

**WHATCOM COUNTY
EXECUTIVE'S OFFICE**

County Courthouse
311 Grand Avenue, Suite #108
Bellingham, WA 98225-4082



Jack Louws
County Executive

MEMORANDUM

To: Whatcom County Council

From: County Executive Jack Louws

Date: June 23, 2015

RE: Whatcom County Jail Options

Dear Chairman Weimer and Whatcom County Council,

Close to 4 years ago we jointly embarked on a journey to replace our jail with a new one. Based on the recommendation of community members, and validation from experts, we purchased the LaBounty Road property that met the criteria for the size and scope of the new jail.

We have completed the preliminary design, received the conditional use permit from the City of Ferndale, and have completed price estimates necessary to develop the financial instrument required for the county to finance a facility sized to house our community's inmates.

The County Council approved the financial instrument known as the Jail Facility Use Agreement (JFUA) on June 9th of 2015. Subsequent to that approval and the approval from all of the small cities, the City of Bellingham (COB) on June 16th of 2015 rejected the JFUA with a 6-1 vote. This decision by the COB was given for a variety of reasons as articulated by individual City Council members. As a reminder, the JFUA is written to require 100% participation from all the cities and county; therefore with Bellingham's no vote the JFUA cannot be executed as written.

The critical path to achieving our goal of a replacement jail requires a County Council resolution authorizing a ballot measure for the voters to consider for the jail. This resolution is required prior to August 4th of 2015 in order to be placed on the November 3rd, 2015 ballot. Whatcom County needs a legally binding JFUA from all of the participating cities prior to bonding for, and building a jail that would adequately house their city's inmates. The ballot measure and a revised JFUA are not mutually binding to each other prior to the November 3rd election, but would be beneficial to the success of the ballot measure.

Late last week you have received a letter, signed by the Small City Caucus Mayors. This letter requests that the County Council continue moving forward with the jail project, with all of the cities that wish to participate.

Last Thursday, I met with COB Mayor Kelli Linville to gain a better understanding of the 4 principles as discussed by COB related to the jail project. Her memo of June 22nd to the COB Council re-states what I heard in our meeting. The memo as well includes many other clarifications that were not specifically discussed last Thursday.

Below is my understanding of the principles COB would like to negotiate with the County, prior to their re-consideration of a modified JFUA. Following each of the principles, I have provided comment and a fiscal analysis for your consideration.

1. *Equitable Contribution to the Capital Project and Operation:*

The sharing of costs, both capital and operating, should be based on equity. The driving factors for cost sharing should be the historical use of each party and defined cost of services and facilities provided to each party. All revenue, including existing taxes, beyond the proposed tax should be used to reduce the operating costs of all parties.

As confirmed in the Mayor's memo, COB is requesting that the existing .1% corrections tax be used to offset their per diem charges for city inmates. If equally applied to all cities based on past bed day use, this represents a shift of \$35 million over the duration of the jail financing project (32 years) to the cities from the county. This shift is from a tax source which is exclusively authorized for corrections use by counties under RCW 82.14.350.

The Mayor makes further requests to limit the COB's contribution to capital and operating costs throughout the life of the bonds that have not been analyzed regarding fiscal impact.

2. *The Needs for the Public Safety Tax Revenue Should Be Considered in a Broad Context:*

The Public Safety Tax should be distributed and used to pay for public safety needs identified by and unique to each city. Each city would then be able to prioritize and fund other programs such as alternative prevention and diversion programs that provide services to help reduce incarceration costs and reduce recidivism.

This request has a negative fiscal impact on the County. As explained to me, the requested action is to allow the .2% ballot measure to proceed under the 60%/40% rule as described in RCW 82.14.450(6), with modifications to the JFUA that redistributes the tax revenue. The modifications include redistributing proceeds so that the cities receive additional revenue as described below:

- First .1% of Sales Tax
 - For all revenue collected within the cities, 85% would be retained by the cities and 15% would be retained by the County
 - For all revenue collected in un-incorporated areas, 40% retained by the Cities and 60% retained by the County;
- Second .1% of Sales Tax
 - For all revenue collected countywide, 40% would be retained by the cities distributed on a per capita basis and 60% would be retained by the County.

Over the 32 year life of a modified JFUA, this COB principle results in a shift of \$71.8 Million from the County to the cities.

The shift in sales tax distribution outlined in Principles 1 and 2, has a fiscal impact that results in a combined shift of at least \$106.7 million from the County to the cities.

This combined revenue shift results in and requires an average annual transfer of \$3.325 Million from the County General Fund to fund the operations of the jail over and above the current transfer of approximately \$5.1 Million. Please note, these estimates are based on an annual 2.5% increase in sales tax revenue as estimated in the JFUA.

3. The Agreement Should Be Structured to Maximize Certainty and Flexibility for Local Jurisdictions:

A dedicated tax should be used to create a closed capital fund, and at the end of thirty-years or once the bonds have been repaid, whichever is earlier, the tax should end. This dedicated tax could be either property tax or a sales tax.

Each jurisdiction should retain its ability to fund public safety needs identified and prioritized by its citizens.

A new Property Tax would be removed from discussion if Whatcom County Council agrees to Principles #1 and #2.

Please note the existing JFUA includes elimination of .1% of the sales tax upon repayment of bonds.

4. The Agreement Should Provide for Continued Access to the Jail and Durability for All Parties:

All parties that have funded the facility should be afforded the opportunity, beyond the life of the bonds, to continue to access the facility and mutually modify the agreement based on evolving public safety needs of the community. If necessary,

meaningful dispute resolution should be available for discussion about whether administration of the agreement is meeting the interests of all parties.

If an agreement is reached on Principles #1, #2 and #3, we will work to develop specific language that may satisfy COB concerns.

Potential Options for the Council to Consider:

- 1. Pass a resolution to authorize a ballot measure using .2% sales tax. Re-work the JFUA as requested by Small City Caucus Mayors, allowing for the County to build up to a 521 bed jail. Actual size is dependent on each individual city's financial and usage participation in the revised JFUA.**
- 2. Pass a resolution to authorize a ballot measure using .2% sales tax. Instruct Administration to rework JFUA transferring up to \$106.7 Million in revenue from County to cities as proposed by COB.**
- 3. Do not authorize a ballot measure and suspend any further action on the new jail project.**

In order to achieve a new countywide jail, my recommendation is to move forward with Option 1. The current JFUA was developed in cooperation and direct involvement of all the cities' administrations, and approved by the Small City Caucus Mayors and their legislative authorities. This proposal is in the best interest of Whatcom County Government and all of the cities who choose to participate.

If the County Council wishes to proceed with Option 1, my office will modify the JFUA to be consistent with the recommendations from the Small City Caucus, and be resubmitted to all cities and the County Council for action. Further, we have prepared an updated resolution authorizing the ballot measure for consideration at tonight's Council meeting.

I am unable to recommend Option #2. This option results in a substantial increase in contribution to the jail fund from Whatcom County's general fund. It restricts our ability to fund additional services as described in the ordinance establishing the Whatcom County Incarceration Prevention and Reduction Task Force. Furthermore, it is unlikely that this reallocation of resources will be an acceptable modification for the financing of this project.

If the County Council wishes to proceed with Option #2 please provide specific direction in regards to the extent you wish to further contribute general fund monies to finance the operations of the jail. Also, please provide any additional priorities and principals the Council wishes to include in a revised JFUA.

Regarding Option #3, today we have the support of 6 of the 7 cities for a jail use agreement and the stated support for a new jail by COB. The voters deserve the opportunity to approve our proposed solution to this decades' long public safety challenge. Therefore, I do not recommend losing this opportunity of requesting voter approval, and encourage the Council to take positive action authorizing a ballot measure.

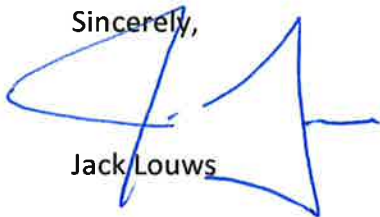
It needs to be understood that without Council authorization of a ballot measure that is approved by the voters in November, I concur with our Sheriff as articulated in the Sunday Editorial published on June 20th of 2015 that we have no option but to invest existing limited funds in our current facilities. He says;

"As Sheriff, I have a legal and moral obligation to operate the jail in a safe, constitutional and humane manner. The result of not replacing the main jail or incurring more years of delay will require investing millions more to stabilize and remodel the structurally flawed and inadequate facility. It will also require that the jail population be lowered and affect the County's ability to continue meeting the jail needs of cities and tribes and likely lead to a fragmented system of providing jail services in our community."

Thank you for your work in the last 4 years bringing us to this point in time that would allow for the voters of Whatcom County to decide on this important matter. I ask for your leadership in providing the legislative direction necessary to resolve this critical public safety need. Please note the critical deadline for these decisions is prior to August 4th, 2015. It is important to note that it takes community conversation, consensus building and education for a successful ballot measure. Your prompt action authorizing a ballot measure will allow the community more time to make an informed decision.

As always, my team and I are available to answer any questions you may have regarding this issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jack Louws". The signature is stylized with a large loop on the left and a horizontal line extending to the right.

Jack Louws

Attachments:

COB recommended proposal on new jail 06.22.15

Letter from Small Cities to Whatcom County Council 06.18.15

COB's proposal fiscal analysis 06.23.15



Mayor's Office
City of Bellingham
210 Lottie Street
Bellingham, WA 98225
360-778-8100
mayorsoffice@cob.org

MEMORANDUM

TO: BELLINGHAM CITY COUNCIL
FROM: KELLI LINVILLE, MAYOR
CC: BRIAN HEINRICH, DEPUTY ADMINISTRATOR; BRIAN HENSHAW, FINANCE DIRECTOR;
PETER RUFFATTO, CITY ATTORNEY
SUBJECT: CLARIFICATIONS TO E-MAIL MESSAGE REGARDING KEY TERMS - JAIL
DATE: JUNE 22, 2015

1. Equitable Contribution to the Capital Project and Operation:

Whatcom County Executive's language:

The City's request is to allocate the existing 1/10th sale tax based on jail bed usage. This means that for the existing 1/10th sales tax, Whatcom County would keep our percentage of jail bed usage (approximately 80%) and the cities would keep their jurisdictions percentage based on their average jail bed usage (approximately 20%). It was also discussed that if the City of Bellingham gets this distribution then all of the cities would receive the same distribution.

Mayor's Response:

In addition, the components of an equitable contribution to capital include the following elements:

1. Each party will pay into a closed capital fund based on that party's historical use of the facility. For example, Bellingham will pay 15% of the bond payment.
2. The capital construction charge that will be included in non-party per diem charges will go into the closed capital fund, along with interest and other contributions to capital.
3. The capital fund will be used to make the bond payments and only those items related to construction of the jail facility, not operation. Any funds remaining after bond repayment will be returned to the parties per the amount contributed.
4. The capital project will include only those facilities that serve all parties. For example, the jail demolition and sally port project will not be part of the project.

The components of an equitable contribution to operations include the following:

1. A clear formula for calculation of per diem and booking fees that includes all jail revenue benefiting all parties (for example, the existing .1% you have referenced above, as well as behavior health tax applied to the jail, and operational fees collected from non-parties);
2. A provision that when establishing fees and charges, all revenue received by the County for jail operations will be applied to the gross cost before any proration and cost allocation; and
3. A mechanism to ensure that direct, actual costs, plus an agreed administrative charge (expressed as a percentage), are the only charges included in the per diem and booking fees. For example, personnel dedicated primarily to transportation should not be allocated as a direct cost because transportation services are not being provided to the cities. Additionally, the cities should be charged depreciation costs or a capital facility charge, but not both.

2. The Needs for the Public Safety Tax Revenue Should Be Considered in a Broad Context:

Whatcom County Executive's language:

The City's request is for the County to put the 2/10th measure on the ballot and to agree with the Cities that the first 1/10th of the sales tax will be distributed 60% to the County and 40% to the Cities' and the second 1/10th would be distributed 85/15, with the City collecting 85% as outlined in state law if the City moved the ballot measure forward.

Mayor's Response:

Yes. The .2% sales tax revenue should be distributed as follows by agreement:

- 60/40 split: .1% of the Sales Tax revenue will be distributed in accordance with RCW 82.14.450(6); and
- 85/15 split within cities and 60/40 within unincorporated areas: .1% of the Sales Tax revenue will be distributed in accordance with RCW 82.14.450(7) as if each city imposed a .1% sales tax under RCW 82.14.450(7) and, subsequently, the County imposed a .1% sales tax under RCW 82.14.450.

This revenue structure will allow Bellingham and other municipalities to fund prevention and diversion programs and preserve revenue for the cities' public safety needs.

3. The Agreement Should Be Structured to Maximize Certainty and Flexibility for Local Jurisdictions:

Whatcom County Executive's language:

A property tax proposal is off the table, if the two points above are accomplished.

Mayor's Response:

- The County proposal to utilize a sales tax, if structured as described above, will satisfy the need for certainty and flexibility.
- The closed capital fund will ensure certainty, equity, and transparency for payment toward the construction of the jail facility. It will ensure that all payments toward capital are expended on capital.
- The distribution of revenue set forth above will maintain flexibility for cities in the effort to continue and expand prevention and diversion programs.

4. The Agreement Should Provide for Continued Access to the jail and Durability for All Parties:

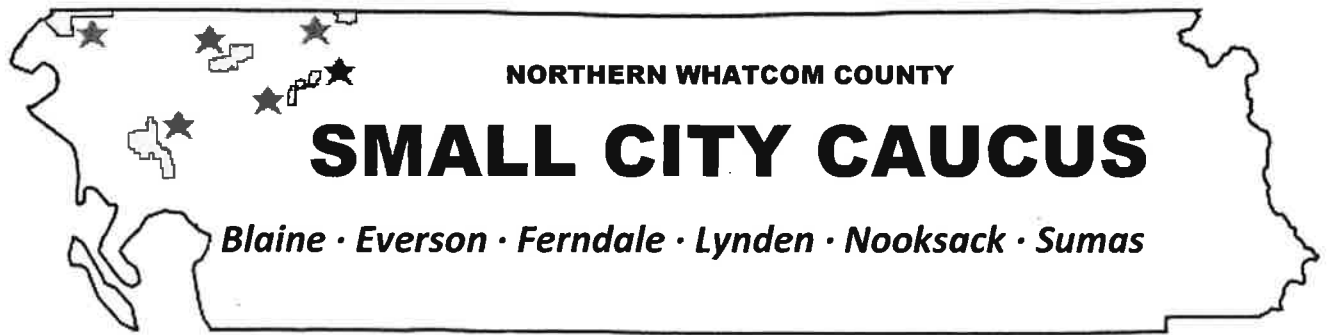
Whatcom County Executive's language:

At this time, it is best if we discuss specific language on this item to further contemplate if it can be agreed upon.

Mayor's Response:

- As written, the agreement allows the County to terminate City access after repayment of the bonds. The cities need to preserve their vested interest in the facility. For example, the parties should be mandated to negotiate in good faith to allow such access if Bellingham, or another city, wishes to continue accessing the facility.
- The agreement also makes it clear that City access is secondary to County felony use. The City agrees that felony inmates generally take precedence over misdemeanor inmates. The Skagit Agreement at page 11 provides a mechanism to deal with a capacity problem if one arises, i.e. "the new jail will be made available to parties to this agreement on an equal priority basis." Our agreement should also deal with this issue.
- The dispute resolution language in the proposed agreement suggests that all payments required of cities to the county, operational and capital, must be paid regardless whether the County acts in accordance with the agreement. Bellingham acknowledges the importance of a guaranteed revenue stream to satisfy bond payments. However, on the operational side, in the unlikely event of a dispute, the dispute resolution process language should be balanced between the parties. For example:

1. Capital payments are not subject to dispute resolution so long as the capital funds are used for purposes consistent with the agreement; and
 2. All other payments required under the agreement are subject to dispute resolution; provided, however, that the cities may not withhold any payments that have been invoiced by the County unless an arbitrator rules that the payments are not required.
- In the proposed agreement, there was a change to the language regarding "Determination of Case Status" suggesting that cities may be responsible for felony inmates prior to determination of case status. This would be a deviation from state law and the current agreement/practice. Bellingham requests that this language revert back to the language in the current agreement.



June 18, 2015

The Honorable Carl Weimer, Whatcom County Council Chair
311 Grand Avenue
Suite 105
Bellingham, WA 98225

Dear Council Chair Weimer,

The Bellingham City Council voted June 15 to decline participation in Whatcom County's jail initiative. We are writing today on behalf of the Small Cities Caucus to strongly urge the Whatcom County Council to continue moving forward with its plan to build the jail, with or without the help from the City of Bellingham.

The need to build a new jail is unavoidable. No one disputes that the existing facility is decrepit, bordering on dangerous, and dilapidated, bordering on inhumane. As important as it is to prevent some individuals from going to jail, there is no disagreement that we have a moral obligation to provide a safe place for those who are in jail serving time.

The disagreement is not about "if" there is a need for a jail, it is about "how" it will be built. In its June 9th memo to Mayor Kelli Linville, City of Bellingham staff identified four specific areas of concerns: How shall costs be shared fairly? How would the City control funds be raised from its residents? How can it make certain funds are used as the City wishes? How can the City continue to have access to the Jail into the indefinite future?

You may not be aware that our Caucus had very similar concerns, and in fact rejected the proposal when Executive Louws first presented it to us earlier this year. But we agreed that a new jail needed to be built, and that we needed to support the County initiative to build one. The leadership in the Small Cities Caucus recognized that, as a provider of regional services, the County is best positioned to build that facility. It is good public policy to make that effort a success.

Somewhat to our surprise, the County Administration proved flexible in its position and willing to modify its proposal to allay our greatest concerns. We disagreed over some issues - and still do. But we agreed that the alternative – not building a new jail – is not an option. So we compromised, which we believe is in the best interest of all our residents.

We absolutely respect the Bellingham City Council's right to do what it believes is best for Bellingham residents, and we fully acknowledge its obligation to fight for things that best serve them. As such, we encourage the County Administration to try one more time to work through differences with Bellingham and ask the City to identify specific concerns so they may be addressed.


However, time is not our ally. The \$97 million price tag on this project increases about \$450,000 each month of delay. We have already missed the opportunity to include the jail initiative in the August primary election, and in just a few weeks the chance to place it on the General Election ballot in November will be lost as well.

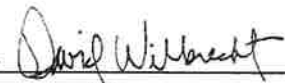
So we ask: If not this, then what? If not now, then when? The cities in the county, except Bellingham, have formally recognized the need for the jail. The Small Cities have agreed to the finance plan and have all signed on with our commitment to build and fund the jail. Now, with Bellingham declining to participate, we strongly recommend revising the documents to allow for participation from each city. This will give Bellingham one more opportunity to join the rest of the community, but also allows the County the latitude to proceed without Bellingham.


If, for some reason, all of this cannot be accomplished, and the Sherriff decides to downsize the existing jail, we respectfully ask that we, as members of the Small Cities Caucus, be allowed to participate in this process so we can be assured that we have the necessary jail space. Collectively the Small Cities use less than 5% of the current jail space and we would hope that any downsize in jail capacity could accommodate our needs, provided we worked together to avoid overcrowding. We have worked with you to this point in the process, and for that we hope you can work with us to assure us of jail space.


We respectfully request you move forward with the jail plan as soon as possible.


Sincerely;



 Harry Robinson
 Mayor of Blaine

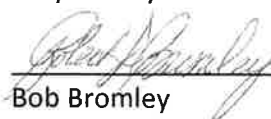

 David Wilbrecht
 City Manager, Blaine


 John Perry
 Mayor of Everson


 Gary Jensen
 Mayor of Ferndale


 Scott Korthuis
 Mayor of Lynden


 Jim Ackerman
 Mayor of Nooksack


 Bob Bromley
 Mayor of Sumas

SMALL CITY CAUCUS

BLAINE · EVERSON · FERNDALE · LYNDEN · NOOKSACK · SUMAS

Cc:

Barbara Brenner, County Council Member

Rud Browne, County Council Member

Barry Buchanan, Council Member

Pete Kremen, County Council Member

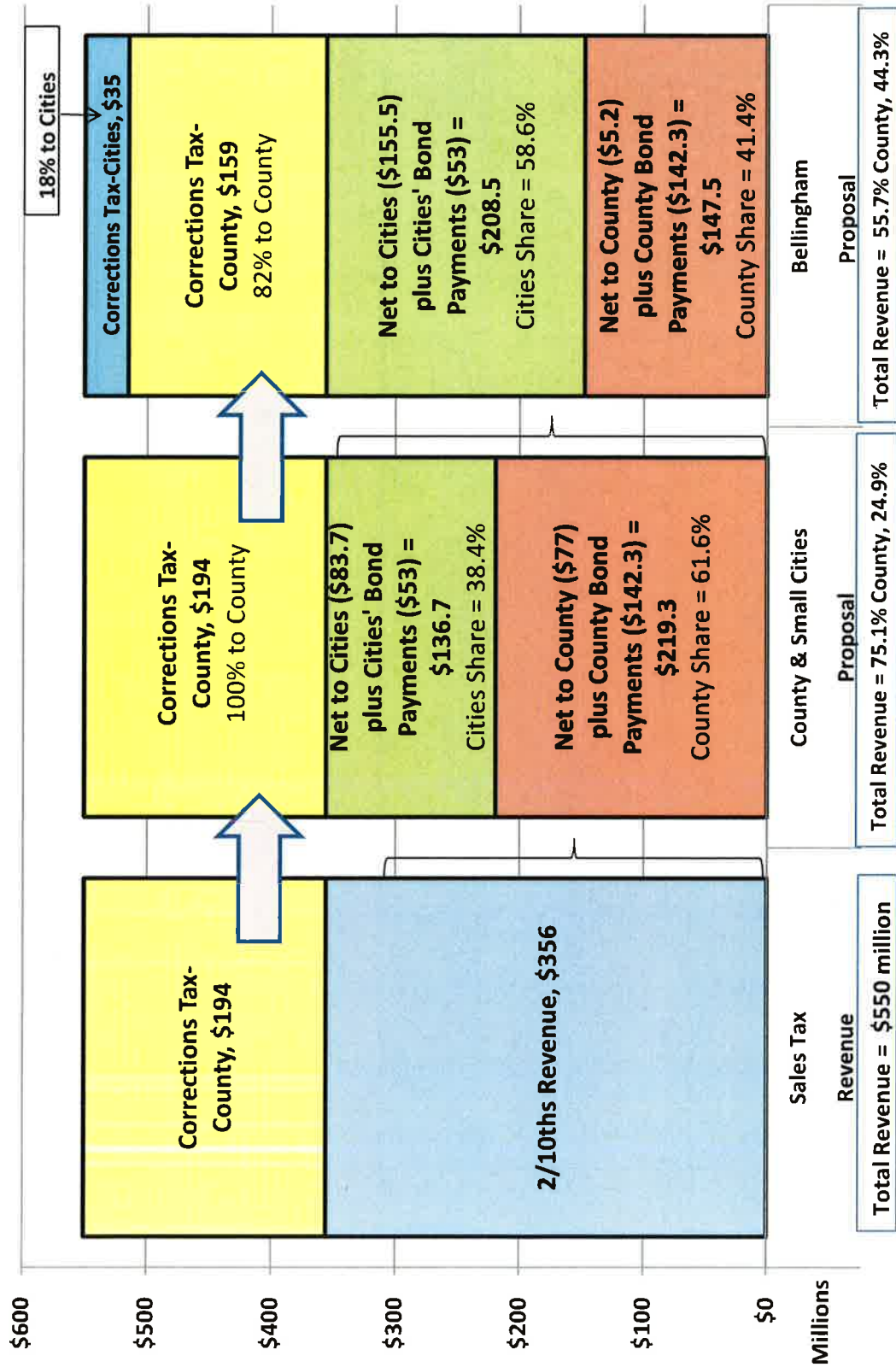
Ken Mann, County Council Member

Satpal Sidhu, County Council Member

Jack Louws, Honorable County Executive

2016 - 2048 CITY/COUNTY SALES TAX DISTRIBUTIONS

Revenue Shift to Cities = \$106,766,086*



*Revenue Shift would require an additional \$3,235,000 average annual transfer from the General Fund.

CITY/COUNTY SALES TAX DISTRIBUTIONS

	Revenue	Proposal	Proposal	Variance
	Sales Tax	County & Small Cities	Bellingham	
2/10ths Revenue	\$355,988,844			-
Net to County plus County Bond Payments		\$219,279,786	\$ 147,493,903	\$ (71,785,883)
Net to Cities plus Cities' Bond Payments		\$136,709,058	\$208,494,941	\$ 71,785,883
Detention Tax-County	\$194,442,484	\$194,442,484	\$159,462,281	\$ (34,980,203)
Detention Tax-Cities			\$34,980,203	\$ 34,980,203
	\$550,431,328	\$550,431,328	\$550,431,328	\$0
Amount of Shift to Cities =				\$ 106,766,086