



CITY OF KIRKLAND

Department of Public Works

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www.kirklandwa.gov

MEMORANDUM

To: Kurt Triplett, City Manager

From: Josh Pantzke, Utility Manager
Ray Steiger, P.E., Superintendent
Kathy Brown, Public Works Director

Date: March 20, 2019

Subject: REGIONAL WASTEWATER GOVERNANCE AND CONTRACT DISCUSSIONS

RECOMMENDATION:

City Council authorizes Mayor Sweet to sign the two attached letters on behalf of the City of Kirkland. Other King County wholesale wastewater customers will be signing these letters.

BACKGROUND AND DISCUSSION:

This memo is to brief the City Council on multiple regional wastewater related items including:

- The evolution of recent discussions involving members of the Cascade Water Alliance (Cascade) regarding regional wastewater contract negotiations;
- King County (County) wastewater governance and decision-making authority; and
- Draft written communications to County officials the Council is asked to authorize for signature in cooperation with the other jurisdictions.

For nearly twenty years, the County and its wholesale customers have been negotiating the terms of a new regional wastewater contract. Discussions between the parties have faced many challenges. The Municipality of Metropolitan Seattle (Metro), which provided regional transit and wastewater treatment service to jurisdictions throughout King County, merged with King County as a negotiated settlement to a lawsuit about the constitutionality of Metro. Because of that merger, King County Metro Transit and the King County Wastewater Treatment Division were formed as divisions of King County government. After the merger, many wholesale sewer customers have felt they do not have a strong enough voice about the direction of the regional wastewater system, and that the County operates without full input from the wholesale customers and their ratepayers. Kirkland is a wholesale customer served by the Wastewater Treatment Division.

In September 2018, the King County Wastewater Treatment Division (WTD) released a draft regional wholesale contract (Contract) for review and comment by its wholesale customers. WTD is undergoing a discussion process through its Regional Negotiations Team and Metropolitan Water Pollution Abatement Advisory Committee. As one of 34 wholesale customers, Kirkland has been involved in this process. The Contract includes a proposal for an operating board like that of Seattle Public Utilities (SPU) to better involve its wholesale customers in the wastewater system decision making process. Seattle Public Utilities is also a wholesale customer.

Since October 2018, members of Cascade, including Kirkland, have been meeting to discuss the Contract and potential means to provide wholesale wastewater customers a more meaningful role in the wastewater decision-making process. The shared perspective of “a voice and a vote” regarding the WTD budget, capital improvement program, project priorities, rates, and capacity charges are being emphasized by Cascade member agencies acting as a coalition (the Coalition). Cascade staff is assisting this effort in a de minimis capacity, but the Contract conversations are not technically part of Cascade’s purview or workplan, since these are wastewater issues being discussed by wastewater utilities.

Among other items, the Coalition would like to change the voting structure of the Regional Water Quality Committee and/or establish an operating board with authority equal to the County’s. The Coalition has identified its desire to have a more meaningful role in the decision-making process than what has been provided and proposed in the Contract. The Coalition crafted an issue statement that articulates the Coalition’s concerns and a strategy for addressing them (Attachment A). The strategy uses a three-pronged approach: 1) the King County Charter Review Commission; 2) potential State legislation; and 3) the Contract negotiation process.

The strategy is proposed to be implemented in the following ways:

- The Coalition has drafted a letter to the King County Charter Review Commission informing them of the Coalition’s desire to create a venue for a “voice and a vote” for wholesale wastewater customers (Attachment B). Coalition members are targeting to send this letter shortly after April 2. The Coalition believes this letter will be most effective if it is signed by as many jurisdictions as possible.
- The Coalition is seeking to insert into the State Operating Budget a proposed appropriation of \$100,000 for the Washington State Department of Commerce to retain a consultant to research and identify the best ways to change the governance structure of regional wastewater (Attachment C). This insertion is referred to as a “study bill.”
- The Coalition has drafted a letter to the King County Executive to express the great importance of a fair governance structure for regional wastewater and suggests the contract be amended to increase the decision-making authority of the wholesale customers through the operating board (Attachment D). Coalition members are targeting to send this letter shortly after April 2. The Coalition believes this letter will be most effective if it is signed by as many jurisdictions as possible.

The Coalition is reaching out to SPU to gauge its support of the Coalition’s concerns and strategy, and will be asking SPU to sign on to the proposed State legislation and also to submit letters to the Charter Review Commission and the King County Executive. King County wholesale wastewater customers also will be invited to provide similar letters through the Washington Association of Sewer and Water Districts and the Sound Cities Association.

NEXT STEPS:

After review and discussion, if the Council supports the City sending letters to the Charter Review Commission and the County Executive, then the Council will need to approve a motion to authorize the Mayor to sign them. Staff will continue to keep the Council updated about these matters.

Attachment A: Issue Statement, “Wastewater Discussions: Getting a Voice and a Vote”
Attachment B: Draft Letter to the King County Charter Review Commission
Attachment C: Proposed State Operating Budget Bill Insert
Attachment D: Draft Letter to King County Executive Constantine

Wastewater Discussions: Getting a Voice and a Vote

Attachment A

Current Situation: Wastewater service providers in King County do not have a meaningful voice or a vote in how decisions are made on plans, capital budgets, rates and connection charges. They are seeking this because it is essential for them to have real input on these issues that have a direct impact on their ability to provide essential public services to their customers and ratepayers.

Overview: The Metropolitan Municipality of Seattle was officially merged into King County in the mid-1990s, shifting the responsibility to provide regional wastewater transmission and treatment services to the County. Included in the merger was the creation of the Regional Water Quality Committee (RWQC) that was intended to provide meaningful policy input from the local governments that directly serve customers. However, opportunities are too limited for providers to give substantive input as they had in Metro.

In addition, during the last 25 years, communities outside Seattle have grown in size and population and many new cities exist that were not contemplated in the 1990s. Yet these entities (as well as Seattle) that provide retail wastewater services to the people of King County have no real voice or a vote on how regional wastewater services are planned for, delivered, or financed.

Since 2001, the County has attempted to negotiate wastewater contracts for future services, with little success, because the issues of representation and meaningful input or decision-making have not been addressed. Moreover, the County continues to issue revenue debt for regional wastewater improvements beyond the length of existing contracts (2036) as well as invest in capital that is not cost-effective. The costs of those financings are borne by residents across the County even though their representatives have had no say in the bond issuance. This has become a significant issue for wastewater providers and their customers throughout King County, and getting a voice and a vote on plans, capital budgets, rates and connection charges is being sought on many fronts.

Goals: The local governments directly serving wastewater customers in King County deserve a voice and a vote in future wastewater decisions that allow them to approve what they are being asked to pay for, to determine where funds are spent, and to approve future obligations that are being assigned to their customers – the ratepayers of King County. If this is not achieved, some cities and districts are beginning to explore other options for services once existing contracts expire in 2036. Cascade Water Alliance’s elected officials who comprise its board explored their potential options to achieve a voice and a vote, and evaluated their next steps forward.

How Do We Get There?

1. **Charter Review Commission** – the opportunity to change existing King County structure and policies through changes to the King County Charter is possible once every decade through a process that begins with the County’s Charter Review Commission. That Commission is now accepting suggested changes to the Charter. Several wastewater service providers plan to submit recommendations to this group for Charter amendments, including but not limited to the roles of regional committees, particularly the Regional Water Quality Committee. The goal is to provide wastewater service providers with real, meaningful input on regional wastewater plans, capital budgets, rates and connection charges to be able to serve their customers more efficiently and effectively.

2. Legislation – Several options remain open to wastewater providers through the Washington State Legislature. These include but are not limited to:
 - a. Review and revision of current statutory requirements and regulations, including the Metro Statute (Chap. 35.58 RCW);
 - b. Review and revise RCW 36.94, a statute followed by Pierce County to give its wastewater customers additional input, voice and a vote;
 - c. A measure that would require wastewater providers and counties of a certain size to reach consensus on major system or policy plans, capital budget, rates, and connection charges prior to adoption and implementation (preferred option);
 - d. A study bill or budget proviso that would seek to clarify or propose legislation aimed at:
 - i. Reviewing and proposing potential statutory solutions regarding regional wastewater services for counties that have assumed a Metro (e.g. King County);
 - ii. Evaluating legislation that would create a yet-to-be defined proposed board of wastewater service providers to give them an effective voice, a vote and a say on rates, budgets and plans;
 - iii. Determining the potential of amending the statutes to allow formation of a public utility district to prohibit King County from being able to issue further bonds without a signed contract with the requisite number of providers; and
 - iv. Inclusion of a sunset clause on new regional wastewater debt until this conflict is resolved.
3. WTD Contract Negotiations – Although the discussions have been going on unsuccessfully for almost 18 years, contract language remains a potential avenue to obtain the desired results. An operating board, similar to that of Seattle Public Utilities', might be an important step forward, but as it is currently proposed by the County, such a board would provide no significant decision-making role for cities and districts who provide wastewater services to county residents. Engaging the Regional Negotiating Team and discussing more decision-making influence on plans, capital budgets, rates and connection charges would be an initial start.
4. Citizen's Initiative Process -- if the Charter Commission does not include the wastewater providers' proposed Charter changes or if the County Council declines to place proposed changes on the ballot, a citizen's initiative could propose similar provisions.
5. Take no action: This would not change the status quo, and elected officials who are responsible for fair, equitable rates and fees on behalf of their customers, would continue to be without a real say in regional wastewater governance.

Current Recommendations for Moving Forward:

1. Include other wastewater providers, throughout King County, such as Seattle, in the process
2. Prepare Charter Review Commission submittal
3. Prepare legislative measures, amendments, etc.

March 4, 2019

[DATE]

Attachment B

Louise Miller & Ron Sims, Co-Chairs
King County Charter Review Commission
King County Courthouse
516 Third Avenue
Seattle, Washington 98101
c/o charterreview@kingcounty.gov

Dear Ms. Miller and Mr. Sims,

Thank you so much for your invitation to provide input on potential amendments to the King County Charter to help shape the future of King County government and the citizens of this county. We are writing to request that you consider Charter changes that could improve regional governance relating to the wastewater that comes from customers directly served by local governments in King County.

As you know, the Metropolitan Municipality of Seattle (Metro) was officially merged into King County in the mid-1990s, shifting the responsibility to provide regional wastewater transmission and treatment services to the County. Included in the merger was the creation of the Regional Water Quality Committee (RWQC) that was intended to provide meaningful policy input from the local governments that directly serve customers. However, opportunities are too limited for providers to give the kind of substantial input they were able to do provide through Metro.

In addition, during the last 25 years, communities outside Seattle have grown in size and population, and many new cities exist that were not contemplated in the 1990s. Yet these entities (as well as Seattle) that provide retail wastewater services to the people of King County do not have an effective voice or a vote on how regional wastewater services are planned for, delivered, or financed.

The King County Charter addresses the role of local wastewater service providers in Section 270, "Regional Committees." A *real* voice and vote for those providers and their customers could be achieved through a collaborative process requiring that before major capital plans, rates, and connection charges are approved, true consensus must be reached among the County, cities with various portions of the customer base, and special purpose districts. An additional improvement would involve adjusting the composition and/or powers of the Regional Water Quality Committee (RWQC) in Sections 270.20 and 270.30 of the Charter. The RWQC could become more relevant, and help build consensus between the County as the regional transmission and treatment provider, and the direct service utilities operated by cities of various sizes and by special purpose districts.

Charter changes to consider could include either or both of the following:

- Support and encourage a collaborative process that includes RWQC approval of (a) major wastewater CIPs and system plans, (b) rates, and/or (c) connection charges, before County Council action.
- Adjust membership and decision making on the RWQC to allow for an increase of membership or otherwise adjusted to allocate membership to providers (cities and districts) in a way that reflects the number of residential customer equivalents directly served.

Thank you again for your careful consideration of these issues. We would be pleased to provide you with additional information and detailed ideas if you interested in pursuing these concepts.

Sincerely,

**Operating Budget Bill Insert re Regional Wastewater Study -
DRAFT 2/20/19**

(§___) \$100,000 of the general fund–state appropriation for fiscal year 2020 is provided solely for the department of commerce to contract with an entity or entities with expertise in regional governance and/or regional utility organization to evaluate alternative approaches to increasing the participation of cities and special purpose districts in major regional wastewater decisions by a county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW. That evaluation will include consideration of various approaches and options, including without limitation:

(a) An evaluation of county, city, and special purpose district perceptions of the strengths and weaknesses of the existing system of intergovernmental deliberation of major regional wastewater decisions, with that evaluation including a survey of view of elected officials, government staff, and nonprofit organizations with an interest in regional wastewater governance; the evaluation will include the solicitation of

views for improving the system of regional wastewater decision making;

(b) A review of existing wastewater governance structures within North America where treatment is provided wholesale by one government entity and collection and distribution of wastewater is carried out by local governments other than the wholesale treatment provider;

(c) Evaluation of a statutory provision requiring the formation of an operating board that includes representatives of the county and the cities and special purpose districts that provide direct sewer service to consumers, and requiring that major regional wastewater decisions such as capital improvement plans, wastewater transmission and treatment rates, and regional connection charges, be approved by that operating board. The evaluation should include how votes on such an operating board might be allocated to provide a significant voice and vote to the local entities providing direct sewer service to consumers;

(d) Evaluation of a statutory provision requiring that any regional water quality committee existing under a county charter provision include representatives of the county and the cities and special purpose districts that provide direct sewer service to consumers, and requiring that major regional wastewater decisions such as capital improvement plans, wastewater

transmission and treatment rates, and regional connection charges, be approved by that regional water quality committee. The evaluation should include how votes on such a committee might be required to be allocated to provide a significant voice and vote to the local entities providing direct sewer service to consumers;

(e) Evaluation of statutory amendments limiting the period of time in the future during which such a county may continue to borrow money under the provisions of chapter 35.58 RCW, and requiring the conversion of future borrowings to be accomplished under an alternate statute, including without limitation chapter 36.94 RCW and chapter 36.67 RCW;

(f) Evaluation of a statutory amendments limiting the period of time in the future during which such a county may continue to borrow money for regional wastewater purposes if long-term transmission and treatment contracts have not been entered into by the county with at cities and special purposes districts providing direct sewer service to the consumers representing at least three-quarters of the residential customer equivalents directly served by those local governments;

(g) Evaluation of a mechanism permitting the cities and special purposes districts providing direct sewer service to consumers in such a county to develop transmission and treatment

approaches that are alternative to transmission to and treatment by that county;

(h)

_____;

(i) Other approaches that might increase the involvement and direct participation by the cities and special purposes districts providing direct sewer service to the consumers in such a county, in key regional wastewater decisions such as capital improvement plans, wastewater transmission and treatment rates, and regional connection charges.

The department of commerce shall facilitate the timely transmission of information and documents from all appropriate state departments, state agencies, and relevant county and local governments, to the entity hired to carry out its contract. The contract is exempt from the competitive procurement requirements in chapter 39.26 RCW. The contract must not be executed unless and until the county, and/or cities, and/or special purpose districts in a county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW, have contracted with the department to provide amounts equaling at least \$100,000 to match the amounts provided by the state in this section. If the

contract with the entity hired to carry out its contract thereafter is executed, a status report must be provided to the governor and appropriate committees of the legislature by December 1, 2019, and a final report provided to the appropriate committees of the legislature by June 30, 2020.

March xx, 2019

Attachment D

Dow Constantine
King County Executive
401 5th Ave, Suite 800
Seattle, WA 98075

RE: Governance Structure for Wastewater Decision-Making

Dear Executive Constantine:

This letter is a continuation of the correspondence initiated with you on December 12 in which we shared that the Cities of Bellevue, Issaquah, Kirkland, Redmond and Tukwila as well as the Sammamish Plateau Water and Skyway Water and Sewer District had started to meet to better understand the status of wastewater contract negotiations with the King County Wastewater Treatment Division (WTD). Since the date of that letter, this group of elected officials has continued to meet to discuss wastewater issues.

After numerous discussions this group has decided that the single most important element to be discussed is the current governance structure for wastewater decision-making. To that end, we are seeking a satisfactory resolution to regional wastewater governance before addressing the remaining contract issues.

Wastewater service providers in King County do not have a meaningful voice or a vote in how decisions are made on regional wastewater plans, capital budgets, rates and connection charges. We are seeking both a voice and a vote because it is essential for us to have real input on wastewater issues that have a direct impact on our ability to provide essential public services to our customers and ratepayers. King County does not serve these customers -- we do. The local governments directly serving wastewater customers in King County deserve a voice and a vote in future wastewater decisions so that they can authorize what they are being asked to pay for, determine where funds are spent, and approve future obligations that are being assigned to their customers – the ratepayers of King County. All of these decisions are controlled by the King County Executive

and the King County Council. Currently, input from cities and districts is merely advisory.

As part of our discussion, we have reviewed the suggestions for an operating board as part of the proposed wastewater contract. We believe it falls significantly short of meeting our desired objective. An operating board, similar to that used by Seattle Public Utilities but comprised of elected officials, might be an important step forward. But as it is currently proposed by King County, the board would provide no significant decision-making role for cities and districts that are the direct wastewater providers in the regional system. Engaging the Regional Negotiating Team and discussing more decision-making influence on plans, capital budgets, rates and connection charges would be an initial start.

At the same time, we have been discussing other potential avenues that could help us accomplish what we believe are necessary changes to the current wastewater governance structure. These avenues include: recommendations to the King County Charter Review Commission which establishes the powers and responsibilities of the Regional Water Quality Committee (RWQC) and seeking legislative authorization of an interim study bill that could explore other wastewater governance structures.

We look forward to working with you, staff and the King County Council regarding this important topic and to ensure a strong partnership between the County and contract agencies for the future of the regional wastewater system and our customers. We would be pleased to provide you with additional information and detailed ideas.

Sincerely,