

1. 06/08/2016 - Snohomish County Charter Review Commission - Agenda

Documents: [2016_0608 AGENDA.PDF](#)

2. 06/08/2016 - Snohomish County Charter Review Commission - Ballot Language

Documents: [2016-46 BALLOT LANGUAGE.PDF](#)

3. 06/08/2016 - Snohomish County Charter Review Commission - Memo From Attorney

Documents: [MEMO FROM ATTORNEY.PDF](#)

4. 06/08/2016 - Snohomish County Charter Review Commission Agenda

Documents: [2016_0608 AGENDA.PDF](#)

Snohomish County
Charter Review Commission
8th Floor Robert J. Drewel Building
Jackson Board Room
Wednesday, June 8, 2016
7:00 p.m. – 9:00 p.m.
AGENDA

7:00 p.m. Call to Order

Flag Salute/Roll Call

Agenda Order

Public Comments (7:20 p.m.)

Approval of the Minutes:

Chair's Report

Business Items

1. Study Items

 1. Proposal 2016-14 - Enlarge Council from 5 to 7 Members

 2. Proposal 2016-38 - Change Date of County Elections

 3. Proposal 2016-24 - Evaluate Governance Structure for Paine Field

Old Business

New Business

Adjournment 9:00 p.m.

Next meeting is currently scheduled for June 15 at the Robert J. Drewel Building

Agenda Topics

Ballot Language Review

[NOTE: Times shown on Agenda are approximate]

Active List of Charter Amendment Proposals

2016-02	Revisions to Districting Timeline	Reviewed Language
2016-04	Adding Office of Ombudsman to Charter	Reviewed Language
2016-08	Schedule of County Council Meetings	Reviewed Language
2016-10	Confirmation of Department Heads	Reviewed Language
2016-12/13	Qualifications of Elected Officials	Discussion after August 6
2016-14	Enlarge Council from 5 to 7 Members	Language to be Reviewed
2016-18	Change Date of Submission of Executive's Budget	Reviewed Language
2016-19	Update Charter Language on Nondiscrimination	Reviewed Language
2016-23	Update Charter to use Gender Neutral Language	Reviewed Language
2016-24	Evaluate Governance Structure for Paine Field	Language to be Reviewed
2016-30	Evaluate Status of Human Rights Commission	Reviewed Language
2016-31	Appeals of Hearing Examiner	Reviewed Language
2016-38	Change Date of County Elections	Language to be Reviewed
2016-42	Make Prosecuting Attorney Non-Partisan	Reviewed Language

SNOHOMISH COUNTY CHARTER REVIEW COMMISSION AGENDA ITEM 2016-46	
SUBJECT TITLE: Review of Charter Amendment Language	Meeting Date: June 8, 2016
Estimated Presentation Time: 90 minutes	Exhibits: 1. Enlarge County Council from Five to Seven Members 2. Change Date of County Elections 3. Evaluate Governance Structure of Paine Field

RECOMMENDATION: The Commission should review proposed amendments to the Charter for Charter Amendment Proposals 2016-14, Enlarge County Council from Five to Seven Members, 2016-24, Evaluate Governance Structure of Paine Field, and Proposal 2016-38, Change Date of County Elections.

SUMMARY:

At the March 30, 2016 meeting of the Commission, the Commission moved to review potential amendments to the Charter on Charter for Charter Amendment Proposals 2016-14, Enlarge County Council from Five to Seven Members.

At the May 18, 2016 meeting of the Commission, the Commission moved to review potential amendments to the Charter on Proposal 2016-38, Change Date of County Elections.

At the June 1, 2016 meeting of the Commission, the Commission moved to review potential amendments to the Charter on Proposal 2016-24, Evaluate Governance Structure of Paine Field.

Exhibits 1 through 3 contain potential amendments to the Charter that reflect the intent of the Commission. In each of the drafts, the amendments also include provisions to amend the transition sections of the Charter.

The Commission should review the potential amendments and, if necessary, direct staff to conduct additional analysis on each proposal. The proposed ballot titles in each exhibit will be drafted by the Prosecuting Attorney, not the Commission. The ballot title in each exhibit is illustrative of what the ballot title may look like.

A final vote on each proposition to send it to the voters will occur at a future meeting of the Commission.

BACKGROUND:

Enlarge Council from 5 to 7 Members

On March 30, the Commission held a discussion on Charter Amendment Proposal 2016-14, Enlarge County Council from 5 to 7 Members. During the discussion, the Commission directed that the effective date of the proposal would occur after the 2021 redistricting process.

Discussion

Exhibit 1 shows potential language for amending the Charter. Given the technical nature of the amendment, the Commission’s attorney asked the county auditor for additional guidance.

The draft language shows the expansion of the county council with an effective date of a seven-member council either January 1, 2023 or January 1, 2024, depending on the status of Proposal 2016-38, changing the date of the county elections. This proposal is based on consideration by voters during the 2016 election.

Term of Office

Because the new members would be elected the same year as the county executive and other county offices, the draft ballot language resets the council so three members of the council would be elected the same year as the county executive and four members are elected opposite the county executive. This retains the structure of the council as it currently exists, with three members elected in years where the county executive is not on the ballot and two councilmember elected at the same time as the county executive.¹ To accomplish this, all members of the council would be on the ballot in 2022 or 2023 and then the council terms would stagger (See Tables 1, 2, and 3 for an illustrated explanation).

Table 1 Expansion of Council

Year	Position 1	Position 2	Position 3	Position 4	Position 5	Position 6	Position 7
2017	X			X	X		
2018							
2019		X	X				
2020							
2021	X			X	X		
2022							
2023	X	X	X	X	X	X	X
2024							
2025		X	X			X	X
2026							
2027	X			X	X		
2028							
2029		X	X			X	X

Redistricting

¹ The county executive is elected in 2019, 2023 and 2027.

Two new council districts would be drawn by the districting committee following the receipt of the 2021 census. Those positions would initially be up for election on the 2022 or 2023 ballot. The estimated size of the new districts based on 2015 Census estimates would be 110,357, a decrease of over 44,000 from the estimated district size of five council districts. For comparison, the 2015 Census estimate of the population of Everett is 108,010.

RCW 29A.76 sets out the criteria for redistricting:

- (a) Each internal director, council, or commissioner district shall be as nearly equal in population as possible to each and every other such district comprising the municipal corporation, county, or special purpose district.
- (b) Each district shall be as compact as possible.
- (c) Each district shall consist of geographically contiguous area.
- (d) Population data may not be used for purposes of favoring or disfavoring any racial group or political party.
- (e) To the extent feasible and if not inconsistent with the basic enabling legislation for the municipal corporation, county, or district, the district boundaries shall coincide with existing recognized natural boundaries and shall, to the extent possible, preserve existing communities of related and mutual interest.

Voting and Other Changes due to Expansion of the Council

The addition of two new councilmembers affects multiple sections of the Charter relating to the number of votes it takes to pass an ordinance and the budget. Expansion of the council also has an effect on the Charter Review Commission.

Currently ordinances require three votes to pass. Emergency ordinances, overriding the veto of the executive, increasing the amount of revenue in the budget and passing charter amendments require four votes.

In the draft language, the passage of ordinances require four votes (a simple majority).

The Commission will need to determine the number of votes to pass emergency ordinances, override the veto of the executive, and increasing the “the amount of the estimated revenues contained in the budget.” Five votes would equate to a 71% threshold. Six votes would equate to an 86% threshold. The Commission could decide to change the formulation for voting and require a certain percentage of those members present and voting. The Commission may also need to direct staff to decide the number of votes needed to amend the districting committee’s proposal.

The Commission will also need to decide about membership to the Charter Review Commission. The current Commission consists of fifteen members, three from each council district. Keeping three members per district would lead to a commission size of twenty-one.

Options for the Charter Review Commission include:

- a) Enlarge the size of the Charter Review Commission to twenty-one.
- b) Stating only two members are elected from each council district.

To keep the commission an odd-number, the Commission could decide to:

- a) Require the commission to elect a voting or non-voting chair.
- b) Elect one commissioner county-wide.

Costs

Staff has asked the county council office for an estimate of the costs of expanding the council. In 2006, the Commission received information that the costs of expanding the council was \$740,000 which includes \$403,514 in annual operating costs and about \$336,000 in one-time costs for improvements to the council office. On May 25, 2016, Executive Somers presented material suggesting that the annual costs would be \$800,000 per year.

The current salary for a councilmember is \$111,340. Staff is currently awaiting a response from the county council office on the benefits and overhead assigned to each councilmember and their office.

Change Date of County Elections

On May 18, the Commission held a discussion on Charter Amendment Proposal 2016-38, Change Date of County Elections. During the discussion, the Commission directed staff to prepare an amendment to the Charter to change the date of county elections from odd- to even-numbered years.

Discussion

Exhibit 2 shows potential language for amending the Charter. This proposal is based on consideration by voters during the 2016 election.

The draft language starts the transition to even-numbered year elections beginning with the 2017 election. Councilmembers elected in 2017 will serve a three-year term and the positions would be on the ballot again in 2020. County officials elected in 2019 will serve a three-year term ending in 2022.

Tables 2 and 3 show how the transition to even-year elections would work for the council. County executives would be elected in 2022, 2026, 2030 and every four years thereafter, opposite to presidential and gubernatorial elections.

Table 2 Even-Numbered Year Elections, No Council Expansion

Year	Position 1	Position 2	Position 3	Position 4	Position 5
2017	X			X	X
2018					
2019		X	X		
2020	X			X	X
2021					
2022		X	X		
2023					
2024	X			X	X
2025					
2026		X	X		

Table 3 Expansion of Council, Even-Numbered Year Elections

Year	Position 1	Position 2	Position 3	Position 4	Position 5	Position 6	Position 7
2017	X			X	X		
2018							
2019		X	X				
2020	X			X	X		
2021							
2022	X	X	X	X	X	X	X
2023							
2024		X	X			X	X
2025							
2026	X			X	X		
2027							
2028		X	X			X	X

The draft language does not change the election date for the Charter Review Commission.

Costs

Moving to even-numbered year elections would save the county a certain amount of money for conducting elections. The exact amount of savings would depend upon the number of contested primary elections.² Looking at November general election savings alone, the county may save around \$548,000 over a ten-year period.^{3 4}

Moving to county elections in even-numbered years would likely lead to increases in costs on city and special purpose districts. Cities and special purpose districts elect their officers in odd-numbered years in accordance with state law. If the county no longer conducts elections in odd-numbered years, then the proportionate share of the election costs in those years would increase in those jurisdictions.

If the Commission desires, staff can ask the auditor to estimate the savings for switching to even-numbered years.

Undervote

² A primary election takes place when more than three candidates file for a seat.

³ The auditor develops a cost factor for each jurisdiction that has an election on the ballot. The current practice is for the auditor to charge each jurisdiction the same rate if it had one issue or race on the ballot or multiple issues or races.

⁴ There would be additional savings to the county for conducting primary elections in even-numbered years. However, those costs are more variable than those costs associated with the November general election.

During the May 18 discussion, Commissioners wondered about the undervote for down-ballot elections. Staff is working on providing complete tables of the undervote in selected jurisdictions for the meeting on June 8.

At the county level, the race for county executive indicates the difference in undervotes in the 2014 and 2015 elections. In Everett, 20,798 people voted for county executive in 2014, with less than a 5% undervote. In 2015, 14,570 people voted for county executive, with a 5.5% undervote. A similar story exists in Edmonds, Lynnwood, Marysville, and Monroe where more people voted in 2014 and the undervote was less in each jurisdiction in 2014.⁵

Using incomplete data, the undervote for the first race for city council ranges from 8 to 16 percent and for local initiatives from 5 to 11 percent.⁶ This range does not appear to vary whether the election is held in an even or odd-numbered year. As one data point, over 32,000 voters in Everett voted in 2012 for a competitive city council election. In 2013, 16,000 voted in a competitive city council election.

This data leads to preliminary conclusions that in odd-numbered year elections, the race for county executive does not drive turnout for local races. In Edmonds, Everett and Lynnwood more people voted for a city council race than for county executive. In Edmonds, Lynnwood, and Marysville, more people voted for the Community Transit measure than for county executive.⁷

Transition Language

The transition language for this proposal, as well as for the expansion of the size of the county council include a provision that repeals all of Article 11 by January 1, 2024. If the Commission wishes to delete references to the entirety of the obsolete transition provisions, this provision, Section 11.130, could be added to each proposal sent to the voters.

Evaluate Governance Structure for Paine Field

On June 1, the Commission held a discussion on Charter Amendment Proposal 2016-24, Evaluate the Governance Structure of Paine Field. During the discussion, the Commission directed staff to prepare an amendment to the Charter to create an airport commission in the Charter.

Exhibit 3 shows potential language for amending the Charter.

Discussion

The proposed language differs slightly from the language seen in the June 1 staff report to the Commission. The purpose and scope of the commission come from the 1987 Snohomish County ordinance creating the airport commission. The draft states the council can determine

⁵ Caution is urged in comparing the undervote across the 2014 and 2015 elections. In 2015, two Democrats were on the ballot and non-Democrats may have skipped voting in the race.

⁶ Excluding uncontested elections.

⁷ Everett is not in the Community Transit District

the membership of the airport commission, but must include at least one member from each county council district.⁸

Since the meeting on June 1, staff found another example of the purpose of scope of an airport roundtable found in King County Code 15.94.⁹ The scope and purpose of the roundtable is to “advise and make recommendations to the airport management, county executive and county council on the airport budget, programs, regulations, master plans and noise reduction strategies and other related matters.”

If the Commission wishes to be more specific in the purpose of the airport commission, staff suggests language similar to the King County Code.

Reimbursement

As the Commission was made aware in an earlier proposal, there are two different languages for reimbursement for mileage and expenses for commissions located in the charter.

The language for the salary commission states, “Members of the salary commission shall serve without compensation, but may receive reimbursement for mileage to and from meetings and for such other expenses directly related to their service as provided by ordinance.”

The language for the charter review commission and districting committee states, “Members of the districting committee shall serve without salary but shall be compensated for reasonable-out-of-pocket expenses,” and, “Members of the commission shall serve without salary, but shall be reimbursed for reasonable out-of-pocket expenses.”

After reviewing the language, the Commission’s attorney recommends paralleling the language of the salary commission for the airport commission and the human rights commission. If given direction from the Commission, the Commission’s attorney recommends that the charter language for the charter review commission and districting commission be amended to use the language of the salary commission.

Codification

At this point in the process, the airport commission, human rights commission, and the office of the public advocate (ombudsman) are all numbered 2.160. As proposals are refined or postponed for discussion after August 6, 2016, these proposals will be renumbered. If multiple proposals move forward for the 2016 ballot that add 2.160 to the Charter, the Commission’s attorney may either add transition language or consider another method of codification of the proposal.

ALTERNATIVES:

The Commission may delay a vote to a subsequent meeting or elect to consider combining a proposal with another proposal.

⁸ This is the same formulation used in the proposal to establish the Human Rights Commission in the Charter. In each case, the council can expand the size of the commission.

⁹ http://aqua.kingcounty.gov/council/clerk/code/18_Title_15.htm#_Toc422301812

PROPOSITION NO. ____

Increasing County Council from Five Members to Seven Members

A. Proposed Ballot Title:

The Snohomish County Charter Review Commission has proposed amendments to the Snohomish County Charter concerning the number of county councilmembers. This proposition would increase the number of county councilmembers from five councilmembers to seven councilmembers beginning in 2023, or in 2022 if Proposition No. ____ providing for elections in even-numbered years is approved, make procedural and other related changes, and provide for transition. Should this proposition be:

Approved

Rejected

B. Charter Amendments Required

AMENDED SECTIONS:

Section 2.30 Composition

The county council shall consist of ~~((five))~~ seven members nominated and elected from districts. Councilmembers shall be residents and registered voters of the district they represent at the time of filing for election to said office and at all times during their terms. Any change in the boundaries of a councilmember's district which shall cause him to be no longer a resident shall not disqualify him from holding office during the remainder of the term for which he was elected or appointed.

Section 2.110 Ordinances - Enactment

Proposed ordinances may be introduced by any councilmember, mini-initiative or initiative. Every proposed ordinance shall be introduced in its entirety in writing. At least thirteen days shall pass between the introduction and the final passage of every ordinance, except emergency ordinances. Brief summaries of proposed ordinances providing reasonable notice as to the nature of the action contemplated shall be published before consideration. The council shall hold at least one public hearing after due notice to consider the proposed ordinance. Any proposed ordinance may be amended by motion at hearing without publication, provided, that such amendments shall not change the scope and object of the proposed ordinance. No proposed ordinance shall become a law unless on its

final passage the vote be taken by roll call by yeas and nays. Ordinances, or summaries of them, shall be published after enactment. Except for emergency ordinances, a minimum of ~~((three))~~ four affirmative votes shall be required to adopt an ordinance.

Every ordinance shall be presented to the county executive within five working days after adoption by the county council. Within ten working days after presentation, the county executive shall either sign the ordinance and return it or veto the ordinance and return it to the county council with his written objections. If an ordinance is not returned to the county council within ten working days after its presentation, it shall be deemed enacted without the county executive's signature. If the county executive vetoes an ordinance, the county council shall have thirty days to reconsider the ordinance. If the ordinance receives at least ~~((four))~~ [XXX] affirmative votes it shall become law. Except as otherwise provided by this charter, all ordinances shall take effect ten days after they are signed by the county executive or otherwise enacted, or at a later date if stated in the ordinance.

Section 2.120 Emergency Ordinances

Any proposed ordinance may be enacted as an emergency ordinance if the county council finds as a fact, and states in the ordinance, that the ordinance is necessary for the immediate preservation of public peace, health or safety or for the support of county government and its existing public institutions. A minimum of ~~((four))~~ [XXX] affirmative votes shall be required to enact an emergency ordinance. Emergency ordinances shall not be subject to the veto power of the county executive. All emergency ordinances shall be effective immediately upon passage by the county council.

Section 6.50 Consideration and Adoption of the Budget

At least thirty days prior to the end of the fiscal year, the county council shall adopt budget, tax and revenue ordinances for the next fiscal year. Prior to the adoption of any budget ordinance for the next fiscal year, the county council shall hold a public hearing to consider the proposed budget presented by the county executive and shall hold any other public hearings on the budget or any part thereof that it deems advisable. The county council in considering the budget ordinance proposed by the county executive, may delete or add items, may reduce or increase the proposed appropriations and may add provisions restricting the expenditure of certain appropriations, provided that the county council shall adopt a six (6) year capital improvement program as an adjunct to the budget, including a balance of proposed expenses and potential revenue sources.

The appropriations included in the budget ordinance adopted by the county council shall not exceed the estimated revenues of the county for the next fiscal

year for each fund including surpluses and reserves. However the county council may increase the amount of the estimated revenues contained in the budget proposed by the county executive by reestimating the amount by motion passed by a minimum of ~~((four))~~ [XXX] affirmative votes, by utilizing reserves in a manner not proposed by the county executive or by creating additional sources of revenue which were not included in the proposed tax and revenue ordinances presented by the county executive.

Section 8.20 Election and Period of Office

Five years after the adoption of this charter and every ten years thereafter, the county council shall cause an election of a charter review commission, hereinafter referred to as the commission. The commission shall consist of ~~((fifteen))~~ [XXX] persons ~~((, an equal number))~~ from each council district. There shall be no filing fee nor shall there be a primary. The election shall be held at the November general election and candidates shall run on a nonpartisan basis. The member of the commission who receives the greatest number of votes shall convene the commission. The term of office shall be one year. The commission may meet at such times and in such places as it deems appropriate.

Section 8.80 Amendments by the County Council

The county council may propose amendments to the charter by enacting an ordinance to submit a proposed amendment to the voters at the next November general election occurring at least ninety days after enactment. A minimum of ~~((four))~~ [XXX] affirmative votes shall be required to enact such an ordinance. An ordinance proposing an amendment to the charter shall not be subject to the veto power of the county executive.

REPEALED SECTIONS:

~~((Section 11.40 Budget~~

~~The budget for 2007 which is in effect when this amended charter takes effect, shall remain effective until revised.))~~

~~((Section 11.70 Effective Date~~

~~This amended charter shall take effect January 1, 2007. The term "effective date of this amended charter" shall mean January 1, 2007.))~~

NEW SECTIONS:

Section 11.090 Districting Plan

The districting committee appointed in 2021 shall draw a districting plan having seven council districts numbered one through seven.

Section 11.110 Elections and Terms of Office – County Councilmembers

Notwithstanding any other provision of this charter, the elections and terms of office of county councilmembers shall be as set out in this section, according to the following contingencies:

1. If Proposition No. ___ providing for elections in even-numbered years is approved by a majority of voters in the 2016 general election and Proposition No. ___ providing for an increase in the number of county councilmembers is not approved by a majority of voters in that election, then: (a) councilmembers elected in 2017 to represent districts one, four, and five shall serve three-year terms; and (b) councilmembers elected in 2019 to represent districts two and three shall serve three-year terms. All subsequent elections shall be held in even-numbered years according to the provisions of this charter.
2. If Proposition No. ___ providing for elections in even-numbered years is not approved by a majority of voters in the 2016 general election and Proposition No. ___ providing for an increase in the number of county councilmembers is approved by a majority of voters in that election, then: (a) councilmembers elected in 2021 to represent districts one, four, and five shall serve two-year terms; (b) elections for all council districts as redistricted under Section 11.090 of this charter shall be held in 2023, (c) councilmembers elected in 2023 to represent districts two, three, six, and seven shall serve two-year terms; and (d) councilmembers elected in 2023 to represent districts one, four, five, and six shall serve four-year terms. All subsequent elections shall be held according to the provisions of this charter. Districts six and seven shall not be deemed vacant prior to 2024.
3. If Proposition No. ___ providing for elections in even-numbered years and Proposition No. ___ providing for an increase in the number of county councilmembers are both approved by a majority of voters in that election, then: (a) councilmembers elected in 2017 to represent districts one, four, and five shall serve three-year terms; (b) councilmembers elected in 2019 to represent districts two and three shall serve three year terms; (c) councilmembers elected in 2020 to represent districts one, four, and five shall serve two-year terms; (d) elections for all council districts as redistricted under Section 11.090 of this charter shall be held in 2022; (e) councilmembers elected in 2022 to represent districts two, three, and seven shall serve two-year terms; and (f) councilmembers elected in 2022 to represent districts one, four, five, and six shall serve four year terms. All subsequent elections shall be held in even-numbered years according to the provisions of this charter. Districts six and seven shall not be deemed vacant prior to 2023.

Section 11.120 Expiration of Transition Provisions

This Article 11 shall expire on January 1, 2024, and shall not appear in the publication of this charter after that date.

Section 11.130 Effective Dates

The amendments to Section 2.30, 2.110, 2.120, 6.50, 8.20, and 8.80 shall take effect January 1, 2023, except that if Proposition No. ___ providing for elections in even numbered years is approved by a majority of voters then the amendments to Section 2.30, 2.110, 2.120, 6.50, 8.20, and 8.80 shall take effect January 1, 2022. All other changes proposed by the 2016 Charter Review Commission and approved by a majority of voters in the 2016 general election shall take effect as provided in Section 8.50 or this article.

DRAFT

PROPOSITION NO. ____

Providing for Elections in Even-Numbered Years

A. Proposed Ballot Title:

The Snohomish County Charter Review Commission has proposed amendments to the Snohomish County Charter concerning the schedule for holding county elections. This proposition would change the schedule for electing the County Executive, County Assessor, County Auditor, County Clerk, County Sheriff, County Treasurer, and members of the County Council from odd-numbered years to even-numbered years beginning in 2020, and provide for transition. Should this proposition be:

Approved

Rejected

B. Charter Amendments Required

AMENDED SECTION:

Section 4.90 Commencement of Terms of Office

~~((With the exception of the prosecuting attorney, the))~~ The election of county officers provided for in this charter shall be held in ~~((odd-numbered))~~ even-numbered years as provided by general law and the provisions of this charter. The terms of office of elected county officers shall commence on the first day of January immediately following the November general election.

REPEALED SECTIONS:

~~**((Section 11.40 Budget**~~

~~The budget for 2007 which is in effect when this amended charter takes effect, shall remain effective until revised.))~~

~~**((Section 11.70 Effective Date**~~

~~This amended charter shall take effect January 1, 2007. The term "effective date of this amended charter" shall mean January 1, 2007.))~~

NEW SECTIONS:

Section 11.100 Elections and Terms of Office – Elected Executive Officers

Notwithstanding any other provision of this charter, the elections and terms of the elected executive officers provided for in Section 3.20 shall be as set out in this section.

The executive officers elected in 2019 shall serve three-year terms. All subsequent elections shall be held in even-numbered years according to the provisions of this charter.

Section 11.110 Elections and Terms of Office – County Councilmembers

Notwithstanding any other provision of this charter, the elections and terms of office of county councilmembers shall be as set out in this section, according to the following contingencies:

1. If Proposition No. ___ providing for elections in even-numbered years is approved by a majority of voters in the 2016 general election and Proposition No. ___ providing for an increase in the number of county councilmembers is not approved by a majority of voters in that election, then: (a) councilmembers elected in 2017 to represent districts one, four, and five shall serve three-year terms; and (b) councilmembers elected in 2019 to represent districts two and three shall serve three-year terms. All subsequent elections shall be held in even-numbered years according to the provisions of this charter.
2. If Proposition No. ___ providing for elections in even-numbered years is not approved by a majority of voters in the 2016 general election and Proposition No. ___ providing for an increase in the number of county councilmembers is approved by a majority of voters in that election, then: (a) councilmembers elected in 2021 to represent districts one, four, and five shall serve two-year terms; (b) elections for all council districts as redistricted under Section 11.090 of this charter shall be held in 2023, (c) councilmembers elected in 2023 to represent districts two, three, six, and seven shall serve two-year terms; and (d) councilmembers elected in 2023 to represent districts one, four, five, and six shall serve four-year terms. All subsequent elections shall be held according to the provisions of this charter. Districts six and seven shall not be deemed vacant prior to 2024.
3. If Proposition No. ___ providing for elections in even-numbered years and Proposition No. ___ providing for an increase in the number of county councilmembers are both approved by a majority of voters in that election, then: (a) councilmembers elected in 2017 to represent districts one, four, and five shall serve three-year terms; (b) councilmembers elected in 2019 to represent districts two and three shall serve three year terms; (c) councilmembers elected in 2020 to represent districts one, four, and five shall

serve two-year terms; (d) elections for all council districts as redistricted under Section 11.090 of this charter shall be held in 2022; (e) councilmembers elected in 2022 to represent districts two, three, and seven shall serve two-year terms; and (f) council members elected in 2022 to represent districts one, four, five, and six shall serve four year terms. All subsequent elections shall be held in even-numbered years according to the provisions of this charter. Districts six and seven shall not be deemed vacant prior to 2023.

Section 11.120 Expiration of Transition Provisions

This Article 11 shall expire on January 1, 2024, and shall not appear in the publication of this charter after that date.

DRAFT

PROPOSITION NO. ____

Airport Commission

A. Proposed Ballot Title:

The Snohomish County Charter Review Commission has proposed amendments to the Snohomish County Charter concerning an advisory commission for the county airport at Paine Field. This proposition would direct the county council to establish a commission to advise the county council and executive on proposed rules and regulations for the management and control of airport property and on such other matters as may be specified by ordinance, with the commission to be appointed and include at least one member from each council district and may include other members as determined by the council. Should this proposition be:

Approved

Rejected

B. Charter Amendments Required

NEW SECTION:

Section 2.160 Airport Advisory Commission

The county council shall establish by ordinance a commission to advise and make recommendations to the county executive and council concerning the county airport at Paine Field. The commission shall have authority to advise the executive and council on proposed rules and regulations for the management and control of airport property and on such other matters as may be specified by ordinance. The commission shall consist of at least one resident of each council district and may include other members as determined by the council. Members shall be appointed by the county executive and confirmed by the council. Members of the commission may receive reimbursement for mileage to and from meetings and for such other expenses directly related to their service as provided by ordinance. All commission meetings shall be open to the public and contain an opportunity for public comment, except to the extent executive sessions are authorized by state law.

REPEALED SECTIONS:

~~((Section 11.40 Budget~~

~~The budget for 2007 which is in effect when this amended charter takes effect, shall remain effective until revised.))~~

~~((Section 11.70 Effective Date~~

~~This amended charter shall take effect January 1, 2007. The term "effective date of this amended charter" shall mean January 1, 2007.)~~

DRAFT

(206) 718-8230

THOMAS HERRICK ROBERTSON
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June 3, 2016

Snohomish County Charter Review Commission
Attention: Chris Roberts
3000 Rockefeller Avenue, M/S 507
Everett, Washington 98201

Re: Application of Single Subject Rule

Dear Members of the Commission:

You have asked through staff whether combining certain proposals into single proposals would conflict with the single subject rule that appears in Section 8.50 of the charter. The proposed combinations are:

1. Office of Ombudsman (2016-04) and Commission on Human Rights (2016-30)
2. Confirmation of Department Heads (2016-10) and Change Date of Submission of Executive's Budget (2016-18)
3. Qualifications of Elected Officials (2016-12/13) and Gender-Neutral Language (2016-23)

Short answer

Each of the proposed combinations would, if challenged, likely be found to violate Section 8.50. However, the Human Rights Commission and Gender-Neutral Language proposals could be combined with the proposal to revise charter language on nondiscrimination (2016-19).

Analysis

Section 8.50 states, in part:

If more than one amendment is submitted on the same ballot, they shall be submitted in such a manner that the people may vote for or against the amendments separately; provided, an amendment which embraces a single or inter-related subject may be submitted as a single proposition even though it is composed of changes to different sections of one or more articles.

“The single-subject rule aims to prevent the grouping of incompatible measures and to prevent ‘logrolling,’ which occurs when a measure is drafted such that a legislator or voter may be required to vote for something of which he or she disapproves in order to secure approval of an unrelated law.” Wash. Ass’n for Substance Abuse and Violence Prevention v. State, 174 Wn.2d 642, 655, 278 P.3d 632 (2012) (citing Amalgamated Transit Union Local 587 v. State, 142 Wn.2d 183, 212, 11 P.3d 762 (2000); Wash. Fed’n of State Employees v. State, 127 Wn.2d 544, 552, 901 P.2d 1028 (1995)). When legislation embodies two unrelated subjects it is impossible to determine whether either subject would have passed if voted on separately. Consequently, the remedy applied by the courts has been to invalidate the entire act. Burien v. Kiga, 144 Wn.2d 819, 825, 31 P.3d 659 (2001).

Washington courts have employed a multi-step analysis in cases involving the corresponding provision of the state constitution, Article II, Section 19.¹ The first step is to determine whether the ballot title of the measure is general or restrictive. “A general title is broad, comprehensive, and generic as opposed to a restrictive title that is specific and narrow.” Burien v. Kiga, *supra* at 825 (citing Amalgamated Transit Union Local 587, *supra* at 207-208). “A few well-chosen words, suggested of the general topic stated, are all that are necessary.” *Id.* A restrictive title, on the other hand, carves out a particular part or branch of a subject and “provisions not fairly within it will not be given force.” Amalgamated Transit Union Local 587 v. State, *supra* at 210.

Where a general title is used, the courts next require that there be “rational unity” among the general subject and the incidental subjects. This means that the incidental subjects must be related to both the title and to each other. Wash. Ass’n for Substance Abuse and Violence Prevention v. State, *supra* at 656 (citing Burien v. Kiga, *supra* at 826). This requirement has been a significant stumbling block for initiative measures at the state level.

For example, the initiative at issue in Kiga, I-722, purported to grant tax relief by nullifying various 1999 tax increases, authorizing a one-time refund, changing a method of assessing property taxes, and imposing a 2 percent cap on property tax increases. While the Supreme Court found each element to be related to the general subject of tax relief, it concluded that they were not germane to each other, citing Amalgamated Transit for the proposition that each incidental element must be “necessary to the implementation” of the others. Burien v. Kiga, *supra* at 827.

In Wash. Toll Bridge Authority v. State, 49 Wn.2d 520, 304 P.2d 676 (1956), an act purported to establish procedures for establishing and financing toll roads and also provided for a toll road from Tacoma to Everett. Although the title covered both elements the Court found the legislation unconstitutional because it contained two unrelated subjects, establishment of an ongoing financing mechanism and construction of a specific

¹ Article II, Section 19 states, in part: “No bill shall embrace more than one subject, and that shall be expressed in the title.”

road, that were not germane to each other and thus violated the constitutional mandate “that the members of the legislature be given the opportunity to consider legislative subjects in separate bills, so that each subject may stand or fall upon its own merits or demerits.” Id. at 524-525. The court reached the same conclusion when it invalidated I-695 in Amalgamated Transit, finding an absence of “rational unity” in setting license tab fees at \$30.00 and imposing procedural constraints on future tax and fee increases.

The Supreme Court recently shed additional light on this requirement in Lee v. State, __ Wn.2d __ (Docket No. 92708-1, May 26, 2016). That case concerned I-1366, which would have decreased the sales tax rate unless the legislature referred to voters a constitutional amendment requiring two-thirds legislative approval or voter approval to raise taxes, and legislative approval of fee increases. The Court assumed that I-1366 had a general title of either “taxes” or “fiscal restraint” and that each element related to that title. In the second step of the analysis, the Court stated that “[t]he key inquiry is whether the subjects are so unrelated that ‘it is impossible for the court to assess whether either subject would have received majority vote if voted on separately.’ Slip op. at __ (quoting Burien v. Kiga, supra at 825). It went on to find that reducing a current tax rate and changing the way taxes are levied or assessed constitute “two operative, unrelated provisions” that were not “germane” to one another and thus violated the single subject rule.

I am aware of no reported decision that applies the single subject rule embodied in charter Section 8.50. However, given the textual similarity, it is highly likely that a court would look to cases applying Article II, Section 19, for guidance. This approach was used in Filo Foods LLC v. The City of SeaTac, 142 Wn.2d 183, 11 P.3d 762 (2000), which rejected a statutory single subject challenge to a city ballot measure that established a \$15.00 minimum wage and other benefits for hospitality and transportation workers.² The Court noted that “[w]hile no judicial opinion has interpreted this statutory language, the parties agree that it appears to be an extension of article II, section 19, of our state constitution. We therefore consider our cases interpreting that constitutional provision.” Id. at 781-82.

It also does not appear likely that the difference between the text of the constitutional provision (“No bill shall embrace more than one subject...”) and the charter (amendment “which embraces a single or inter-related subject” permissible as single proposition) would lead to a different result. The constitution is structured as a prohibition while the charter is structured as an exception to the general rule that each amendment be voted on as a separate proposition. Moreover, the term “inter-related,” which does not appear in the constitution, has been defined as “having a close connection with each other or one another; mutually related,” a concept that is closely akin to the judicial requirement that individual elements be “germane,” which is defined in the same dictionary as “closely related” or “closely connected.” Webster’s New Universal Unabridged Dictionary, 2nd ed. (1983).

² RCW 35.12.130 provides, in part that “[n]o ordinance shall contain more than one subject and that must be clearly expressed in the title.”

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At this point we are not in a position to apply the first step of the analysis to the proposed combinations since ballot titles for the combined measures have not been prepared. However, it can be assumed for present purposes that general ballot titles having "a few well-chosen words" can be fashioned. In proceeding to the second step it is important to keep the underlying purpose of the rule in mind, prohibiting logrolling, for which the "key inquiry" is whether the elements are so unrelated that the courts cannot determine whether any one would have been approved if voted on separately.

The first combination would link proposals to create or maintain an office of ombudsman and a separate commission on human rights. The former would be responsible for investigating and making recommendations on complaints concerning county government. The latter would advise the legislative and executive branches on matters concerning human rights, including unlawful discrimination. Although issues could arise within the purview of both entities, there does not appear to be any inherent connection that would make either one necessary for the proper functioning of the other, and there is no reason why each could not be voted on separately.

The second combination would link a proposal to revise the procedure for confirming appointed executive department heads with a proposal to change the deadline for the County Executive to present proposed annual or biennial budgets to the County Council. While both concern procedural aspect of the relationship between branches of county government, there is likewise no inherent connection between the methods for confirming of department heads and developing annual or biennial budgets.

The third combination would link a proposal to revise the qualifications for elective county office with a proposal to eliminate gender-based charter language. Again, there appears to be no inherent connection between the two proposals. However, as suggested in my May 24 cover letter, the latter proposal might be combined with proposals to create or maintain a commission on human rights and revise charter language on nondiscrimination since substituting gender-neutral terms would implement the policies underlying the both proposals and have no independent legal effect.

It therefore appears that none of the proposed combinations would satisfy the requirement that each element be inter-related or germane to the other. Given the underlying purpose of the single subject rule, it appears likely that if presented with the question a court would conclude that the measures must be presented separately.

I trust the foregoing will be of assistance.

Sincerely,



Thomas Herrick Robertson

THR

Snohomish County
Charter Review Commission
8th Floor Robert J. Drewel Building
Jackson Board Room
Wednesday, June 8, 2016
7:00 p.m. – 9:00 p.m.
AGENDA

7:00 p.m. Call to Order

Flag Salute/Roll Call

Agenda Order

Public Comments (7:20 p.m.)

Approval of the Minutes:

Chair's Report

Business Items

1. Study Items
 1. Proposal 2016-14 - Enlarge Council from 5 to 7 Members
 2. Proposal 2016-38 - Change Date of County Elections
 3. Proposal 2016-24 - Evaluate Governance Structure for Paine Field

Old Business

New Business

Adjournment 9:00 p.m.

Next meeting is currently scheduled for June 15 at the Robert J. Drewel Building

Agenda Topics

Ballot Language Review

[NOTE: Times shown on Agenda are approximate]

Active List of Charter Amendment Proposals

2016-02	Revisions to Districting Timeline	Reviewed Language
2016-04	Adding Office of Ombudsman to Charter	Reviewed Language
2016-08	Schedule of County Council Meetings	Reviewed Language
2016-10	Confirmation of Department Heads	Reviewed Language
2016-12/13	Qualifications of Elected Officials	Discussion after August 6
2016-14	Enlarge Council from 5 to 7 Members	Language to be Reviewed
2016-18	Change Date of Submission of Executive's Budget	Reviewed Language
2016-19	Update Charter Language on Nondiscrimination	Reviewed Language
2016-23	Update Charter to use Gender Neutral Language	Reviewed Language
2016-24	Evaluate Governance Structure for Paine Field	Language to be Reviewed
2016-30	Evaluate Status of Human Rights Commission	Reviewed Language
2016-31	Appeals of Hearing Examiner	Reviewed Language
2016-38	Change Date of County Elections	Language to be Reviewed
2016-42	Make Prosecuting Attorney Non-Partisan	Reviewed Language