

03-01-10 Council Mtg

Sponsor: Ferguson

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Proposed No.: 2009-0523

2H MOVED 8-0 PUR EX

AMENDMENT TO PROPOSED ORDINANCE 2009-0523, VERSION 2

On page 1, beginning on line 13, strike everything through page 18, line 385, and insert:

"STATEMENTS OF FACTS:

1. On June 22, 2009, the state Auditor released an Accountability Audit Report of King County, wherein the state Auditor expressed concerns about oversight of capital projects.

2. The council has previously taken significant steps to provide capital project oversight. For example, in 2006, the council created a capital projects oversight office in the county auditor's office that oversees the county's large capital construction projects. In 2008, the council required the executive to transmit a critical analysis report for all current capital improvement projects over seven hundred fifty thousand dollars. These are just two of many capital projects oversight actions that the council has taken.

3. The state Auditor found that "lack of adequate performance measures and expectations prevent the King County Executive and Council from providing adequate oversight of construction activity." The state Auditor

18 noted, "We believe some of the variances [between initial budget and final  
19 project cost] may be attributed to poor budget estimation, inaccurate or  
20 incomplete project specifications and/or inadequate cost controls."

21 4. On July 13, 2009, the council passed Motion 13026, directing that the  
22 council consider legislation by September 15, 2009, that would require  
23 phased appropriation of funding for high-risk capital projects and create  
24 standard reporting and cost-estimating requirements for all capital  
25 projects. This ordinance is in response to that directive.

26 5. The legislation incorporates recommendations from the King County  
27 Capital Project Oversight – Phase 1 Report A produced by PMA  
28 Consultants in August 2007, "Design of a Model for the Auditor's Office  
29 Capital Project Oversight Reporting" and was developed with extensive  
30 input from executive agencies.

31 6. In 2010, the executive will review all sections of the King County code  
32 that pertain to capital projects, with the goal of developing clear,  
33 consistent and meaningful standards for effective capital project reporting  
34 and appropriation requests, clarifying standards for submittal of all capital  
35 budget appropriation requests and removing duplicative sections.

36 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

37 NEW SECTION. SECTION 1. A. This ordinance is intended to enhance the  
38 county's ability to identify high-risk capital projects, provide greater scrutiny of high-risk  
39 capital projects, and promote accountability of government spending.

40 B. It is further the county's intent that a select group of high-risk capital projects  
41 receive closer council scrutiny and rigorous cost controls each year. The number of  
42 projects selected for high-risk review should be small enough to allow for focused,  
43 meaningful oversight by the council and executive.

44 C. It is further the county's intent that all capital project appropriation requests be  
45 accompanied by a consistent, comprehensive set of scope, schedule and budget  
46 information that will allow more comprehensive tracking of projects.

47 NEW SECTION. SECTION 2. There is hereby added to K.C.C. chapter 4.04 a  
48 new section to read as follows:

49 A. For the purposes of this section:

50 1. "Capital projects oversight program" means the function within the King  
51 County auditor's office to oversee King County's large capital construction projects that  
52 was initially funded within the 2007 annual budget;

53 2. "Earned value management" means an analysis of how much has been  
54 accomplished on a capital project to date compared to the project's planned scope,  
55 schedule and cost. It includes a plan that identifies work to be accomplished, a valuation  
56 of planned work, and predefined earning rules that quantify how to measure the  
57 accomplishment of work;

58 3. "Eligible capital project" means a capital project as defined in K.C.C.  
59 4.04.020, except it does not include information technology projects, transit acquisitions,  
60 affordable housing and community development projects that are developed and managed  
61 by noncounty entities, energy savings performance contracts or lease-based projects;

62           4. "Estimate at completion" means a forecast of cost and time to complete a  
63 project. The estimate at completion includes the amount of cost and time incurred to date  
64 plus remaining forecasted cost and time;

65           5. "High-risk project" means an eligible capital project with characteristics that  
66 increase its likelihood of being completed late or over budget at a potentially significant  
67 financial cost or other significant impact to the county. Whether an eligible capital  
68 project is a high-risk project shall be determined by the process in subsection C. of this  
69 section;

70           6. "Joint advisory group" means the real estate and major capital project review  
71 joint advisory group created in K.C.C. chapter 4.06;

72           7. "Lease-based project" means a project where a lease-purchase or lease-  
73 leaseback agreement is proposed, pursuant to Chapter 35.42 RCW, that transfers  
74 construction risk to a developer or not-for-profit intermediary and provides the  
75 contractual basis for obtaining funding from a third party to finance construction of the  
76 project;

77           8. "Project baseline" means the scope, schedule and budget set at the conclusion  
78 of the preliminary design phase when the preferred alternative has been selected and  
79 design has progressed adequately to make reasonable and informed commitments, at  
80 thirty to forty percent design. Project baseline is used as a basis for variance reporting  
81 and performance measurement;

82           9. "Project management plan" means a formal document that defines how the  
83 project is executed, monitored and controlled. The objective of the project management

84 plan is to define the approach and schedule to be used by the project team to deliver the  
85 intended project scope.

86 10. "Risk register" means a document that identifies potential events that could  
87 impact cost, schedule, or scope. The document formulates plans for addressing those  
88 risks.

89 11. "Rough order of magnitude cost estimate" means an early cost estimate  
90 based on approximate cost models; and

91 12. "Total project cost estimate" means the estimated project cost from the start  
92 of planning through project closeout. If the project has a range of potential project costs,  
93 the total project cost estimate is the highest cost in the range.

94 B.1. For any eligible capital project with a total project cost estimate of over ten  
95 million dollars, the executive shall transmit risk score results to the joint advisory group  
96 each year in accordance with the process identified in subsection C.1. of this section  
97 under the following circumstances:

98 a. the appropriation request for the project will be over two hundred thousand  
99 dollars or the appropriation request plus the project's prior appropriations will collectively  
100 exceed two hundred thousand dollars;

101 b. the project has not yet had a high-risk determination from the joint advisory  
102 group that was made after setting the project baseline; and

103 c. the project has not entered the construction phase.

104 2. The high-risk determination by the joint advisory group shall be made in  
105 accordance with the process outlined in subsection C. of this section.

106           3. High-risk projects shall provide supporting data in accordance with the  
107 requirements of subsections F. through H. of this section beginning with the next phase  
108 for which appropriation authority is requested.

109           C.1. The capital projects oversight program shall develop a risk scoring  
110 instrument for assessing whether an eligible capital project is a high-risk project. The  
111 instrument shall be submitted to the joint advisory group for its approval.

112           2. The risk scoring instrument shall be used by the implementing agency to  
113 generate a risk score for all projects that are required to be scored under subsection B.1.  
114 of this section.

115           3. The risk scoring instrument shall use information such as complexity of  
116 regulatory requirements, interdependencies with other projects and programs, schedule  
117 constraints, implementing agency resources, project delivery method, complexity of  
118 property acquisition issues, public impact, risks inherent to the likely construction  
119 technology, or any other issues that could have a significant impact on the ability of the  
120 project to meet baseline scope, schedule or budget.

121           4. The implementing agency director shall ensure that the risk scoring has been  
122 completed by qualified staff who does not report to the project manager, to anyone who  
123 reports to the project manager, or to anyone to whom the project manager directly  
124 reports.

125           5. By March 1, the executive shall electronically transmit all risk score results  
126 for eligible capital projects that require a risk score that year to the clerk of the council,  
127 who will retain an electronic copy and distribute electronic copies to the manager of the  
128 capital projects oversight program and the co-chairs of the joint advisory group or their

129 designees, except that scoring results for eligible capital projects that received  
130 appropriations in 2010 shall be transmitted to the clerk of the council by July 31, 2010.

131           6. By the end of the first quarter of each year, or by the end of the third quarter  
132 in the year in which this ordinance is enacted, the joint advisory group, in consultation  
133 with the capital projects oversight program and using the risk scores for guidance, shall  
134 determine which projects for which it has received risk scores are high-risk projects. The  
135 joint advisory group may change the risk status of any of those projects when the joint  
136 advisory group receives an updated risk score.

137           7. The capital projects oversight program may recommend to the joint advisory  
138 group changes to the risk scoring instrument, but a new risk scoring instrument may be  
139 used only if the joint advisory group approves the instrument and provides an effective  
140 date for agency use of the instrument.

141           8. The joint advisory group shall file an electronic list of all eligible capital  
142 projects for which it has changed the high-risk status designation, including risk score  
143 and change in high-risk status, with the clerk of the council who will retain an electronic  
144 copy and distribute electronic copies to the chair of the budget and fiscal management  
145 committee or its successor and the manager of the capital projects oversight program.

146           9. Each agency or department that has at least one eligible capital project with a  
147 total project cost estimate of over ten million dollars should have at least one project  
148 designated as a high-risk project by the joint advisory group.

149           10. The executive may designate any eligible capital project as a high-risk  
150 project by letter or the council may designate any eligible capital project as a high-risk  
151 project by motion. Thirteen copies of the letter or motion shall be filed with the clerk of

152 the council for distribution to all councilmembers, the co-chairs of the joint advisory  
153 group or their designees and the manager of the capital projects oversight program.

154 D. For purposes of identifying when an eligible capital project has entered a  
155 particular phase and when subsections F. through H. of this section apply, phases include  
156 preliminary design, design, construction and close-out, and the following characteristics  
157 shall be used as a guide:

158 1. The preliminary design phase is when evaluation and analysis of potential  
159 project alternatives occurs. Based on analysis, the preferred alternative is selected and  
160 designed sufficiently to establish a project baseline, at thirty to forty percent design.  
161 Activities requiring long lead times, such as land acquisition or permitting may be  
162 initiated during this phase. Some planning activities may occur prior to the preliminary  
163 design phase;

164 2. The design phase is the time during which design is completed, permits and  
165 other permissions are secured, and necessary land, rights-of-way, and easements are  
166 acquired so that the project (or staged elements of the project consistent with the project  
167 management plan) can proceed to construction. The design phase also includes  
168 development of a cost estimate, plans, specifications and a bid package. It is expected  
169 that the range of uncertainty associated with project cost estimates decreases as the  
170 design progresses. Activities to procure materials and equipment that require long lead  
171 times may be initiated during this phase. For projects with alternative delivery methods,  
172 such as general contractor-construction manager projects, the design phase may include  
173 some construction activities that occur before completion of project plans and  
174 specifications;

175           3. The construction phase is the time during which the project is constructed or  
176 implemented. This also includes the testing, inspection, adjustment, correction and  
177 certification of facilities and systems to ensure that the project performs as specified. The  
178 construction phase ends with final acceptance of the project; and

179           4. Close-out follows final acceptance and consists of administrative processes  
180 and associated accounting activities to close out all contracts. It may include multi-year  
181 monitoring. It should comprise no more than three percent of the total project cost.

182           E.1. When submitting a capital budget appropriation ordinance or an additional  
183 or amended capital budget appropriation ordinance to the council that includes an  
184 appropriation for a high-risk project, the executive shall submit supporting data as  
185 identified in subsections F. through H. of this section. For any item required by  
186 subsections F. through H. of this section that the executive does not provide with the  
187 appropriation request, the executive shall provide a detailed explanation of why it cannot  
188 be provided and, if the item is to be provided later, identify the date by which the item  
189 will be provided.

190           2. For some eligible capital projects, one or more phases may run concurrently,  
191 such as projects requiring staged construction due to site constraints or operational needs,  
192 or performed under a declaration of emergency. Some nonconstruction eligible capital  
193 projects, such as land acquisition, may not utilize all of the capital project phases.

194           a. When submitting a capital budget appropriation ordinance or an additional  
195 or amended capital budget appropriation ordinance to the council where the appropriation  
196 request encompasses work performed in more than one phase of a high-risk project, not  
197 including the close-out phase, the executive shall submit as supporting data an

198 explanation of the cost and schedule factors necessitating appropriation for more than one  
199 phase. The executive shall also submit as supporting data a schedule for reporting those  
200 supporting items required by subsections F. through H. to the council. The schedule and  
201 items to be reported shall match milestones identified in the project management plan.  
202 The reports shall be filed with the clerk of the council for distribution to the chair of the  
203 budget and fiscal management committee or its successor.

204           b. The council should consider placing expenditure restrictions upon the  
205 appropriation that release funds contingent upon appropriate further action.

206           F. When submitting a capital budget appropriation ordinance or an additional or  
207 amended capital budget appropriation ordinance to the council that encompasses work  
208 performed in the preliminary design phase of a high-risk project, the appropriation  
209 request may include up to ten percent of the funding for the design phase. The executive  
210 shall, in addition to the requirements of section 4 of this ordinance, provide the following  
211 supporting data:

212           1. Identify design criteria;

213           2. Provide an estimate of preliminary design costs, start and end dates for the  
214 preliminary design phase, and a rough order of magnitude cost estimate, which may be  
215 expressed as a range, for design and construction phases;

216           3. Provide a planned schedule that shows the anticipated start and finish dates  
217 for each major task for the preliminary design phase, and for the design and construction  
218 phases, provide the anticipated start and finish dates for major work through completion;

219           4. Identify stakeholders;

220 5. Identify regulatory requirements and highlight any regulatory requirements  
221 that increase project risk; and

222 G. When submitting a capital budget appropriation ordinance or an additional or  
223 amended capital budget appropriation ordinance to the council that encompasses work  
224 performed in the design phase of a high-risk project, the executive shall, in addition to the  
225 requirements of section 4 of this ordinance, provide the following supporting data:

226 1. Describe the alternatives considered, including a summary of life-cycle cost  
227 analysis performed for feasible alternatives progressing to further design, and identify the  
228 recommended alternative or alternatives with detailed scope description;

229 2. Provide a summary of the results of a formal schedule and cost risk  
230 assessment conducted by an external consultant or staff who does not report to the project  
231 manager, to any person who reports to the project manager, or to anyone to whom the  
232 project manager directly reports;

233 3. Provide the project baseline, if set by the time of the appropriation request;

234 4. Certify that the implementing agency completed a cost estimate validation  
235 process to provide an independent evaluation of the project's cost estimates using an  
236 external consultant or staff who does not report to the project manager, to any person who  
237 reports to the project manager, or to anyone to whom the project manager directly  
238 reports;

239 5. Certify that significant progress has been made in environmental review and  
240 public outreach, identify steps remaining in the environmental review process, and  
241 summarize major issues;

- 242           6. Identify permits, acquisitions, and relocations, address mitigations, and  
243 highlight any of these that increase project risk to scope, schedule or budget;
- 244           7. Certify that application for external funding has begun, if applicable; and
- 245           8. For projects with alternative delivery methods that contemplate a need for  
246 early construction costs, provide an explanation of the need.

247           H.1. When submitting a capital budget appropriation ordinance or an additional  
248 or amended capital budget appropriation ordinance to the council that encompasses work  
249 performed in the construction phase of a high-risk project, the executive shall, in addition  
250 to the requirements of section 4 of this ordinance, provide the following supporting data:

251           a. certify that plans, specifications, estimates and contract documents reflect a  
252 level of design completion that is sufficient to support a final cost estimate and schedule  
253 for proceeding to procurement and specify the ready date for proceeding with the selected  
254 procurement method for the project;

255           b. certify that all required nonconstruction permits are in place in accordance  
256 with the project management plan or provide status of pending approvals and the  
257 expected date of receipt;

258           c. certify that all land acquisition, lease documents, and partnership agreements  
259 are in place in accordance with the project management plan or provide status of pending  
260 actions and expected date of receipt; and

261           d. certify that the implementing agency completed a cost estimate validation  
262 process to provide an independent evaluation of the project's cost estimates using an  
263 external consultant or staff who does not report to the project manager, to any person who

264 reports to the project manager, or to anyone to whom the project manager directly  
265 reports.

266           2. The executive shall provide quarterly reports during the construction phase of  
267 a high-risk project. The quarterly report shall address performance relative to project  
268 baseline, highlight any significant variance from project baseline, summarize the top risks  
269 in the risk register, summarize change orders, explain change orders that have the  
270 cumulative potential to carry the project over project baseline and summarize the results  
271 of the latest earned value analysis. Five copies of each report shall be filed with the clerk  
272 of the council, who shall retain a copy and distribute copies to the chair of the budget and  
273 fiscal management committee or its successor, the co-chairs of the joint advisory group or  
274 their designees and the manager of the capital projects oversight program.

275           I.1. The implementing agency shall establish and maintain a risk register for each  
276 high-risk project. The risk register shall be developed consistent with industry standards.

277           2. The implementing agency shall update the risk register at least quarterly, or  
278 more frequently should significant changes or additions be identified by the  
279 implementing agency.

280           J.1. The implementing agency shall employ earned value management on high-  
281 risk projects to forecast unfavorable variations in final project cost or completion date,  
282 based on progress to date.

283           2. Agencies shall apply earned value management tools and methods to the  
284 design and construction phases. The earned value management tools and methods, and  
285 the format and level of detail reported, shall be appropriate for the phase of the project  
286 and the associated level of certainty regarding cost and schedule estimates. Tools for

287 earned value management may include forecasting estimate at completion for design  
288 phase and use of earned value analysis for the construction phase.

289 3. The analysis shall be updated at least monthly.

290 NEW SECTION. SECTION 3. There is hereby added to K.C.C. chapter 4.04 a  
291 new section to read as follows:

292 A. For purposes of this section, "lease-based project" is as defined in section 2 of  
293 this ordinance. The phases of a lease-based project are the planning, predevelopment and  
294 lease phases.

295 1. The planning phase is the time during which the county develops the scope of  
296 work including an estimate of project size, construction cost, and tenant improvements.  
297 The procurement process for the developer is completed in this phase.

298 2. The predevelopment phase is the time during which the county in conjunction  
299 with the developer identifies and analyzes potential alternatives, selects the preferred  
300 alternative and evaluates the technical and economic feasibility of the project. The  
301 preferred alternative is engineered to approximately thirty percent design. The draft lease  
302 agreement is agreed to in principle by the developer and the executive at the completion  
303 of the predevelopment phase.

304 3. The lease phase is when the executive requests council approval to enter into  
305 a lease agreement for the project.

306 B. When submitting a capital budget appropriation ordinance or an additional or  
307 amended capital budget appropriation ordinance to the council that encompasses work to  
308 be performed in the planning phase of a lease-based project, the executive shall provide

309 as supporting data a cost estimate that details the anticipated cost for each major task  
310 required to complete the predevelopment phase.

311 C. When submitting a capital budget appropriation ordinance or an additional or  
312 amended capital budget appropriation ordinance to the council that encompasses work to  
313 be performed in the predevelopment phase of a lease-based project, the executive shall  
314 provide as supporting data an estimate of project size, construction cost and tenant  
315 improvements, and a description of performance requirements and space needs.

316 D. When submitting an ordinance requesting council approval to enter into a  
317 lease agreement for a lease-based project, the executive shall provide supporting data as  
318 follows:

- 319 1. Identify design criteria;
- 320 2. Provide a financial analysis of the project;
- 321 3. Provide the draft lease agreement agreed to by the executive and developer;
- 322 4. Provide the development team's pro forma cost plan for the design and  
323 construction of the project;
- 324 5. Provide a description and an analysis of the feasible alternatives considered,  
325 and identify the recommended alternative;
- 326 6. Provide planned schedule that shows the anticipated start and finish dates for  
327 each major task, consistent with the development team's pro forma cost plan;
- 328 7. Identify stakeholders;
- 329 8. Identify regulatory requirements;
- 330 9. Report variance of predevelopment phase major task performance from the  
331 schedule and cost estimate provided for the predevelopment phase.

332 E. For any item required by subsections B. through D. of this section that the  
333 executive does not provide with the appropriation request, the executive shall provide a  
334 detailed explanation of why it cannot be provided and, if the item is to be provided later,  
335 identify the date by which the item will be provided.

336 NEW SECTION. SECTION 4. There is hereby added to K.C.C. chapter 4.04 a  
337 new section to read as follows:

338 A. When submitting a capital budget appropriation ordinance or an additional or  
339 amended capital budget appropriation ordinance to the council, the executive shall  
340 include the following supporting data using a standard format, in the form of an  
341 electronic database when possible:

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

344 2. A brief description of the project and the project's purpose, including  
345 importance with respect to the implementing agency's priorities and goals, and  
346 consequences of deferral or disapproval;

347 3. Current phase of project, phase status and whether the project has been  
348 designated as a high-risk project by the joint advisory group;

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

351 5. An explanation of alternatives considered;

352 6. Appropriation and expenditure amounts to date;

353 7. Current-year appropriation requested amount;

354 8. Estimated cost through project closeout, which may be expressed as a range if  
355 baseline is not established;

356 9. Explanation of how contingency amounts were determined or reference to  
357 applicable county policy;

358 10. Explanation of how inflation is incorporated or reference to applicable  
359 county policy;

360 11. Identification of funding sources, funding status, and funding risks; and

361 12. Description of key project risks, including summary of top risks in the risk  
362 register if applicable.

363 B.1. Capital project cost estimates shall be prepared in accordance with  
364 applicable industry standards, requirements of external funding sources and county  
365 policies, including but not limited to standards regarding estimate accuracies,  
366 methodology for determining contingency included for uncertainty, and the cost index  
367 used to define the value of money.

368 2. The level of detail incorporated within each estimate shall be commensurate  
369 with the information available at each phase, and shall be consistent with the Association  
370 for the Advancement of Cost Engineering International cost estimate classification  
371 system. The estimates for all succeeding phases shall be updated to represent the latest  
372 project information.

373 NEW SECTION. SECTION 5. There is hereby added to K.C.C. chapter 4.04 a  
374 new section to read as follows:

375 The King County auditor's office, in consultation with the joint advisory group,  
376 shall conduct a review of sections 2 and 3 of this ordinance and make a report to the

377 council by April 15, 2012. The review shall evaluate the scoring tool used in identifying  
378 high risk projects and the extent to which the reporting requirements for high-risk  
379 projects are providing beneficial information to the council, executive and capital projects  
380 oversight program. The report required to be submitted by this subsection must be filed  
381 in the form of a paper original and an electronic copy with the clerk of the council, who  
382 shall retain the original and provide an electronic copy to all councilmembers."

383 **EFFECT: Makes clarifications after additional feedback from Council's legal**  
384 **counsel that do not change the substantive intent of the proposed ordinance,**  
385 **including the following:**

- 386 • **Adding a definition of risk register and clarifying other terms used**
- 387 • **Clarifying language regarding risk score eligibility and the March 1**  
388 **deadline for submitting risk score results**
- 389 • **Clarifying that the joint advisory group can change the risk status of a**  
390 **project at the time it is rescored**
- 391 • **Clarifying that Council legislative action to change risk status is done by**  
392 **motion**
- 393 • **Eliminating a provision made unnecessary by previous changes**
- 394 • **Making it clear that earned value management occurs in design and**  
395 **construction phases.**

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03-01-10 Council Mtg,

at Sponsor: Ferguson  
Proposed No.: 2009-0523

2H MOVED 9-0

**TITLE AMENDMENT TO PROPOSED ORDINANCE 2009-0523, VERSION 2**

On page 1, beginning on line 1, strike lines 1 through 12, and insert:

"AN ORDINANCE providing for appropriation by phases for high-risk capital projects and establishing standardized requirements for capital project reporting and cost-estimating; amending Ordinance 12076, Section 2, as amended, and K.C.C. 4.04.020, Ordinance 12076, Section 3, as amended, and K.C.C. 4.04.030, Ordinance 14743, Section 6, and K.C.C. 4.04.265, Ordinance 13035, Section 5, as amended, and K.C.C. 4.04.270, Ordinance 14811, Section 6, and K.C.C. 4.04.273, Ordinance 14452, Section 5, and K.C.C. 4.04.275, Ordinance 14122, Section 6, as amended, and K.C.C. 4.04.280, Ordinance 14921, Section 6, and K.C.C. 4.06.040 and adding new sections to K.C.C. chapter 4.04."

**EFFECT: Inserts a corrected title for the ordinance as amended.**