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2020 Clallam County Charter Review Commission County Commissioners' Formal Response to Recommendations

The Commissioners deeply appreciate the service of those elected to the 2020 Charter Review Commission and commend them for their effort and dedication, particularly given the tremendous impact of the COVID-19 pandemic. Our county government only works when residents are active participants and those who serve on the Charter Review Commission do all of us a great service; even more so in 2020 during such a difficult time.

Background

Clallam County is a "Home Rule Charter" county, which in effect means that Clallam County has its own County Constitution, or Charter, rather than utilizing the system of county governance that is established by state law.

Every five years a group of county residents is elected by their peers to serve on the Charter Review Commission which is tasked with reviewing the county Charter to vet and suggest for further consideration, either directly by voters in the form of Charter Amendments or by providing recommendations to the Board of County Commissioners for additional vetting with county residents.

Section 11.10.40 of our Charter lays out a process for the County Commissioners to follow when presented with formal recommendations by the Charter Review Commission:

The Board of Commissioners shall conduct meetings, as required, including district town hall meetings, to fully vet publically all recommendations for changes or revisions to county operations and procedures (not proposed for ballot measures) forwarded to them by the Charter Review Commission. The meetings shall engage the public and shall encourage public comment on the proposed changes and revisions. Upon the conclusion of the meetings, the Board of Commissioners shall issue written conclusions and responses to the recommendations, including timetables for adoption of the recommendation and/or reasons for not adopting the

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recommendation. (New article proposed by the Charter Review Commission and approved by the voters November 3, 2015.)

Since the mechanism for presenting formal recommendations to the County Commissioners was adopted in 2015, and since the Charter Review Commission did not meet again until 2020, this is the first time that a Board of County Commissioners has received recommendations, engaged the public, encouraged public comment and issued written conclusions and responses to the recommendations.

Charter Review Commission's Recommendations

The five formal recommendations forwarded to the Board of County Commissioners by the 2020 Charter Review Commission are:

1. The BOCC shall take all required and necessary legal actions to ensure that any franchise associated with new radio frequency devices or systems operating in the micro or millimeter wave frequency range be accompanied by a scientific study determining that such law, regulation or franchise is in compliance with the National Environmental Policy Act (NEPA) prior to the enactment or granting of any franchise.
2. The Clallam County Board of County Commissioners pass a resolution calling on the state legislature to pass legislation, which would enable the County (and other jurisdictions in the state) to adopt ranked-choice voting for local elections, if they so choose.
3. That Clallam County increase its monitoring of the DNR's management of its trust lands by hiring a forester.
4. The Clallam County Board of Commissioners immediately take active leadership to reclaim and renew their primary leadership role in engaging a group of public and private organizations and businesses to creatively increase affordable housing availability, apply forward thinking ideas proven to be successful in communities that have reduced the experience of homelessness effectively, and report progress back to the community every six months.
5. The BOCC and the DCD shall jointly agree to commission a third-party review of the County ordinances and solicit a report on proposed changes to ordinances and operating procedures to clarify the roles and responsibilities of the DCD. The BOCC will consider, after public review and hearings, any proposed Ordinances for adoption within 120 days of the commissioned report. BOCC shall place on the November 2022 ballot, if needed, any necessary Charter changes to clarify the powers and duties of an elected DCD Director.

Public Engagement Process

The County Commissioners have engaged in a variety of efforts to "engage the public and encourage public comment" on these recommendations, including:

- Multiple Public Hearings, including morning, afternoon and evening events, attended by all three County Commissioners

- Presentations and question/answer opportunities with the Forks Chamber of Commerce (Commissioner Peach,) the Port Angeles Regional Chamber of Commerce (Commissioner Johnson,) and the Sequim-Dungeness Chamber of Commerce (Commissioner Ozias)
- Town hall-style events held by each County Commissioner in our respective Districts
- Radio outreach and question/answer opportunities on KONP and KSQM
- Written comments received (mostly via email) from October 2020 through June 2021
- Individual conversations with county residents

Our intent was to provide a variety of times, forums and formats to engage the public. The Public Hearings, and by extension the written comments received over several months, were where public engagement was most effective and successful. The Chamber of Commerce events were all well-attended and provided opportunities to further explore the recommendations that garnered the most interest. The town hall-style events were not an effective means of communicating with the public; despite broad promotion attendance at these events was essentially nil. It is certainly likely that in-person attendance was impacted by COVID-19. The radio outreach opportunities provided a good way to share and discuss the recommendations but were less effective in terms of engaging the public.

Commissioners' Responses to Recommendations

1. *"The BOCC shall take all required and necessary legal actions to ensure that any franchise associated with new radio frequency devices or systems operating in the micro or millimeter wave frequency range be accompanied by a scientific study determining that such law, regulation or franchise is in compliance with the National Environmental Policy Act (NEPA) prior to the enactment or granting of any franchise."*

This recommendation relates to "5G" technology that is currently being deployed across the country. The general topic of "5G" generated the highest volume of comments from members of the community during the Charter Review process, with a significant number concerned about the safety of this technology and others looking forward to improved mobile and broadband speed capability in a county with poor access to broadband.

The Commissioners understand that concerns exist regarding public health and safety that have been raised during this discussion. Small cell or 5G wireless technology is substantively different from previous technologies and its impacts have not been widely-studied; most health concerns center around the increase in involuntary exposure to electromagnetic radiation. Public health concerns relating to this new technology have caused other countries to take a variety of actions, including Switzerland placing a moratorium on the use of its 5G network in February of 2020 before developing new environmental guidelines that were released in February of 2021.

In county government, elected officials are tasked with looking to their Prosecuting Attorney's office for legal advice and guidance. Legal guidance from our Prosecuting Attorney's office indicated:

- Clallam County can only grant franchises along county roads or rights-of-way owned by the county, and we have no authority to grant or deny franchises along state highways. Franchises in cities are managed by cities, while public or private providers may also seek easements across private property or purchase property themselves on which to locate equipment.
- Clallam County's ability to regulate telecommunications equipment is limited by the Telecommunications Act of 1996 and the Commerce Clause of the U.S. Constitution. While Clallam County retains some regulatory authority over our rights-of-way, the extent to which

the County can regulate telecommunications is quite restricted: "No State or local statute or regulation, or other State or local requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." The Act goes on to state that "regulation of the placement, construction and modification of personal wireless service facilities by any...local government...shall not prohibit or have the effect of prohibiting the provision of personal wireless services."

The legal opinion goes on to indicate that a requirement to ensure compliance with NEPA would create many hurdles that would need to be overcome before the telecommunications equipment could be installed, and would seem to require action by the FCC that neither Clallam County nor the company applying for the franchise could force the FCC to take. It is also unclear what specific steps would be necessary to demonstrate compliance with NEPA. The Commissioners believe the result of creating an Ordinance that would require NEPA compliance would seem to be that no entity would be able to obtain such a franchise, which would likely be viewed by the Court as an outright and unlawful ban.

Furthermore, federal law already requires compliance with NEPA. The county Ordinance that is being suggested would, in effect, ask an entity that is applying for a wireless franchise to be compliant with federal law that already exists. The Commissioners do not believe that any county department has the expertise necessary to even evaluate NEPA compliance in this context.

Regardless of whether a local jurisdiction like Clallam County may or may not wish to regulate wireless technology, Congress has ensured that only Congress itself can regulate such technology under the Commerce Clause of the U.S. Constitution. As cities and counties have pushed back against the reality that we have little ability to regulate wireless franchises and "5G" technology, the Court has substantially upheld FCC rules and underscored the extremely limited ability local jurisdictions have to enact local regulations. While local jurisdictions have been found to be able to legally regulate franchise fees and the aesthetics of cell towers, no local jurisdictions have been found to be able to legally regulate franchise agreements based on public health concerns.

Conclusion: There is no action that Clallam County could reasonably or legally take to ensure compliance with NEPA that federal law doesn't already require, making any proposed Ordinance redundant at best and potentially placing the County in legal jeopardy at worst. When coupled with the fact that there are many other jurisdictions within Clallam County that have the ability to grant wireless franchises, the Commissioners see no benefit – public health or otherwise – to even attempting to place an additional regulatory burden on entities seeking a new wireless franchise.

Additionally, the Commissioners do not believe that the County Charter is the appropriate location in which to identify or direct any specific Ordinance; rather, its purpose is to describe how Ordinances are to be adopted, amended or rescinded. The Charter envisions an Initiative Process, outlined in Sections 8.10, 8.20, 8.30, 8.40 and 8.50 which is to be used when the people desire a new Ordinance.

The Commissioners will continue to follow this topic closely should the regulatory environment change in the future in such a way as to allow local jurisdictions more authority.

2. *"The Clallam County Board of County Commissioners pass a resolution calling on the state legislature to pass legislation, which would enable the County (and other jurisdictions in the state) to adopt ranked-choice voting for local elections, if they so choose."*

Ranked-choice voting is an electoral system in which voters have the ability to rank multiple candidates by preference on their ballots, rather than just voting for a single candidate. Under a ranked-choice

system, if a candidate garners a majority (more than 50%) of first-place votes they are declared the winner. If no candidate achieves a majority of first-place votes, then the candidate with the fewest first-place votes is eliminated. The first preference votes cast for the failed candidate are eliminated, lifting the second-place votes on those ballots. The count is re-tallied, and if there is still not a majority winner the process repeats until a candidate achieves a majority.

Ranked-choice voting has been instituted in a variety of states and locales across the United States, most notably Maine and New York City. It is currently being considered by local jurisdictions as well, including the City of Seattle.

Proponents of ranked-choice voting believe that ranked-choice voting ensures that candidates with the broadest support win, and that it levels the field for all candidates. It effectively allows voters to vote their actual preferences instead of having to vote strategically; for example, a voter might rank their *actual* favorite candidate first, followed by the candidate they can live with and who they expect to win. This assures that if their first place vote is negated, their second-place vote will still have meaning. Proponents argue that ranked-choice voting might also reduce distortions in partisan representation, reduce the entrenchment of incumbents in "safe" seats, reduce some of the vitriol currently taking place in elections and improve representation and competition.

Opponents of ranked-choice voting have expressed concern that it is too complicated and difficult to understand, which could discourage some from exercising their right to vote. Some point to the value of a traditional primary that elevates the top two candidates, who then have several months to engage each other and the public to garner support in the general election. Others point to data from previous elections that illustrate ranked-choice voting usually produces similar outcomes to traditional elections. Conversely, there is concern that ranked-choice voting could result in "fringe" candidates winning. Finally the complexity in counting votes can delay the final outcome for a longer period of time, resulting in further questions about the integrity of the system.

This recommendation garnered a substantial volume of comments from county residents, with approximately even numbers in support and in opposition. There are strong feelings about ranked-choice voting, but no clear mandate.

The potential cost related to the implementation of ranked-choice voting is unclear. County Auditor Shoona Riggs has done preliminary research and indicates that the county's voting system vendor believes that its system would require a substantial overhaul in order to accommodate a ranked-choice election; in addition to new or updated software there would also be an unknown impact on the elections staff needed to manage a more complex vote counting process. The County Commissioners believe that should ranked-choice voting eventually be allowed by the state legislature and then adopted by a vote of county residents, a robust and ongoing public education campaign would be necessary to help explain the new system.

Conclusion: The County Commissioners see no reason to preclude Clallam County voters from adopting ranked-choice voting should it be allowed by state law. While no Commissioner is opposed to considering a Resolution that would call on the state legislature to allow for ranked-choice voting, the Commissioners note that in recent legislative sessions Bills to allow for ranked-choice voting have garnered little traction and have never advanced past the preliminary stages of the legislative process. Since there is no clear mandate from Clallam County voters, the Commissioners believe there would be little-to-no impact in

forwarding such a Resolution at this time. Of course, any interested individual is encouraged to reach out to our state representatives to share their support for, or opposition to, ranked choice voting.

Rather, the Commissioners believe that a combination of internal preparatory work – namely developing a more clear understanding of what it would take in terms of technology, software, hardware and staff time, coupled with increased public education about ranked-choice voting are more important and meaningful exercises. Should it become clear that the state legislature is actively and realistically contemplating legislation that would allow for ranked-choice voting at some point in the future, the County Commissioners believe that it would be wholly-appropriate to consider the proposed Resolution at that time.

3. *"That Clallam County increase monitoring of the DNR's management of its trust lands by hiring a forester."*

The Department of Natural Resources (DNR) manages approximately 92,000 acres of Clallam County Trust Lands for commercial forestry with a mandate to return revenue to the county and to junior taxing districts. This is an important source of revenue for all parties, but most especially for some junior taxing districts.

There is no doubt that the DNR has an antiquated and inadequate inventory system and the County Commissioners agree that improvements are needed. However, both the state House and Senate recently passed bills to fund significant improvements in the DNR's inventory system so there is reason to expect improvement. Furthermore, Clallam County has been working with other "timber counties" through the Washington Association of Counties Timber Counties Caucus to review the entirety of the DNR's system – not just inventory management – and have developed a common set of priorities to take to the DNR and to the legislature. These priorities, and the entire assessment, can be viewed in greater detail at [Trust Lands Performance Assessment Project: Charting a Course for the Future \(wa.gov\)](#)

We believe this effort will be more successful than any action taken by an individual county because of the many involved timber counties and because the DNR has instituted a broad review process and has a stake in its success. The Commissioners believe that there may be increased opportunity for local engagement at the conclusion of this effort.

In addition, the Commissioners have allocated a large amount of time and effort working with the DNR's Regional Office to improve the flow of information available to the county and to junior taxing districts. This information and accountability have continued to improve with time, although new financial systems, new GIS systems and myriad other recommended improvements need to be implemented.

Because the Charter Review Commission did not envision a job description for this position it is impossible to know exactly what may have been considered beyond an improved understanding of actual inventory on the ground. When discussing this recommendation with county citizens, the Commissioners found that most either had no opinion or did not understand the potential role of such a position.

Others believed that for such a position to have value, the job description would need to be sufficiently expansive as to help establish broad vision and policy for the future of county trust lands. Given that our Charter defines the role of the elected Director of Community Development as "...advise(ing) the County Commissioners on all laws...with respect to the environment, natural resources, and land and shoreline development, including...forest management..." the Commissioners continue to see the need for language in the Charter that clarifies the responsibility of the Commissioners vs. the Director of Community Development specifically with regard to county trustlands.

Conclusion: The Commissioners will not move forward with hiring a county forester at this time. We will continue to work with fellow Timber Counties Caucus members and the Department of Natural Resources both locally and in Olympia to continue to improve and provide recommendations regarding forest management, operations, improved transparency, sustainable harvest calculation and the fiduciary duty of the DNR to provide funding for our schools and junior taxing districts.

The Commissioners note the need for clarification in our Charter; it is logical that the Director of Community Development would be the party directly responsible for timberland conversions to other land use changes. It is not logical that the broader issues at hand including timberland trust performance and policy issues which result in funding for the county and junior taxing districts fall under the purview of the DCD. The Commissioners will therefore continue to operate as we currently do in performing our fiduciary duties and plan to recommend a Charter change to clarify these ambiguities.

4. *"The Clallam County Board of Commissioners immediately take active leadership to reclaim and renew their primary leadership role in engaging a group of public and private organizations and businesses to creatively increase affordable housing availability, apply forward thinking ideas proven to be successful in communities that have reduced the experience of homelessness effectively, and report progress back to the community every six months."*

The County Commissioners are acutely aware that housing and homelessness rank among the top concerns of our community and of county governance, and we are engaged in a variety of efforts in this arena.

However, we must point out that while our Charter indicates that Charter Review recommendations be forwarded to the Commissioners this recommendation may have been better directed to the elected Director of Community Development, who is specifically empowered by our Charter to "administer, enforce and advise the County Commissioners on all laws, except health, with respect to...land and shoreline development, including, but not limited to, zoning, land divisions, environmental policy, building and fire codes..." Nothing is more central to community development then enumerating and pursuing a housing policy and recommending new or updated Ordinance, planning documents or development regulations in support of this policy. (The Commissioners do acknowledge that Director Winborn created a pre-approved "tiny home" plan available to county residents.)

Because no broad vision or plan for increasing the availability of affordable housing has ever been presented by any elected Director of Community Development, and given the immediate and substantial need for more affordable housing options in our county, the Commissioners are providing leadership by:

- Planning for the strategic use of the HB 1406 revenue stream for maximum impact now
- Considering how the Opportunity Fund can be paired with other revenue sources to facilitate the development of affordable housing units
- Working with community partners including the Peninsula Housing Authority, Habitat for Humanity, Peninsula Behavioral Health, Serenity House, Healthy Families, Sarge's Place and private builders to create a land bank, community land trust or similar model to reduce the cost of affordable housing and to create a method of ensuring affordable housing stock in perpetuity
- Leading a housing/homelessness working group to establish priorities and opportunities for dollars recently made available through the American Recovery Plan Act
- Working with Serenity House, Peninsula Behavioral Health and the Peninsula Housing Authority to support funding applications and planning processes for affordable housing projects in multiple areas of the county

- Providing a letter of support and funding to support a current application to the Dept. of Commerce Housing Trust Fund for a 25-27 unit affordable housing project being spearheaded by Peninsula Behavioral Health
- Supporting the United Way in leading a "Housing Summit" to bring service providers, cities and community members together to examine alternatives for increasing housing stock

The Commissioners do have a clear role to play with regard to addressing homelessness and the coordinated entry system. We are currently engaged in the following:

- Implementing a Clallam County Homelessness Gaps and Needs Analysis, including targeted recommendations
- Working closely with Serenity House to facilitate a major expansion of their overnight shelter
- Supporting the Homelessness Task Force in their work to improve the RFP and funding process for the dedicated revenue streams that can be used to build homelessness programming and infrastructure
- Funding a variety of programs that support homeless individuals in pursuit of permanent housing
- Planning for in-house management and oversight for the coordinated entry system, a responsibility which is currently deferred to Serenity House

Conclusion: While our Charter indicates that the Director of Community Development is tasked with the primary leadership role in developing and recommending policy to engage public and private organizations and businesses to creatively increase affordable housing availability, nevertheless the Commissioners are highly-engaged in this work due to its importance and due to the reality that most in the community (up to and including the Charter Review Commission) see this as the Commissioners' job.

The Commissioners believe that the combination of new revenue sources (primarily HB 1406 and ARPA funds) coupled with intense community focus provides the opportunity to make real gains in the provision and availability of affordable housing in the next few years.

As supported by the recently-concluded Homelessness survey and gaps analysis, our efforts in the homelessness arena will be focused on expanding and improving coordinated entry, increasing funding for effective outreach and case management services, expanding shelter options, considering strategies like establishing safe parking areas and most importantly working to ensure improved coordination and communication among and between service providers, and between providers and business and community leaders.

Affordable housing in all forms is and will continue to be a major issue for Clallam County. This has a direct effect on the wellbeing of our County and will continue to be a major focus of the Commissioners. Leadership provision, vision-setting and policy development related to housing and affordable housing are topics that would benefit from clarification in our Charter language.

5. *The BOCC and the DCD shall jointly agree to commission a third-party review of the County ordinances and solicit a report on proposed changes to ordinances and operating procedures to clarify the roles and responsibilities of the DCD. The BOCC will consider, after public review and hearings, any proposed Ordinances for adoption within 120 days of the commissioned report. BOCC shall place on the November 2022 ballot, if needed, any necessary Charter changes to clarify the powers and duties of an elected DCD Director.*

Clallam County is unique in Washington State, and we believe in the entire country, in that our Director of Community Development is an elected – rather than appointed – position. Due to the unusual and challenging nature of this arrangement, previous Charter Review Commissions have asked county voters

to re-affirm this choice several times and each time voters have affirmed that they do, in fact, wish this county official to be elected by the people.

One of the unique challenges arising from this situation is that state and federal law do not recognize the elected authority of this official. Therefore, any number of planning documents, grant agreements and contracts that would appear to fall squarely under the jurisdiction of the elected DCD in fact require that final action be taken by the Board of County Commissioners. This reality truly "muddies the waters" when attempting to describe and capture the intended authority of the DCD in county Ordinance, policy or procedure.

As previously noted, the waters are further muddied by public perception. Our Charter language indicates that the DCD take the lead in developing broad environmental vision around forestry policy, yet when no policy has been advanced the public (via the Charter Review Commission) asks the Commissioners to act to fill the void by hiring a forester. Our Charter language indicates that the DCD should take the lead in developing affordable housing policy, yet when no such policy has been advanced the public (via the Charter Review Commission) asks the Commissioners to reclaim our natural leadership role in this arena.

It is these "muddy waters" that underscored this recommendation and there is little doubt that all parties would benefit from greater clarity. Since the recommendation asks the Commissioners and the DCD to jointly agree to a third-party review of county Ordinances we began by discussing the recommendation and potential third-party reviewers at a Commissioners' work session late in 2020.

During that discussion, Director of Community Development Mary Ellen Winborn indicated that she did not believe that such a review was as important or necessary as improving relationships between her and the Commissioners and requested consideration of a mediation to help improve these relationships prior to any third-party review.

The Commissioners have agreed to mediation as requested by Director Winborn and each Commissioner will engage in an individual mediation with Director Winborn sometime this summer. Our expectation is that we can begin with a third-party review as recommended by the Charter Review Commission at the conclusion of these mediations.

Conclusion: The Commissioners believe there would be value in engaging in the third-party review as suggested by the Charter Review Commission and plan to work with Director Winborn to identify an appropriate "third party" to review county Ordinance after the completion of these mediations. Should the review indicate consideration of changes or updates to Ordinance, policy or procedure the Commissioners will move forward with the appropriate required processes to vet them with the public.

Recommendations for Next Time

Based on our experience receiving and responding to formal recommendations from the Charter Review Commission for the first time, we wish to offer the following observations and recommendations for the next Charter Review cycle for the consideration of future Charter Review Commissioners and future County Commissioners. The County Commissioners recognize the unusual challenges that the 2020 Charter Review Commission faced as they worked around the COVID-19 pandemic and understand the extreme impact the pandemic had on the CRC's process and public participation plan.

- Given that most people who are elected as Charter Review Commissioners may not be wholly familiar with the structure of county government generally, nor with the functioning of Clallam County government specifically, we believe that it is vital for future Charter Review Commissions to spend sufficient time "up-front" to build up their knowledge base. ***This is particularly important given that these recommendations relate to "changes or revisions to***

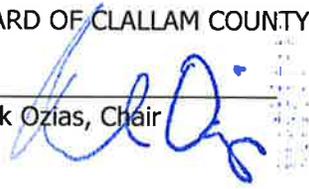
county operations or procedures,” rather than topics that are worthy of inclusion in the Charter itself, which is intended as a document that outlines the structure, authorities and operation of county government.

- It was very difficult to engage the public in a meaningful way after the conclusion of the formal Charter Review effort. Most county residents who were interested in engaging in the topics being raised for consideration by the Charter Review Commission provided their input during the Charter Review process. Our recommendation is to ensure robust public engagement during the year the Charter Review Commission is meeting; again, we realize that the 2020 CRC’s process was severely hampered by the COVID-19 pandemic.
- The Commissioners question the benefit of the Charter language that was adopted in 2015 that asks Charter Review Commissioners to make suggestions related to county operations or procedures. We believe that county residents are best-served by a Charter Review Commission that focuses its attention on the Charter document itself, rather than being distracted by “getting into the weeds” by focusing on operational or procedural issues and our suggestion to the next Charter Review Commission is to reconsider the efficacy of this language.

Sincerely,

BOARD OF CLALLAM COUNTY COMMISSIONERS

Mark Ozias, Chair



Excused
Randy Johnson

Bill Peach

