

MEMORANDUM

TO: Charter Review Commission
FROM: Stephen Reinig; Administrative Analyst
RE: Continuity of County Government
DATE: July 6, 2006

Background

On May 22, 2006 Prosecuting Attorney Janice Ellis presented a memorandum requesting the commission to consider changes to the charter to ensure continuity of county government in the event of a pandemic flu outbreak.

The request was submitted in response to one of her staff's recommendation based on his participation in a pandemic flu workgroup with the Health District. The state legislature required local health districts to make plans for pandemic flu including the continuity of local governments. That and other concerns have brought this issue to the surface.

Current Status

Snohomish County Code 2.34 (attached) describes Emergency Management and Continuity of County Government. This along with the cited RCW 42.14 both refers to and defines an "attack." **It does not address pandemic flues or other natural disasters.** King County has a similar code.

Notes from a meeting with Deputy Prosecuting Attorney Gordon Sively

Staff met with Gordon Sively DPA and the lead attorney for the county related to the Continuity of Government as it relates to the pandemic flu. The Health Districts were mandated by the legislature to develop a plan including continuity of government related to the pandemic flu.

According to Gordon folks are just beginning to think about this issue. No-one has a clear idea vision about the whole process. With that in mind he thought the commission could amend 2.50 by directing the council to create an ordinance stipulating what is an "emergency" and what would constitute a quorum in an "emergency." Likewise he

thought changes could be made to vacancies by literally lowering the threshold of how many members it takes to fill a vacancy.

Having said all of this, he too feels more than three weeks time is needed to sort through the variety of issues to ensure all the bases are covered. He thought a half baked proposition might anger the citizens. I spoke with Mark Soine in the Exec's office who from whom I got the impression they are neutral or that it needs more study.

Discussion

What emerges from this brief analysis is that changes may be required to the following areas:

- Majority of entire council for a quorum
- Definition of Emergency
- Vacancies

It should be noted that this is a very cursory overview. Others have stated the entire scope of the issue is not entirely known and requires more study and time. Some have suggested that it may be more appropriate for the state legislature to address the issue directly

Options

1. Status Quo; No change
2. Direct attorney to draft changes based on known potential conflicts in the Charter
3. Commission strongly advises the county to undergo thorough planning process and then have the County Council place Charter amendments on the ballot in a future year.



**Snohomish County
Prosecuting Attorney
Janice E. Ellis**

Administration
Robert G. Lenz, Operations Manager
Admin East 7th Floor, Mail Stop 504
3000 Rockefeller Ave
Everett, WA 98201-4060
(425) 388-3333
Fax (425) 388-7121

MEMORANDUM

TO: All Members of the Charter Review Commission
FROM: Janice E. Ellis, Prosecuting Attorney
DATE: May 22, 2008
RE: **Charter Revisions to Assure Continuity of Government in the Event of Catastrophes**

The County and the Snohomish Health District are preparing for a possible influenza pandemic. Assuring the continuity of county government is a key aspect of that planning effort. The possible loss or incapacity of multiple members of the County Council during such a pandemic has emphasized the need to consider processes that will enable the county's legislative body to continue to function. (Note that this same concern does not arise for other elected officials because, under the Charter and general law, the deputy serving under each elected official may assume the responsibilities of the elected's office during a temporary disability of the official and the Council can act quickly to fill a vacancy).

The Continuity of Government Act (ch. 42.14 RCW), and its corresponding county code provision (SCC 2.36.075), address government continuity in the event of an enemy attack. However, neither provision addresses other types of catastrophes, such as a pandemic or a natural disaster. Charter 4.80 addresses vacancies generally, but it neither addresses the temporary incapacity of an elected official due to illness, nor does it provide a means for the Council to act if a majority of the Council is incapacitated or simultaneously deceased.

Problems may arise because Charter 4.80 requires a majority vote of the Council to fill vacancies, Charter 2.110 requires at least 3 Council member votes to pass regular ordinances, and section 2.120 requires 4 votes to pass emergency ordinances. In the event of a catastrophe, where action by emergency ordinances would be needed, a Council with reduced membership could present a significant problem.

As I indicated to you in my April 19, 2006 memorandum, ensuring the continuity of county government in times of crisis is an important policy consideration for the Commission. I encourage you to evaluate this issue with your independent counsel and I will make the services of other attorneys in my office who are knowledgeable in this area available to assist you.

cc: Steve Reinig, Administrative Analyst, Charter Review Commission

Criminal Division
Joan Cavagnaro, Chief Deputy
Mission Building
(425) 388-3333
Fax (425) 388-3572

Civil Division
Barbara Dykes, Chief Deputy
Admn. East 7th Floor
(425) 388-6330 Fax
(425) 388-6333

Family Support Division
Marie Turk, Chief Deputy
Admn. East 6th Floor
(425) 388-7280
Fax (425) 388-7295

Chapter 2.34

DEPARTMENT OF EMERGENCY MANAGEMENT

(Repealed effective Jan 1, 2006 pursuant to Section 12 of Ordinance No. 05-123 adopted on November 9, 2005)

Chapter 2.36

EMERGENCY MANAGEMENT

2.36.010 Purposes.

The purposes of this chapter are to provide for the preparation and carrying out of plans for emergency services in the event of an emergency or disaster, for the coordination of the emergency services of this county with other public agencies and affected private persons, corporations and organizations, for the exercise of emergency powers by the county executive, for the establishment of the Snohomish county department of emergency management, and for the continuity of county government, in a manner consistent with the Washington Emergency Management Act, Chapter 38.52 RCW, and the Continuity of Government Act, Chapter 42.14 RCW. Any county expenditures made in connection with such emergency services, including mutual aid activities and mock or practice drills, shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property of the county of Snohomish.

(Res. 80-136A § 1, adopted April 28, 1980; § 1 of Res. adopted March 31, 1958; Ord. 02-104, January 8, 2003, Eff date January 20, 2003; Ord. 05-123, Nov. 9, 2005, Eff date Jan. 1, 2006).

2.36.020 Definitions.

In this chapter, unless the context clearly requires otherwise,

- (1) "Advisory Board" means the emergency management advisory board established pursuant to SCC 2.36.100.
- (2) "County personnel system" means those statements of policy and procedure contained in title 3A SCC and amendments thereto.
- (3) "Department" means the Snohomish county department of emergency management.
- (4) "Director" means the director of the Snohomish county department of emergency management.
- (5) "Emergency or disaster" means an event or set of circumstances which (a) demands immediate action to preserve public health, protect life, protect public property, or to provide relief to any stricken community overtaken by such occurrences, or (b) reaches such a dimension or degree of destructiveness as to warrant the governor declaring a state of emergency pursuant to RCW 43.06.010.
- (6) "Emergency management" means the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily

responsible, to mitigate, prepare for, respond to, and recover from emergencies and disasters, and to aid victims suffering from injury or damage, resulting from disasters caused by all hazards, whether natural, technological, or human caused, and to provide support for search and rescue operations for persons and property in distress. It does not mean preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack.

(7) "Executive head" and "executive heads" means the county executive and in the case of cities and towns, it means the mayor in those cities and towns with a mayor-council or commission form of government where the mayor is directly elected, and it means the city manager in those cities and towns with a council-manager form of government. In the case of tribes, "executive head" means the tribal chairman.

(8) "Exempt personnel system" means the conditions of employment under the provisions of chapter 3.68 SCC and amendments thereto.

(Res. 80-136A § 1, adopted April 28, 1980; § 2 of Res. adopted March 31, 1958; Ord. 02-106, January 9, 2003, Eff date January 20, 2003; Ord. 05-123, Nov. 9, 2005, Eff date Jan. 1, 2006).

2.36.030 Powers and duties of county executive.

(1) Except as otherwise provided by state law or the county charter, the county executive shall have general supervision and control of emergency services provided by the county in the event of an emergency or disaster, and shall be responsible for implementing the Washington Emergency Management Act, Chapter 38.52 RCW, on behalf of the county.

(2) In performing the executive's duties under this chapter, the county executive is further authorized and empowered to:

(a) Delegate county emergency management functions to the director of the Snohomish county department of emergency management appointed pursuant to SCC 2.36.060, subject to supervision by the county executive;

(b) Develop and implement emergency evacuation and other procedures for county government, consistent with the approved county comprehensive emergency management plan;

(c) Coordinate county emergency management functions with federal, state and local organizations for emergency management to promote effective preparation and use of manpower, resources, and facilities;

(d) In collaboration with appropriate public or private agencies, prepare and present to the county council for approval agreements providing for mutual aid in the event of an emergency or disaster;

(e) Issue emergency or disaster proclamations, for obtaining state and federal assistance and for other purposes as authorized by law; and

(f) Take such other actions as are provided for the executive head of a political subdivision by the Washington Emergency Management Act, Chapter 38.52 RCW.

(3) The county executive shall approve and revise as necessary county comprehensive emergency management plans prepared by the Snohomish county department of emergency management pursuant to SCC 2.36.050. The executive shall promptly distribute approved or revised plans to the council and affected county agencies.

(Added Ord. 02-104, January 8, 2003, Eff date January 20, 2003; Ord. 05-123, Nov. 9, 2005, Eff date Jan. 1, 2006)

2.36.040 Disaster -- specific powers.

In the event of disaster as herein provided, the county executive is hereby empowered:

(1) To issue, amend, and rescind rules and regulations on matters reasonably related to the protection of life and property as affected by such disaster; PROVIDED, That such rules and regulations shall be published at least once in such form as the executive finds reasonable under the circumstances, shall be available for public inspection at the Snohomish county department of emergency management, and shall expire at the end of thirty days after issuance unless enacted by ordinance;

(2) To approve contracts and incur obligations necessary to combat such disaster, and in light of the exigencies of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (except mandatory constitutional requirements), as provided in RCW 38.52.070(2);

(3) After proclamation by the governor of the existence of such disaster, to command the service and equipment of as many citizens as considered necessary in light of the disaster proclaimed: PROVIDED, that citizens so commandeered shall be entitled during the period of such service to all privileges, benefits and immunities as are provided by federal and state law for registered emergency workers, as provided in RCW 38.52.110(2);

(4) To execute all of the special powers conferred upon the executive by this chapter, by statute, or by any other lawful authority; and

(5) To requisition necessary personnel or material of any county department or agency.

(Res. 80-136A §§ 1, 4, adopted April 28, 1980; § 6 of Res. adopted March 31, 1958; Ord. 02-104, January 8, 2003, Eff date January 20, 2003; Ord. 05-123, Nov. 9, 2005, Eff date Jan. 1, 2006).

2.36.050 Department of emergency management - creation and authority

(1) The Snohomish county department of emergency management (□ department □) is hereby established. The administration of the department is the responsibility of the county executive.

(2) The department shall implement policies and procedures and administer programs which provide for the preparation and carrying out of plans for emergency services in the event of an emergency or disaster, and for the coordination of the emergency services of this county with other public agencies and affected private

persons, corporations and organizations.

(3) The department's functions and responsibilities shall include but not be limited to the following:

(a) Management and administration of the emergency management program as provided in this chapter;

(b) Preparation and presentation to the county executive for approval of a county comprehensive emergency management plan, consistent with the state comprehensive emergency management plan;

(c) Coordination of county emergency services with other public agencies and affected private persons, corporations, and organizations, subject to the authority of the county executive; and

(d) Performance of such other duties as may be required to further the purpose of this chapter.

(Added Ord. 05-123, Nov. 9, 2005, Eff date Jan. 1, 2006)

2.36.060 Department director.

(1) The director shall be appointed by the executive subject to confirmation by the county council. The director shall serve at the pleasure of the executive and shall be subject to the county exempt personnel system.

(2) The director shall manage and administer the activities of the department and shall advise the executive and the council with regard to programs managed by the department. Subject to the approval of the county executive, the director shall establish policies and procedures for the management and administration of emergency management services. The director shall prepare and submit to the executive an annual budget request for the department as directed by the executive. The director shall appoint all employees of the department in accordance with the rules of the county personnel system and exempt personnel system. The director may delegate functions, powers and duties to other officers and employees of the department as the director deems expedient to further the purpose of this chapter.

(Added Ord. 05-123, Nov. 9, 2005, Eff date Jan. 1, 2006)

2.36.070 Organization by director.

Subject to the approval of the executive, the provisions of the county charter and the provisions of Title 3A SCC, and amendments thereto, and budget and appropriation controls, the director may create, assign, and reassign functions and positions within the department and direct and supervise all functions of the department.

(Added Ord. 05-123, Nov. 9, 2005, Eff date Jan. 1, 2006)

2.36.075 Continuity of county government.

(1) In accordance with Chapter 42.14 RCW, the continued operation of county government shall be assured in the event of enemy attack as follows:

(a) If enemy attack reduces the number of members of the county council, then those members who are available for duty shall have full authority to act in all matters as the county council. In the event no member of the county council is available for duty, then those elected county officials as are available for duty shall jointly act as the county council and shall possess by majority vote the full authority of the county council.

(b) Elected county officers, other than members of the county council, are authorized and directed to designate one or more temporary interim successors to the office of such officer in the event the officer is unavailable for duty during an emergency caused by enemy attack.

(c) The county executive shall, subject to such rules as the executive may adopt, permit each appointed county officer to designate one or more temporary interim successors of such officer in the event the officer is unavailable for duty during an emergency caused by enemy attack.

(2) Any county officer succeeding to an office on a temporary interim basis pursuant to this section shall discharge the duties of that office only until such time as the elected or appointed officer is available for duty or a regular successor is appointed by the ordinary means applicable to the office.

(3) In this section, the term "attack" means any act of warfare taken by an enemy of the United States causing substantial damage or injury to persons or property in the United States and in the state of Washington. The term "unavailable" means either that a vacancy in the office exists or that the lawful incumbent of the office is absent or unable to exercise the powers and discharge the duties of the office following an attack and a declaration of existing emergency by the governor or the governor's successor.

(Added Ord. 02-104, January 8, 2003, Eff date January 20, 2003)

2.36.090 Penalty for violations.

It is a misdemeanor, punishable as provided in SCC 1.01.100 for any person during a disaster:

(1) To willfully obstruct, hinder or delay any emergency worker as defined in RCW 38.52.010 in the enforcement of any lawful rule or regulation issued pursuant to this chapter, or in the performance of any duty imposed upon him or her by virtue of this chapter;

(2) To do any act forbidden by any lawful rules or regulations issued pursuant to this chapter, if such act is of such a nature as to give, or be likely to give assistance to the enemy, or to imperil the lives or property of inhabitants of this county, or to prevent, hinder or delay the defense of property thereof; or

(3) To wear, carry or display, without authority, any means of identification specified by the Snohomish County Department of Emergency Management or state division of emergency management.

(Res. 80-136A § 1, adopted April 28, 1980; § 9 of Res. adopted March 31, 1958; Ord. 02-104, January 8, 2003, Eff date January 20, 2003).

2.36.100 Emergency management advisory board established.

There is hereby established a Snohomish county emergency management advisory board, hereinafter referred to as the "advisory board", to assist the director of emergency management in reviewing and recommending policies relating to emergency management.

(Added Ord. 05-123, Nov. 9, 2005, Eff date Jan. 1, 2006)

2.36.110 Composition of the board.

(1) The advisory board shall be composed of one member from each city, town or tribe that contracts with the county through an interlocal agreement for emergency management services. Additionally, the director will participate as an ex officio representative to the advisory board, serving as a liaison between the county and the members, but will not be a voting member.

(2) The initial member for each contracting city, town or tribe shall be the city, town or tribe's executive head.

(3) The executive head of any city, town or tribe may designate an alternate representative to the advisory board, such designation to be made in a writing delivered to the county prior to the meeting at which the alternate will be entitled to vote.

(4) One representative of each city or town within the county that has established a local organization performing emergency management services in accordance with RCW 38.52.070, and one representative of each joint local organization within the county performing emergency management services in accordance with RCW 38.52.070, shall be entitled to participate on the advisory board. Such representatives shall not be voting members of the advisory board.

(Added Ord. 05-123, Nov. 9, 2005, Eff date Jan. 1, 2006)

2.36.120 Meeting and election of officers.

The advisory board shall meet as necessary, but at least quarterly. It shall act under Robert's Rules of Order, adopt by-laws and elect its chairperson and vice chairperson from within the board membership.

(Added Ord. 05-123, Nov. 9, 2005, Eff date Jan. 1, 2006)

2.36.130 Duties of the advisory board.

(1) The board shall serve in an advisory capacity and have the power to make recommendations to the county.

(2) The board shall advise the director of emergency management in recommending

to the executive, actions on the following:

- (a) Emergency management plans;
- (b) The department's annual budget;
- (c) Rate schedules for emergency management service charges paid by contracting agencies;
- (d) Grant applications and utilization of awarded grant funds; and
- (e) Other matters as requested by the county executive or the director.

(Added Ord. 05-123, Nov. 9, 2005, Eff date Jan. 1, 2006)