## REVISED STAFF REPORT

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| **Agenda Item:** |  | **Name:** | Mary Bourguignon |
| **Proposed No**.: | 2020-0203 | **Date:** | June 30, 2020 |

**COMMITTEE ACTION**

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| ***Proposed Substitute Ordinance 2020-0203.2, which would propose an amendment to the King County Charter to allow metropolitan function surplus property to be transferred for less than fair market value for affordable housing, passed out of committee on June 30, 2020, with a “Do Pass” recommendation. The Ordinance was amended in committee with Amendment 1 to make a technical correction to conform the body of the ordinance to the title.*** |

**SUBJECT**

Proposed Ordinance 2020-0203 would propose an amendment to the King County Charter to allow the transfer, sale, or lease of County “metropolitan function” surplus property at less than fair market value for affordable housing.

**SUMMARY**

In 2018, the Washington State Legislature passed a bill[[1]](#footnote-1) allowing public entities to transfer, lease, or sell surplus property for affordable housing below fair market value.[[2]](#footnote-2)

The King County Code requires that when County-owned property is declared surplus, the Facilities Management Division must determine if that property is appropriate for affordable housing,[[3]](#footnote-3) and then allows that property can be sold or leased below fair market value for use as affordable housing.[[4]](#footnote-4) However, King County also holds property in dedicated enterprise funds for countywide “metropolitan functions.”[[5]](#footnote-5) The King County Charter requires that revenues or properties held in those funds be used only to benefit metropolitan functions, meaning fair market value is required if that property is sold.[[6]](#footnote-6)

Proposed Ordinance 2020-0203 is one of 11 charter amendments recommended by the 2018-2019 King County Charter Review Commission. It proposes an amendment to the Charter to allow the transfer, sale, or lease of County metropolitan function surplus property at less than fair market value for affordable housing.

To place this potential charter change amendment on the November 3 ballot, the last regular Council meeting date for adoption is July 21.[[7]](#footnote-7) The deadline for Elections to receive the effective ordinance is August 4.

**BACKGROUND**

**Need for affordable housing.** King County’s Regional Affordable Housing Task Force Five-Year Action Plan[[8]](#footnote-8) estimates that a total of **244,000 net new affordable homes** are needed within the county by 2040. The Action Plan states that this estimate is the amount needed to ensure that all households in King County by 2040 earning 80 percent of the area median income or less could secure housing for no more than 30 percent of their income.

To meet this housing need estimate, the Task Force identified seven goals, including creating and supporting an ongoing structure for regional collaboration,[[9]](#footnote-9) increasing the construction and preservation of affordable homes for low-income households, protecting vulnerable communities from displacement, and promoting greater housing growth and diversity.

Regionally, the Puget Sound Regional Council (PSRC) draft VISION 2050 plan[[10]](#footnote-10) identifies the need to accommodate an additional 1.8 million residents and 830,000 households in the four-county PSRC area by 2050. The draft VISION 2050 plan estimates that by 2050, 38 percent of households in the region will earn 80 percent of area median income or below, thus potentially needing some level of housing support. Specifically, the draft VISION 2050 plan estimates:

* 198,979 (11 percent) households earning 0-30 percent area median income
* 179,674 (10 percent) households earning 30-50 percent area median income
* 290,404 (17 percent) households earning 50-80 percent area median income[[11]](#footnote-11)

Proposed actions included in the draft VISION 2050 plan include preparing a regional housing strategy that is based on a regional housing needs assessment; and developing strategies for regional housing assistance.

**Use of surplus property for housing.** One strategy local jurisdictions have employed to develop affordable housing is identifying publicly owned properties that are surplus to their original purpose and can be used for housing development. Several years ago, the King County Assessor identified a list of government-owned properties throughout the county that could potentially be used for affordable housing. More recently, Enterprise Community Partners has used King County parcel data to develop a mapping tool[[12]](#footnote-12) to allow housing developers to search for public and tax-exempt sites that could potentially be used for housing.

Sound Transit is required by State law[[13]](#footnote-13) to offer 80 percent of its surplus property that is suitable for housing to qualified entities to develop housing affordable to families at 80 percent of area median income of less. King County is under no such requirement to use its surplus property in this way. However, the King County Code requires the Facilities Management Division to maintain an inventory of all County-owned properties, with annual updates from each County department on any properties that might be surplus. It then outlines a process for the use of surplus property, which requires that County agencies consider affordable housing before other non-governmental uses.[[14]](#footnote-14)

**King County Code process for dedicating surplus property for housing.** The King County Code establishes a process for declaring property surplus and then disposing of it. That process requires that County agencies must first determine whether the property is needed for other essential government services and then whether it could be used for affordable housing. If a property is determined to be surplus to government needs and suitable for affordable housing,[[15]](#footnote-15) the Code requires that the County “shall first attempt to make it available or use it for affordable housing.”[[16]](#footnote-16)

The Code requires that all sales of real and personal property must be made to the highest responsible bidder, except in a number of cases, including when County property is sold for on-site development of affordable housing[[17]](#footnote-17) or for other public benefits, including but not limited to, “the provision of affordable housing, open space or park land, child care facilities, public art beyond what is required under applicable law, or monetary contribution toward such benefits.”[[18]](#footnote-18) The Code also allows that County-owned property can be leased at below market rates for affordable housing.[[19]](#footnote-19)

For surplus property that is conveyed for affordable housing, the Code requires the Executive to include covenants related to prevailing wages and apprentice utilization during the construction of the housing.[[20]](#footnote-20) Separately, the Code outlines requirements for the County’s use of federal and other funds to assist with the housing and community development needs of low- and moderate-income households.[[21]](#footnote-21)

**King County Charter restrictions on metropolitan function property.** The King County Code’s requirements for surplus property state that disposing of property below fair market value for affordable housing or other public benefits must be consistent with other applicable laws, regulations, and contract restrictions, including with Section 230.10.10 of the King County Charter.[[22]](#footnote-22)

Section 230.10.10 of the Charter relates to King County’s metropolitan functions. Metropolitan functions are defined in State law as a way for people in “populous metropolitan areas in the state the means of obtaining essential services not adequately provided by existing agencies of local government.”[[23]](#footnote-23) Specifically, these functions are defined as any one or more of the following:

* Metropolitan water pollution abatement;
* Metropolitan water supply;
* Metropolitan public transportation;
* Metropolitan garbage disposal;
* Metropolitan parks and parkways; and
* Metropolitan comprehensive planning.[[24]](#footnote-24)

In 1958, King County voters created the Municipality of Metropolitan Seattle to manage countywide, metropolitan functions. The agency began with wastewater treatment, and in 1972 voters added public transit. The Municipality of Metropolitan Seattle was disbanded in 1994,[[25]](#footnote-25) and its functions were assumed by King County under a State law that allows large counties to assume metropolitan functions.[[26]](#footnote-26)

In anticipation of King County’s assumption of metropolitan functions, in 1992, King County voters approved a Charter amendment that[[27]](#footnote-27) expanded the then-existing nine-member King County Council to a 13-member Metropolitan King County Council, created three regional committees,[[28]](#footnote-28) and added a section to the Charter on metropolitan municipal functions. That Charter section (230.10.10) states:

Each metropolitan municipal function authorized to be performed by the county pursuant to RCW ch. 35.58 shall be operated as a distinct functional unit. Revenues or property received for such functions shall never be used for any purposes other than the operating expenses thereof, interest on and redemption of the outstanding debt thereof, capital improvements, and the reduction of rates and charges for such functions.[[29]](#footnote-29)

The effect of this Charter section is to ensure that property and revenues held for King County’s metropolitan functions are used only for those functions and not for other County priorities. As a result, properties owned by the enterprise funds of the County’s metropolitan functions do not follow the Code’s provisions for transfer or leasing at below market rate for affordable housing.

**2018 State law on surplus property.** During the 2018 state legislative session, the Legislature passed a bill[[30]](#footnote-30) to promote the use of surplus public property for affordable housing.[[31]](#footnote-31)

The bill, which took effect in June 2018, permits[[32]](#footnote-32) any state or local agency with authority to dispose of surplus property to transfer that property to any public, private, or nongovernmental body on any agreeable terms (including for no cost) if the property is used for a public benefit, which is defined as affordable housing.[[33]](#footnote-33)

The bill does not apply to state forest lands; school lands; or other lands subject to legal restrictions, such as property purchased with federal funds or other funding sources with restrictions. In addition, it requires that any property transfer for affordable housing can only occur if it is consistent with the jurisdiction’s Comprehensive Plan. However, the bill does allow for transfer at less than fair market value of properties held by enterprise funds, “regardless of the primary purpose or function” of the agency holding the property.[[34]](#footnote-34)

**Charter Review Commission.** The King County Charter provides for a citizen commission[[35]](#footnote-35) to be assembled every ten years for the purpose of reviewing the charter and presenting a written report recommending amendments to the County Council. The 2018-2019 King County Charter Review Commission (CRC) recommended 11 charter amendments.[[36]](#footnote-36) Proposed Ordinance 2020-0203 is one of three amendments identified as early action recommendations by the CRC.

**Proposed Ordinance 2020-0203.** The proposed ordinance would submit a measure to King County voters authorizing a change to the Charter to allow the transfer, sale, or lease of County “metropolitan function” surplus property at less than fair market value for affordable housing. The Charter amendment would add language to Section 230.10.10 to make affordable housing an exception to the requirement that revenues or property held in metropolitan function enterprise funds must be used only to benefit those functions. The section as revised would state:

Each metropolitan municipal function authorized to be performed by the county pursuant to ((~~RCW ch.~~)) chapter 35.58 RCW shall be operated as a distinct functional unit. Revenues or property received for such functions shall never be used for any purposes other than the operating expenses thereof, interest on and redemption of the outstanding debt thereof, capital improvements, and the reduction of rates and charges for such functions. To the extent not otherwise prohibited by law, this section shall not preclude the county from leasing, selling or conveying the properties at less than fair market value for affordable housing purposes.

The CRC’s report describes this action as removing “charter impediment to the sale of county property below market value for affordable housing purposes, in accordance with recent amendments to state law.”[[37]](#footnote-37) The report goes on to state:

The Commission recognizes the importance of affordable housing and believes the county should have access to all options available under the law to address the affordable housing shortage. Washington state law changed in 2018 to allow local governments, in some circumstances, to sell publicly-owned land for less than full market value for affordable housing purposes. Thus, the Commission recommends eliminating the existing Charter language that prohibits such an action, bringing the Charter into line with state law. While there may still be other restrictions preventing such sales, removing the Charter prohibition will allow the County to exercise that option should it otherwise be legally permissible.[[38]](#footnote-38)

**ANALYSIS**

The proposed Charter amendment, if approved by voters, would not require any changes to County functions or procedures, and would not require that property owned by the County be devoted to housing. It would simply allow the County, if desired, to transfer, sell, or lease County “metropolitan function” surplus property at less than fair market value for affordable housing, with the caveat that there might be other restrictions on any given property that would still prevent this from happening, for instance, if restricted federal grant funds, levy funds, or ratepayer proceeds were used to acquire the property.

**Implications of disposing of property for less than fair market value.** The CRC’s Regional Coordination subcommittee prepared a report on this proposed Charter amendment, which identified additional considerations for the County Council to address prior to disposing of any surplus metropolitan function property if the proposed Charter amendment is adopted. These additional considerations were listed in the subcommittee’s report:[[39]](#footnote-39)

1. **Capital projects.** The subcommittee noted that many of the properties that could be affected by this Charter amendment may have been budgeted for eventual sale to facilitate capital needs. The subcommittee noted that the loss of revenue from disposing of properties at less than fair market value would have to be made up from other sources, which could result in a “trade of affordable housing in exchange for less resources for roads, transit and wastewater treatment.”[[40]](#footnote-40)
2. **Intergovernmental accounting.** The subcommittee also noted the potential accounting complexities that could result if financial burdens are shifted from one part of the government to another.
3. **Best use of funds.** The subcommittee recommended that a fiscal note be developed for each proposed sale of property for affordable housing, asking whether, if market prices are high, it might be better to simply sell the property for market value and use the funds to develop affordable housing elsewhere.
4. **Restrictions on use and re-sale.** The subcommittee noted that there would need to be restrictions on the re-sale and rental of any units developed as a result of the Charter amendment. King County’s Housing, Homelessness and Community Development Division has developed these types of restrictions for other housing programs it operates and could presumably be requested to adapt them for these types of transactions.
5. **Cyclical nature of the housing market.** The subcommittee noted that the cyclical nature of the housing market means that regulation and market forces may at times be enough to meet the need for affordable housing. If that is the case, the subcommittee wondered if the County would need to invest in affordable housing.
6. **Other housing investment options.** The subcommittee noted that the County has a number of tools it can use to address housing affordability, including zoning, developer incentives, and expediting permitting. The subcommittee noted that it is unclear if these tools might be more effective than selling surplus land at a discount.
7. **Limitation on surplus power.** The subcommittee expressed caution that the County not become a de facto developer by purchasing property simply to surplus it for affordable housing. The subcommittee noted that it did not believe this was the intent of the 2018 State law, and suggested that, if the Charter amendment is approved by voters, the County Council could further affirm its intention to devote only truly surplus properties to affordable housing.

**Potential fiscal impact.** The potential fiscal impact of this proposed charter amendment is impossible to estimate at the moment, as it would depend on “metropolitan function” properties being determined to be surplus, then being evaluated for housing, and then being determined to have no other impediments (such as federal, levy, or ratepayer funding) that could prevent a below-market transfer to an affordable housing developer. At that point, the fiscal impact would be the difference between the fair market value of the property and the amount for which it would be offered for affordable housing, which would be some as-yet-undetermined portion of the fair market value.

If the proposed charter amendment is placed on the ballot and approved by voters, the Council might wish to request that County agencies holding metropolitan function properties prepare an inventory that includes the current and anticipated future use of the property, its suitability for housing, and any other impediments to potential use as affordable housing.

**Ballot Timeline.** To place this potential charter change amendment on the November ballot, the last regular Council meeting date for adoption is July 21.[[41]](#footnote-41) The last special Council meeting date to adopt this ordinance as an emergency is August 4. The deadline for Elections to receive the effective ordinance is August 4.

**AMENDMENT**

Amendment 1 is a technical amendment to standardize the language used about the election across all the charter change ordinances currently under consideration.

1. 3SHB 2382 Chapter 217, Laws of 2018 [↑](#footnote-ref-1)
2. RCW 39.33.015(6) [↑](#footnote-ref-2)
3. KCC 4.56.070.C.1 [↑](#footnote-ref-3)
4. KCC 4.56.100.A.7, KCC 4.56.100.A.12a, KCC 4.56.150.E [↑](#footnote-ref-4)
5. KCC 4A.10.405, RCW 36.56.010. RCW 35.58.050 defines these functions as any one or more of the following: water pollution abatement, water supply, public transportation, garbage disposal, parks and parkways, or comprehensive planning. [↑](#footnote-ref-5)
6. King County Charter 230.10.10 [↑](#footnote-ref-6)
7. An ordinance adopting a charter amendment is not subject to Executive veto, so the legislation is effective 10 days after the Council adopts it. [↑](#footnote-ref-7)
8. Regional Affordable Housing Task Force, Final Report and Recommendations for King County, WA, December 2018, revised October 2019. (<https://www.kingcounty.gov/depts/community-human-services/housing/~/media/depts/community-human-services/housing-homelessness-community-development/documents/affordable-housing-committee/RAH_Report_Print_File_Updated_10,-d-,28,-d-,19.ashx?la=en> ) [↑](#footnote-ref-8)
9. Work on this goal has been addressed by the Affordable Housing Committee of the Growth Management Planning Council. [↑](#footnote-ref-9)
10. VISION 2050 is a regional growth plan for the four-county Puget Sound Regional Council (PSRC) area. It was scheduled to be considered by the PSRC General Assembly in June 2020, but is on hold due to the COVID-19 pandemic. (<https://www.psrc.org/vision>) [↑](#footnote-ref-10)
11. VISION 2050 draft plan (December 2019), page 104 [↑](#footnote-ref-11)
12. Enterprise Community Partners, Home & Hope Mapping Tool (<https://www.enterprisecommunity.org/where-we-work/pacific-northwest/home-and-hope-mapping-tool>) [↑](#footnote-ref-12)
13. RCW 81.112.350 [↑](#footnote-ref-13)
14. KCC 4.56.070 [↑](#footnote-ref-14)
15. Per KCC 4.56.070.C.1, “suitable for affordable housing” means the parcel is located within the Urban Growth Area, zoned residential, and the housing development is compatible with the neighborhood. [↑](#footnote-ref-15)
16. KCC 4.56.070.C.1 [↑](#footnote-ref-16)
17. KCC 4.56.100.A.7 [↑](#footnote-ref-17)
18. KCC 4.56.100.A.12a [↑](#footnote-ref-18)
19. KCC 4.56.150.E [↑](#footnote-ref-19)
20. KCC 4.56.100.C [↑](#footnote-ref-20)
21. KCC 24.18 [↑](#footnote-ref-21)
22. KCC 4.56.100.A.12a [↑](#footnote-ref-22)
23. RCW 35.58.010 [↑](#footnote-ref-23)
24. RCW 35.58.050 [↑](#footnote-ref-24)
25. Metro: Municipality of Metropolitan Seattle, History Link Essay 7813 , Kit Oldham, Posted June 18, 2006 (<https://historylink.org/File/7813>) [↑](#footnote-ref-25)
26. RCW 36.56.010 [↑](#footnote-ref-26)
27. Ordinance 10530 [↑](#footnote-ref-27)
28. Per Ordinance 10530, “Three regional committees shall be established by ordinance to develop, recommend and review regional policies and plans for consideration by the metropolitan county council: one for transit, one for water quality and one for other regional policies and plans.” [↑](#footnote-ref-28)
29. King County Charter 230.10.10 [↑](#footnote-ref-29)
30. 3SHB 2382 Chapter 217, Laws of 2018 [↑](#footnote-ref-30)
31. Per RCW 43.63A.510(4), “affordable housing” in this context is defined as being for households at or below 80 percent of the area median income, in which monthly housing costs, including utilities other than phone, do not exceed 30 percent of the household’s monthly income. [↑](#footnote-ref-31)
32. Final bill report for 3SHB 2382 (<https://app.leg.wa.gov/billsummary?BillNumber=2382&Year=2017&Initiative=false>) [↑](#footnote-ref-32)
33. Per RCW 39.33.015(8)(a), “public benefit” in this context is defined as affordable housing for households with very-low-income (at or below 50 percent of area median income) or low-income (greater than 50 percent and at or less than 80 percent of area median income). [↑](#footnote-ref-33)
34. RCW 39.33.015(6) [↑](#footnote-ref-34)
35. King County Charter Section 800 [↑](#footnote-ref-35)
36. 2018-2019 King County Charter Review Commission: Report to the King County Council, November 2019 [↑](#footnote-ref-36)
37. 2018-2019 King County Charter Review Commission: Report to the King County Council, November 2019, p. 4. [↑](#footnote-ref-37)
38. 2018-2019 King County Charter Review Commission: Report to the King County Council, November 2019, p. 18. [↑](#footnote-ref-38)
39. 2018-2019 King County Charter Review Commission: Report to the King County Council, November 2019, p. 148. [↑](#footnote-ref-39)
40. 2018-2019 King County Charter Review Commission: Report to the King County Council, November 2019, p. 148. [↑](#footnote-ref-40)
41. An ordinance adopting a charter amendment is not subject to Executive veto, so the legislation is effective 10 days after the Council adopts it. [↑](#footnote-ref-41)