

Whatcom County Council Committee of the Whole

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



Committee Minutes - Draft Minutes

**Tuesday, July 23, 2024
1:50 PM
Hybrid Meeting**

**HYBRID MEETING - ADJOURNS BY 4:30 P.M. - MAY BEGIN EARLY
(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
Kaylee Galloway
Jon Scanlon
Mark Stremler

CLERK OF THE COUNCIL

Cathy Halka, AICP, CMC

Call To Order

Council Chair Barry Buchanan called the meeting to order at 2 p.m. in a hybrid meeting.

Roll Call

Present: 7 - Barry Buchanan, Tyler Byrd, Todd Donovan, Ben Elenbaas, Kaylee Galloway, Jon Scanlon, and Mark Stremler

Announcements

Special Presentation

1. [AB2024-456](#) Presentation on fentanyl-related actions and updates from the Sheriff

Donnell Tanksley, Sheriff, described what the Sheriff's Office has been doing recently and in the last couple years including:

- A crisis intervention team, which they are in the process of creating
- Involvement in a group called CLEARs (Community Low Enforcement Aligning Response to Substance use)
- The drug take-back program
- Two deputies in the foothills and a resident deputy in Point Roberts, with a plan to add an additional deputy or shift to Point Roberts

He spoke about patrol drug seizure highlights of and the drug task force, and stated they are looking to acquire a Fentanyl detection dog for the jail, looking at modifying booking restrictions, evaluating alternative court programs, looking at ways to make sure that all jail detainees have proper medication both in jail and post-incarceration, applying for a \$2.5 million (over a four-year period) Health Care Authority grant, and teaming up with Lummi Health to see if they could come inside our facility to treat some of their tribal members. He spoke about courses that detainees have completed while incarcerated. He talked about some of the limitation they deal with including space, and the difficulty of finding housing for people while they are incarcerated.

He answered whether they will put in a budget request this fall for the Fentanyl detection dog for the jail and what the process is for the Sheriff's Office to get one, and stated they will definitely consider it. He answered what the status is on open positions in corrections, and stated they are still down about twelve people.

This agenda item was PRESENTED.

Committee Discussion

1. [AB2024-336](#) Update from the investigative committee assigned to review recent employment law decisions

Buchanan stated they had an executive session this morning on this subject at which the three-person investigative committee (Buchanan, Donovan, and Elenbaas) presented a timeline and some of the raw data they have gotten out of the interview process. They have a couple more interviews to conduct.

Donovan stated they cannot summarize or come up with findings of fact until they conduct the rest of the interviews, but he thinks they are at a point right now where they can decide if they want to define what a Request for Proposal (RFP) might look like or whether they would like to wait on that.

Elenbaas stated the discussion this morning was helpful for them in order to conclude the rest of their interviews.

Buchanan stated they can talk about what having a third party look at this might look like and when to do it, and that there are a lot of ideas for that in the raw data report that Councilmembers received.

Councilmembers discussed moving forward with an RFP, and learning more about what the options are for who they could retain and who does this type of work.

George Roche, Prosecuting Attorney's Office, stated he is the person who typically hires people to handle similar problems (employment law investigations or general HR policy procedure audits). He named attorneys that are currently retained by the County and stated they do not typically put those out for RFPs since he is retaining them under the scope of his authority as legal advisor. So, Council could just put together a scope of work and they would just broker a contract.

Donovan asked whether there are other types of professionals that are not attorneys or whether there are other attorneys that do not presently have connections with Whatcom County that they could reach out to.

Roche stated he is sure there are non-attorney practitioners out there, but he feels like that is going to be less common. He stated typically our contracts for these things do have independence provisions in them saying they are going to render their findings and conclusions without consultation with us. If Council wants to retain people that are outside the scope of the

current Whatcom County operation, his best suggestion for that would be to contact Summit Law, a large employment law firm the County contracts with in a variety of different fields.

Councilmembers discussed when they think the interviews will be completed, putting together a scope of work that includes our HR practices (past, current, and best practices), and looking at other public employers and what can be done to rebuild trust in the system.

This agenda item was DISCUSSED.

2. [AB2024-427](#) Discussion of Docket Item PLN2024-00007, High Impact Industrial uses in Urban Growth Areas, regarding questions posed by the Planning Commission

Mark Personius, Planning and Development Services Department Director, briefed the Councilmembers and stated there were two questions posed to Councilmembers from the Planning Commission, and this discussion is focused on the first of those on the Staff Memo (on file). He would like to get some guidance from the Council today on what he can take back to the Planning Commission so they can keep that docketed item moving along. It is a first phase of looking at uses in the High Impact Industrial district (HII) in the Bellingham Urban Growth Area (UGA). He stated Councilmember Donovan put together a potential list of uses that might be prohibited in the interim and other uses that would still be allowed to continue in that zone (on file). They have looked at that language and are comfortable with it, and that all of the existing uses in the HII zone in the Bellingham UGA would not be affected by any of the prohibited language.

Donovan spoke about his suggested list of uses to be excluded in the HII UGA and the list of Remaining HII permitted uses.

Councilmembers and Personius discussed whether the Planning Department and Planning Commission could provide some findings of fact around the excluded uses, having more discussion and getting more clarity from the Planning Commission about HII that is fully enclosed, the fact that these lists may not be complete but that they want to signal to the Planning Commission that it is not an all-or-nothing thing and that the Council is providing a list of things they think might be compatible, that it may take the Planning Commission until late September or early October to review this and get back to Council with a recommendation, getting more data around air quality to inform whether anything needs to be done mitigation-wise to address community concerns, and a suggestion for Councilmembers to actually go to the site to get a perspective of what it is like out there.

Satpal Sidhu, County Executive, stated the discussion on this item is

connected to the discussion on the next agenda item (**AB2024-467**) and that questions in this discussion will inform the next one.

Donovan stated they agreed that they would not be taking any action on a moratorium today, but by giving the Planning Commission these lists of what may or may not be compatible uses, they would not need the type of moratorium that is in the next agenda discussion. It would be different, if they would even need it.

Councilmembers and Personius discussed getting a commitment that, if they were to move forward with a moratorium, that this process would still happen, and whether Council is OK with the guidance to the Planning Commission provided by Donovan and that it is just the first phase of a two-phased process.

Donovan moved that Planning and Development Services Department use this included and excluded list as a starting point for working with the Planning Commission on advancing Phase 1 code changes discussion.

Councilmembers discussed the motion.

Donovan clarified the motion and stated it would be to use this list of potentially allowable and excluded uses in the HII in this UGA so it would be preserving some, if not most elements of the HII. It is not a moratorium but a starting point for the Planning Commission to discuss what would be allowable and not-allowable uses there.

Councilmembers continued to discuss the motion and that it is a starting point for the Planning Commission to discuss code changes separate from the zoning issue and separate from a moratorium.

The motion carried by the following vote:

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

Nay: 1 - Stremmler

This agenda item was DISCUSSED AND MOTION(S) APPROVED.

Motion approved that Planning and Development Services Department use this included and excluded list as a starting point for working with the Planning Commission on advancing Phase 1 code changes discussion.

3. [AB2024-467](#) Ordinance imposing an interim moratorium on the acceptance and processing of applications and permits for new uses in areas zoned heavy impact industrial within a City's designated urban growth area

Clerk's note: see discussion in previous agenda item (**AB2024-427**).

Buchanan stated this item is a discussion only and not on the even meeting agenda, and it requires a public hearing in the future.

Donovan stated if they were going to go the moratorium route, he would not go with this one that is proposed here because it would just preclude all applications for any heavy industry use in this area. He suggested they rethink this one and come back with one that lists specific things they are most worried about and that they would want to put a moratorium on. If they get a sense that the Planning Commission is taking too long to get back to the Council or if early October is too late to get their recommendations, then they could maybe have a discussion about what a different kind of moratorium would be to finish that process.

Councilmembers discussed holding off on this and maybe not doing it at all, what a different moratorium should look like, being clear about the time limit on a moratorium and what their plan of action would be for those six months, getting assurance that this would not impact existing businesses and land uses in the region, and whether they could reach out to the HII businesses in this UGA to see if this might impact them.

Donovan stated this ordinance is too blunt in its present form and he addressed the suggestions and concerns voiced by Councilmembers. He stated the ordinance as proposed does not need to go anywhere and he would potentially come back with something that would be allowing permit applications for everything but some specific uses if they do feel like they need to do that. So, this version does not need to come back on the agenda as is.

Donovan moved that the Ordinance Requiring a Public Hearing be HELD until revised. The motion carried by the following vote:

Aye: 7 - Buchanan, Byrd, Donovan, Elenbaas, Galloway, Scanlon, and Stremler

Nay: 0

Motion approved to hold until revised.

4. [AB2024-470](#) Discussion regarding new ferry and terminal modernization funding

The following people read from a presentation (on file):

- Elizabeth Kosa, Public Works Department Director
- Kelly Lesoing, KPFF Marine Transit Consulting Group, and project manager for this project
- Carla Sawyer, financial specialist on the project

They presented on the history of the project, factors contributing to an approximately 90% increase of estimated project costs since the 2021 financial plan, how new financial plans were developed, two primary project scenarios (single-phase with full electrification of a 34-car battery electric ferry or deferred electrification on a 34-car hybrid diesel propulsion system ferry) and an in-kind replacement of a 15-car diesel propulsion ferry, the cost and current funding for those options, financial plans for each scenario depending on the level of State funding and including financing costs, available options for revenue, the project schedule to meet the Rebuilding American Infrastructure with Sustainability and Equity (RAISE) grant deadline and the fact that an indecision on funding by this time next year would automatically default in a loss of that grant, and scheduling some work sessions with the Council to work through the questions of whether to proceed with the current project that meets the adopted level of service goals and how to fund the project.

Donovan stated he is skeptical about the scenarios because there is not an option for a smaller electric boat that does not meet the level of service but would lower the terminal costs, and asked if something like that would qualify for grants.

Kosa stated they can look into all sorts of different scenarios and they could look into other grant opportunities for a smaller electrified vessel.

Sawyer stated they would have to return the \$25 million received in 2022 (because it was premised on a larger vessel) and would have to start the grant process over, but if they did that for a smaller electrified vessel, they could probably compete reasonably well nationally for it.

Kosa answered when they would need to know the level of State funding in order to make some of the decisions they need to make, and stated they would need that by this time next year because that is when our funding plan goes to RAISE for approval.

Kayla Schott-Bresler, Executive's Office, answered whether they have a new lobbyist on board yet and stated they do not, but they hope to sign a contract in September.

Councilmembers and the speakers discussed hiring a lobbyist and how long securing State funding could take, the fact that they would be asking for a ferry district that would be countywide and would affect all citizens in Whatcom County and that that is where they could see the most revenue, the

fact that if they had such a district, they would not have to pull from the Road Fund for the capital piece, that a ferry district could be set up in perpetuity, without an end date, and potentially relieve the Road Fund of operational costs as well, how bonding being in the mix for local funding might affect other projects the County is doing, getting more clarity and a timeline needed for all the funding options, getting feedback from the Ferry Advisory Committee, how to schedule work sessions with the Council, and whether there has been any consideration given to alternative infrastructure such as a bridge.

This agenda item was DISCUSSED.

Committee Discussion and Recommendation to Council

1. [AB2024-419](#) Ordinance submitting to the qualified voters of Whatcom County a proposal to repeal Proposition 5

Galloway stated they could take no action on this and this is still getting forwarded to the ballot, so her question is whether or not this ordinance is even necessary.

George Roche, Prosecuting Attorney's Office, stated the way the ordinance is proposed, it is largely them taking no action other than the courtesy of letting the Auditor know that they are not going to be proposing alternate measures. This is essentially a confirmation of the lack of action, through action.

Councilmembers discussed the ordinance and whether they should take an action.

Donovan moved that they recommend approval of the ordinance to the full Council.

The motion ***failed*** for lack of a second.

George Roche, Prosecuting Attorney's Office, answered whether this sends a clear signal to the Auditor that they are finished with this and are not taking action, and he stated he is going to tell the attorney that represents the Auditor's Office that no one seconded the motion here today, and it was described as dying on the vine, and then they will have to interpret that for themselves. The Auditor still has to contemplate whether the Council will do something two weeks from now.

Council staff spoke about whether they should make a recommendation to the Council to take no action.

Buchanan stated he is taking no action and Donovan stated he thinks they sent a clear signal.

This agenda item was NOT ACTED UPON.

2. [AB2024-420](#) Ordinance amending Whatcom County Code 2.02.080, Standing Committees - Membership, to change the membership of all standing council committees from three members to seven

Galloway stated this discussion opened a much bigger can of worms than she originally thought it would and she is happy about that. She referred to the summary and table of data (on file) showing information on other counties' meeting schedules, and stated it gives them a lot of food for thought, and she is not sure she has a clear recommendation at this point.

Donovan stated this county seems to be an outlier in that all Council business is done in one day and they vote on the same things twice. There may be something to be gained by looking at those aspects.

Jill Nixon, Council Office Staff, answered whether there were more than two counties that had a less-than-full number of Councilmembers on committees.

Councilmembers discussed the need for more discussion, the number of Councilmembers or Commissioners on committees based on population of the county or number of total Councilmembers on the Council, whether they could have a special meeting to discuss this further and whether all Councilmembers should work on it or just a subgroup of them, waiting until the first of next year to implement any potential changes, and having Council staff find out which Councilmembers would be interested in participating in the conversation.

Galloway, Byrd, and Elenbaas, stated they would be interested in working on it.

This agenda item was FORWARDED TO COUNCIL WITHOUT A RECOMMENDATION.

3. [AB2024-453](#) Ordinance creating Whatcom County Code 2.49, establishing the Justice Project Finance and Facility Advisory Board

Kayla Schott-Bresler, Executive's Office, briefed the Councilmembers. She stated there are some differences between the interlocal and the original ordinance that this code reflects. That is principally additional representation from the city of Bellingham on the Finance Board, through the Bellingham police chief, as well as concurrence by the Mayor of

Bellingham on the discretionary appointments to the Finance and Facility Advisory Board. They are also bringing forward this evening the Executive's recommendations for the two discretionary seats on the Board.

Donovan stated there was some confusion about who would be doing the appointments and asked if this clarifies that, and Schott-Bresler stated that it does. He asked if it is adding one more position representing the City of Bellingham and she stated it replaced a municipal law enforcement representative with the Bellingham police chief.

Schott-Bresler and George Roche, Prosecuting Attorney's Office, answered whether there is language that specifies that this is superseding the original ordinance, and Roche stated they were confronted with some inconsistencies between the original ordinance and the interlocal and this is their best resolution of those.

Councilmembers and staff discussed the Bellingham police chief position and the appointments being Executive-led.

Donovan moved and Galloway seconded that the Ordinance be RECOMMENDED FOR ADOPTION. The motion carried by the following vote:

Aye: 4 - Buchanan, Donovan, Galloway, and Scanlon

Nay: 3 - Byrd, Elenbaas, and Stremmer

4. [AB2024-492](#) Resolution supporting the expansion of year-round shelter capacity in Whatcom County

Scanlon briefed the Councilmembers, stated they are looking at the substitute resolution, and spoke about community feedback they received. The idea here is to set goals to plan for this winter and then get to a budget proposal for biennial budget discussions with the Executive this fall.

Galloway stated this is interwoven with a multitude of other priorities and speaks to the importance of thinking system wide.

Buchanan moved and Scanlon seconded that the SUBSTITUTE Resolution be RECOMMENDED FOR APPROVAL.

Councilmembers discussed the feedback from the small cities, that there may be newer data than what is reflected in lines 180-189 in the substitute resolution which address student homelessness, and whether Council could pick out some areas to give clear direction about policies to the Executive if they had more legislative capacity.

Kayla Schott-Bresler, Executive's Office, answered whether the shelter options and budget impacts requested in the resolution could realistically be provided to the Council for review and consideration by September 30, 2024, and stated she does not expect that the Health Department will be able to deliver the shelter and budget impacts by that time. She would expect something like the end of the year to be much more feasible.

Satpal Sidhu, County Executive, stated we are in the budget process at the same time and that is taking up most of the time. He stated we support the intent of the policy but the County does not have the capacity for this. It will take time and the Administration will give the Council options and dollar amounts, but it is complicated from their perspective.

Elenbaas stated he would prefer they focus their money and resources on making sure that people can put themselves in a situation where they can help themselves.

Buchanan's motion that the SUBSTITUTE Resolution be RECOMMENDED FOR APPROVAL carried by the following vote:

Aye: 4 - Buchanan, Donovan, Galloway, and Scanlon

Nay: 3 - Byrd, Elenbaas, and Stremmer

Items Added by Revision

There were no agenda items added by revision.

Other Business

There was no other business.

Adjournment

The meeting adjourned at 4:32 p.m.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WA

Cathy Halka, Council Clerk

Barry Buchanan, Council Chair

Kristi Felbinger, Minutes Transcription