



## King County

### Metropolitan King County Council Committee of the Whole

#### STAFF REPORT

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<b>Agenda Item No.:</b>	<b>5</b>	<b>Date:</b>	<b>20 June 2011</b>
<b>Proposed Ordinance No.:</b>	<b>2011-0278</b>	<b>Prepared by:</b>	<b>Nick Wagner</b>

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#### SUMMARY

Proposed Ordinance 2011-0278 (pp. 9-12 of these materials) would place on the November 2011 ballot a proposed charter amendment establishing the protection of “the rights and safety of the general public” as the county’s “paramount duty” and requiring the county to establish by ordinance such levels of service as the county “deems appropriate to provide a well-functioning public safety and justice system.”

#### BACKGROUND

In July of 2010 the Council adopted the King County Strategic Plan (Ordinance 16897).<sup>1</sup> The strategic plan includes eight major goals, four focused on “What we deliver” and four on “How we deliver” (not listed in order of priority):

##### **What we deliver**

- Justice and Safety
- Health and Human Potential
- Economic Growth and Built Environment
- Environmental Sustainability

##### **How we deliver**

- Service Excellence
- Financial Stewardship
- Public Engagement
- Quality Workforce

For several years, because of revenue caps approved by the voters and the national economic recession, the county has lacked sufficient funds to vigorously pursue all of these goals. Instead it has been necessary each year for the Executive and the Council, in

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<sup>1</sup> A poster summarizing the Strategic Plan is included at p. 13 of these materials.

proposing and adopting the county's budget, to strike a balance between competing priorities.

The adoption of the county's strategic plan has clarified the county's priorities and helped to focus the county's efforts, but it has not eliminated—and cannot eliminate—the chronic insufficiency of available funding. It continues to be necessary for the county to choose which worthy programs will receive financial support and which ones will not. The strategic plan itself does not establish priorities among the plan deliverables.

Decisions concerning which programs to fund and at what level of funding are currently made in the context of appropriation ordinances, including the annual budget ordinance. Each proposed appropriation ordinance reflects the Executive's judgment about how scarce county funds should be allocated, and the Council's action on each ordinance reflects the Council's own judgment. Currently, those judgments are based on all of the county's competing priorities. The King County Charter does not require the Executive or the Council to give one particular priority or group of priorities preference over another.

## **THE PROPOSED CHARTER AMENDMENT**

Proposed Ordinance 2011-0278 would place on the November 2011 general election ballot a charter amendment adding the following new section to the King County Charter:

### **Section 805. Paramount Duty of the County**

It is the paramount duty of the county to protect the rights and safety of the general public by enforcing the laws of the state of Washington and the county and providing for the swift administration of justice when such laws are violated within its boundaries. To further these aims, the county shall seek to provide a well-functioning public safety and justice system by making ample provision for such police, prosecution, defense, detention and court services as may be required by law. The county shall by ordinance establish such levels of service as it deems appropriate to provide a well-functioning public safety and justice system. This section is intended neither to protect any particular class of individuals or organizations, nor to guarantee any specific level of funding, nor to create any private or public right of action.

The operational effect of the proposed amendment depends in part on whether the third sentence of proposed new Section 805 is viewed as: (A) designed to implement the second sentence or as (B) independent of the second sentence

### **A. Third sentence as designed to implement the second sentence**

If the third sentence of Section 805 is designed to implement the second sentence, the operation of the section can be broken down as follows:

1. It would establish as the county's "paramount duty" the protection of "the rights and safety of the general public."
2. The rights and safety of the general public are to be protected by:
  - a. "[E]nforcing the laws of the state of Washington and the county" and
  - b. "[P]roviding for the swift administration of justice when such laws are violated within its boundaries."
3. "To further these aims" (i.e., points 1 and 2) the county is required to "seek to provide a well-functioning public safety and justice system" by adopting an ordinance establishing "such levels of service as it deems appropriate" for that purpose.
4. The county is to accomplish point 3 by "making ample provision for such police, prosecution, defense, detention and court services as may be required by law."

Thus, if the charter amendment were adopted, the Council would need to (a) determine which "police, defense, detention and court services" are required by law, (b) set service levels sufficient to provide those required services, and (c) "make ample provision for" those service levels through budget appropriations. Those appropriations would take precedence over all other possible appropriations, except those required by other applicable law. Funding of other government services that are not legally mandated would be subject to the availability of funds after the appropriations required by the charter amendment. If no funds remained available, none of those other services could be funded.

### **B. Third sentence as creating a separate duty**

Alternatively, the second and third sentences of proposed new Section 805 could be viewed as creating two separate duties. In other words, the duty to make "ample provision for such police, prosecution, defense, detention and court services as may be required by law" could be viewed as being separate from the duty to "establish such levels of service as it deems appropriate to provide a well-functioning public safety and justice system." Under this view, the decision whether to fully fund the adopted service levels would be entirely within the discretion of the Council.

## **DISCLAIMERS AGAINST POTENTIAL LIABILITY**

The proposed charter amendment bears a similarity to article IX, section 1, of the State Constitution, which provides: “It is the *paramount duty* of the state to make *ample provision* for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex” (emphasis added). This language has been interpreted by the courts to create a judicially enforceable obligation on the part of the state to assure sufficient funding for basic education.

To guard against the possibility that the proposed charter amendment might likewise be construed to create a judicially enforceable funding mandate—and also against the possibility of the county being held liable for an injury attributable to an alleged failure to adequately fund criminal justice services—the last sentence of proposed new charter section 805 provides: “This section is intended neither to protect any particular class of individuals or organizations, nor to guarantee any specific level of funding, nor to create any private or public right of action.” Councilmembers may wish to consult with legal counsel about the protection afforded by this language.

## **RATIONALE FOR THE PROPOSED CHARTER AMENDMENT**

Section 1 of Proposed Ordinance 2011-0278 summarizes the rationale for the proposed charter amendment. The crux of the rationale is addressed in section 1.D of the proposed ordinance, which provides:

Since it is difficult, if not impossible, to enjoy the benefits of achieving the other goals of county government in the absence of personal safety and security, the highest priority of county government should be the enforcement of the criminal law and the swift administration of justice when that law is violated.

## **ISSUES RAISED BY THE PROPOSED CHARTER AMENDMENT**

Proposed Ordinance 2011-0278 raises several issues, as described below.

### **A. Would the proposed charter amendment expose the county to increased legal risk?**

As described above in the section entitled “Disclaimers Against Potential Liability,” the proposed charter amendment contains language that is intended to guard against the possibility of the amendment being used either (1) to create a judicially enforceable obligation on the part of the county to fund criminal justice services at a certain level or (2) to hold the county liable for an injury attributed to an alleged failure to adequately fund criminal justice services. Nevertheless, councilmembers may wish to consult with legal counsel about whether the protection afforded by this language is complete.

## B. Should personal safety and security be treated as a higher priority than other concerns, such as prevention and treatment of injury and illness?

It is not universally agreed that personal safety and security should always take precedence over other priorities, such as the prevention and treatment of injury and illness, in the allocation of scarce public resources. *See, e.g.*, Proposed Ordinance 2011-0283. One index of the relative importance of different public problems, though not the only one, of course, is to compare the risk attributable to each—in particular, the risk of death.

### 1. Actual risk

According to the Washington State Department of Health, Center for Health Statistics,<sup>2</sup> the leading causes of death in King County during the years from 2003 through 2007 were, on average:

Cause	Rate per 100,000	Average Annual Count	Percent of Total
All Causes	657.6	11474	100.0%
Cancer	163.8	2798	24.4%
Heart Disease	149.2	2608	22.7%
Stroke	44.6	776	6.8%
Alzheimer's disease	36.8	659	5.7%
Unintentional injury	31.6	587	5.1%
Chronic Lower Respiratory Disease	32.4	539	4.7%
Diabetes	20.1	346	3.0%
Influenza and Pneumonia	13.4	237	2.1%
Suicide	11.1	212	1.8%
Chronic Liver Disease and Cirrhosis	7.8	145	1.3%
All Others	146.8	2567	22.4%
<b>Homicide</b>	<b>3.9</b>	<b>71.4</b>	<b>0.6%</b>

Thus, criminal behavior appears to have accounted for less than one percent of all deaths.

The three categories of behavior that most commonly contributed to death in King County in 2008 were tobacco use (18% of all deaths), poor diet and physical inactivity (17%), and alcohol consumption (4%).<sup>3</sup> Together, these behaviors alone caused about 65 times more deaths than homicide.

<sup>2</sup> [http://www.doh.wa.gov/EHSPHL/CHS/chs-data/death/dea\\_VD.htm](http://www.doh.wa.gov/EHSPHL/CHS/chs-data/death/dea_VD.htm)

<sup>3</sup> Source: Public Health – Seattle & King County, Assessment, Policy Development & Evaluation Unit.

## 2. Perceived risk

On the other hand, according to a noted security expert, “Security is both a feeling and a reality”:

Security is also a feeling, based not on probabilities and mathematical calculations, but on your psychological reactions to both risks and countermeasures. You might feel terribly afraid of terrorism, or you might feel like it’s not something worth worrying about. You might feel safer when you see people taking their shoes off at airport metal detectors, or you might not. You might feel that you’re at high risk of burglary, medium risk of murder, and low risk of identity theft. And your neighbor, in the exact same situation, might feel that he’s at high risk of identity theft, medium risk of burglary, and low risk of murder.<sup>4</sup>

On this basis one could argue that the low risk of homicide, relative to other causes of death, does not preclude the possibility that the residents of King County view “protection of the rights and safety of the general public” as the “paramount duty” of King County. For example, the terrorist attacks of September 11, 2001, resulted in the deaths of about 3,000, a number dwarfed by the number of annual deaths that year due to traffic accidents (42,196), yet the attacks had a much greater psychological impact on most U.S. residents (at least, on those who were not closely related to a traffic accident victim).

Whether the allocation of scarce public resources should be based on actual risk or on perceived risk is a policy decision to be made by the Council.

### **C. Is a charter amendment the best way to set priorities for the county’s response to actual and perceived risk?**

Since the levels of both actual and perceived risk can change over time (this seems especially true of perceived risk), a question could be raised whether the priority assigned to a particular risk, actual or perceived, should be enshrined in the county charter, rather than in an ordinance that can be adjusted in response to changing circumstances.

### **D. Should resources be allocated in isolation from an assessment of the cost of those resources and a comparison with other needs of county residents?**

There is a suggestion in the proposed charter amendment that criminal justice service levels should be set independently of any comparison with other needs of county residents.<sup>5</sup> A question could be raised whether such bifurcation of the decision-making

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<sup>4</sup> Bruce Schneier, “The Psychology of Security,” (18 Jan 2008), <http://www.schneier.com/essay-155.html>.

<sup>5</sup> As described in section E below, it is not clear that the amendment would require this.

process is desirable from a policy standpoint, since it would preclude, at least in theory, a cost-benefit analysis of all the county's competing priorities, which may change from year to year.

**E. Which “police, defense, detention and court services” are “required by law”?**

The proposed charter amendment does not specify which “police, defense, detention and court services” are “required by law.”

To the extent that the listed services are required by state or federal law, the charter amendment would require the county by ordinance to set service levels sufficient to provide those services and to appropriate sufficient funds to pay for them. The proposed charter amendment appears to have no effect on the county's existing legal obligations in that regard.

To the extent that the listed services are required by county ordinance (including though not necessarily limited to the ordinance establishing appropriate service levels), but not by state or federal law, the charter amendment appears to permit the county—i.e., the Council—if it wishes, to amend its local service requirement and then adopt an ordinance making appropriations sufficient to provide the services required by the amended ordinance. The charter amendment contains no explicit prohibition against the Council adopting the service-level ordinance contemporaneously with the appropriations ordinance—for example, as part of the annual budget process.

**F. Should the proposed amendment be clarified?**

Councilmembers may wish to clarify the language of the proposed amendment to address the interpretation issue discussed on page 3 of this staff report.

**G. Is the proposed charter amendment needed?**

Since the proposed charter amendment would limit the county's discretion only to the extent that certain services are required by state or federal law, which is independently enforceable, or required by a county ordinance that is subject to amendment, it would be reasonable to ask whether the proposed amendment is needed.

**FISCAL IMPACT**

In addition to the issue of whether the proposed charter amendment would expose the county to increased legal risk (discussed on p. 4 above), the potential fiscal impact of the proposed charter amendment is substantial, though it cannot be quantified in advance. As described above, depending on how it is interpreted and implemented, the amendment has the potential to require funding of criminal justice services to the exclusion of all other county services that are not legally mandated.

**INVITED**

None.

**ATTACHMENTS**

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- 2. Poster summarizing King County Strategic Plan ..... 13





# KING COUNTY

1200 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

## Signature Report

June 17, 2011

### Ordinance

**Proposed No.** 2011-0278.1

**Sponsors** Dunn and Ferguson

1 AN ORDINANCE proposing an amendment to the King  
2 County Charter; establishing as the county's paramount  
3 duty to protect the rights and safety of the general public by  
4 enforcing the laws and providing for the swift  
5 administration of justice, and requiring the county to  
6 establish by ordinance such levels of service as it deems  
7 appropriate to provide a well-functioning public safety and  
8 justice system; adding a new Section 805 to the King  
9 County Charter; and submitting the same to the voters of  
10 the county for their ratification or rejection at the  
11 November 2011 general election.

12 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

13 **SECTION 1. Findings:**

14 A. The principal goals of county government, as set forth in the King County  
15 strategic plan, adopted by the county council in July of 2010, are to deliver justice and  
16 safety; health and human potential; economic growth and built environment; and  
17 environmental sustainability to county residents, and to do so in a manner that reflects  
18 service excellence, financial stewardship, public engagement and a quality workforce.

19           B. In times of economic scarcity, county government may lack sufficient  
20 resources to achieve all of these goals and therefore may need to establish priorities  
21 among them.

22           C. Toward that end, it is the function of a county charter to guide county  
23 government in establishing priorities among its goals.

24           D. Since it is difficult, if not impossible, to enjoy the benefits of achieving the  
25 other goals of county government in the absence of personal safety and security, the  
26 highest priority of county government should be the enforcement of the criminal law and  
27 the swift administration of justice when that law is violated.

28           E. Effective enforcement of the criminal law and the swift administration of  
29 justice require a well-functioning public safety and justice system, including police,  
30 prosecution, defense, detention and court services.

31           SECTION 2. There shall be submitted to the voters of King County for their  
32 approval and ratification or rejection, at the next general election to be held in this county  
33 occurring more than forty-five days after the enactment of this ordinance, the addition of  
34 a new Section 805 to the King County Charter to read as follows:

35           **Section 805. Paramount Duty of the County**

36           It is the paramount duty of the county to protect the rights and safety of the  
37 general public by enforcing the laws of the state of Washington and the county and  
38 providing for the swift administration of justice when such laws are violated within its  
39 boundaries. To further these aims, the county shall seek to provide a well-functioning  
40 public safety and justice system by making ample provision for such police, prosecution,  
41 defense, detention and court services as may be required by law. The county shall by

42 ordinance establish such levels of service as it deems appropriate to provide a well-  
43 functioning public safety and justice system. This section is intended neither to protect  
44 any particular class of individuals or organizations, nor to guarantee any specific level of  
45 funding, nor to create any private or public right of action.

46 SECTION 3. The clerk of the council shall certify the proposition to the elections  
47 director, in substantially the following form, with such additions, deletions or  
48 modifications as may be required by the prosecuting attorney:

49 Shall the King County Charter be amended to establish the protection of  
50 the rights and safety of the general public as the paramount duty of the

51

52 county and to require the county to seek to provide a well-functioning  
53 public safety and justice system?  
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KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

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Larry Gossett, Chair

ATTEST:

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Anne Noris, Clerk of the Council

APPROVED this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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Dow Constantine, County Executive

**Attachments:** None

# KING COUNTY STRATEGIC PLAN

## Working Together for One King County

### Vision Statement

King County: a diverse and dynamic community with a healthy economy and environment where all people and businesses have the opportunity to thrive.

### Mission Statement

King County government provides fiscally responsible, quality-driven local and regional services for healthy, safe, and vibrant communities.

### Guiding Principles

Collaborative • Service-oriented • Results-focused • Accountable  
Innovative • Professional • Fair and Just

### Goals

#### What we deliver

##### Justice and Safety

Support safe communities and accessible justice systems for all.

1. Keep people safe in their homes and communities
2. Ensure fair and accessible justice systems
3. Ensure offending individuals are appropriately detained or sanctioned
4. Decrease damage or harm in the event of a regional crisis

##### Health and Human Potential

Provide opportunities for all communities and individuals to realize their full potential.

1. Increase the number of healthy years that residents live
2. Protect the health of communities
3. Support the optimal growth and development of children and youth
4. Ensure a network of integrated and effective health and human services is available to people in need

##### Economic Growth and Built Environment

Encourage a growing and diverse King County economy and vibrant, thriving and sustainable communities.

1. Support a strong, diverse and sustainable economy
2. Meet the growing need for transportation services and facilities throughout the county
3. Shape a built environment that allows communities to flourish
4. Preserve the unique character of our rural communities in collaboration with rural residents

##### Environmental Sustainability

Safeguard and enhance King County's natural resources and environment.

1. Protect and restore water quality, biodiversity, open space, and ecosystems
2. Encourage sustainable agriculture and forestry
3. Reduce climate pollution and prepare for the effects of climate change on the environment, human health, and the economy
4. Minimize King County's operational environmental footprint

#### How we deliver

##### Service Excellence

Establish a culture of customer service and deliver services that are responsive to community needs.

1. Improve our customers' satisfaction with King County
2. Build a culture of performance and improve the effectiveness and efficiency of county programs, services, and systems
3. Foster an ethic of working together for King County
4. Increase access to King County services, personnel, and information

##### Financial Stewardship

Exercise sound financial management and build King County's long-term fiscal strength.

1. Keep the county's cost of doing business down, including keeping growth in costs below the rate of inflation
2. Plan for the long-term sustainability of county services
3. Provide the public with choices about which services -King County delivers within existing resources and for which services they would like to provide additional funding

##### Public Engagement

Promote robust public engagement that informs, involves, and empowers people and communities.

1. Expand opportunities to seek input, listen, and respond to residents
2. Empower people to play an active role in shaping their future
3. Improve public awareness of what King County does

##### Quality Workforce

Develop and empower King County government's most valuable asset, our employees.

1. Attract and recruit a talented county workforce
2. Develop and retain quality employees
3. Utilize employees in an efficient, effective, and productive manner

### Immediate Priorities

①

Set standards and expectations for the immediate improvement of customer service

②

Build lasting regional partnerships

③

Stabilize the long-term structural budget problem

④

Build a culture of performance

⑤

Empower our workforce and work together as one King County

⑥

Implement the King County Strategic Plan



King County

Office of Performance, Strategy and Budget

[www.kingcounty.gov/strategicplan](http://www.kingcounty.gov/strategicplan)  
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