate applicant’s eligibility for appointment, and 3) provide written recommendations for Commission appointments to the County Executive and Mayor of Bellingham. Once established under this ordinance, the Commission Steering Committee shall replace the four community representative members on the Appointment Committee. On no less than an annual basis, the Appointment Committee shall assess Commission vacancies and perform its duties as provided herein.”

He stated he would like to change the word “approved” to “confirmed” so that it reads, “...recommended by the County Executive and confirmed by the County Council...”

Quinn stated they could use what the Council deems appropriate and he suggested that the Council also consider changing the word “replace” to “supersede” so that it reads “...the Commission Steering Committee shall supersede the four community representative members...”

Kershner made a point of order and asked if there was a motion on the floor to adopt the Ordinance and **moved** to introduce AB2022-521. The motion was seconded by Buchanan.

Buchanan moved to amend Exhibit A of the Ordinance to replace the first paragraph of Section 2.107.070 as follows (words are bolded just to reflect the discussion above):

“An Appointment Committee consisting of one staff representative for Whatcom County appointed by the County Executive, one staff representative for the City of Bellingham appointed by the Mayor of Bellingham, and four community representatives recommended by the County Executive and **confirmed** by the County Council shall be established

to 1) review applications for appointed Commission positions 2) evaluate applicant's eligibility for appointment, and 3) provide written recommendations for Commission appointments to the County Executive and Mayor of Bellingham. Once established under this ordinance, the Commission Steering Committee shall **supersede** the four community representative members on the Appointment Committee. On no less than an annual basis, the Appointment Committee shall assess Commission vacancies and perform its duties as provided herein.”

The motion was seconded by Donovan.

The motion to amend carried by the following vote:

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

Nay: 0

Galloway stated she would like to make a motion to hold a public hearing on this item but a motion was already on the floor.

Councilmembers voted 5-2 to introduce AB2022-521 as amended. See that motion and vote after further discussion below.

Galloway moved that they hold a public hearing for this Ordinance. The motion was seconded by Kershner.

Galloway amended her motion to add that they hold a public hearing for this Ordinance at the October 11 meeting.

The motion carried by the following vote:

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

Nay: 0

Kershner's motion that the Ordinance be INTRODUCED AS AMENDED carried by the following vote:

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

Nay: 2 - Byrd, and Elenbaas

Absent: 0

COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES

Donovan reported for the Committee of the Whole Executive Session.

Kershner read the following motion:

I hereby **move** to authorize Whatcom County Executive pro tempore to execute Expedited Settlement Agreement (No. 21317) between Whatcom County and the State of Washington, Department of Ecology.

The motion was seconded by Buchanan.

The motion carried by the following vote:

Aye: 6 - Galloway, Kershner, Buchanan, Byrd, Donovan, and Elenbaas

Nay: 1 - Frazey

Councilmembers gave committee reports.

Elenbaas encouraged the Administration to use every tool in their toolbox when we are dealing with managing the river.

Galloway gave updates and asked whether Councilmembers had thoughts about possibly hosting a town hall regarding the budget.

Councilmembers discussed that idea.

Dana Brown-Davis, Clerk of the Council, and Tyler Schroeder, Director of Administrative Services, answered when the Council will get the Executive's budget and the Additional Services Requests (ASRs).

Galloway stated she would like to get guidance from the Council on direction regarding broadband and Councilmembers discussed that.

Elenbaas moved to have a public hearing on AB2022-529 (Ordinance approving a system of rates and charges for the Whatcom County Conservation District), but a hearing was already scheduled.

Galloway spoke about a proposed letter from the Council to the Washington State Broadband Office and either holding off on discussing it until October 4th to see if they would like to sign on to a letter from the Port of Bellingham (Port) and the Public Utility District (PUD) or just discussing it tonight.

Donovan asked if they could float it past the Port and the City.

Schroeder stated the Administration would be happy to reach out to the Port and the PUD with the draft letter and discuss which type of letter they are

anticipating to sign, and see if we can do some coordination effort between now and October 4th. If the Council wants, we can bring back a proposed letter of some sort for Council consideration.

The Councilmembers discussed with the Council Clerk what time to schedule a meeting on October 4th.

ACTION TAKEN: Motion from Committee of the Whole Executive Session approved.

ADJOURN

The meeting adjourned at 9:23 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

Dana Brown-Davis, Council Clerk

Todd Donovan, Council Chair

Kristi Felbinger, Minutes Transcription