



Legislation Text

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AN ORDINANCE relating to public transit and authorizing the executive to enter into RapidRide project agreements that require defined service level commitments as a prescribed condition of receiving federal financial assistance; amending Ordinance 17929, Section 29, as amended, and K.C.C. 4A.100.110, Ordinance 17929, Section 14, as amended, and K.C.C. 4A.100.030 and Ordinance 17929, section 20, as amended, and K.C.C. 4A.100.070.

STATEMENT OF FACTS:

1. Via Ordinance 18449, enacted January 23, 2017, the King County council adopted METRO CONNECTS, King County Metro's long-range transit service and capital plan, which calls for expansion of the RapidRide network, the Metro transit department's bus rapid transit system.
2. Via Ordinance 18301, enacted June 16, 2016, the council approved the 2015 update to Metro's Strategic Plan for Public Transportation 2011-2021 and associated Service Guidelines. The plan describes current and future planning work required to implement additional RapidRide bus rapid transit service in King County.
3. RapidRide A, B, C, E and F lines received federal financial assistance from the Very Small Starts grant program, a now discontinued component of the federal government's Capital Investment Grant ("CIG") program administered by the Federal Transit Administration ("the FTA").
4. The CIG program is the federal government's primary financial resource for supporting transit capital projects that are locally planned, implemented and operated, including bus rapid

transit.

5. Future RapidRide lines identified in the expanded network of METRO CONNECTS will compete with other CIG grant applicants to receive up to \$100,000,000 in federal grant funding from the CIG program's ongoing Small Starts grant program.

6. When a transit capital project is awarded federal financial assistance, grant agreements are used by the FTA to establish the prescribed conditions governing the use of federal funds by grant recipients.

7. Future grant agreements for RapidRide lines identified in the expanded network of METRO CONNECTS may be awarded either to King County or to a third party that is in a partnership arrangement with King County.

8. The FTA requires that Small Starts grant-funded projects operate transit service at the level specified in the grant agreement for a defined period of performance. The period of performance for such service level commitments is at the discretion of the FTA and is a prescribed condition of receiving federal financial assistance. The FTA did not require such contractual service level commitments for grants awarded under the former Very Small Starts grant subcategory of the CIG program.

9. For Small Starts grant-funded projects in other jurisdictions that are of similar scope and cost to a RapidRide capital project, the FTA has required a period of performance of five years for maintaining service level commitments specified in the grant agreement.

10. A grant agreement that requires defined service level commitments must be executed with the FTA before receiving CIG grant funds for the development of transit capital projects.

11. RapidRide capital projects that receive federal financial assistance for construction should execute a grant agreement before the start of the construction phase of the project.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance 17929, Section 29, as amended, and K.C.C. 4A.100.110 are hereby amended to read as follows:

A. If any part of this chapter is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the county, any conflicting part of this chapter is declared to be inoperative solely to the extent of that conflict and with respect to the agencies directly affected, and any finding or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. The rules and regulations under this chapter shall meet federal requirements that are a necessary condition to the receipt of federal funds by the county.

B. For the purpose of securing federal financial assistance for the development and implementation of RapidRide capital projects as documented in the six-year capital improvement program, the executive is authorized to enter into RapidRide project agreements that include defined service level commitments as a prescribed condition of receiving federal funds provided that the following conditions are met:

1. The agreements are limited to those proposed RapidRide lines for which:

a. the King County council has adopted an alignment ordinance establishing the route and station locations; and

b. the capital project biennial budget includes appropriations authority for the construction phase of the proposed RapidRide line;

2. The agreement term does not exceed the period of performance specified in the federal grant agreement; and

3. The agreement term does not exceed five years from the opening of revenue service.

SECTION 2. Ordinance 17929, Section 14, as amended, and K.C.C. 4A.100.030 are hereby amended to read as follows:

A. All capital projects shall be included in the six-year capital improvement program for the fiscal period and the next two fiscal periods and shall be organized by fund in the budget. The capital improvement

program shall reflect changes, as needed, to capital projects resulting from determinations that the capital budget is not supported by fund balance and revenues to be collected. If the budget includes a new mandatory phased appropriation project or an additional or amended capital budget appropriation for an existing mandatory phased appropriation project, the executive shall submit supporting data as identified in K.C.C. 4A.130.030. A bond ordinance to provide funding for a capital project is not an appropriation for capital projects.

B. The capital improvement program shall include the following supporting data in a standard format for each capital project, in the form of an electronic database, when possible, with a capital project number, project title, division, department, council district, fund number and fund name, appropriation and expenditures to date and six-year appropriations. The electronic database should provide the capability to sort the capital improvement program by capital project number, division, department, council district, fund number and fund name. Supporting data shall include:

1. Estimated expenditure authority for at least the next six years, by program;
2. Expenditure authority proposed for existing or new capital projects during the ensuing fiscal period, with information indicating sources of proposed revenue;
3. Whether the proposed project is the result of an operational need identified in an executive and council approved business plan and project plan;
4. Anticipated project schedule information;
5. Estimated net annual operating costs associated with each capital project upon completion, if applicable;
6. An enumeration of any revised capital project cost estimates;
7. Life to date expenditure authority and moneys expended on the project life to date;
8. Anticipated specific project phases within each capital project, including the individual allocations by project phase;

9. A list of planned subprojects including an assigned capital project number, project title, division, department, council district, fund number and fund name;

10. A list of capital project appropriation requests, including an explanation of how the capital project complies with applicable plans under K.C.C. 4A.100.060.

11. One emergent need contingency project and any grant contingency projects under K.C.C. 4A.100.080 and 4A.100.090 may be included in the capital improvement program at the fund level;

12. A list of lapsed capital projects for which the appropriation has lapsed because the capital project has been abandoned or no expenditure or encumbrance has been made on the project for three years shall be disappropriated; and

13. Separate operating and operating transfers to capital appropriations if a single fund finances both operating expenses and capital projects; and

14. For technology projects, the chief information officer's assessment required under K.C.C. 2A.380.200.A.2.

C. Project plans, also known as capital appropriation proposal forms, shall also be included in the electronic database and shall include, but not be limited to:

1. Project number, project title, program, division, department, council district, fund number and fund name;

2. The project's scope and a brief description of how the project satisfies the agency's business plan requirements and, if applicable, how the project satisfies the agency's site master plan;

3. Current phase of project, phase status and whether the project has been designated as a mandatory phased appropriation project;

4. Project baseline, if established, and explanation of any significant variance from it;

5. An explanation of alternatives considered;

6. Appropriation and expenditure amounts to date;

7. Ensuing-fiscal period appropriation requested amount;
 8. Estimated cost through project closeout, which may be expressed as a range if baseline is not established and planned project costs by phase;
 9. Explanation of how contingency amounts were determined or reference to applicable county policy;
 10. Explanation of how inflation is incorporated or reference to applicable county policy;
 11. Identification of funding sources, funding status, and funding risks; ~~((and))~~
 12. Description of key project risks, including summary of top risks in the risk register, if applicable;
- and
13. Metro transit department RapidRide capital projects shall include a description of any federal financial assistance being sought and indicate whether the project is subject to K.C.C. 4A.100.110.B.

D.1. Capital project cost estimates shall:

- a. be prepared in accordance with applicable industry standards;
- b. be identified by the executive as part of the budget;
- c. include requirements of external funding sources and county policies, including, but not limited to, standards regarding estimate accuracies, methodology for determining contingency included for uncertainty and the cost index used to define the time value of money.

2. The level of detail incorporated within each cost estimate shall be commensurate with the information available at each phase of a capital project, and shall be consistent with the Association for the Advancement of Cost Engineering International cost estimate classification system. For technology projects, cost estimates shall be consistent with the King County information technology project management methodology. The estimates for all succeeding phases shall be updated to represent the latest project information.

E. An updated project plan shall be provided for each capital project request for appropriation.

F. Each technology capital project seeking appropriation shall also include a benefit achievement plan

describing: how the proposed technology investment will produce an improvement or savings in county services; how the improvement or savings will be measured; how much improvement or savings is expected; and when the improvement or savings is likely to be achieved.

The major maintenance capital program submitted with the budget shall include the following:

1. A detailed financial plan covering at least six years setting forth the sources and amounts of revenues used to finance major maintenance reserve fund expenditures in each year of the plan. The revenues from a particular source may change from year to year, as economic and budgetary circumstances warrant.

However, if proposed revenues do not fully support the major maintenance financial model, then the discrepancy shall be documented together with justification and a recovery plan outlining how the deficiencies will be restored;

2. The major maintenance financial model, which is the analytical system for the expenses for periodic replacement of major county building systems and components and for developing the revenue estimates necessary to cover those expenses. The model shall include any proposed changes from the previous fiscal period model to building systems and components, life cycles, estimates, percentage allocations or other associated assumptions that form the basis of the model; and

3. The proposed major maintenance program plan, which is the prioritized list of projects transmitted to the council in the budget with the major maintenance fund expenditure authority request for the ensuing fiscal period, accompanied by criteria used to develop the list and any changes from the previous fiscal period list. The plan shall be prioritized and include project names, project numbers and project appropriation requests. The final program plan is adopted by the council as part of the budget appropriation ordinance.

Expenditures from the major maintenance reserve fund may be made only for approved capital projects on the program plan or approved reallocations but total expenditures shall not exceed the amount appropriated to the fund.

H. Major maintenance program costs shall be financed by the major maintenance reserve fund. The

calculation of the amount necessary to finance facility infrastructure maintenance costs for each building shall be determined by the major maintenance financial model. Proposed changes to the financial model are subject to the reporting requirements in subsection G.2. of this section.

service.

SECTION 3. Ordinance 17929, Section 20, as amended, and K.C.C. 4A.100.070 are hereby amended to read as follows:

A.1. Any departments or agencies, except the council, with unanticipated expenditures shall submit to the executive a statement of unanticipated expenditures. The statement shall specify any request for supplemental appropriation by program, project, object of expenditure or any combination thereof. The executive shall review the requests in accordance with the department's or agency's work plan and determine whether to submit a supplemental appropriation request.

2. If during the fiscal period the executive determines that revenues will be less than the expenditure amounts included in the appropriations ordinance, the executive shall revise the expenditures of departments or agencies funded from those revenue sources to prevent the making of expenditures in excess of revenues. If the executive determines that the fund has unrestricted reserves, the executive may use these reserves to avoid making expenditure reductions; however, the use of reserves may not reduce the fund balances below target reserve amounts. If the use of reserves exceeds five percent of the total appropriation, the council shall be notified in the quarterly management and budget report. An expenditure shall not be made from any portion of an appropriation that has been assigned to a reserve status except as provided in this section.

B. All unexpended appropriations in noncapital appropriation ordinances lapse at the end of the fiscal period.

C. The executive may transfer appropriation authority from an emergent need contingency project to support a cost increase for a capital project in the same fund in accordance with the procedures in K.C.C.

4A.100.080. D.1. Except as provided in this subsection, an agency shall not expend or contract to expend any money in excess of amounts appropriated. A contract made in violation of this subsection is null and void. An officer, agent or employee of the county knowingly responsible for such a contract is personally liable to anyone, including the county, damaged by the officer, agent or employee's action.

2. An agency may contract to expend money in excess of existing appropriations when:

a. the contract commits the county to expend funds beyond the biennium and the contract includes a cancellation clause that provides:

(1) the contract may be unilaterally terminated by the county for lack of appropriation; and

(2) the costs associated with such a termination, if any, shall not exceed the appropriation for the biennium in which termination occurs;

b. the contract commits the county to expend funds beyond the biennium and the council, at the request of the executive, adopts an ordinance permitting the county to enter into the contract;

c. the contract implements a grant awarded to the county before the appropriation of grant funds, including appropriations that must be made in future years, if the council has received prior notice of the grant application and if either of the following conditions are met: all of the funds to be appropriated under the contract will be from the granting agency; or all financial obligations of the county under the contract are subject to appropriation; ((~~or~~))

d. the contract is for a Metro transit department RapidRide capital project that requires contractually defined service level commitments as a prescribed condition of receiving federal financial assistance as authorized by K.C.C. 4A.100.110.B; or

e. the contract is an emergency contract as authorized by K.C.C. 2.93.080.

3. In accordance with Section 495 of the King County Charter, real property shall not be leased to the county for more than one year unless it is included in a capital budget appropriation ordinance.

4.a. Any lease or license for the possession or use of real property by the county with a term, including any potential options, extensions or renewals, longer than five years must be approved by the council before execution by the executive.

b. Any decision to extend a lease or license for the possession or use of real property by the county beyond a cumulative total of five years, whether memorialized through an option, extension, amendment, or new lease or license, must be approved by the council before execution by the executive.

c. Any lease or license for the possession or use of real property by the county that requires more than fifty thousand dollars in tenant improvement or other alterations to the real property for the benefit of the county must be approved by the council before execution by the executive.

5. Any lease or license or extension of a lease or license for the possession or use of real property by the county entered into for the purpose of implementing the Puget Sound emergency radio network project as described in Ordinance 17993 and approved by the voters at the election held on April 28, 2015, may commit the county to expend funds in excess of amounts appropriated, and may be executed by the executive without council approval.

E. A capital project budget and phases of a capital project shall be prepared by the user agency. The capital project shall be managed by the implementing agency.

F. Ongoing review of capital projects for which moneys have been appropriated shall be coordinated by the office of performance, strategy and budget or its successor. For capital projects involving more than one agency, representatives from the agencies shall consult with the office of performance, strategy and budget or its successor. The office of performance, strategy and budget shall review capital projects for compliance with scope, budget and schedule.