



King County

**Metropolitan King County Council
Committee of the Whole**

REVISED STAFF REPORT

Agenda Item:		Name:	Leah Krekel-Zoppi Wendy Soohoo Mary Bourguignon
Proposed No.:	2018-0086	Date:	

COMMITTEE ACTION

Proposed Substitute Ordinance 2018-0086.2, which would make a number of changes to oversight of 4Culture, a cultural development authority formed by King County in 2003 to steward public art, the arts, heritage, and historic preservation funding and programs, passed out of committee on March 7, 2018, with a “Do Pass” recommendation. The Ordinance was amended in committee with Striking Amendment S1.2 and Amendments 1 and 2 to the striking amendment. These amendments would make the following changes:

The striking amendment would stipulate that the 4Culture budget be transmitted to the Executive 125 days before the end of each fiscal year and then to the Council, rather than directly to the Council 95 days before the end of each fiscal year. It would require the 4Culture budget review and acceptance process to begin in 2020, rather than on the effective date of the proposed ordinance. It would allow transfers to continue in the next fiscal year if the Council did not act on the motion by at least 30 days before the end of the year; transfers would only discontinue if the Council rejected the 4Culture budget by motion at least 30 days before the end of the year.

The striking amendment would provide for a process for notification and input from the 4Culture Governance/Nominating Committee on board vacancies, and also require that the current 4Culture process for nominating vacancies to the Board occur only by request of the Executive or Councilmember making the appointment.

Director. The striking amendment would eliminate the ability of the County to remove the 4Culture Executive Director.

Amendment 1 to the Striking Amendment would establish a task force to conduct a community stakeholder process to be staffed by an independent consultant funded by King County and 4Culture. The task force report would be transmitted

to the county by February 1, 2019. If the Council passes a motion acknowledging receipt of the report by April 1, 2019, then the 4Culture budget transmittal/ review process would begin in 2019. If the Council does not pass the motion by April 1, 2019, the 4Culture budget transmittal/ review process would begin in 2020.

Amendment 2 to the Striking Amendment would add policy language to the King County Code stating that, "King County recognizes that meeting its goals for regional distribution of cultural activities requires regional planning, outreach to cities and communities throughout the county, and a regional investment strategy."

SUBJECT

Proposed Ordinance 2018-0086 would make changes to County oversight of the King County Cultural Development Authority, known as 4Culture, by amending King County Code, the 4Culture Charter, and the 4Culture Bylaws.

SUMMARY

Proposed Ordinance 2018-0086 would make the following changes to oversight of 4Culture, a cultural development authority formed by King County in 2003 to steward public art, the arts, heritage, and historic preservation funding and programs:

- **4Culture budget.** Require that the Council accept by motion 4Culture's board-adopted budget, prior to transferring funding to 4Culture in the next fiscal year.
- **4Culture Board appointment process.** Modify the process to include one board appointment each by County Councilmembers by district and six appointments by the County Executive. The requirements for a specific balance of expertise on the board would be eliminated.
- **4Culture Executive Director.** Provide for the County Executive to appoint and the Council to confirm the 4Culture Executive Director recommended by the 4Culture Board. Provide for the County to remove the Executive Director by ordinance.

Striking amendment S1.2 would make a number of changes to PO 2018-0086:

- **4Culture budget.** Stipulate that the 4Culture budget be transmitted to the Executive 125 days before the end of each fiscal year and then to the Council, rather than directly to the Council 95 days before to the end of each fiscal year. Require the 4Culture budget review and acceptance process beginning in 2020, rather than on the effective date of the proposed ordinance. Allow transfers to continue in the next fiscal year if the Council did not act on the motion by November 30; transfers would only discontinue if the Council rejected the 4Culture budget by motion by November 30.
- **4Culture Board appointment process.** Provide for a process for notification and input from the 4Culture Governance/Nominating Committee on board vacancies

and require that the current 4Culture process for nominating vacancies to the Board occur only by request of the Executive or Councilmember making the appointment.

- **4Culture Executive Director.** Eliminate the ability of the County to remove the 4Culture Executive Director;

BACKGROUND

Formation of 4Culture

Prior to the existence of the 4Culture Public Development Authority, King County arts and cultural services were administered by the King County Office of Cultural Resources (OCR). The core services of the former OCR were to:

- Advise the County Executive and Council on cultural resources policies,
- Administer Cultural Programs funded by Hotel-Motel tax revenues,
- Administer King County's Public Art Program (1% for Art),
- Manage the Public Art Collection on behalf of King County,
- Provide technical assistance to arts and heritage organizations, and
- Receive and manage revenues appropriated by King County to accomplish these core services.

In 2002, the King County Executive proposed and the County Council adopted Ordinance 14482 creating a Cultural Development Authority, later named 4Culture, to assume the functions previously provided by OCR.

Under state law,¹ counties, by ordinance, may establish a Public Development Authority (PDA) defined as a special purpose, quasi-municipal corporation created by a local government to carry out a specific public purpose.

According to a presentation delivered to the County Council by OCR in February 2002, the proposal to form the PDA was in response to changes in cultural funding at the time, including a reduction in lodging tax revenue available for operations (see discussion below) and a reduction in the county general fund which resulted in the elimination of general fund support for cultural grants in 2002.

At the time the Council was studying the creation of a PDA to take on cultural services, OCR noted that, in addition to the core services provided by OCR, a PDA could:

- Provide consulting services;
- Collect revenue from additional sources such as consulting contracts, rental income and project-specific grants;
- Fundraise;
- Advocate for cultural resources; and
- Form cultural tourism partnerships with the private sector.

¹ RCW 35.21.730

The OCR analysis also found that a PDA was expected to provide greater flexibility in administrative costs such as employee benefits.

According to 4Culture, the agency has expanded to provide these additional services² and realize intended operational efficiencies.

In forming the 4Culture PDA through passage of Ordinance 14482, King County wrote and adopted 4Culture’s charter and bylaws, and selected the acting Executive Director and members of a nominating committee to select the initial 4Culture Board. The nominating committee included two King County Councilmembers.

4Culture Revenue Sources

The primary funding sources for 4Culture’s ongoing operations³ are currently:

- **A special account** – (formerly called the endowment fund) which was created by setting aside a portion of lodging tax proceeds dedicated to culture between 2001 and 2012. See a more detailed discussion below.
- **1 percent for art** – funding from the capital budgets of county construction projects to fund public art.
- **Investment earnings**
- **County general fund** – for maintaining King County’s art collection.

According to the 2018 4Culture budget, 4Culture’s expected revenues for ongoing operations are:

Table 1. 4Culture 2018 Revenue Sources

Revenue source	2018 projected amount
Special account	\$9,807,000
1% for Art	\$874,000
Net investment earnings	\$735,000
King County art collection stewardship (general fund)	\$260,000
Other	\$230,000

Historically, a portion of the lodging tax collected in King County was dedicated to arts and culture to be used for art museums, cultural museums, heritage museums, the arts, and the performing arts. In 1995, the Washington State Legislature passed Second Engrossed Substitute Senate Bill 6049,⁴ which reduced support for arts and culture in two ways: first, by reducing the total amount (above the \$5.3 million threshold set aside for repaying the debt on the Kingdom) dedicated to arts and culture from 75 to 70 percent; and second, by requiring that 40 percent of the arts and culture revenues received after

² According to 4Culture staff, the agency intentionally limits fundraising activities to avoid competing with the arts and culture organizations it helps support.

³ In 2018, 4Culture will also receive pass-through funding for the Building for Culture capital program, which is not an ongoing expense.

⁴ SESSB 6049 made changes to RCW 67.28.180

January 2001 be set aside into an endowment, which was originally expected to be sufficient to permanently support arts and culture functions beginning in 2013.⁵

However, during the years that these funds were collected, it became clear that the endowment would not be sufficient to provide permanent support to arts and culture. In 2011, the Washington State Legislature passed legislation⁶ that:

- Changed the endowment to a “special account” to be used to sustain arts and culture from January 1, 2013, through December 31, 2020, during which time no lodging tax revenue would be available for arts and culture purposes;⁷
- Provided that any lodging tax revenues available after the Kingdome debt was retired and before December 31, 2015, would be devoted to arts and culture;⁸
- Established a permanent funding stream for arts and culture – of 37.5 percent of the total lodging tax revenues – to begin on January 1, 2021.⁹

Table 2 on the next page shows the use of lodging taxes for arts and culture over time.

⁵ In 2011, in response to concerns that the endowment would not be sufficient to provide permanent, ongoing revenue, the State Legislature approved ESSB 5834, which permitted spend-down of the accumulated endowment between 2013 and 2020, and authorized a new, ongoing lodging tax set-aside for arts and culture beginning in 2021.

⁶ ESSB 5834, Chapter 38, Laws of 2011

⁷ ESSB 5834 Section 1(3)(e)

⁸ ESSB 5834 Section 1(3)(b), these funds were used for the Building For Culture Program, Ordinances 18179, 18180, 18181

⁹ ESSB 5834 Section 1(3)(d)(i)

Table 2: Uses of Lodging Taxes for Culture¹⁰

Time Period	Amount for Arts and Culture¹¹		Changes in Use
Jan 1, 1992 through Dec 31, 2000	75% of Amount Collected Above \$5.3 Million	Growing from approximately \$2 million to \$6.5 million annually	Of this amount, at least 70% for capital: purchase, design, construction, and remodeling of performing arts, visual arts, heritage, and cultural facilities, and for the purchase of fixed assets that will benefit art, heritage, and cultural organizations
Jan 1, 2001 through Dec 31, 2012	70% of Amount Collected Above \$5.3 Million	Growing from approximately \$3.5 million to \$6.7 million annually (for current expenses) ¹²	Of this amount, at least 40% of revenues shall be deposited in an account to be used as an endowment to support arts and culture over the long term
Jan 1, 2013 Through Dec 31, 2020	None	Use funds from the special account to replace lodging tax revenue	Changed the endowment to a “special account” to be used to sustain arts and culture
Jan 1, 2021 And beyond	37.5% of the total	Projected to grow from \$9 million ¹³ to \$17 million between 2021 and 2026	For art museums, cultural museums, heritage museums, the arts, the performing arts. No capital or endowment restrictions

Summary of Proposed Ordinance 2018-0086

The proposed ordinance would make the following changes to the King County code sections related to 4Culture, and the 4Culture charter and bylaws.

Section 1 of the proposed ordinance would strengthen the expertise requirements for members serving on the public art advisory committee.

Section 2 would strengthen the expertise requirements for members serving on the arts advisory committee.

Section 3 would strengthen the expertise requirements for members serving on the heritage advisory committee.

¹⁰ SESSB 6049 Section 10(3)

¹¹ Washington State Department of Revenue and August, 2017 Office of Economic Forecast Analysis (OEFA) forecast

¹² An additional 40% annually was set aside in the endowment fund

¹³ According to 4Culture, in the 2021, 4Culture will receive 10 months of lodging tax revenue because of the time it takes for the Washington State Department of Revenue to collect and distribute the revenue.

Section 4 would strengthen the expertise requirements for members serving on the historic preservation advisory committee.

Section 5 would make the definition of “bylaws” consistent with changes in section 12, add the doing-business-as (dba) name of “4Culture” to the definition of “cultural development authority,” and add a definition for “Executive Director.”

Section 6 would make King County code reference the updated version of the 4Culture charter that is proposed as part of this ordinance.

Section 7 would decodify a code section that is now obsolete.

Section 8 would make King County code consistent with proposed changes in the 4Culture charter to how 4Culture Board vacancies and expired terms are filled.

Section 9 would add a new code section providing that the 4Culture Executive Director would be recruited and recommended for selection by the 4Culture Board through the process established in 4Culture’s bylaws, and be appointed by the King County Executive and confirmed by the King County Council.

Section 10 would repeal a code section that is now obsolete.

Section 11 would provide for the County to remove by ordinance 4Culture’s Executive Director.

Section 12 would make King County code reference the updated version of the 4Culture bylaws that is proposed as part of this ordinance. It would also provide for the County to amend the bylaws by ordinance to conform the bylaws to amendments made to the 4Culture charter.

Section 13 would change the requirements of the annual report to remove requirements that would be redundant with the proposed requirements for transmittal of 4Culture’s annual budget.

Section 14 would remove code language that is now obsolete. It would also add a requirement that 4Culture transmit its budget for the following fiscal year to the Council at least 95 days before the end of each fiscal year. The budget would be required to identify budgeted operating expenditures and full-time equivalent positions for the following fiscal year and budgeted capital expenditures for the next six fiscal years, and include specified supporting data. The county’s transfer of moneys to 4Culture would only occur if the Council accepts the 4Culture budget by motion before the end of the fiscal year. If the Council does not accept the 4Culture budget before the end of the year, the County would not transfer hotel-motel tax revenues or any other state and federal funds designated for county cultural purposes, or current expense amounts and all other funds and fees appropriated to the arts and cultural development fund, or public art revenues to 4Culture until after the Council accepts a 4Culture budget.

Section 15 and 16 would remove code language that is now obsolete.

Section 17 and 18 would reflect the changes proposed in section 14 in other sections of King County code.

The proposed changes to the 4Culture Charter (Attachment A to the proposed ordinance) would:

- Remove the requirement for the 4Culture Board that at least one director have expertise in the arts, at least one director have expertise in heritage, at least one director have expertise in historic preservation, and at least one director be from the business community. General requirements that board directors have expertise in one or more of those areas of expertise would be retained (Section 5.2.B).
- Provide that upon the effective date of the proposed ordinance board vacancies and expired terms would be appointed one each by each Councilmember and six by the County Executive. All appointments would continue to be confirmed by the full Council (Section 5.2.D).
- Provide for the Executive Director to be appointed by the Executive after being recruited and recommended for selection by the Board through the process established in 4Culture's bylaws, and confirmed by the County Council (Section 5.7).
- Provide for the County to remove the Executive Director by ordinance (Section 5.7).
- Make the Governance/Nominating Committee's process for recommending appointments for Board appointments and reappointments discretionary rather than mandatory, and provide for County Councilmembers and the Executive to appoint directors from among those forwarded by the 4Culture Board or other qualified candidates (Section 7.3.D).
- Reflect the proposed change to county code to require transmittal of the 4Culture budget to the Council (Section 8.5.A).
- Reflect the proposed change to county code to modify 4Culture's annual reporting requirements (Section 8.5.B).
- Reflect the proposed change to county code to provide for the county to change 4Culture's bylaws by ordinance to conform the bylaws to amendments to the charter (Section 9.3.A).
- Make technical changes including changes to make the language gender neutral, as required by King County code¹⁴ (throughout).

The proposed changes to the 4Culture bylaws (Attachment B to the proposed ordinance) would:

¹⁴ K.C.C. 1.03.120

- Reflect the proposed changes to 4Culture’s charter to make the nominating process for expired terms and vacancies on the board discretionary rather than mandatory (Sections 1.2 & 1.3).
- Reflect the proposed changes to 4Culture’s charter to have the County Executive appoint and the County Council confirm the 4Culture Board’s recommendation for Executive Director (Section 3.1).
- Reflect the proposed changes to 4Culture’s charter to provide for the County to remove the Executive Director (Section 3.1).
- Reflect the proposed changes to 4Culture’s charter to provide for the County to amend the bylaws to conform with amendments to the charter (Section 6.5).
- Make the language gender neutral, as required by King County code (throughout).

ANALYSIS

Summary of Impacts of Proposed Ordinance

Table 3 shows the impacts that adoption of Proposed Ordinance 2018-0086 is expected to have compared to current conditions.

Table 3. Impacts of Proposed Ordinance

	Current	Proposed (PO 2018-0086)
4Culture budget	<p>The 4Culture charter requires the 4Culture Board to adopt 4Culture’s annual budget and capital budget.</p> <p>4Culture is required to transmit to the county an annual report that includes specific financial information and meet with the Council twice per year and Executive and department directors once per year.</p>	<p>Require that the Council accept 4Culture’s board-adopted budget and capital budget prior to the County transferring funds to 4Culture for the following year. The 4Culture Board would continue to have responsibility for most of the fiscal management of the agency such as approving contracts, large expenditures, grant awards, and adopting a budget prior to Council review.</p>
4Culture Board nominations and makeup	<p>The 4Culture Board (through its nominating committee) recruits nominations for new board members, and the board votes on which nominees to recommend to the Executive to appoint for Council confirmation. Board members are required to fulfill specific categories of expertise (for example: at least 1 director with expertise in the arts, at least</p>	<p>The 4Culture Board (through its nominating committee) could recruit nominations for new board members and forward those recommendations to the Executive and Council. New appointments and reappointments due to vacancies and expired terms would be appointed six by the Executive and one each by each Councilmember. The Executive and Councilmembers could make appointments from among</p>

	Current	Proposed (PO 2018-0086)
	1 director with expertise in heritage, etc.) and are limited to no more than 6 from any one municipality.	those forwarded by the 4Culture Board or other qualified candidates. The Council would continue to confirm all appointments and reappointments. The specific expertise requirements on the board would be eliminated, and the expertise requirements for advisory committee members would be strengthened. Board members would still be required to have a demonstrated commitment to and knowledge of cultural resources and be active and experienced in community and civic issues.
4Culture Executive Director	The 4Culture Executive Director is selected by the 4Culture Board and serves at the pleasure of the board.	Require Executive appointment and Council confirmation of the 4Culture Board's selection for Executive Director and allow the County to remove the Executive Director by ordinance. The 4Culture Board would continue to recruit, hire, and annually review the performance of the Executive Director, and would retain the authority to remove the Executive Director.
4Culture Bylaws	While the Council initially adopted the 4Culture bylaws and has the authority to amend the 4Culture charter, the authority to amend the 4Culture bylaws rests with the 4Culture Board. The bylaws are required to be consistent with the charter.	Allow the Council to amend the 4Culture bylaws consistent with amendments to the 4Culture charter, while retaining the 4Culture Board's authority to amend the bylaws.

Comparison of PDA and Other Public Agency Oversight in the Region

The proposed ordinance would increase King County's oversight over 4Culture. Attachment 6 to this staff report shows a comparison of all PDAs and a few additional public agencies in the region, their funding sources, and the types of oversight they receive.

The comparison shows that most PDAs are funded through their own operations. Some get a portion of their funding from public sources such as dedicated taxes and fees. Only one PDA, the South Correctional Entity Facility PDA, gets all of its funding from public sources. Beginning in 2021, 4Culture would also get nearly all of its funding from public sources. Of the non-PDA public agencies in the comparison, Harborview Medical Center, which is owned by King County and operated by UW Medicine, receives a portion of its operating revenue and the majority of its capital revenue from King County; and the King

County Library System is almost entirely publicly funded but has taxing authority that is independent of King County government.

In terms of governance oversight, all the public agencies in the comparison have executive directors that are selected and report to the governing board of the agency, with the Tacoma Community Redevelopment Authority requiring the concurrence of the City Council for appointing and removing the executive director. Under the proposed ordinance, 4Culture would become the only other agency in the comparison to have an executive director that must be appointed and could be fired by the government that established the PDA. All the organizations in the comparison have governing boards with members appointed by elected representatives of the governments that formed them, and confirmed by the legislative body of the governments that formed them. Some also have board members appointed by their own governing board or with the input of other groups.

For oversight of public agencies' budgets, for all the organizations, the government that created the organizations retain some degree of financial oversight, particularly for those agencies that receive public funding. However, Harborview Medical Center, which is owned by King County, is the only public agency in the comparison that is required to have its capital budget approved by the King County Council. Under the proposed ordinance, 4Culture would be the only PDA to have its operating and capital budget approved by the government agency that created it.

In comparing 4Culture's oversight under this proposal to the oversight King County had over cultural programming in the county before 4Culture was created as a PDA, 4Culture would have greater autonomy under the proposed ordinance compared to the County's oversight of the former Office of Cultural Resources. The County approved OCR's annual budget by ordinance, played a role in approving cultural projects and grant awards, and confirmed the appointments of 27 commissioners to three cultural advisory bodies: the Arts, Public Art and Landmarks, and Heritage Commissions. By contrast, the proposed ordinance would have the County Council accept 4Culture's budget by motion, and would not have the County play a role in approving cultural projects and grant awards or appointing cultural advisory body members.

Council staff also researched oversight of other jurisdictions' arts programs, as shown in Attachment 7. These jurisdictions include the cities of Seattle and Bellevue and Pierce and Snohomish counties. Except for Seattle, the other jurisdictions have internal arts programs housed within larger executive departments with staff support provided by the departments. Seattle has an executive Office of Arts and Culture with a director appointed by the Mayor subject to confirmation by the Council. All of the jurisdictions have appointed arts commissions with members appointed by the executive and confirmed by the council. Pierce and Snohomish counties' arts commissions include members appointed to represent each council district.

Budget Impacts

Proposed Ordinance 2018-0086 would require 4Culture to transmit its board-approved budget for the following fiscal year to the County Council by September 27th each year. Under the proposed legislation, 4Culture would be required to transmit information similar

to that provided by the Executive for the county's biennial budget. Specifically, 4Culture would be required to transmit information on:

- Budgeted operating expenditures and full-time equivalent positions for the following fiscal year;
- Capital expenditures for the following six fiscal years; and
- Supporting data, including but not limited to a statement of assets and liabilities, a description of significant changes from the previous fiscal year budget and a financial plan showing actual expenditures and revenues for the previous fiscal year and estimated expenditures and revenues for the current year and the next five years.

If the Council were to not accept the budget by motion (either by rejecting the motion or not taking action) before December 31st, the County would discontinue transferring county funds to 4Culture in the new fiscal year; these funds include hotel-motel tax revenues, One Percent for Art funding, and General Fund support for stewardship of the county's art collection. The transfers would not resume until after the Council accepted a 4Culture budget by motion.

According to the sponsors of the proposed ordinance, the rationale for this proposal is to provide greater public accountability and oversight of 4Culture's expenditures of public funding.

According to 4Culture, preparing, adopting, and transmitting the budget to the Council under the schedule required by the proposed ordinance would require significant changes to the agency's budgeting process. Historically, 4Culture has presented its budget to its board in December after the King County budget has been adopted and the exact amount of county funding for 4Culture is known. The Board then takes action in January. In order to meet the timeline specified in the proposed ordinance, 4Culture would need to propose an estimated budget to its board mid-year for approval and subsequent transmittal to the Council. 4Culture staff note that this early approval and transmittal of the budget would require estimates and projections of costs and revenues, which may not be accurate and 4Culture may subsequently need to update its budget during the fiscal year. The proposed legislation would not require 4Culture to resubmit such adjustments to its budget to the Council, though in the event that the Council rejected or did not approve 4Culture's budget by motion before the end of the year, 4Culture would potentially need to transmit a revised budget.

Council staff asked 4Culture to provide information on the potential impacts to program implementation if transfers of hotel-motel tax revenues, General Fund support, and One Percent for Art funds were to be discontinued for a period of time. 4Culture indicated that if the Council rejected or did not accept the budget prior to the end of the year and transfers discontinued beginning in the following year, it would have to announce that it was postponing funding for programs until the budget impasse was resolved.

According to 4Culture, in 2019 and 2020, the primary impact would be to the Public Art program. Public Art projects have multi-year schedules and One Percent for Art funds

are transferred to 4Culture at the beginning of each biennial budget period. If the funds were not transferred, the Public Art program would have to be suspended, which could result in layoffs and public art project delays. In addition, stewardship of the County's art collection would need to be suspended if General Funds were not transferred at the beginning of the budget period and could lead to temporary layoffs of employees.

By 2020, 4Culture expects to have spent most of its reserves, so grant programs funded by the lodging tax/special account would also be impacted. Most of 4Culture's application deadlines are early in the calendar year, which would be problematic if the Council did not accept the 4Culture budget by the end of the preceding year – without significant reserves to rely on, grant awards would be delayed, potentially delaying projects or impacting operations for the organizations and individuals receiving those grants. Additionally, 4Culture would potentially only be able to cover one to two months of general operations before layoffs would need to be made.

Council staff also asked the Office of Performance, Strategy and Budget (PSB) for input on the proposed budget review and acceptance process. PSB staff requested that, if the Council adopts such proposed legislation, the 4Culture budget be transmitted via PSB so that it can provide a quality control review before transmittal to Council. In addition, PSB suggested that the 4Culture budget transmittal include information on administrative expenses and estimated expenditures for major program areas, but limit the estimate of capital expenditures to only one year as 4Culture does not manage a significant capital program. PSB also expressed the Executive's interest in specifying that the Council should act on the motion to accept the 4Culture budget at least 30 days prior to the end of the year. Lastly, PSB requested that only the hotel-motel tax collections be withheld pending Council acceptance of 4Culture budget, as withholding One Percent for Art funding or General Fund support for stewardship of the County art collection could cause operational or implementation issues as discussed above.

Note that acceptance of the 4Culture budget would be a separate action from the appropriation of County funds for transfer to 4Culture, which occurs in the County's biennial budget. The biennial budget ordinance, therefore, would remain a vehicle for potential provisos and expenditure restrictions on the appropriation supporting the transfer of County funds.

4Culture Board Impacts

The proposed ordinance would change the 4Culture Board nominating process and board makeup such that new appointments and reappointments due to vacancies and expired terms would be appointed six by the Executive and one each by each Councilmember. The Executive and Councilmember could make appointments from among those forwarded by the 4Culture Board or other qualified candidates. The Council would continue to confirm all appointments and reappointments. Board members would still be required to have a demonstrated commitment to and knowledge of cultural resources and be active and experienced in community and civic issues, but the board overall would no longer be required to include members from specific areas of cultural expertise.

According to the sponsors of the proposed ordinance, the rationale for the proposal is to increase communication between the 4Culture Board and King County Council and to ensure diverse geographic representation on the board.

The proposed changes would not impact current Board members, as the changes would take effect in the case of filling vacant or expired terms. Attachment 8 to this staff report shows the current roster of 4Culture Board members, their position numbers, when their terms expire, and in which Council district they reside. The proposed changes to the 4Culture charter would have County Councilmembers appointing Board members for board positions that currently have Board members residing in the Council district they represent. In the cases in which no current Board member resides in a Council district, that Councilmember would appoint a Board member to a vacant position or one currently held by a Board member from a Council district with more than one representative on the Board, after the Board member serves out the remainder of the terms. The Executive would appoint Board members to the remaining Board positions.

4Culture expressed that while they welcome County Council input into the nomination of 4Culture board members, they are concerned that having Board members nominated by individual Councilmembers could decrease the overall diversity they strive for by looking at nominations to the Board as whole rather than individually. In its nominating process, 4Culture seeks to recruit Board members that complement and round out the overall makeup of the Board in terms of areas of cultural and business expertise as well as gender, racial, and geographic diversity. They state that the only time in their 15-year history that they have not had a Board with members residing in each Council district was when Board members moved after they had been appointed.

King County uses many models for the makeup of boards and commissions. Table 4 shows a comparison of a sample of boards and commissions that have an affiliation with King County.

Table 4. Comparison of Boards

Board	Nominated, appointed and confirmed by	Board makeup requirements
4Culture Board current	<ul style="list-style-type: none"> • 4Culture Board recruits and nominates • Executive appoints 15 members • Confirmed by the Council 	<ul style="list-style-type: none"> • At least one director have expertise in each of the following areas: arts, heritage, historic preservation, business. • Reflect the geographic and cultural diversity of the County. • No more than six Directors from any one municipality shall serve on the Board at the same time.
4Culture Board PO 2018-0086	<ul style="list-style-type: none"> • 4Culture Board recruits and nominates • Executive appoints 6 members • Each council member appoints 1 member 	<ul style="list-style-type: none"> • Have a demonstrated commitment to and knowledge of cultural resources and be active in community issues • Reflect the geographic and cultural diversity of the County.

Board	Nominated, appointed and confirmed by	Board makeup requirements
	<ul style="list-style-type: none"> • Appointments may be from those recruited and nominated by 4Culture or other qualified candidates • Confirmed by the Council 	<ul style="list-style-type: none"> • No more than six Directors from any one municipality shall serve on the Board at the same time.
Children and Youth Advisory Board¹⁵	<ul style="list-style-type: none"> • Appointed by the Executive • Confirmed by the Council 	<ul style="list-style-type: none"> • Not more than 40 members • At least 3 members be youth age 24 or under
Communities of Opportunity-Best Starts for Kids Levy Advisory Board¹⁶	<ul style="list-style-type: none"> • Members recommended by the Board with an open application process and input from county councilmembers • 2 members appointed by the Seattle Foundation • 1 member appointed as a representative of the county executive • 1 member appointed as a representative of the county council • 10-14 members appointed by the board • Confirmed by the Council 	<ul style="list-style-type: none"> • Experience related to improving health and well-being outcomes in communities with the greatest need for improvement, and committed to the communities of opportunity best starts for kids levy implementation plan. • Reflect the diversity in King County and reflect a range of backgrounds
Conservation Futures Citizen Oversight Committee	<ul style="list-style-type: none"> • 4 members nominated by the Council • Additional nominations from the City of Seattle and suburban cities • Appointed by the Executive • Confirmed by the Council 	<ul style="list-style-type: none"> • 1 member residing in each council district and 7 at-large members
Harborview Medical Center Board of Directors	<ul style="list-style-type: none"> • Appointed by the Executive • Confirmed by the Council 	<ul style="list-style-type: none"> • 1 member residing in each council district and 4 at-large members
Immigrant and Refugee Commission¹⁷	<ul style="list-style-type: none"> • Recommended by a committee comprised of council representatives, executive representatives, and commission members • At least 5 members represent and be appointed by an immigrant-led 	<ul style="list-style-type: none"> • Demonstrate active and engaged civic participation in one or more immigrant and refugee communities • Reflect gender diversity represent a range of age groups, including persons representing youth issues • At least 6 members from suburban cities or unincorporated areas

¹⁵ Ordinance 18217

¹⁶ Ordinance 18442

¹⁷ Ordinance 18653

Board	Nominated, appointed and confirmed by	Board makeup requirements
	organization serving immigrant communities <ul style="list-style-type: none"> • Other members appointed by the Executive • Confirmed by the Council 	<ul style="list-style-type: none"> • At least 3 members shall have had personal experiences as a refugee or asylee • At least 1 member should have familiarity with King County government, systems and agencies • 4 nonvoting members who are community leaders that are actively engaged with local government, business or philanthropic organizations
King County Library System Board of Directors	<ul style="list-style-type: none"> • Appointed by the Executive • Confirmed by the Council 	
Parks Levy Citizen Oversight Board¹⁸	<ul style="list-style-type: none"> • Each Councilmember nominates 1 member • Appointed by the Executive • Confirmed by the Council 	<ul style="list-style-type: none"> • If the Executive does not appoint a Councilmember's nominee within 60 days, the Executive must request the Councilmember to nominate someone new

While Table 4 shows that the nomination and appointment processes and makeup requirements for these bodies vary, one common thread is the Executive appointing most members and the Council confirming appointments, even for boards, committees, and commissions that are required to have members residing in each Council district or where the Council plays a role in the nominating process. The proposed ordinance would make 4Culture the only Board in this comparison to have a member directly appointed by each Councilmember.

4Culture Executive Director Impacts

The proposed ordinance would keep in place the provisions that allow for the 4Culture Board to manage the selection of 4Culture's Executive Director, oversee the Executive Director's performance, and remove the Executive Director, but the proposed ordinance would add provisions requiring the 4Culture Board to recommend an Executive Director candidate to the County Executive for appointment and confirmation by the Council. The proposal would also allow the County to remove the Executive Director by ordinance.

According to the sponsors of the proposed ordinance, the rationale for the proposal is to increase responsiveness of the 4Culture Executive Director to the King County Council and Executive, who represent the people of King County.

4Culture has expressed concern about the proposal to have the Executive Director, who they point out is an employee of 4Culture, hired and fired by an entity outside of King County. They have noted that they believe the proposal would create the confusion of the

¹⁸ Ordinance 17568

Executive Director reporting to multiple entities, and would deviate from the governance structure typical of PDAs and non-profit organizations.

To compare this proposal with the management of other County departments and independent agencies, generally, King County department heads and other appointees are appointed by the Executive, confirmed by the Council, and can only be removed by the Executive. As noted in the comparison with other PDAs and public organizations above, it is more typical of independent public agencies to have their Executive Directors hired and fired by the governing board of the organization.

Bylaws Impacts

The proposed ordinance would provide the County with the authority to change 4Culture's Bylaws by ordinance to conform the Bylaws to amendments to the 4Culture Charter. Under this proposal, the County could not amend 4Culture's bylaws for a purpose other than to conform with changes to the 4Culture Charter.

This proposal would ensure 4Culture's Bylaws are consistent with changes made to the 4Culture Charter.

While the ordinance that created 4Culture and the original Charter granted the authority to change 4Culture's Bylaws to the 4Culture Board, the Council did adopt the original Charter and Bylaws, may initiate changes to the 4Culture Charter, and must approve any changes to the 4Culture Charter proposed by the 4Culture Board. Further, King County code requires the Bylaws to be consistent with the Charter.¹⁹

4Culture Feedback

In addition to the concerns related to specific aspects of the proposed outlined above, 4Culture has provided general feedback in response to the proposed ordinance. That feedback can be found in Attachments 9 and 10 to this staff report, which are statements from the agency and the 4Culture Board in response to the proposed ordinance. To summarize 4Culture's feedback, they ask for an open and transparent process for public discussion of the proposed changes prior to any Council action. They point out their current accountability measures, which include:

- A three-step review process for approving grant awards;
- Annual state audits;
- Three Councilmembers and an Executive representative serving as ex-officio board members;
- Annual reports to the King County Council; and
- Three Councilmembers serving on the nominating committee that provides recommendations for 4Culture board appointments, as well as rules that require geographic and racial diversity on the board.

The 4Culture Board also points to the successes of the organization over its 15-year history, which they state includes 23 clean audits; navigating complex financial

¹⁹ K.C.C. 2.49.110

challenges; retaining superb staff; and earning the trust of arts, heritage and preservation communities throughout King County for their “commitment to accessibility, fairness, and equity.”

Legal Review

Council’s legal counsel, in concert with the Prosecuting Attorney’s Office, has reviewed the proposed ordinance and provided their findings to Councilmembers.

AMENDMENT

Striking Amendment S1.2 would make the following changes to the proposed ordinance:

- Eliminate the ability of the County to remove the 4Culture Executive Director;
- Stipulate that the 4Culture budget be transmitted to the Executive 125 days before the end of each fiscal year and then to the Council, rather than directly to the Council 95 days before to the end of each fiscal year;
- Require the 4Culture budget review and acceptance process beginning in 2020, rather than on the effective date of the proposed ordinance;
- Allow transfers to continue in the next fiscal year if the Council did not act on the motion by November 30; transfers would only discontinue if the Council rejected the 4Culture budget by motion by November 30.
- In the 4Culture Charter (Attachment A to the proposed ordinance): Eliminate the ability of the County Council to remove the 4Culture Executive Director, require the 4Culture budget review and acceptance process beginning in 2020 with transmittal to the Executive and then to the Council, and provide for a process for notification and input from the Governance/Nominating Committee on board vacancies, require that the current 4Culture process for nominating vacancies to the Board occur only by request of the Executive or Councilmember making the appointment, and make technical corrections to make the document consistent throughout.
- In the Bylaws (Attachment B to the proposed ordinance): Eliminate the ability of the County Council to remove the 4Culture Executive Director, and make technical corrections to make the document consistent throughout.

All other elements of the proposed ordinance would remain as described in the staff report.

Title Amendment T1 would reflect the changes in Striking Amendment S1.2.