



King County

1200 King County
Courthouse
516 Third Avenue
Seattle, WA 98104

Meeting Agenda Committee of the Whole

*Councilmembers: Kathy Lambert, Chair; Rod Dembowski, Vice Chair;
Claudia Balducci, Reagan Dunn, Larry Gossett, Jeanne Kohl-Welles, Joe McDermott,
Dave Upthegrove, Pete von Reichbauer*

*Staff: Patrick Hamacher, Lead Staff (206-477-0880)
Marka Steadman, Committee Assistant (206-477-0887)*

9:30 AM

Wednesday, June 1, 2016

Room 1001

Pursuant to K.C.C. 1.24.035 A. and F., this meeting is also noticed as a meeting of the Metropolitan King County Council, whose agenda is limited to the committee business. In this meeting only the rules and procedures applicable to committees apply and not those applicable to full council meetings.

1. Call to Order

2. Roll Call

To show a PDF of the written materials for an agenda item, click on the agenda item below.

3. Approval of Minutes

[May 4 and 18, 2016 meeting minutes pp. 3-10](#)

Discussion and Possible Action

4. [Proposed Ordinance No. 2016-0044 pp. 11-34 \(Approx. 30 min.\)](#)

AN ORDINANCE proposing an amendment to the King County Charter to make the office of King County prosecuting attorney nonpartisan; amending Section 610 of the King County Charter; adding a new Section 649 to the King County Charter; amending Section 680.10 of the King County Charter; and submitting the same to the qualified voters of the county for their approval or rejection at the next general election occurring more than forty-five days after the enactment of this ordinance.

Sponsors: Mr. Gossett and Ms. Lambert

Nick Wagner, Council staff



Sign language and communication material in alternate formats can be arranged given sufficient notice (206-1000).

TDD Number 206-1024.

ASSISTIVE LISTENING DEVICES AVAILABLE IN THE COUNCIL CHAMBERS.



Briefing

5. [Briefing No. 2016-B0085](#) pp. 35-50 (Approx. 20 min.)

Eastside Rail Corridor quarterly update

Deb Eddy, Council staff

Discussion and Possible Action

6. [Proposed Motion No. 2016-0221](#) pp. 35-50 (Approx. 10 min.)

A MOTION approving the 2016 work plan for the Eastside Rail Corridor program.

Sponsors: Ms. Lambert

Deb Eddy, Council staff

7. [Proposed Motion No. 2016-0260](#) pp. 51-64 (Approx. 10 min.)

A MOTION approving the First Quarter 2016 Expenditures for Emergent Needs and Unanticipated Project Costs Summary Report prepared by the road services division in the department of transportation as required in the 2015/2016 Biennial Budget Ordinance, Ordinance 17941, Section 53, Proviso P2.

Sponsors: Ms. Lambert

Contingent upon referral to the Committee of the Whole.

Lise Kaye, Council staff

Briefing

8. [Briefing No. 2016-B0117](#) p. 65 (Approx. 30 min.)

Roads: Clear Zone Issues and Standards

Lise Kaye, Council staff

Other Business

Adjournment



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Meeting Minutes

Committee of the Whole

Councilmembers: Kathy Lambert, Chair; Rod Dembowski, Vice Chair;

Claudia Balducci, Reagan Dunn, Larry Gossett, Jeanne Kohl-Welles, Joe McDermott, Dave Upthegrove, Pete von Reichbauer

*Staff: Rachele Celebrezze, Lead Staff (206-477-0897)
Marka Steadman, Committee Assistant (206-477-0887)*

9:00 AM

Wednesday, May 4, 2016

Room 1001

SPECIAL MEETING - DRAFT MINUTES

Pursuant to K.C.C. 1.24.035 A. and F., this meeting is also noticed as a meeting of the Metropolitan King County Council, whose agenda is limited to the committee business. In this meeting only the rules and procedures applicable to committees apply and not those applicable to full council meetings.

1. **Call to Order**

The Metropolitan King County Council's Committee of the Whole was called to order by Chair Lambert at 9:10 a.m.

2. **Roll Call**

Present: 9 - Ms. Balducci, Mr. Dembowski, Mr. Dunn, Mr. Gossett, Ms. Kohl-Welles, Ms. Lambert, Mr. McDermott, Mr. Upthegrove and Mr. von Reichbauer

Point of Personal Privilege

Councilmember von Reichbauer thanked the Chair for rearranging the process for the District Court candidate interviews.

Chair Lambert commented that she attended a meeting this morning, and received feedback from the public regarding a King County proposed land purchase.

3. **Approval of Minutes**

Councilmember von Reichbauer moved approval of the March 30, April 6 and April 25, 2016, meeting minutes. There being no objections, the minutes were approved.

Discussion and Possible Action

Chair Lambert provided introductory comments and instructions. The Chair recessed the meeting at 9:20 a.m. The meeting reconvened at 9:23 a.m. The Committee proceeded to interview the following candidates for the judicial vacancy in the southwest division of the King County District Court:

*Laurel Gibson
Brian Todd*

And the following candidates for the judicial vacancies in the west division of the King County district court:

*Gregg Hirakawa
Mary Lynch
Lisa Paglisotti
Andrew Simons
Sumeer Singla*

The Chair recessed the meeting to go into executive session under RCW 42.30.110(h) at 11:44 a.m. to evaluate the qualifications of candidates for appointment to elective office. The meeting returned to regular session at 12:10p.m.

4. Proposed Motion No. 2016-0218

A MOTION making an appointment to fill a judicial vacancy in the southwest division of King County district court.

This matter was expedited to the May 9, 2016 Council Agenda.

A motion was made by Councilmember Upthegrove that this Motion be Recommended Do Pass Substitute. The motion carried by the following vote:

Yes: 8 - Ms. Balducci, Mr. Dembowski, Mr. Dunn, Mr. Gossett, Ms. Kohl-Welles, Ms. Lambert, Mr. McDermott and Mr. Upthegrove

Excused: 1 - Mr. von Reichbauer

5. Proposed Motion No. 2016-0219

A MOTION making an appointment to fill a judicial vacancy in the west division of King County district court.

This matter was expedited to the May 9, 2016 Council Agenda

A motion was made by Councilmember Dembowski that this Motion be Passed Out of Committee Without a Recommendation. The motion carried by the following vote:

Yes: 8 - Ms. Balducci, Mr. Dembowski, Mr. Dunn, Mr. Gossett, Ms. Kohl-Welles, Ms. Lambert, Mr. McDermott and Mr. Upthegrove

Excused: 1 - Mr. von Reichbauer

6. Proposed Motion No. 2016-0220

A MOTION making an appointment to fill a judicial vacancy in the west division of King County district court.

This matter was expedited to the May 9, 2016 Council Agenda.

A motion was made by Councilmember Dembowski that this Motion be Passed Out of Committee Without a Recommendation. The motion carried by the following vote:

Yes: 8 - Ms. Balducci, Mr. Dembowski, Mr. Dunn, Mr. Gossett, Ms. Kohl-Welles, Ms. Lambert, Mr. McDermott and Mr. Upthegrove

Excused: 1 - Mr. von Reichbauer

Adjournment

The meeting was adjourned at 12:18 p.m.

Approved this _____ day of _____.

Clerk's Signature

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1200 King County
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Meeting Minutes

Committee of the Whole

Councilmembers: Kathy Lambert, Chair; Rod Dembowski, Vice Chair;

Claudia Balducci, Reagan Dunn, Larry Gossett, Jeanne Kohl-Welles, Joe McDermott, Dave Upthegrove, Pete von Reichbauer

*Staff: Patrick Hamacher, Lead Staff (206-477-0880)
Marka Steadman, Committee Assistant (206-477-0887)*

6:30 PM

Wednesday, May 18, 2016

Gymnasium

DRAFT MINUTES - SPECIAL MEETING

**Evergreen Middle School
6900 208th Ave. N.E.
Redmond, WA 98053**

Pursuant to K.C.C. 1.24.035 A. and F., this meeting is also noticed as a meeting of the Metropolitan King County Council, whose agenda is limited to the committee business. In this meeting only the rules and procedures applicable to committees apply and not those applicable to full council meetings.

1. **Call to Order**

The Metropolitan King County Council's Committee of the Whole was called to order by Chair Kathy Lambert at 6:35 p.m.

2. **Roll Call**

Present: 7 - Ms. Balducci, Mr. Dembowski, Mr. Gossett, Ms. Kohl-Welles, Ms. Lambert, Mr. Upthegrove and Mr. von Reichbauer
Excused: 2 - Mr. Dunn and Mr. McDermott

3. **Introductory Remarks**

Opening remarks were provided by Chair Lambert and Evergreen Middle School Principal Robert Johnson.

4. **Recognition**

Chair Lambert and Principal Johnson read a proclamation recognizing the King County Girls Environmental Club, The Legion of Bot, for their work to improve the environment by developing a method to reduce the degradation time for plastics. Club members include Ananya Rajagopalan, Neha Mukundan, Nitya Vangala, Roshni Srikanth, Sahana Sasikumar, Sai Vangala and Tarini Srikanth.

Briefing

5. **Briefing No. 2016-B0094**

Local Government Update: Sheriff's Office

King County Sheriff John Urquhart addressed crime trends, Sheriff's Department budget constraints and their impacts, and changes brought about by the legalization of marijuana.

This matter was Presented

6. **Briefing No. 2016-B0058**

Emergency Preparedness

Jody Miller, Deputy Director, Office of Emergency Management, provided a PowerPoint presentation regarding emergency preparedness.

This matter was Presented

7. **Briefing No. 2016-B0059**

Local Government Update: Road Services Division

Brenda Bauer, Director, Road Services Division, provided a PowerPoint presentation regarding the status of King County roads and bridges and upcoming challenges.

This matter was Presented

8. Public Comment

The following individuals provided public comment:

*Senator Andy Hill
Del Moore
Nancy Moore
Alex Tsimerman
Jen Boon
Julianne Bogaty
Sai Ramanath
J.D. Klein
Bob Yoder
Scott Mantei
Lana Rich
Karen Morris
Peter Dove
David Laird
Lee Culverwell
Duni Chand Thamijen
Rajesh Pandey
Iswaeya Venkatraman
Nandiini Singh
Bill McKenzie
Phil Brady
Juan Carlos Combouriza
Rodney
Val Close
Dick Hergert
Anne Loring
Yinod Sharma
Sujeet Kumar
Lawrence and Sharon Pope
Gina Cronkite
Qingsu Wu
Eric Ross
Jessie Liu
Yu Yao
Helin Yao
Yuee Li
Murthy Gorty
Jill Tracy
Larry Happ
Mengke Li
Pradeep Rasha
Yi Xiao
Deepak Asora
Mariana Combariza
Ya Gao
Patrick Magee
Ben Raser
Alia Ozman*

Adjournment

The meeting was adjourned at 9:06 p.m.

Approved this _____ day of _____.

Clerk's Signature



**King County
Metropolitan King County Council
Committee of the Whole**

STAFF REPORT

Agenda Item:	4	Date:	June 1, 2016
Proposed No.:	2016-0044	Name:	Nick Wagner

SUBJECT

A charter amendment that would make the office of King County Prosecuting Attorney nonpartisan and provide for filling vacancies in that office in the same manner as vacancies in certain other nonpartisan county elective offices.

SUMMARY

Proposed Ordinance 2016-0044 (Att. 1) would place on the November 2016 ballot a charter amendment that would make the office of King County Prosecuting Attorney nonpartisan and provide for vacancies in that office to be filled in the same manner as vacancies in the offices of assessor, councilmember, elections director, executive, and sheriff.

BACKGROUND

A. Other King County Elective Offices

Currently, every King County elective office except Prosecuting Attorney is nonpartisan. The nonpartisan offices include, in alphabetical order:

- Assessor
- Councilmember
- District Court Judge
- Elections Director
- Executive
- Sheriff
- Superior Court Judge

The offices of Assessor, Councilmember, Elections Director, and Executive were made nonpartisan by charter amendment in 2008,¹ the office of Sheriff in 1996.² The offices of

¹ Initiative 26 placed on the 2008 ballot the charter amendment that made the offices of Assessor, Councilmember, and Executive nonpartisan. Initiative 25 placed on the 2008 ballot the charter amendment that made the Elections Director a nonpartisan, charter-based office.

² The charter amendment that made the Sheriff a nonpartisan, charter-based office was placed on the 1996 ballot by Ordinance 12301 (adopted on May 28, 1996).

Superior Court Judge and District Court Judge are nonpartisan under state law. RCW 29A.52.231.

B. Other Washington Counties

Currently, in all 39 Washington counties, the office of Prosecuting Attorney is a partisan office.³

1. Non-Charter Counties

For non-charter counties, this is prescribed by RCW 29A.04.110, which provides:

“Partisan office” means a public office for which a candidate may indicate a political party preference on his or her declaration of candidacy and have that preference appear on the primary and general election ballot in conjunction with his or her name. The following are partisan offices:

- (1) United States senator and United States representative;
- (2) All state offices, including legislative, except (a) judicial offices and (b) the office of superintendent of public instruction;
- (3) All county offices except (a) judicial offices and (b) those offices for which a county home rule charter provides otherwise.

Regardless of whether Prosecuting Attorney is considered a “state office” or a “county office” under state law, either subsection (2) or subsection (3) of RCW 29A.04.110 prescribes that in non-charter counties the office is partisan.

2. Charter Counties

For charter counties, RCW 29A.04.110 allows county offices, but not state offices, to be designated as nonpartisan in the county charter. The question is whether Prosecuting Attorney is a county office or a state office.

In four of the seven charter counties, including King County, all of the executive branch elective offices except Prosecuting Attorney are nonpartisan.⁴ This disparate treatment of the office of Prosecuting Attorney could be due to uncertainty among the drafters of those counties’ charters about whether Prosecuting Attorney is a state office or a county office and therefore whether the county is permitted to make the office nonpartisan.

³ “County Forms of Government” – MRSC (Att. 2), <http://bit.ly/1TB2bU0>.

⁴ Those four charter counties are Clallam, King, San Juan, and Whatcom. In one of the other three charter counties, Snohomish County, all of the executive branch elective offices except Prosecuting Attorney and Executive are nonpartisan. In Clark and Pierce Counties, all of the executive branch elective offices, including Prosecuting Attorney, are partisan. See note 3.

3. Opinion of the Washington Attorney General

This issue was addressed recently in a formal opinion of the Washington Attorney General (AGO 2015 No. 6, Nov. 4, 2015) (Att. 2). The Prosecuting Attorney of Clallam County had asked: "May a county operating under the home rule form of government convert the Office of County Prosecuting Attorney from partisan to nonpartisan?" After acknowledging that "[c]ounty prosecutors have been deemed 'state officers' entitled to defense and indemnification from the state when prosecuting under state criminal laws," the Attorney General said:

But in the election context, the office of prosecuting attorney is consistently treated as a county office. For example, candidates for prosecuting attorney must file their declaration of candidacy with the county auditor, not the secretary of state (see RCW 29A.24.070(3)), and the office of prosecuting attorney is not included in the definition of "state office" in the campaign finance and reporting laws (see RCW 42.17A.005(44)). It accordingly makes little sense to consider county prosecuting attorneys as state officers for this purpose. [AGO 2015 No. 6, p. 3]

The RCW is not the only potential obstacle to changing the election of the Prosecuting Attorney from partisan to nonpartisan. Article XI, Section 4, of the Washington State Constitution provides that counties "shall not affect the election of the prosecuting attorney," but the Attorney General has interpreted that to mean only that the office of prosecuting attorney must remain elective, rather than being made appointive. AGO 2015 No. 6, p. 4]

Having concluded that Prosecuting Attorney is a county office for the purpose of RCW 29A.04.110 and that there is nothing in the state constitution requiring the office of Prosecuting Attorney to be partisan under "Washington's current system for conducting partisan and nonpartisan primaries and elections," the Attorney General has concluded that a county may, by charter, change the office of Prosecuting Attorney from partisan to nonpartisan. AGO 2015 No. 6, p. 4.

It remains to be seen how many of the Washington charter counties in which the office of Prosecuting Attorney is currently partisan will amend their charters to make the office nonpartisan in light of the Attorney General's opinion. Both Clallam County and King County, at least, are considering it.

ANALYSIS

Effects of the Proposed Amendment

The proposed charter amendment (Att. 1) would provide, among other things:

A. No Party Preference, Affiliation, or Endorsement on the Ballot

Election of the Prosecuting Attorney must be conducted as a nonpartisan election (Att. 1, lines 17-27), which means that no candidate's party preference

may be listed on the ballot (RCW 29A.04.110).⁵ According to the Prosecuting Attorney's Office, this does not preclude candidates for Prosecuting Attorney from affiliating themselves with political parties in their campaigns or from seeking partisan endorsements or preclude political parties from endorsing or campaigning for candidates for Prosecuting Attorney, nor does it prohibit any form of partisan identification or advocacy except on the ballot itself.

B. Designation of Deputy

The Prosecuting Attorney is required, immediately upon taking office, to "designate one or more employees who serve as a deputy or assistant in such office to serve as an interim official in the event of a vacancy" in the office (Att. 1, lines 29-57).

C. Filling of vacancy

A vacancy in the office of Prosecuting Attorney, like a vacancy in any of several other nonpartisan, elected county offices, shall be filled by the Council by appointment of "an employee who served as a deputy or assistant in such office at the time the vacancy occurred," who shall serve "until the vacancy is filled by appointment pursuant to general law for nonpartisan county elective offices."

In making an appointment to fill the office of Prosecuting Attorney "pursuant to general law for nonpartisan county elective offices," the Council is not required to appoint someone from the same political party as the former Prosecuting Attorney and from among three persons nominated by that party's county central committee, as would be the case if the office remained partisan. (Att. 1, lines 62-68, 76-78; cf. Washington State Constitution, art II, § 15)

At the next primary and general election following a vacancy in the office of Prosecuting Attorney, the office will be on the ballot to fill the unexpired portion of the term of office (or to elect a Prosecuting Attorney to a new term of office, if the current term is expiring). (Att. 1, lines 69-75)

D. Qualifications for Office and Timing of Election

The qualifications for office and the timing of the election of the Prosecuting Attorney shall be as prescribed in state law. (Att. 1, lines 25-27)

RCW 36.27.010 currently provides that the Prosecuting Attorney must be a qualified elector in the county and an attorney admitted to practice in the Washington state courts. RCW 36.16.020 and 36.16.030 provide that the Prosecuting Attorney's term of office shall be four years and until a successor is elected and qualified and assumes office.

⁵ In Washington, even in partisan elections, neither party endorsement nor party affiliation is permitted on the ballot. Only the candidate's party preference is permitted to be shown. RCW 29A.32.032.

Partisan and Nonpartisan Elections in Washington

A. Washington's Form of Partisan Elections

Unlike traditional partisan elections, in which the political party endorsing a candidate is listed on the ballot with the candidate's name, Washington's Top 2 Primary system permits only a candidate's "party preference" to be listed with the candidate's name on the ballot in a partisan election. RCW 29A.32.032. The ballot may not show whether the candidate has been nominated or endorsed by a political party, whether a party approves of the candidate, or whether the candidate is a member of, or is otherwise affiliated with, a party.

B. The Function of Partisan Information on the Ballot

In traditional partisan elections, the listing of the name of a political party below a candidate's name on the ballot serves to inform the voter that the party endorses the candidate, which is information that the voter can use in deciding whom to vote for, based on the voter's familiarity with the party and what it stands for. Party endorsement has been described as "a low-cost—and usually reasonable—policy guide for voting,"⁶ since it enables the voter to avoid a more time-consuming process of determining the candidate's positions on issues of concern to the voter. In much the same way, a consumer might rely on a consumer magazine's ratings of products. Information about partisan endorsements is not available on the ballot to voters in partisan elections in Washington, where only a candidate's party preference is permitted to be listed on the ballot.

A candidate's preference for a political party does not necessarily mean that the party supports the candidate. For example, two or more candidates might express a preference for the same party in an election for the same office, and a candidate could express a particular party preference for strategic reasons, despite holding views that are not entirely shared by that party. Thus, some of the informational benefits of traditional partisan elections are unavailable to voters in Washington under the Top 2 Primary system. Nevertheless, even a candidate's expressed preference for a political party provides some information about the candidate that a voter might find useful.

C. Possible Effects of a Nonpartisan Ballot

1. Potholes and buses as apolitical

Potholes and bus schedules have no political affiliation, in the sense that there is no political disagreement about whether potholes should be fixed and buses should run on time. Reducing local government to that mundane level, one might argue that politics and political labels are less important in local elections than in federal and state elections and therefore that party labels do not belong on local election ballots. On the other hand, one could argue that a willingness to raise taxes to finance road

⁶ Wright, Gerald C., "Charles Adrian and the Study of Nonpartisan Elections," *Political Research Quarterly*, Vol. 61, No. 1 (March 2008), p. 13.

improvements or mass transit, or the allocation of resources between the two, may well depend on an elected official's political perspective. So, too, might a prosecuting attorney's position on issues such as whether it is an effective use of public resources to press felony charges against certain low-level criminal defendants or whether to support diversion programs for non-violent offenders or decriminalization of certain drug offenses.

2. Mismatch between national political affiliation and local issues

Political allegiances and party affiliations are sometimes based on national issues that do not carry over to the local level. A voter's allegiance to a particular party and its candidates may be based on specific national issues, though the local branch of the party may take positions on local issues that the voter, if he or she knew about them, would not support. As a consequence, voting on the basis of a party label on the ballot could lead such a voter to vote in a manner inconsistent with his or her own preferences.⁷

3. Avoidance of an appearance of bias

Endorsement by a political party does not necessarily mean that the endorsed candidate, if elected, will be biased in favor of that party in performing the duties of the elected office. On the contrary, a party might endorse a specific candidate for Prosecuting Attorney, for example, precisely because the party believes the candidate will be even-handed. In Washington, however, the only permissible reference to political parties on the ballot is the *candidate's preference* for a particular party, which seems more suggestive of bias than a *party's endorsement* of a candidate. This arguably strengthens the case for having nonpartisan election of the Prosecuting Attorney in Washington, compared with states where a party's endorsement is permitted on the ballot.

4. Avoidance of partisan bickering in election campaigns

Some advocates of nonpartisan elections argue that they are inherently less rancorous than partisan elections. In Washington, however, nonpartisan elections are required to be nonpartisan only in the sense that party endorsements, affiliations, and preferences may not be shown *on the ballot*. Candidates are not precluded from affiliating themselves with political parties in their campaigns or from seeking partisan endorsements, nor are political parties precluded from endorsing or campaigning for candidates. Partisan identification and advocacy are prohibited only on the ballot itself. RCW 29A.04.110.

5. Voters' alternatives to relying on party labels

One of the rationales for removing party affiliation from the ballot is to motivate voters to find other sources of information about the candidates. In practice, the evidence

⁷ Elmendorf, Christopher S., "Informing Consent: Voter Ignorance, Political Parties, and Election Law," *University of Illinois Law Review*, Vol. 2013, No. 2, 363, pp. 393-408.

suggests that many voters in nonpartisan elections rely on information shortcuts that are less reliable or less appropriate than party affiliation, such as the race or ethnicity suggested by a candidate's name, or the candidate's name familiarity, which favors incumbents and well-financed candidates. Alternatively, eligible voters might decide not to vote at all. In the words of one commentator:

Turnout is lower in nonpartisan elections, and incumbents are stronger, suggesting that informed voting is costly and voters rely more on name recognition and familiarity when denied information about party. Voters deprived of easy access to partisan cues also give much more weight to candidates' race, ethnicity, religion, and social status.⁸

Voters in Washington, however, receive a voter pamphlet containing information provided by the candidates. See RCW Chapter 29A.32.

6. Benefit to the minority party

If partisan information is unavailable on the ballot and voters have not found substitute sources of information, they may end up voting, by mistake, for a candidate who does not share their perspectives and priorities. In a jurisdiction where a clear majority of voters supports a particular party, such mistakes are statistically likely to favor the minority party.⁹

INVITED

Dan Satterberg, King County Prosecuting Attorney

ATTACHMENTS

1. Proposed Ordinance 2016-0044
2. Attorney General Opinion (AGO 2015 No. 6)
3. "County Forms of Government" – Municipal Research and Services Center

⁸ Elmendorf (note 7), p. 386.

⁹ Schaffner, Brian F., "A New Look at the Republican Advantage in Nonpartisan Elections," *Political Research Quarterly* (Vol. 60, No. 2), p. 240.

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KING COUNTY

ATTACHMENT 1

Signature Report

1200 King County
Courthouse 516 Third Avenue
Seattle, WA 98104

January 29, 2016

Ordinance

Proposed No. 2016-0044.1

Sponsors Gossett and Lambert

1 AN ORDINANCE proposing an amendment to the King
2 County Charter to make the office of King County
3 prosecuting attorney nonpartisan; amending Section 610 of
4 the King County Charter; adding a new Section 649 to the
5 King County Charter; amending Section 680.10 of the King
6 County Charter; and submitting the same to the qualified
7 voters of the county for their approval or rejection at the
8 next general election occurring more than forty-five days
9 after the enactment of this ordinance.

10 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

11 SECTION 1. There shall be submitted to the voters of King County for their
12 approval or rejection, at the next general election to be held in this county occurring more
13 than forty-five days after the enactment of this ordinance, an amendment to Section 610
14 of the King County Charter; the addition of a new Section 649 to the King County
15 Charter; and an amendment to Section 680.10 of the King County Charter, to read as
16 follows:

17 **Section 610 Election Procedures.**

18 The nominating primaries and elections for the offices of King County executive,
19 King County assessor (~~and~~), King County council and King County prosecuting

20 attorney shall be conducted in accordance with general law governing the election of
21 nonpartisan county officers.

22 **Section 649 Prosecuting Attorney.**

23 The county prosecuting attorney shall be elected as a nonpartisan office by the
24 voters of the county, and the term of office shall be four years and until his or her
25 successor is elected and qualified. Notwithstanding any section of this charter to the
26 contrary, the qualifications for office and the timing of election shall be as prescribed in
27 state law.

28 **Section 680.10 Designation, Appointment and Election to Fill Vacancy.**

29 Immediately upon commencing their terms of office, the county executive, county
30 assessor, county director of elections, county prosecuting attorney and county sheriff
31 shall each designate one or more employees who serve as a deputy or assistant in such
32 office to serve as an interim official in the event of a vacancy in the elective office of the
33 county executive, county assessor, county director of elections, county prosecuting
34 attorney or county sheriff, respectively.

35 Except for a designation made by the metropolitan county council, a designation
36 of an interim official shall only be effective if the county executive, county assessor,
37 county director of elections, county prosecuting attorney and county sheriff, each for his
38 or her elective office, complies with the following procedure: commits the designation to
39 writing; identifies the order of precedence if more than one county officer or employee is
40 designated; signs the written designation; has the written designation notarized; files the
41 written designation with the county office responsible for records; and provides a copy of
42 the written designation to the chair of the metropolitan county council. The county

43 executive, county assessor, county director of elections, county prosecuting attorney and
44 county sheriff may, at any time, amend such designation by complying with the same
45 procedure established for making the designation.

46 In the event the county executive, county assessor, county director of elections,
47 county prosecuting attorney or county sheriff neglects or fails to make such a designation
48 within seven calendar days of commencing his or her term of office, the metropolitan
49 county council may by ordinance designate one or more employees who serve as a
50 deputy or assistant in such office to serve as an interim official in the event of a vacancy
51 in the elective office of the county executive, county assessor, county director of
52 elections, county prosecuting attorney or county sheriff, respectively. A designation
53 made by the metropolitan county council shall be effective upon adoption of the
54 ordinance therefor and may be amended by ordinance; provided that a designation by the
55 county executive, county assessor, county director of elections, county prosecuting
56 attorney or county sheriff which occurs subsequent to the adoption of an ordinance shall
57 take precedence over the designation by ordinance.

58 The designated county officer or employee shall immediately upon the occurrence
59 of a vacancy serve as the interim official and shall exercise all the powers and duties of
60 the office granted by this charter and general law until an acting official is appointed as
61 provided in this section.

62 The metropolitan county council shall, after being appraised of a vacancy in the
63 elective office of county executive, county assessor, county director of elections, county
64 prosecuting attorney or county sheriff, fill the vacancy by the appointment of an
65 employee who served as a deputy or assistant in such office at the time the vacancy

66 occurred as an acting official to perform all necessary duties to continue normal office
67 operations. The acting official shall serve until the vacancy is filled by appointment
68 pursuant to general law for nonpartisan county elective offices.

69 A vacancy in an elective county office shall be filled at the next primary and
70 general elections which occur in the county; provided that an election to fill the vacancy
71 shall not be held if the successor to the vacated office will be elected at the next general
72 election as provided in Sections 640 and 645 of this charter. The term of office of an
73 officer who has been elected to fill a vacancy shall only be for the unexpired portion of
74 the term of the officer whose office has become vacant and shall commence as soon as he
75 or she is elected and qualified.

76 A majority of the county council may temporarily fill a vacancy by appointment
77 until the vacancy has been filled by election or the successor to the office has been
78 elected and qualified.

79 SECTION 2. The clerk of the council shall certify the proposition to the county
80 elections director, in substantially the following form, with such additions, deletions or

81 modifications as may be required by the prosecuting attorney:

82 Shall the King County Charter be amended to make the elected office of King

83 County prosecuting attorney nonpartisan?

84

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Larry Phillips, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this ____ day of _____, _____.

Dow Constantine, County Executive

Attachments: None

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Attorney General Bob Ferguson

COUNTIES—CHARTERS—ELECTIONS—ATTORNEY, PROSECUTING—Authority Of Counties To Provide By Charter For The Prosecuting Attorney To Be Elected As A Nonpartisan Office

Article XI, section 4 of the Washington Constitution does not prohibit a county from providing in its charter for the election of the prosecuting attorney as a nonpartisan office.

November 4, 2015

The Honorable Mark B. Nichols Prosecuting Attorney
223 E 4th Street Suite 11
Port Angeles, WA 98362-3015

Cite As:
AGO 2015 No. 6

Dear Prosecutor Nichols:

By letter previously acknowledged, you have requested our opinion on the following question:

May a county operating under the home rule form of government convert the Office of County Prosecuting Attorney from partisan to nonpartisan by charter?

BRIEF ANSWER

Yes, home rule counties have wide latitude in structuring their government in their home rule charters and have statutory authority to designate county positions as nonpartisan.

ANALYSIS

Washington counties can choose whether to govern under a standardized commission form of government or under a home rule charter, which allows the county to create its own form

of government. The home rule approach is authorized by article XI, section 4 of the Washington Constitution, as amended by Amendment 21 and approved by the voters in 1948. Under the home rule approach, a county adopts a charter “for its own government subject to the Constitution and laws of this state[.]” Const. art. XI, § 4. The home rule amendment “expressed the intent of the people of this state to have ‘the right to conduct their purely local affairs without

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supervision by the State, so long as they abided by the provisions of the constitution and did not run counter to considerations of public policy of broad concern, expressed in general laws.” *Henry v. Thorne*, 92 Wn.2d 878, 881, 602 P.2d 354 (1979) (quoting *State ex rel. Carroll v. King County*, 78 Wn.2d 452, 457-58, 474 P.2d 877 (1970)).

Counties have wide latitude in adopting home rule charters, subject to specific limitations in article XI, section 4, which specify that the positions of prosecuting attorney, the county superintendent of schools, judges of the superior court, and justices of the peace are to be treated differently from other positions in three respects.^[1] First, the home rule charter cannot “affect the election” of those positions. Second, the terms of those elective officers do not terminate at the time of the adoption of a home rule charter, in contrast to all other county elective officers. And third, the powers, authorities, and duties granted to and imposed on county officers by general law, which vest in the county legislative authority unless expressly vested in specific officers by the home rule charter, specifically do not include those powers, authorities, and duties vested in the prosecuting attorney, the county superintendent of schools, and the judges of the superior court and justices of the peace.

In construing these limitations, our office has previously opined that “counties lack the power to alter or diminish the authority of the prosecuting attorney through the home rule charter process” and that “[t]he prosecuting attorney in a home rule county thus enjoys the same statutory and constitutional authority as prosecuting attorneys in noncharter counties.” AGO 1986 No. 1, at 6. In that opinion, we were asked whether the legislative authority of a home rule county could condition its appropriation to the prosecuting attorney’s office on a particular allocation of resources within that office. We answered the question in the qualified affirmative, concluding that the “delicate balance” between the county legislative authority’s budget powers and the prosecuting attorney’s independent discretion means that both offices must exercise their discretion to respect the others’ powers and not eliminate the others’ prerogatives.

We are now asked whether home rule counties may convert the office of prosecuting attorney from partisan to nonpartisan. “Partisan office” is defined by statute as a “public office for which a candidate may indicate a political party preference on his or her declaration of candidacy and have that preference appear on the primary and general election ballot in conjunction with his or her name.” RCW 29A.04.110. This statute specifies that the following are partisan offices:

- (1) United States senator and United States representative;

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- (2) All state offices, including legislative, except (a) judicial offices and (b) the office of superintendent of public instruction;

(3) All county offices except (a) judicial offices and (b) those offices for which a county home rule charter provides otherwise.

RCW 29A.04.110.

The first question we must address is whether the office of prosecuting attorney is a state or county office for purposes of RCW 29A.04.110. This is because if the office is a state office, then it must be partisan as a matter of statute. RCW 29A.04.110(2). County prosecutors have been deemed “state officers” entitled to defense and indemnification from the state when prosecuting under state criminal laws. *Whatcom County v. State*, 99 Wn. App. 237, 250, 993 P.2d 273 (2000). But in the election context, the office of prosecuting attorney is consistently treated as a county office. For example, candidates for prosecuting attorney must file their declaration of candidacy with the county auditor, not the secretary of state (see RCW 29A.24.070(3)), and the office of prosecuting attorney is not included in the definition of “state office” in the campaign finance and reporting laws (see RCW 42.17A.005(44)). It accordingly makes little sense to consider county prosecuting attorneys as state officers for this purpose.

Having concluded that the office of prosecuting attorney is a county office for purposes of our analysis, RCW 29A.04.110(3) would allow home rule counties to designate that office as nonpartisan, unless the constitution prohibits it. Therefore, the answer to your question depends on interpretation of the scope of a county’s power under the home rule provisions of the state constitution.

The relevant constitutional language provides that the home rule charter shall not “affect the election of the prosecuting attorney, the county superintendent of schools, the judges of the superior court, and the justices of the peace, or the jurisdiction of the courts.” Const. art. XI, § 4. The term “affect” is not defined in the constitution. In construing terms undefined in the constitution, courts apply their ordinary meaning. *Gerberding v. Munro*, 134 Wn.2d 188, 199, 949 P.2d 1366 (1998) (using a dictionary definition to construe an undefined term).^[2] As relevant in this context, “affect” means “to act upon” or “to produce a material influence upon or alteration in.” *Webster’s Third New International Dictionary* 35 (2002).

Applying this ordinary meaning, we see two reasonable readings of this provision. The first, narrower reading would be that it simply bars county home rule charters from converting the position of county prosecutor into a non-elected, appointive position. That is, in prohibiting home rule charters from “affect[ing] the election of the prosecuting attorney” and other officers,

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article XI, section 4 prohibits changing the *elective nature* of the office. The second, broader reading is that the provision prohibits home rule charters from affecting *the election process* for prosecuting attorneys.

While both readings are plausible, our office has previously adopted the first interpretation. In a 2003 formal opinion that addressed (among other topics) whether a county could impose campaign finance restrictions on candidates for prosecutor, we wrote: “This provision simply requires that charter counties retain the office of prosecuting attorney and leave

undisturbed the elective nature of the office. The provision is not framed so broadly as to preclude all local regulations that affect the manner in which elections are conducted for the office of prosecutor so long as the county leaves the office elective." AGO 2003 No. 12, at 4.

Though the opinion cited no authority for this proposition, we have found nothing that would convince us to change our view. In particular, the legislative history of Amendment 21, which added this provision, contains no indication one way or the other about the framers' intent. Voters' Pamphlet 29-32 (1948). Additionally, in at least two cases our state Supreme Court has considered county charter provisions that at least arguably would have implicated this clause under the broader reading, one that changed elections for county offices to odd-numbered years (*Carroll*, 78 Wn.2d 452) and one that imposed new rules for elections to fill vacancies in county offices (*Henry*, 92 Wn.2d 878). Yet the Court never discussed the potential conflict between these changes and this clause. While the lack of discussion is certainly not a holding, it indicates that the Court did not consider the broader reading of this language obviously correct.

In short, because of our office's prior interpretation and the lack of any evidence that would prompt us to revisit it, we continue to conclude that the requirement that a charter "shall not affect the election of the prosecuting attorney" (Const. art. XI, § 4) "simply requires that charter counties retain the office of prosecuting attorney and leave undisturbed the elective nature of the office." AGO 2003 No. 12, at 4.

Given this conclusion, the answer to your question becomes quite simple. Because changing the position of prosecuting attorney from partisan to nonpartisan would not disturb "the elective nature of the office" (AGO 2003 No. 12, at 4), we believe that such a change complies with article XI, section 4.

In an abundance of caution (in case a court ever adopts the broader reading), however, we will also consider how this proposal would fare under the broader reading of this language. Ultimately, though we think it is a closer question, we reach the same result: we see no conflict with article XI, section 4.

To assess whether designating the office of prosecuting attorney as nonpartisan would "affect the election" in the broader sense of affecting the election process, we consider the differences between elections of partisan and nonpartisan offices. In doing so, we ask whether making the position nonpartisan would "act upon" or "materially influence" the manner in which the county prosecutor is elected.

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The most significant difference between the election of partisan and nonpartisan offices arises in the primary. Under Washington's top-two primary system, an election for a partisan office must be preceded by a primary, from which the top two candidates will be certified to appear on the general election ballot. RCW 29A.52.112(2).^[3] The party preference appears on the primary and general election ballots, but only if the candidate expresses a party preference. RCW 29A.52.112(4). For nonpartisan elections, a primary is only required if more than two candidates file for the position. RCW 29A.52.220.

We acknowledge that a candidate's indication of a party preference may affect how the

candidates campaign and how voters perceive the candidates. But, it does not rise to the level of affecting the election because there is so little difference in how elections are conducted for partisan and nonpartisan offices under the top-two primary system. This is largely because, in Washington, the primary is not used to choose party nominees. “The top two candidates from the primary election proceed to the general election regardless of their party preferences.” *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 453 (2008).

Similarly, the small differences in when a primary is, or is not, conducted have little practical effect on the election. By way of example, if there are three candidates for a partisan position, the primary would be held and the top two candidates would proceed to the general election, regardless of party preference. If there are three candidates for a nonpartisan position, the primary would be held and the top two candidates would proceed to the general election. The difference would arise only if there were two candidates for a position; in that case, a primary would be held for a partisan position, but not for a nonpartisan position. But we conclude that this difference is too small and uncertain to “materially” affect the manner of conducting the election. Whether a primary occurs or not, the same two candidates would be competing for election. *Cf. Carlson v. San Juan County*, 183 Wn. App. 354, 370, 333 P.3d 511 (2014) (observing that all regulations of elections “affect” voting in some way, but not all are subject to stringent review).

While it is theoretically possible that a court could construe article XI, section 4 to preclude charters from having *any* effect at all upon the election of the prosecuting attorney, we think that is highly unlikely. Such reasoning would conflict with the courts’ recognition of the broad authority of counties to formulate their own local governments through their locally-developed charters. *See Henry*, 92 Wn.2d at 881 (noting broad authority of counties to tailor their local affairs to charters); *see also Carroll*, 78 Wn.2d at 457-58 (same); *Carlson*, 183 Wn. App. at 368 (same). It would also call into question any number of small changes a county might make in its election process, from the form of its ballots to (formerly) the location of polling places or (currently) ballot drop boxes.

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We also considered that the process for filling vacancies in partisan and nonpartisan offices differs under article II, section 15. That provision requires vacancies in partisan county elective office to be filled by appointment by the county legislative authority from a list of names nominated by the county central committee of the party. In contrast, no such requirement exists for filling the vacancies of nonpartisan elected officers. While these are real differences in how vacant positions are filled for partisan and nonpartisan positions, we also conclude that they do not amount to “affect[ing] the election” of those positions. *Cf. Henry*, 92 Wn.2d at 881-82 (“The constitution does not express any public policy that would require counties to adopt a uniform approach to filling” vacancies in “offices that concern only the residents of a county.”).

Finally, our analysis under this broader reading is limited to Washington’s current system for conducting partisan and nonpartisan primaries and elections. Under a broader reading, article XI, section 4 invites a comparison between the general law and the terms of a county charter. If the general law changed, the analysis of whether the county charter complies with article XI, section 4 under the broader reading could change as well.

We trust that the foregoing will be useful to you.

ROBERT W. FERGUSON
Attorney General

JESSICA FOGEL
Assistant Attorney General

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[1] Two of the four listed offices no longer exist, at least in the same form and under the same name. The former office of “county superintendent of schools” has been replaced by a system of “educational service districts.” See Laws of 1969, 1st Ex. Sess., ch. 176, § 1 (enacting what is now RCW 28A.310.010, and explaining the transition from county superintendents of schools). The former office of justice of the peace has been replaced with a system of district courts, and by statute all references to justices of the peace are construed as references to district judges. RCW 3.30.010.

[2] Article XI, section 4 was amended in 1948. Const. amend. 21. Accordingly, there can be no issue of a need to turn to a nineteenth century dictionary to construe the word “affect.” See State ex rel. Gallwey v. Grimm, 146 Wn.2d 445, 460, 48 P.3d 274 (2002) (cautioning against the use of anachronistic definitions).

[3] For an election to fill the unexpired term of a single county partisan office, the primary requirement does not apply if only one candidate has filed for the position. RCW 29A.52.112(2).



County Forms of Government

This page provides a brief overview of the commission and home rule charter forms of county government in Washington State and the consolidated city-county option for home rule charter counties.

Commission Form

Article 11, section 5 of the Washington Constitution makes the commission form the standard form of county government throughout the state for counties that do not adopt a home rule charter and sets forth, in general terms, the governmental structure that all commission counties must have. Of Washington's 39 counties, 32 "noncharter" counties operate under the commission form of government provided by state law.

The commission form is often referred to as the "plural executive" form of government. Under the commission form, the county governing body consists of a three-member board of commissioners, elected on a partisan basis, who serve as the county's legislative body and also perform executive functions. Counties with populations greater than 300,000 can increase the size of the commission from three to five members ([RCW 36.32.055](http://app.leg.wa.gov/rcw/default.aspx?cite=36.32.055) (<http://app.leg.wa.gov/rcw/default.aspx?cite=36.32.055>) - [36.32.0558](http://app.leg.wa.gov/rcw/default.aspx?cite=36.32.0558) (<http://app.leg.wa.gov/rcw/default.aspx?cite=36.32.0558>)).

Basic authority and procedures for board of county commissioners are set forth in [Ch. 36.32 RCW](http://app.leg.wa.gov/rcw/default.aspx?cite=36.32) (<http://app.leg.wa.gov/rcw/default.aspx?cite=36.32>). While the county commissioners establish the budget and act as the county legislative body, they share administrative functions with several other independently-elected county officials, including a clerk, treasurer, sheriff, assessor, coroner, and auditor (or recorder). The county prosecuting attorney and the judges of the superior court are also independently elected.

Although there is no constitutional or statutory requirement for county commissioners to delegate any of their executive authority to a separately-appointed administrator, many of them have, to a limited degree, chosen to do so.

"Home Rule" Charter Form

Article 11, section 4 of the state constitution was amended in 1948 to provide the option for counties to adopt "home rule" charters to provide their own form of government that may be different from the commission form prescribed by state law. Home rule charters can provide for any county officers deemed necessary to perform county functions, but they cannot affect the election of the prosecuting attorney, the county superintendent of schools, the judges of the superior court, and the justices of the peace, or the jurisdiction of the courts. As outlined in the constitution, the charter process involves electing a group of 15-25 freeholders who are responsible for developing a proposed charter that is voted on by the electorate.

- **Charter Process Case Study: A Brief History of the Development and Passage of Clark County's Home Rule Charter** (<http://mrsc.org/getdoc/96d95e23-478d-4aed-8984-dfe64d1781a7/Summary-of-Clark-County-Charter>)

[2014-Home-Rule-Charter-Pas.aspx](#)

Seven Washington counties have successfully adopted home rule charters - King (1969), Clallam (1977), Whatcom (1979), Snohomish (1980), Pierce (1981), San Juan (2006), and Clark (2015). Several other counties, including Kitsap (1971), Island (1976 and 1995), Thurston (1978), Cowlitz (1998), Ferry (1993), Skamania (1994), and Spokane (1995) counties, have tried and failed to adopt charters.

After adoption of a charter, the powers, authority, and duties of county officers provided for by state law, except for the prosecuting attorney, are vested in the county legislative authority, unless the charter expressly assigns powers and duties to specific officers. The duties of the board of county commissioners and other elected officers may also be modified by charter. The commissioners and other elected officers may be entirely replaced, subject to certain restrictions.

Charter counties generally choose between two types of forms of government:

Council-Elected Executive Form

In the council-elected executive form, the county executive is elected by the voters and serves as the head of the executive branch of government. The county council is the legislative branch of government, and it enacts ordinances, adopts the budget, and exercises oversight of the administration. Its role is similar to the role of a city council in a mayor-council city.

The county executive has the power to veto legislation; however, a veto can be overridden by the council with a two-thirds majority vote or greater. The county executive proposes policies to the council, executes policies adopted by the council, prepares a budget, and has responsibility for general administration of the county. The county executive appoints and may dismiss department heads, generally with the consent of the council. The county executive's role is similar to the role of a mayor in a mayor-council city.

Commission/Council-Appointed Administrator Form

In this form, an elected body, be it a county commission or council, continues to have the policy-making, legislative, and budget-adoption functions. However, the council or commission delegates all or a portion of its administrative authority to an appointed professional administrator with the specific intent of enhancing administrative coordination and control functions. As an appointed official, the county administrator serves at the pleasure of the council or commission.

Other important aspects that charter counties must choose include:

- **Elected Official Partisanship.** While all county elected offices in noncharter counties, other than judicial offices, are partisan offices, charter counties may choose if their elected positions are partisan or not.
- **Initiative and Referendum.** Home rule charters can also provide the powers of [initiative and referendum](http://mrsc.org/getmedia/18593ba0-fa89-4776-84dc-3dcab86b3449/initiativereferendumguide.pdf.aspx?ext=.pdf) (<http://mrsc.org/getmedia/18593ba0-fa89-4776-84dc-3dcab86b3449/initiativereferendumguide.pdf.aspx?ext=.pdf>) to the citizens of the county. All existing charter counties have adopted initiative and referendum powers.
- **Elected vs. Appointed Officials.** A county charter can make any elected county official, except the prosecuting attorney and superior court judges, an appointed rather than an elected position. Most of the charter counties have done so only selectively. A number of counties have made the Office of the County Clerk and the Office of the

Medical Examiner into appointed positions but most others remain elected.

Comparison of Washington Charter Counties

County	Form	Council/Commission	Other Elected	Appointe
King (1969) Charter (http://www.kingcounty.gov/council/legislation/kc_code/O3_Charter.aspx)	Council-Elected Executive	9-member (NP)	County Executive (NP); Assessor (NP); Prosecuting Attorney (P); Sheriff (NP); Director of Elections (NP)	Auditor; County Administ Officer; Treasury Operatio Manager; Clerk; Medical Examiner
Clallam (1977) Charter (http://www.clallam.net/Board/assets/applets/2007_Charter.pdf)	Commission-Appointed Administrator	3-member (P)	Assessor (NP); Prosecuting Attorney/Coroner (P); Auditor (NP); Sheriff (NP); Treasurer (NP); Community Development Director (NP)	County Administ Clerk
Whatcom (1979) Charter (http://www.codepublishing.com/WA/WhatcomCountyCH/)	Council-Elected Executive	7-member (NP)	County Executive (NP); Assessor (NP); Prosecuting Attorney (P); Auditor (NP); Sheriff (NP); Treasurer (NP) Clerk	Clerk; Deputy Administ Medical Examiner
Snohomish (1980) Charter (http://www.codepublishing.com/wa/snohomishcounty/html/SnohomishCountyCH/SnohomishCountyCH.html)	Council-Elected Executive	5-member (P)	County Executive (P); Prosecuting Attorney (P); Assessor (NP); Auditor (NP); Sheriff (NP); Clerk (NP); Treasurer (NP)	Medical Examiner
Pierce (1981) Charter (http://www.codepublishing.com/wa/piercecounty/)	Council-Elected Executive	7-member (P)	County Executive (P); Prosecuting Attorney (P); Sheriff (P); Assessor-Treasurer (P); Auditor (P)	Clerk; Medical Examiner
San Juan (2006) Charter (http://www.sanjuanco.com/docs/Charter/SanJuanCountyCharter.pdf)	Council-Appointed Administrator	3-member (NP)	Prosecuting Attorney/Coroner (P); Assessor (NP); Auditor (NP); Clerk (NP); Sheriff (NP); Treasurer (NP)	County Manager

County	Form	Council/Commission	Other Elected	Appointe
Clark (2015) Charter (https://www.clark.wa.gov/sites/all/files/elections/Clark%20County%20Charter%20BOFCharter_052714.pdf)	Council-Appointed Administrator	5-member (P)	Assessor (P); Auditor (P); Clerk (P); Prosecuting Attorney (P); Sheriff (P); Treasurer (P)	County Manager

(P) = partisan, (NP) = nonpartisan

Consolidated City-County Government

At the same time the state constitution was amended in 1948 to allow counties to adopt "home rule" charters, another amendment was adopted to allow counties with a "home rule" charter to provide for the formation and government of a combined city and county municipal corporation known as a "city-county." The same procedures applicable to the adoption of a county charter also govern the adoption of a city-county charter, except that the only method of beginning the combined city-county charter process is through a voter petition. There is no minimum population requirement.

In addition to providing for an alternative form of county government, a city-county charter may also merge the county with cities and other municipal corporations within its boundaries. Consolidated city-county governments have been proposed as a way to improve local government service provision by eliminating conflicts between competing levels of local government. Although a few Washington counties have explored this option, no combined city-county governments have yet been formed.

Recommended Resources

- **MRSC Insight: A Brief History of the Development and Passage of Clark County's Home Rule Charter** (<http://mrsc.org/getdoc/96d95e23-478d-4aed-8984-dfe64d1781a7/Summary-of-Clark-County-2014-Home-Rule-Charter-Pas.aspx>) (2015) - Insider's perspective of how Clark County became Washington's seventh home rule charter county
- **National Center for the Study of Counties: Responding to the New Realities: Case Studies in County Governance** (<http://mrsc.org/Corporate/media/MediaLibrary/SampleDocuments/ArtDocMisc/m58county.pdf>) (2012) - Describes how a select group of counties attempted or are in the process of making structural changes in order to better face current and future challenges

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King County

**Metropolitan King County Council
Committee of the Whole
STAFF REPORT**

Agenda Items:	5 & 6	Name:	Deb Eddy
Briefing No:	2016-B0085 and 2016-0221	Date:	1 June 2016

SUMMARY

This staff report covers two items:

A. Briefing 2016-B0085, a quarterly update on Eastside Rail Corridor program activities

The Council last received a briefing on ERC activities in the Committee of the Whole in February 2016. Today's briefing updates the council on the Trail Master Plan process, on various coordination activities and on the ERC Regional Advisory Council's initial discussion of re-organization of this interjurisdictional committee.

B. Proposed Motion 2016-0221, a motion adopting the Eastside Rail Corridor Program's work plan for 2016

The Council's adoption of an ERC Program work plan will help guide Council staff, Executive and agency personnel in meeting the Council's expectations for development of this asset. The work plan ensures alignment of council policy with executive branch actions and provides for strong intergovernmental and interdisciplinary engagement with co-owners and public, private and nonprofit stakeholders.

BACKGROUND

The Eastside Rail Corridor (ERC) is a 42-mile former rail line running from the City of Renton to the City of Snohomish and extending through the cities of Snohomish, Woodinville, Kirkland, Bellevue, Renton, and Redmond, and parts of unincorporated Snohomish and King Counties. In 2003, the BNSF Railway Company (BNSF) announced its intention to divest itself of this rail corridor. In response, in 2009, a group of regional partners, including King County and the Port of Seattle, signed a Memorandum of Understanding that envisioned a regional approach to preserve the corridor for multiple uses (Ordinance 16738). To begin that regional effort, the Port of Seattle acquired BNSF's interests in the corridor between Renton and Snohomish. The southern portions of the corridor (between Woodinville and Renton, and from

Woodinville to Redmond) were railbanked.¹ King County became the Interim Trail Sponsor² of the 21-mile railbanked portion and also purchased a multipurpose easement from the Port in the railbanked area (Ordinance 16084). Additionally, King County's wastewater treatment system includes conveyance facilities that run within and cross the ERC.

The Port then sold its property interests in the railbanked portion of the corridor. The City of Redmond purchased the areas within the city boundaries. Puget Sound Energy purchased a utility easement along the entire corridor except within the Redmond-owned portion. Sound Transit purchased all of the Port's remaining interest in roughly 1.1 miles of the corridor in Bellevue (called the "Sound Transit Mile," the planned location of its East Link Hospital Station), as well as high capacity transit easements on the remainder of the railbanked area. The City of Kirkland purchased all of the Port's remaining interest in the segment of the corridor located largely within its boundaries.

On February 8, 2013, King County and the Port executed a purchase and sale agreement for King County to acquire all of the Port's remaining interest in the remaining 15.6 miles of the railbanked area, as well as a 3.6-mile trail easement north of the railbanked area, between Woodinville and Brightwater (Ordinance 17503). In addition, the County continues to own its multipurpose easement in the areas of the ERC acquired by Kirkland and Sound Transit, comprising approximately 6.6 miles. In total King County owns property interests in approximately 25.8 miles of the ERC.

The five entities that acquired the Port's interests in the railbanked portion of the ERC (King County, Sound Transit, the City of Redmond, the City of Kirkland, and Puget Sound Energy) have been planning collaboratively around a shared, multi-use vision for the corridor through a Regional Advisory Council (RAC) (Motion 13801). In December 2014, the Council created the term-limited temporary position of Eastside Rail Corridor Program Manager, to provide adequate support to the complex cross-sector collaboration, ensuring realization of the Council's policies.

A. Quarterly update on Eastside Rail Corridor program activities

The Council last received a briefing on ERC activities in the Committee of the Whole in February 2016. Today's briefing updates the council on the Trail Master Plan process, on various coordination activities and on the ERC Regional Advisory Council's initial discussion of re-organization of this interjurisdictional committee.

Trail Master Plan Process

The Council last received a briefing in the Committee of the Whole on the trail master planning process in February 2016. Today's briefing focuses on recent activities leading

¹ Under the Federal National Trails Act, also known as the Rails to Trails Act, 16 U.S.C. §1247(d).

² As the Interim Trail User, the County is subject to legal obligations imposed by Section 8(d) of the Rails-to-Trails Act, 16 U.S.C. § 1247(d) and 49 C.F.R § 1152.29, as implemented through the Notices of Interim Trail Use (NITUs) for the various parts of the Corridor issued by the Surface Transportation Board (STB), and also the Trail Use Agreement entered into between BNSF and the County, and the STB-required Statement of Willingness to Accept Financial Responsibility (SWAFR). Pursuant to the Rails to Trails Act, all interim uses of railbanked corridors are subject to reactivation of potential interstate freight rail service.

up to transmittal of and Council approval of the Final Trail Master and Environmental Impact Statement (EIS) plan by year's end.

Master planning encompasses approximately 15.6 miles of the ERC under King County ownership in the railbanked section of the ERC, and the 1.1-mile segment owned by Sound Transit. The process has been designed to reflect the vision of the constituent owners that the ERC is a corridor of regional significance due to its potential to enhance mobility, utility infrastructure and recreation in the region.

The process is phased, with Phase 1 representing trail master-planning, funded by the King County Parks Levy. Later phases include Phase 2: Preliminary Design; Phase 3: Final Design; and Phase 4: Construction. Planning, designing and constructing the trail facilities are expected to take several years, including the identification of funding.

The Draft Master Plan and EIS were issued on February 29, followed by a month-long public comment period which closed on March 31. Seven public meetings were held in March, including three open houses and four neighborhood meetings. Over 150 comments were received from citizens and/or households via mail, letter, or online; and several letters were received from stakeholders and agencies. Publication of the Final Master Plan and EIS is expected in July, with legislation for King County Council adoption of the plan transmitted in August. The Final MP and EIS will contain detailed responses to all comments received.

Common themes from public comments included:

- *Environmental impacts:* tree canopy and vegetation preservation, minimize impacts to wildlife habitat and wetlands, protect steep slope stability
- *Trail safety:* User speeds, separation of modes, and design of roadway crossings were all strong concerns
- *Local residential concerns:* Security, privacy, separation, and parking (particularly in Lakefront segment)
- *Trail character and amenities:* Construct a 'World Class Trail' that includes trail access points, parking, restroom and water facilities, separation of user types, locational signage, lighting and other elements
- *Time to build the trail:* The overwhelming majority of commenters supported moving forward with a trail in the corridor as soon as possible.
- *Preference for on-railbed alternative:* Most commenters offered strong support for on-railbed alternative, especially the Lakefront segment (south of I-90).

Other ERC Coordination Activities

Even as this master planning activity moves forward, King County continues to pursue coordination and collaboration on corridor development with a variety of stakeholders, owners and agencies.

Plans to yet again expand I-405 prompt continued discussion between WSDOT and King County on reconnection of the Wilburton Gap, the break in the corridor created by prior work on I-405 and for which \$10 million in state funds have been secured. The state, county and city of Bellevue will participate in a design workshop on June 6, in an effort to come to agreement on a conceptual design.

King County, Sound Transit and City of Bellevue continue to meet to coordinate interim trail opportunities and the challenge of the NE 8th crossing in Bellevue. The three governments have agreed to work in partnership on a design that will optimize the integration of the trail crossing over NE 8th with the light rail crossing and Wilburton Station. The three agencies entered in to an agreement to develop a 30% level of design for the elevated trail crossing at NE 8th and its full integration with the Wilburton Station and surrounding streetscape.

As with many aspects of corridor development, this master planning for the bicycle/pedestrian facility goes forward in parallel with considerations for transit, utility and recreational uses in the corridor, in addition to new thinking about how the corridor could impact adjacent land uses, including availability for economic development and transit-oriented development (TOD). A design charrette focused on NE 8th is being planned for June to conduct visioning work and establish design criteria for the crossing.

Also, King County Parks is working with Sound Transit to establish the trail area in the Sound Transit “mile” and other areas of the corridor where Sound Transit holds a high capacity transit easement. These negotiations are expected to conclude in time to be reflected in the Final Trail Master plan submission to Council. Additional consultation on this trail area will involve Puget Sound Energy’s review for consistency with their easement.

ERC Regional Advisory Council

The ERC Regional Advisory Council was established by Council Motion 13801 in late 2012, charged with engaging the owners’ group in a planning process to ensure that the shared objectives and especially the commitment to dual use by public transit facilities and regional trail facilities would be affirmed as a joint policy of the owners.

By transmittal of the *Creating Connections* report (Motion 14105) in April 2014, the essential work of the advisory council was done. The group has continued to meet, to share information and to coordinate activities, as it has become clear that a continued platform for coordination will ensure not only the full realization of the corridor’s potential, but also efficient use of resources, etc. etc.

The council is represented on the ERC RAC and work in the corridor is overseen by three councilmembers. Currently, Councilmembers Balducci, Dunn and Lambert oversee implementation of council policy and the necessary intergovernmental and interdisciplinary work. In developing the 2016 work plan, these councilmembers noted the need to redesign the ERC RAC governance structure, updating Motion 13801, to meet current needs. While the structure created by Motion 13801 focused on property ownership as a basis for membership, it’s become clear that closer collaboration with

adjacent cities and stronger engagement with state and federal interests is critical to realizing the corridor's potential.

Recently, the ERC has captured the attention and engagement of not only parks, recreation and alternative transportation advocates but also of urban planners and business leaders. Cities are reconsidering their land use plans and seeing the potential for both housing and commercial development that uses the corridor as a central point of reference, a form of street without cars.

At the first ERC RAC meeting of the year, May 5, attendees of the owners named in Motion 13801, including King County, Redmond, Kirkland, Sound Transit and Puget Sound Energy, were joined by a new owner, Woodinville, and by the two cities with major portions of the corridor within their boundaries, Bellevue and Renton. In a facilitated discussion, the representatives of the owners and adjacent cities affirmed five objectives for a re-designed ERC RAC:

1. Share information, providing a basis for collaboration and coordination,
2. Seek joint funding opportunities through project identification and prioritization,
3. Advocate for broad vision of the ERC as an urban redevelopment opportunity,
4. Explore ways to collectively manage, develop or maintain portions of the ERC,
5. Provide joint outreach to the private sector in cross-jurisdictional development.

Recognizing the speed with which activity in the corridor is occurring, the principal members of the ERC RAC ask the staff to move quickly to develop a letter of agreement that outlines how the ERC RAC group will be expanded and will operate in the future. Staff will report back to the public sector interests at the next ERC RAC meeting in July.

B. A motion adopting the Eastside Rail Corridor Program's work plan for 2016

The Council's ERC Program is guided by the County Council's designated members of the ERC RAC, as noted above. The Council's adoption of a work plan will help guide Council staff, Executive and agency personnel in meeting the Council's expectations for development of this asset and provides a useful method of evaluating the Council's efforts. The work plan attempts to ensure an alignment of council policy with executive branch actions and to provide strong intergovernmental engagement with co-owners and public, private and nonprofit stakeholders

Through a variety of actions, the Council has emphasized its commitment to the dual use expectation for the corridor, ensuring that the regional trail facilities co-exist with the potential for alternative transportation facilities, including transit. An important aspect of this work is collaborating with nonprofit and private sector partners who have a shared interest in the corridor.

The ERC Program Manager's work is principally guided by the County Council's members of the ERC Regional Advisory Council (Motion 13801), in support of that collaborative body. But support for the ERC RAC includes engagement with a number of executive staff, as development of the ERC is principally driven by the Department of Natural Resources and Parks (DNRP), with assistance by the Department of Transportation and representatives of the Executive's office.

Because the owners have committed to multiple objectives in developing the corridor, activities affecting the ERC require the coordination of a constantly changing group of governments, stakeholders and community interests. A group assembled to address one challenge, for instance, the Wilburton gap reconnection, may be an entirely different group than is assembled to address the potential for rail-based excursion service in north King County, extending into Snohomish County.

The work plan for 2016 has four main goals, with specific tasks more fully described in Attachment A:

1. Ensure implementation of existing Council policies, supporting the multiple objectives for the corridor, in development activities and in negotiation of agreements or plans carried out by the Executive.
2. Ensure adoption of policies and other Council actions that ensure realization of multiple objectives for development in the corridor and which improve funding opportunities for the ERC.
3. Support redesign and repurposing of the ERC Regional Advisory Council to enhance effective coordination of public sector interests and agencies, together with private and nonprofit stakeholders, in realizing the shared vision of the ERC.

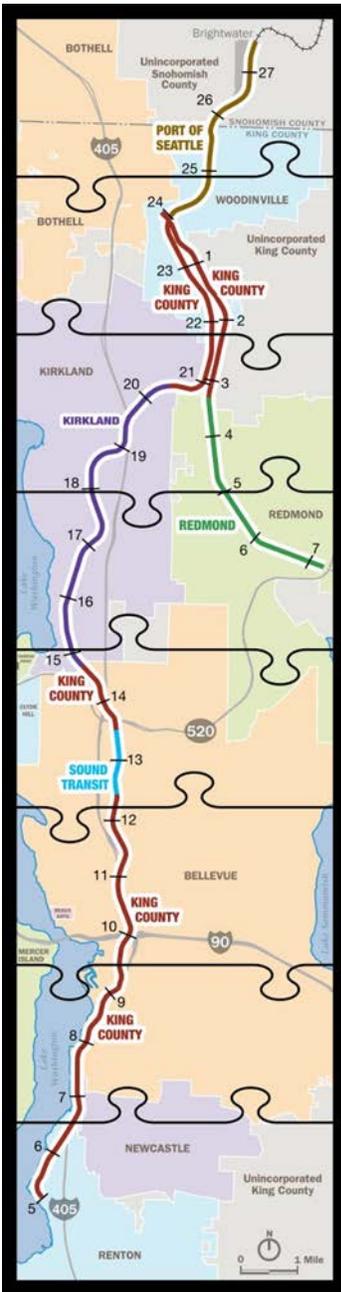
By adopting the motion approving the 2016, the Council continues to provide clear direction to staff and to provide strong regional leadership in the development of this important public asset.

INVITED

1. Erica Jacobs, Special Projects Manager III, Department of Natural Resources and Parks
2. David St. John, Government Relations Administrator, Department of Natural Resources and Parks

ATTACHMENTS

1. PowerPoint Presentation for Draft Trail Master Plan (will be provided at meeting)
2. May 4 ERC RAC Agenda
3. Motion 2016-0221 with Attachment A, 2016 Work Plan for the Eastside Rail Corridor Program



-----Amended-----
Eastside Rail Corridor
Regional Advisory Council

May 4, 2016

1:00 – 3:15 pm

Mercer Island Community Center
 236 SE 24th St, Mercer Island, WA 98040

- 1:00 **Welcome and Introductions** - Claudia Balducci
- 1:15 **Priority Proposal – ERC RAC Reorganization – Deb Eddy**
 - History of the ERC RAC
 - Exploring the form and function of the ERC RAC
 - Next steps
- 1:55 **I-405 Expansion – Lorena Eng, Bill James**
 - WSDOT Plans, Timelines
 - Impacts on the ERC
 - Discussion
- 2:20 **South Kirkland P&R to NE 8th – Significant Near Term Decisions – David St John, Ric Ilgenfritz**
 - Anticipated ERC projects and timelines
 - Integrating the Stakeholder Group and TOD
 - Discussion
- 2:50 **Owners’ Updates**
- 3:00 **Public comment**
- 3:15 **Next steps and adjournment**



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KING COUNTY

ATTACHMENT 3

Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

May 26, 2016

Motion

Proposed No. 2016-0221.1

Sponsors Lambert

1 A MOTION approving the 2016 work plan for the Eastside
2 Rail Corridor program.

3 WHEREAS, the Eastside Rail Corridor ("the ERC") is a forty-two-mile rail
4 corridor that extends from Renton to Snohomish and from Woodinville to Redmond,
5 creating a contiguous land connection through Snohomish county, King County and the
6 cities of Renton, Bellevue, Kirkland, Redmond and Woodinville, and

7 WHEREAS, in May 2007, the Puget Sound Regional Council completed a
8 technical study, titled the BNSF Corridor Preservation Study, of the ERC identifying
9 desirable potential uses and impacts, the comparative costs of those potential uses and the
10 legal or institutional issues associated with preserving or acquiring the ERC, and

11 WHEREAS, the BNSF corridor advisory committee, made up of local
12 jurisdiction, transportation interests and potential users and beneficiaries, recommended
13 in that 2007 report, for the ERC portion south of Woodinville, that an interim regional
14 multipurpose trail be developed, while assuring that the rail corridor right of way is
15 preserved for future transportation uses, and

16 WHEREAS, through a series of property transactions, King County, the cities of
17 Redmond and Kirkland, Puget Sound Energy and Sound Transit now hold property
18 interests in the corridor, and King County and Redmond are the interim trail users under
19 federal law, and

20 WHEREAS, the King County council has declared the Eastside Rail Corridor to
21 be a corridor of regional significance, and has found the transportation, regional trail and
22 county wastewater facilities in the corridor to be essential public facilities, in concert with
23 the region's implementation of the Growth Management Act, and

24 WHEREAS, the King County council created the Eastside Rail Corridor regional
25 advisory council for the purpose of initiating a regional planning process in support of the
26 corridor's potential to assist in the implementation of the Puget Sound Regional Council's
27 vision 2040, including regional goals for housing, transportation, public services and the
28 environment, resulting in the transmittal of the 2013 Creating Connections report, and

29 WHEREAS, the 2016 work plan for the Eastside Rail Corridor represents a set of
30 actions that will fulfill adopted policy of the county and develop recommendations for
31 future actions, including fostering close collaboration among local, state and federal
32 government, with local businesses and with nonprofit stakeholders;

33 NOW, THEREFORE, BE IT MOVED by the Council of King County:

34 A. The 2016 work plan for the Eastside Rail Corridor program, Attachment A to
35 this motion, is hereby approved.

36 B. Those provisions of the work plan that call for the redesign of the governance
37 structure previously adopted in Motion 13801 shall be carried out consistent with the
38 policies in the 2013 Creating Connections report and any other adopted county policy.

39 C. All activities undertaken in support of the work plan should pursue and
40 implement best practices for collaboration and problem-solving, in recognition of the
41 multi-jurisdictional and multisector efforts that will be required to realize the full public
42 benefits from this important public asset. The collaboration should include close

Motion

43 consultation with representatives of the public, private and nonprofit sectors, anticipating
44 and embracing opportunities to bring government, stakeholder groups and economic
45 actors into successful working relationships.
46

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

J. Joseph McDermott, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this ____ day of _____, _____.

Dow Constantine, County Executive

Attachments: A. 2016 Eastside Rail Corridor Work Plan

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2016 Eastside Rail Corridor Work Plan

	Items	Council Action	Time Frame	Outcome
1	<p>County Council Goal: <u>Ensure implementation of existing Council policies, supporting the multiple objectives for the corridor, in development activities and in negotiation of agreements or plans carried out by the Executive.</u></p> <p>ERC Program Manager Role: <u>Engage, to the extent feasible and permitted by the Executive, in oversight of agency or department actions to assure that Council policies are followed. Report back or update ERC RAC Councilmembers, as needed.</u></p>			
1.1	NE 8 th bridge trail integration	Unknown	Unknown	Negotiation of design and shared financial strategy between DNRP, Sound Transit, City of Bellevue
1.2	SKP&R to SR520 interim trail	None	Current to May 2017	Building an interim trail to meet SR520 regional trail at Northup Way, current DNRP project
1.3	SR520 to Wilburton Station interim trail	None	Current to 2020	Negotiation to expedite interim trail development, involves DNRP, Sound Transit, City of Bellevue
1.4	SR520 to Wilburton OMSF impacts on ERC and East Base	Potential Approval of Development Agreement	Unknown	Negotiation led by the Executive’s Chief of Staff with Sound Transit, City of Bellevue, local stakeholders on a development agreement concerning the OMSF area
1.5	Wilburton gap reconnection + I-405 expansion	Potential MOU or other action	Current to 2018	Negotiation among King County, Bellevue, Renton and WSDOT on the ‘gap’ and impacts on Lake Washington Trail; DNRP leads
1.6	RFP for Valley segment excursion service required by Rail Removal Plan	Unknown	After TMP approval, estimated Fall 2016	Determination of potential for excursion rail service prior to rail removal; DNRP charged with RFP process
1.7	South Kirkland Park & Ride Bridge	Motion	May – June 2016	Recognition of reciprocal roles in establishing a bridge/elevator facility at SKP&R, involves KC Metro, DNRP and City of Kirkland
1.8	East Link/SE Redmond Station Partnership	None	Ongoing	Observation of an interjurisdictional coordination template by ST, includes DNRP, other agencies
1.9	Fiber optic, other opportunities in the ERC	Unknown	Ongoing	Engagement in initiatives may include DNRP, KCIT, other agencies or departments

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Printed on 26 May 2016

	Items	Council Action	Time Frame	Outcome
2	<p>County Council Goal: <u>Ensure adoption of policies</u> or other Council actions that ensure realization of multiple objectives for development in the corridor and which <u>improve funding opportunities</u> for the ERC</p> <p>ERC Program Manager Role: <u>Advise Council on policy implications</u> of upcoming actions, especially as those actions affect the potential to attract local, state, federal, private and foundation funding by the county or adjacent jurisdictions</p>			
2.1	CODE REVISIONS: DNRP regional trails code revisions	Ordinance	Unknown	Review proposals for impacts on ERC’s dual use and multiple objectives
2.2	COMPREHENSIVE PLAN: Executive submittal for comp plan changes	Ordinance	Fall 2016	Review policies to ensure incorporation of multiple objectives for the ERC, including transit, non-motorized transportation, parks and recreation, cultural resources and regional growth management
2.3	<p>LAND USE and TRANSPORTATION PLANNING AND INTEGRATION</p> <ul style="list-style-type: none"> • PSRC competitive programs • GMPC supporting CPPs 	May be a budget item	Current to Fall 2017, to be ready for 2018 funding cycle	Ensure competitiveness of projects involving the ERC by close collaboration with County departments and with cross-sector staff team
2.4	COMMUNICATION: Provide necessary updates, briefings for County Councilmembers	Briefings	Ongoing	Provide ongoing reporting to the entire County Council through quarterly updates; support councilmembers engaged in ERC RAC work, schedule other updates as needed
2.5	TRAIL MASTER PLAN: Council adoption of preferred alternative	Comment Letter Ordinance	Fall 2016	Provide support to Council in reviewing, commenting on and helping shape the preferred alternative for the ERC Trail Master Plan
2.6	STATE AND FEDERAL legislative agendas	State and Federal Legislative Agendas	April 2016 (federal) Nov 2016 (state)	Develop agenda items for both state and federal outreach; support councilmembers in connecting public sector lobbyists with nonprofits’ federal staff, ensuring better cross-sector collaboration on funding for ERC projects
2.7	LITIGATION UPDATES	May be a budget item	Ongoing	Ensure Council is kept up to date on litigation impacting the ERC, both substantively and as a budget matter

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	Items	Council Action	Time Frame	Outcome
3	<p>County Council Goal: <u>Support redesign and repurposing of the ERC Regional Advisory Council</u> to enhance effective coordination of public interests and agencies, together with private and nonprofit stakeholders, in realizing the shared vision of the ERC</p> <p>ERC Program Manager Role: <u>Provide lead staff support to Council efforts in supporting the ERC Regional Advisory Council</u> to foster effective collaboration between the public, private and nonprofit sectors</p>			
3.1	2016 ERC Summit debrief, recommendations	Briefing	February 2016 Possible April 2016	Report back to County Council and other sponsors on the Summit results, to be completed with first ERC RAC meeting
3.2	Economic impact analysis	May be a budget item	Ongoing	Establish benefits, scope and estimated budget for an economic impact analysis of the full development of the corridor
3.3	Scheduling, work plan and agenda for the ERC RAC for 2016	None	Ongoing, ASAP	Work with ERC RAC Chair and Councilmembers to establish a shared agenda with other other owners and adjacent jurisdictions, especially focused on 3.4, below
3.4	Redesign the ERC RAC governance structure, updating Motion 13801	MOTION or ILA	Fall 2016	<p>Develop a current and practical mission and objectives for the ERC Regional Advisory Council</p> <ul style="list-style-type: none"> Engage owners and adjacent governments Engage EGA, helping to maximize their effectiveness Incorporate the priorities from the 2016 ERC Summit Develop high level of communication among public, private and nonprofit (EGA) sector, including state and federal representatives
3.5	Develop a proposal for the ERC RAC to provide a multi-year blue print for ERC development (“blue ribbon commission”)	Unknown, may be a budget item	Summer 2016 to Fall 2017	Research other major infrastructure redevelopment efforts and develop a proposal for the ERC RAC that would bring regional leadership together to chart a mid-term (1-5 year) strategic plan or blueprint for the corridor; identify potential participation, structure, resources needed

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King County

**Metropolitan King County Council
Committee of the Whole**

STAFF REPORT

Agenda Item:	7	Name:	Lise Kaye
Proposed No.:	2016-0260	Date:	June 1, 2016

SUBJECT

A motion approving the first quarter 2016 report on Emergent Needs and Unanticipated Project Costs prepared by the Road Services Division in the Department of Transportation.

SUMMARY

Proposed Motion 2016-0260 would approve the first quarter 2016 report on Emergent Needs and Unanticipated Project Costs prepared by the Road Services Division in the Department of Transportation as required by a proviso in the 2015-2016 adopted budget. The report shows a transfer of \$620,000 from the Quick Response project to the Upper Preston SE/SE 97th Slide Repair and no transfers of Emergent Needs funds. Approval of the motion would release \$75,000 to RSD per the proviso.

BACKGROUND

The Executive's proposed 2015-16 budget for the Road Services Division (RSD) implemented an operational shift from planned investments to reactive system management. The RSD's 2015-2016 business plan states that, "With insufficient funds for preservation or replacement of infrastructure, available revenues will be focused on reacting to the higher risks associated with the deteriorating road system." This revision was a response to the RSD funding shortfall, recent experience with emergency roadwork expenses, and a desire not to promise capital projects that would be cancelled if emergency repairs required additional revenue.

The adopted RSD CIP for 2015-2016 cancelled 11 projects and pooled revenue into response-oriented programs such as Emergent Need-Existing Projects, which replaces the Cost Model pooled contingency program, and Quick Response, which addresses core safety and regulatory-driven repairs.

Table 1 below identifies funding changes from the approved 2013-2014 budget associated with major RSD CIP projects:

Table 1. Road Services Division CIP Funding Changes: 2013/14 vs. 2015/16

CIP Project	Description	2015/16 Adopted	2013/14 Approved	Percent Change
Emergent Needs – Existing Projects (1026798)	Replaces the "cost model" line item from previous years; serves as a pooled contingency fund for unanticipated costs.	\$6 million	\$4.1 million	+46%
Bridge Priority Maintenance (1027160)	Down from previous funding levels of \$800,000 in 2013/14; projects selected from priority array in the annual Bridge report.	\$0.5 million	\$0.725 million	-31%
Quick Response (1027163)	Repair fund will prioritize emerging core safety and regulatory-driven repairs on Tier 1, 2 and 4 roadways (Tier 4 are sole access routes), as well as those for which it is significantly more cost effective to repair now than later. Some repairs may only stabilize the site pending additional revenue.	\$7 million	\$4 million	+75%
Preservation	One \$4 million overlay contract to be let in Spring 2015, <i>if emergent needs do not arise earlier in the biennium</i> . The remaining funds will address spot treatments at high risk areas. Areas will be selected by pavement condition score, tier and average daily trips (ADT)	\$7.5 million	\$9.1 million	-17%
South Park Bridge	Costs for contractor's delay in meeting construction milestones	\$6 million	\$0	+100%
Drainage Preservation	Addresses high priority drainage projects (existing or emergent) that pose a high safety and/or regulatory risk to Tier 1, 2 and 4 roadways. Drainage priorities are identified by a combined Field Priority Score and Habitat Evaluations.	\$8 million	\$9.5 million	-15%
Facility Preservation	Addresses approximately half of the most urgent deferred maintenance and preservation needs of the division's facility assets, and funds additional facility consolidations	\$2.4 million	\$0	+100%

Table 2 lists projects deleted from the previous (2013/2014) CIP as a result of the shift toward more programmatic budgeting:

Table 2: Projects Deleted from 2013/14 CIP

Project No.	Name	Proposed Disappropriation
1026727	100 Ave NE/NE 132 - NE 137	(\$372,713)
1026791	SE Summit Landsburg Rd	(\$462,659)
1026793	Green Valley Bridge –end of 180 Ave NE	(\$229,171)
1047575	Green Valley Bridge: 202 Place-212 Ave SE	(\$236,960)
1111170	Cottage Lake Creek Bridge Replacement	(\$178,124)
1111174	Miller River Bridge Replacement	(\$2,500,000)
1114796	SE 277 St Bridge	(\$86,380)
1115255	NE Woodinville/Duvall Road @ West Snoqualmie Valley Road	(\$498,000)
1115260	Bear Creek Bridge	(\$172,463)
1116546	SW Cemetery Rd & Beall Road SW	(\$790,000)
1111817	South Regional Maintenance Facility	(\$35,293)
TOTAL		(\$5,561,763)

The significant shift from specific project investments to a program-based capital budget led Council to adopt the following budget proviso to track expenditures for emergent needs and unanticipated project costs:

SECTION 53.P2.

Of this appropriation, \$525,000 shall not be expended or encumbered until the executive transmits seven quarterly reports on expenditures for each prior quarter for emergent needs and unanticipated project costs and motions that approve the quarterly reports and the motions are passed by the council. The motions shall reference the subject matter, the proviso's ordinance, ordinance section and proviso number in both the title and body of the motion. Upon transmittal of each motion, \$75,000 is released for the expenditure.

Each report shall include, but not be limited to, identified needs, funding requests and expenditures for emergent needs and unanticipated project costs and shall explain the rationale and the policy basis relative to the 2014 update to the Strategic Plan for Road Services for project selection. If identified unanticipated needs and funding requests exceed budgeted capital improvement program revenue, the report shall detail the process used by the department to prioritize the expenditures.

The executive must file the seven quarterly reports by May 15, 2015, August 15, 2015, November 15, 2015, February 15, 2016, May 15, 2016, August 15, 2016, and November 15, 2016, and the motions required by this proviso by those same dates in the form of a paper original and an electronic copy with the clerk of the council, who shall retain the original and provide an electronic copy to all councilmembers, the council chief of staff, the policy staff director and the lead staff for the transportation, economy and environment committee or its successor.

Proposed Motion 2016-0260 transmits the fifth of these quarterly reports. The transmitted report shows a transfer of \$620,000 from the Quick Response project to the Upper Preston SE/SE 97th Slide Repair and no transfers of Emergent Needs funds. Approval of the motion would release \$75,000 of the expenditure restriction.

ANALYSIS

Quick Response Transfers

According to the Executive's report, the \$620,000 first quarter 2016 Quick Response transfer will fund repair of a chronic slope failure that was exacerbated during November 2015 rainfall. The project will repair a portion of the outside travel lane and paved shoulder. It will also reinforce the slope supporting the road to make it difficult to settle and prevent it from further sloughing off.¹

The Executive reports that the basis for prioritizing this expenditure of the Quick Response funds over other unprogrammed needs was the risk of property and personal losses from loss of the roadway that provides sole access to over 200 private residences. RSD staff state that the project meets Goals 1 and 3 of the Strategic Plan for Road Services:

Goal 1: Prevent and respond to immediate operational life safety and property damage hazards.

Goal 3: Maintain and preserve the existing roadway facilities network.

According to RSD staff, unanticipated project needs continue to exceed available Quick Response funds, and RSD uses priorities from the Strategic Plan for Road Services to decide which repairs should go forward. These factors include, but are not limited to, impact on the road system, impact on private property, long term damage assessment, cost benefit analysis, and impact on permanent repair.

Emergent Needs Transfers

The report shows no transfers for the first quarter of 2016. Executive staff report a balance of approximately \$5.6 million in this project.

ATTACHMENTS

1. Proposed Motion 2016-0260 and Attachment A. Road Services Division First Quarter 2016 Expenditures for Emergent Needs and Unanticipated Project Costs Summary Report
2. Transmittal Letter

INVITED

1. Brenda Bauer, Director, King County Road Services Division

¹ The fourth quarter 2015 Emergent Needs and Quick Response Report showed a \$98,000 expenditure from the Quick Response program for nearby emergency hill stabilization and drainage work uphill from this road.



Signature Report

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

May 26, 2016

Motion

Proposed No. 2016-0260.1

Sponsors Lambert

1 A MOTION approving the First Quarter 2016 Expenditures
2 for Emergent Needs and Unanticipated Project Costs
3 Summary Report prepared by the road services division in
4 the department of transportation as required in the
5 2015/2016 Biennial Budget Ordinance, Ordinance 17941,
6 Section 53, Proviso P2.

7 WHEREAS, the King County council in adopting the 2015/2016 Biennial Budget
8 Ordinance, Ordinance 17941, Section 53, Proviso P2, stated that \$525,000 shall not be
9 expended or encumbered until the executive transmits seven quarterly reports on
10 expenditures for each prior quarter for emergent needs and unanticipated project costs
11 and motions that approve the quarterly reports and the motions are passed by the council.
12 The motions shall reference the subject matter, the proviso's ordinance, ordinance section
13 and proviso number in both the title and body of the motion. Upon transmittal of each
14 motion, \$75,000 is released for the expenditure, and

15 WHEREAS, the proviso response reports shall include, but not be limited to,
16 identified needs, funding requests and expenditures for emergent needs and unanticipated
17 project costs and shall explain the rationale and the policy basis relative to the 2014
18 update to the Strategic Plan for Road Services for project selection, and

19 WHEREAS, if identified unanticipated needs and funding requests exceed
20 budgeted capital improvement program revenue, the report shall detail the process used
21 by the department to prioritize the expenditures, and

22 WHEREAS, the King County executive has transmitted to the council its fifth
23 report that contains the required information responding to the proviso, and

24 WHEREAS, the council has reviewed the road services division report;

25 NOW, THEREFORE, BE IT MOVED by the Council of King County:

26 The fifth Expenditures for Emergent Needs and Unanticipated Project Costs
27 Summary Report, which is Attachment A to this motion, is hereby approved.
28

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

J. Joseph McDermott, Chair

ATTEST:

Anne Noris, Clerk of the Council

APPROVED this ____ day of _____, ____.

Dow Constantine, County Executive

Attachments: A. First Quarter 2016 Expenditures for Emergent Needs and Unanticipated Project Costs
Summary Report

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**Road Services Division
First Quarter 2016 Expenditures for
Emergent Needs and Unanticipated Project Costs Summary Report**

Use of Quick Response

Project No.	Project Name	2015/16 Adopted	First Qtr Transfer Amount	Prior Qtrs Transfer Amount	Remaining Appropriation
1027163	Quick Response	\$7,000,000	(\$620,000)	(\$523,302)	\$5,856,698

First Quarter Transfer:

The table below presents the project(s) to which the Quick Response first quarter amount shown above has been transferred. The project(s) as well as the correlations to the strategic plan and project prioritization are discussed in more detail below.

Project No.	Project Name	Original Budget	Transfer Amount	Final Budget
1128945	Upper Preston SE/SE 97 Road Repair	\$0	\$620,000	\$620,000

The purpose of this project is to repair a chronic slope failure that was exacerbated during the November 2015 rainfall. The southbound travel lane has settled, creating a sloped and uneven driving lane; the catch basin has sunk and the outside edge of the road is unsettled and uneven. In addition, the curb on the road has eroded, thus, heavy rains result in more degrading of the slope that supports the road. The project will reinforce the slope supporting the road to make it difficult to settle and prevent it from sloughing off further. The agency prioritized these expenditures over other unprogrammed needs due to the potential of property and personal losses with the road being a two lane limited access arterial that provides sole ingress and egress to more than 200 homes and hundreds of residents. This project meets the following key goals of the Roads strategic plan:

- Goal 1: Prevent and respond to immediate operational life safety and property damage hazards.
- Goal 3: Maintain and preserve the existing roadway facilities network.

Use of Emergent Need Funds

Project No.	Project Name	2015/16 Adopted Plus Carry Forward	First Qtr Transfer Amount	Prior Qtrs Transfer Amount	Remaining Appropriation
1026798	Emergent Need	\$14,505,689	\$0	(\$8,918,259)	\$5,587,430

No budget transfer activity to report during the first quarter of 2016.

May 6, 2016

The Honorable Joe McDermott
Chair, King County Council
Room 1200
C O U R T H O U S E

Dear Councilmember McDermott:

As required by Ordinance 17941, Section 53, Proviso 2, I am transmitting to the King County Council a report, and a motion approving the report, regarding expenditures for emergent needs and unanticipated project costs of the Road Services Division of the Department of Transportation. The proviso reads as follows:

SECTION 53.P2.

Of this appropriation, \$525,000 shall not be expended or encumbered until the executive transmits seven quarterly reports on expenditures for each prior quarter for emergent needs and unanticipated project costs and motions that approve the quarterly reports and the motions are passed by the council. The motions shall reference the subject matter, the proviso's ordinance, ordinance section and proviso number in both the title and body of the motion. Upon transmittal of each motion, \$75,000 is released for the expenditure.

Each report shall include, but not be limited to, identified needs, funding requests and expenditures for emergent needs and unanticipated project costs and shall explain the rationale and the policy basis relative to the 2014 update to the Strategic Plan for Road Services for project selection. If identified unanticipated needs and funding requests exceed budgeted capital improvement program revenue, the report shall detail the process used by the department to prioritize the expenditures.

The executive must file the seven quarterly reports by May 15, 2015, August 15, 2015, November 15, 2015, February 15, 2016, May 15, 2016, August 15, 2016, and November 15, 2016, and the motions required by this proviso by those same dates in the form of a paper original and an electronic copy with the clerk of the council, who

shall retain the original and provide an electronic copy to all councilmembers, the council chief of staff, the policy staff director and the lead staff for the transportation, economy and environment committee or its successor.

During the first quarter of 2016, \$620,000 of appropriation authority was transferred from Quick Response to address emergent needs and unanticipated project costs and no appropriation authority was transferred from Emergent Need. Quick Response is a Master Project reserved for unexpected changes to the road system; this allows the division to set up a project to immediately begin a responsive project.

Quick Response funds were used for the following project:

Project No. 1128945, Upper Preston SE/SE 97 Road Repair

The purpose of this project is to repair a chronic slope failure that was exacerbated during the November 2015 rainfall. The southbound travel lane has settled, creating a sloped and uneven driving lane; the catch basin has sunk and the outside edge of the road is unsettled and uneven. In addition, the curb on the road has eroded, thus, heavy rains result in more degrading of the slope that supports the road. The project will reinforce the slope supporting the road to make it difficult to settle and prevent it from sloughing off further. The agency prioritized these expenditures over other unprogrammed needs due to the potential of property and personal losses with the road being a two lane limited access arterial that provides sole ingress and egress to more than 200 homes and hundreds of residents. \$620,000 of appropriation authority was transferred from Quick Response to fund the project.

Funds for this project address key goals of the Roads strategic plan: Goal 1: Prevent and respond to immediate operational life safety and property damage hazards; and Goal 3: Maintain and preserve the existing roadway facilities network.

The attached motion and report are consistent with the King County Strategic Plan goal of supporting safe communities by maintaining safe and secure county-owned infrastructure, including roads and bridges.

It is estimated that this report and transmittal required two hours of staff time to produce at minimal cost.

The Honorable Joe McDermott

May 6, 2016

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Thank you for your consideration of the attached report and motion. If you have any questions, please feel free to contact Brenda Bauer, Road Services Director, at 477-3580.

Sincerely,

Dow Constantine

King County Executive

Enclosures

cc: King County Councilmembers

ATTN: Carolyn Busch, Chief of Staff

Anne Noris, Clerk of the Council

Carrie S. Cihak, Chief of Policy Development, King County Executive Office

Dwight Dively, Director, Office of Performance, Strategy and Budget

Harold S. Taniguchi, Director, Department of Transportation (DOT)

Brenda Bauer, Director of the Road Services Division, DOT

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King County

**Metropolitan King County Council
Committee of the Whole**

STAFF REPORT

Agenda Item:	8	Name:	Lise Kaye
Proposed No.:	2016-B0117	Date:	June 1, 2016

SUBJECT

A briefing on the Road Services Division’s Clear Zone Safety Program.

SUMMARY

As defined in the King County Road Standards, the clear zone “is a roadside border area starting at the edge of the traveled way available for use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a nonrecoverable slope, and/or a clear run-out area.” Council appropriated \$500,000 for a Clear Zone Safety Program (CIP No. 1027161) in the 2015-2016 biennial budget. Prior to the 2015-2016 biennial budget, clear zone work was part of the RSD’s guardrail program.

The RSD’s CIP describes this project as follows:

This program will continue and augment safety work relating to clear zones adjacent to County roads. The clear zone, as defined in the King County Road Standards, is a roadside border area starting at the edge of the travel way available for use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and/or a clear run-out area. The program provides an integrated approach to regulating and improving the clear zones adjacent to County roads.

According to RSD staff, RSD has initiated an inventory of objects in the clear zone. In the course of the inventory, RSD staff have marked trees and other objects. RSD has received a number of inquiries from the public about the inventory and markings and about project-related clear zone issues. Given the concerns expressed, executive staff will brief the Committee on implementation plans for the program.