City of Tacoma
Charter Review Committee

March 25, 2024
5:30 p.m.

Tacoma Municipal Building, 747 Market Street, Tacoma, WA 98402

AGENDA

1. **Call To Order**
   Roll Call

2. **Welcome**

3. **Approval of Minutes**

4. **Public Comment**

5. **Miscellaneous Subcommittee Report – Action Item**
   - Disposition of City Owned Property
   - Other Recommendations

6. **Power of the People Subcommittee Report – Action Item**
   - Initiative
   - Referendum
   - Campaign Finance
   - Charter Review
   - Other Recommendations

7. **Police Accountability Subcommittee Report – Action Item**
   - Police Accountability

8. **Other Subcommittee Reports and Discussion**

9. **Staff Update**

10. **Other Business/Homework**

11. **Adjourn**

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Section 9.1

Charter Review Committee

Recommendation Summary

Brief Summary of the Amendment:

This amendment does the following:

- Permits the City to sell or disposes of waterfront property belonging to the City.
- Limits the sale or disposition partners to only public agencies.
- Properties must be used for the guaranteed purposes of perpetual public access, use, and benefit.

Committee Activity:

Insert date of vote and voting record for approval of recommendation

Amendment:

Section 9.1 – Except as otherwise provided in this charter or in state law, the sale, lease or conveyance of real or personal property belonging to the City shall be upon authorization of the Council; provided that machinery or equipment may be leased from day to day on written agreement therefore approved by the City Manager or Director of Utilities, as the case may be, and filed with the Director of Finance; provided further that, the lease of real or personal property for a term of less than a one year period without renewal options shall not require authorization of the Council. Any lease of real or personal property for a period longer than five (5) years shall contain provisions for adjustment of rentals at intervals not to exceed five (5) years. The City ~~shall never~~may authorize the sale or disposition of any waterfront property belonging to the City ~~and~~, subject to the provisions of state law, solely to public agencies for the guaranteed purpose of perpetual public access, use, and benefit, and shall not lease waterfront property for a period longer than seventy-five years at any one time. All conveyances, contracts for sale of land owned by the City, and leases of such land for a term of longer than one year, including any renewal options, shall be executed by the Mayor and attested by the City Clerk.

Rationale for Amendment:

This aligns the Charter with City's long-term goal to reduce it's administrative burden regarding public space management – and requirements of Washington state's Shoreline Management Act – to ensure public access, use and benefit to publicly owned waterfront property through the transfer of waterfront property to other public agencies for management.

Dissenting Position(s):

Insert summary of CRC dissenting opinion

Section 9.1

Disposition of City Property

Outreach

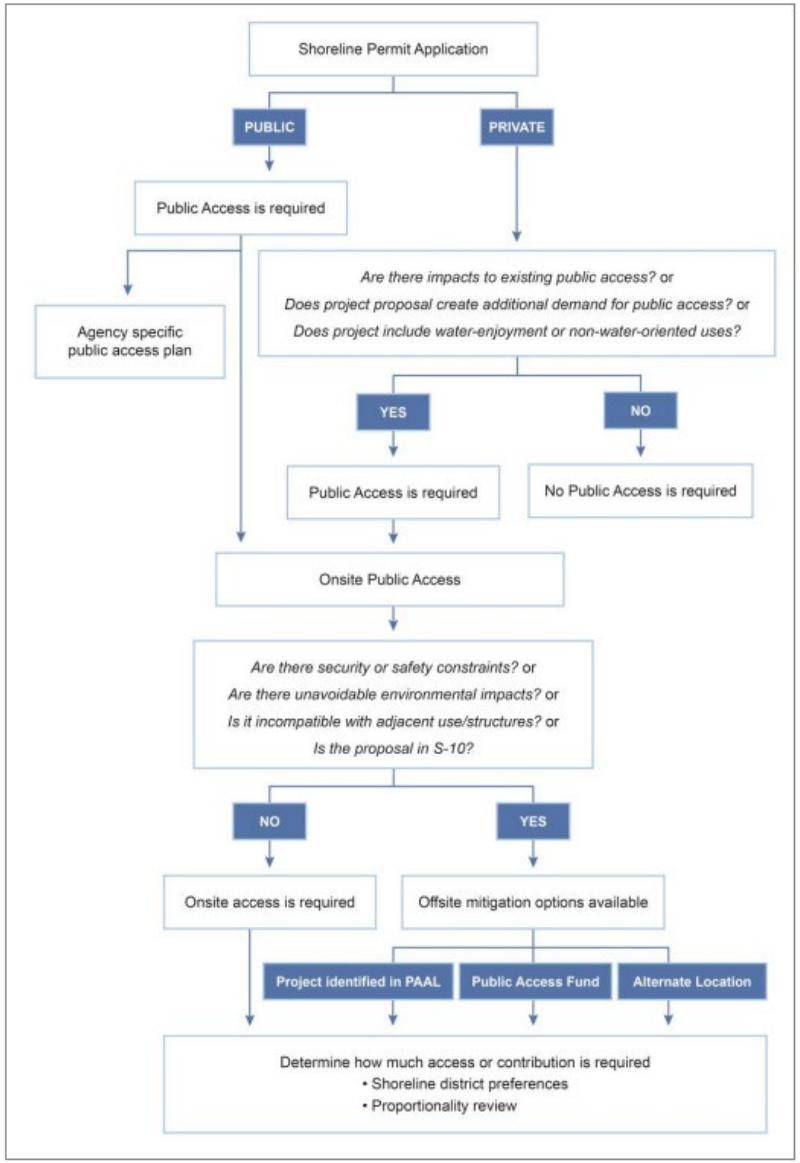
- Metro Parks Tacoma (Hunter George and Joe Brady)
- Puyallup Tribe of Indians (Andrew Strobel)
- Port of Tacoma (Sean Eagan)
- City of Tacoma (Steve Victor)

Question 1:

How is, "public use, access, and benefit" defined/interpreted by the City?

Washington State's Shoreline Management Act requires the incorporation of public access to all publicly owned waterfront property. This is interpreted and applied to ensure that if there is an accessible shoreline the public has to have access and shoreline permits require this public access. If the shoreline site is not accessible, typically dictated by topographic conditions that present a danger, the public has to have view access.

Figure 6-2. Public Access Requirements Flow Chart



PDF **RCW 90.58.020**

Legislative findings—State policy enunciated—Use preference.

The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

(1) Recognize and protect the statewide interest over local interest;

(2) Preserve the natural character of the shoreline;

(3) Result in long term over short term benefit;

(4) Protect the resources and ecology of the shoreline;

(5) Increase public access to publicly owned areas of the shorelines;

(6) Increase recreational opportunities for the public in the shoreline;

(7) Provide for any other element as defined in RCW **90.58.100** deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter **90.58** RCW.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

[**1995 c 347 § 301; 1992 c 105 § 1; 1982 1st ex.s. c 13 § 1; 1971 ex.s. c 286 § 2.**]

PDF **RCW 90.58.100**

Programs as constituting use regulations—Duties when preparing programs and amendments thereto—Program contents.

(1) The master programs provided for in this chapter, when adopted or approved by the department shall constitute use regulations for the various shorelines of the state. In preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible:

(a) Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;

(b) Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;

(c) Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;

(d) Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;

(e) Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;

(f) Employ, when feasible, all appropriate, modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered.

(2) The master programs shall include, when appropriate, the following:

(a) An economic development element for the location and design of industries, projects of statewide significance, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state;

(b) A public access element making provision for public access to publicly owned areas;

(c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas;

(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element;

(e) A use element which considers the proposed general distribution and general location and extent of the use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land;

(f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection;

(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values;

(h) An element that gives consideration to the statewide interest in the prevention and minimization of flood damages; and

(i) Any other element deemed appropriate or necessary to effectuate the policy of this chapter.

(3) The master programs shall include such map or maps, descriptive text, diagrams and charts, or other descriptive material as are necessary to provide for ease of understanding.

(4) Master programs will reflect that state-owned shorelines of the state are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational activities for the public and will give appropriate special consideration to same.

(5) Each master program shall contain provisions to allow for the varying of the application of use regulations of the program, including provisions for permits for conditional uses and variances, to insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in RCW **90.58.020**. Any such varying shall be allowed only if extraordinary circumstances are shown and the public interest suffers no substantial detrimental effect. The concept of this subsection shall be incorporated in the rules adopted by the department relating to the establishment of a permit system as provided in RCW **90.58.140**(3).

(6) Each master program shall contain standards governing the protection of single-family residences and appurtenant structures against damage or loss due to shoreline erosion. The standards shall govern the issuance of substantial development permits for shoreline protection, including structural methods such as construction of bulkheads, and nonstructural methods of protection. The standards shall provide for methods which achieve effective and timely protection against loss or damage to single-family residences and appurtenant structures due to shoreline erosion. The standards shall provide a preference for permit issuance for measures to protect single-family residences occupied prior to January 1, 1992, where the proposed measure is designed to minimize harm to the shoreline natural environment.

PDF **RCW 90.58.357**

Maintenance activities performed by certain entities that do not require a substantial development permit, conditional use permit, variance, letter of exemption, or other review conducted by a local government—Notification.

(1) The following maintenance activities undertaken by the department of fish and wildlife, a federally recognized Indian tribe, a public utility district, or a municipal utility, necessary to maintain the operation of fish hatcheries, including water intakes and discharges, fish ladders, water and power conveyances, weirs, and racks and traps used for fish collection, do not require a substantial development permit, conditional use permit, variance, letter of exemption, or other review conducted by a local government:

(a) Maintenance, repair, or replacement of equipment and components that support the larger hatchery facility and occur within the existing footprint of fish hatchery facilities;

(b) Construction or installation of safety structures and equipment;

(c) Maintenance occurring within existing water intake and outflow sites during times when fish presence is minimized; or

(d) Construction undertaken in response to unforeseen, extraordinary circumstances that is necessary to prevent a decline, lapse, or cessation of operation of a fish hatchery facility.

(2) The proponent of a project undertaken pursuant to this section must ensure compliance with the substantive requirements of this chapter for projects under this section. Projects undertaken under this section must not adversely affect public access or shoreline ecological functions.

(3) Prior to beginning a maintenance or repair project, the proponent of the project must provide written notification of projects authorized under this section to the local government with jurisdiction and to the department.

Question 2:

Can a real estate contract for a transferred waterfront property to the Puyallup Tribe be enforced?

1.) If the property is not transferred into Trust Lands (this is a negotiation between Tribal Government an and the Federal Government) the contract is enforceable.

2.) If the property is put into Trust Lands, then it is a sovereign property of the Tribe.

Mitigating Phase:
"…public agencies for the guaranteed purposes of perpetual public access, use and benefit…"

Question 3:

Is there more information about the City's surplus land policy?

Pre-disposition process includes transfer priorities:

A.) City Departments
B.) Governing land use authority
C.) Federally-recognized Tribes

Public Notice:

"The City should establish appropriate processes for notifying the City Council and the public prior to disposing of property. This notification will vary based upon the classification of the property. This process shall be transparent to the Council and public."

– Disposition Policy for General Government Real Property

Current Section 9.1

Disposition of City Property

Section 9.1 – Except as otherwise provided in this charter or in state law, the sale, lease or conveyance of real or personal property belonging to the City shall be upon authorization of the Council; provided that machinery or equipment may be leased from day to day on written agreement therefore approved by the City Manager or Director of Utilities, as the case may be, and filed with the Director of Finance; provided further that, the lease of real or personal property for a term of less than a one year period without renewal options shall not require authorization of the Council. Any lease of real or personal property for a period longer than five (5) years shall contain provisions for adjustment of rentals at intervals not to exceed five (5) years. The City shall never authorize the sale or disposition of any waterfront property belonging to the City and, subject to the provisions of state law, shall not lease waterfront property for a period longer than seventy-five years at any one time. All conveyances, contracts for sale of land owned by the City, and leases of such land for a term of longer than one year, including any renewal options, shall be executed by the Mayor and attested by the City Clerk.

(Amendments approved by vote of the people September 18, 1973 and November 2, 2004)

Recommendation

Section 9.1 Disposition of City Property

Section 9.1 – Except as otherwise provided in this charter or in state law, the sale, lease or conveyance of real or personal property belonging to the City shall be upon authorization of the Council; provided that machinery or equipment may be leased from day to day on written agreement therefore approved by the City Manager or Director of Utilities, as the case may be, and filed with the Director of Finance; provided further that, the lease of real or personal property for a term of less than a one year period without renewal options shall not require authorization of the Council. Any lease of real or personal property for a period longer than five (5) years shall contain provisions for adjustment of rentals at intervals not to exceed five (5) years. The City ~~shall never~~may authorize the sale or disposition of any waterfront property belonging to the City ~~and~~, subject to the provisions of state law, solely to public agencies for the guaranteed purposes of perpetual public access, use, and benefit, and shall not leasewaterfront property for a period longer than seventy-five years at any one time. All conveyances, contracts for sale of land owned by the City, and leases of such land for a term of longer than one year, including any renewal options, shall be executed by the Mayor and attested by the City Clerk.

Public Agency RCW 39.34.020

"Public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state.

Effect

This amendment would allow the City to transfer City owned waterfront property to only to public agencies. Usage of the transferred waterfront property would be for guaranteed perpetual public access, use and benefit.

City of Tacoma's Comprehensive Plan

"Encourage close cooperation and coordination between both public and private shoreline interests including private property owners, the City, the Metropolitan Park District and the Port of Tacoma in the overall management and/or development of shorelines land use."

-Section 6.1.1 Policies of the Shoreline Management Element

Interagency Coordinating Committee Protocol

Value Proposition

The City of Tacoma and Metro Parks staff agree it is to their mutual benefit, as well as the benefit of the citizens of the City of Tacoma (City) and the Metropolitan Park District of Tacoma (MPT), to refine and clarify the roles of the City and the District in a way that fits within the framework of the voter approved initiative creating the Park District in 1907 and the City's planning responsibilities under GMA, and to achieve efficiencies of scale through sharing of services where appropriate. This course correction will lead to unification of all park facilities, operation, and maintenance with Metro Parks as the primary provider, and better align each agency's core services to reduce duplication. It would also require joint and coordinated planning between Metro Parks and the City. The City and Metro Parks recognize the need to strengthen the provisioning of parks and recreation assets and services through more coordinated long-range planning, as well as assuring that planning goals are relevant, aligned and compliant with the City's GMA obligations. This will allow the parties to gain efficiencies by reducing overhead and ensure a more comprehensive and equitable park system for all residents.

The City and Metro Parks participated in a collaborative and facilitated process to develop the fourteen protocols outlined in this document. These protocols include specific actions the City and MPT will jointly pursue to reduce costs, improve efficiencies and continue to work toward the goal of Metro Parks serving as the City's exclusive provider of parks and recreation services, facilities and amenities supported by stable and sustainable resources. The protocols will lead to a new Master Agreement between Metro Parks and the City of Tacoma.

Purpose

Align the Charter with City's long-term goal – and requirements of state law – to ensure public access, use and benefit to publicly owned waterfront property through the transfer of waterfront property to other public agencies for management.

Police Accountability

& Civilian Oversight

The Problem Statement:

To enhance public trust and ensure impartiality in police misconduct investigations, it's crucial to shift away from the practice of police investigating themselves. Establishing or reinforcing independent civilian oversight bodies is necessary for transparent and unbiased investigations, fostering community confidence and ensuring accountability within law enforcement.

POLICE & OFFICIAL SUPPORT

“The National Black Police Association, an advocacy organization composed of 150 chapters representing more than 30,000 African-Americans in law enforcement ‘strongly support[s] the implementation and use of civilian review of police misconduct”

Police and sheriff’s department administrators have reported that citizen oversight:

- Improves their relationship and image with the community.
- Has strengthened the quality of the department’s internal investigations of alleged officer misconduct and reassured the public that the process is thorough and fair.
- Has made valuable policy and procedure recommendations.

Local elected and appointed officials say an oversight procedure:

- Enables them to demonstrate their concern to eliminate police misconduct.
- Reduces in some cases the number of civil lawsuits (or successful suits) against their cities or counties.

-U.S. Department of Justice, Citizen Review of Police: Approaches and Implementation, xi, 118

THE BENEFITS

Complainants are given a place to voice concerns outside of the law enforcement agency.

The community at large can be reassured that discipline is being imposed when appropriate, while also increasing the transparency of the disciplinary process.

By establishing an oversight system, public officials are provided the opportunity to demonstrate their desire for increased police accountability and the need to eliminate misconduct.

Oversight can help hold the police or sheriff's department accountable for officer's actions.

When the oversight agency confirms a complainant's allegation(s), complainants may feel validated.

Oversight agencies can help reduce public concern about high profile incidents.

Oversight agencies can assist a jurisdiction in liability management and reduce the likelihood of costly litigation by identifying problems and proposing corrective measures before a lawsuit is filed.

Oversight agencies can help improve the quality of the department's internal investigations of alleged misconduct.

When the oversight agency exonerates the officer, the officer may feel vindicated.

Oversight agencies can help increase the public's understanding of law enforcement policies and procedures.

Oversight agencies can improve department policies and procedures. Policy recommendations can prevent issues by identifying areas of concern and subsequently offering options to improve policing.

Mediation has multiple benefits to both citizens and police officers. If the oversight agency provides mediated solutions, it can help complainants feel satisfied through being able to express their concerns to the specific police officer in a neutral environment. Mediation can also help police officers better understand how their words, behaviors and attitudes can unknowingly affect public perceptions.

- National Association for Civilian Oversight of Law Enforcement

SECTION 3.X- POLICE ACCOUNTABILITY

The Council shall establish by ordinance an office of police accountability, which shall report to Council. The office shall have a director who is appointed by a majority of the council to serve a term of four years and until a successor is appointed. The director may be removed from office at any time for cause by a majority of the county council. The office shall be provided with sufficient staff and budget to perform its powers and duties.

SECTION 3.X- POLICE ACCOUNTABILITY

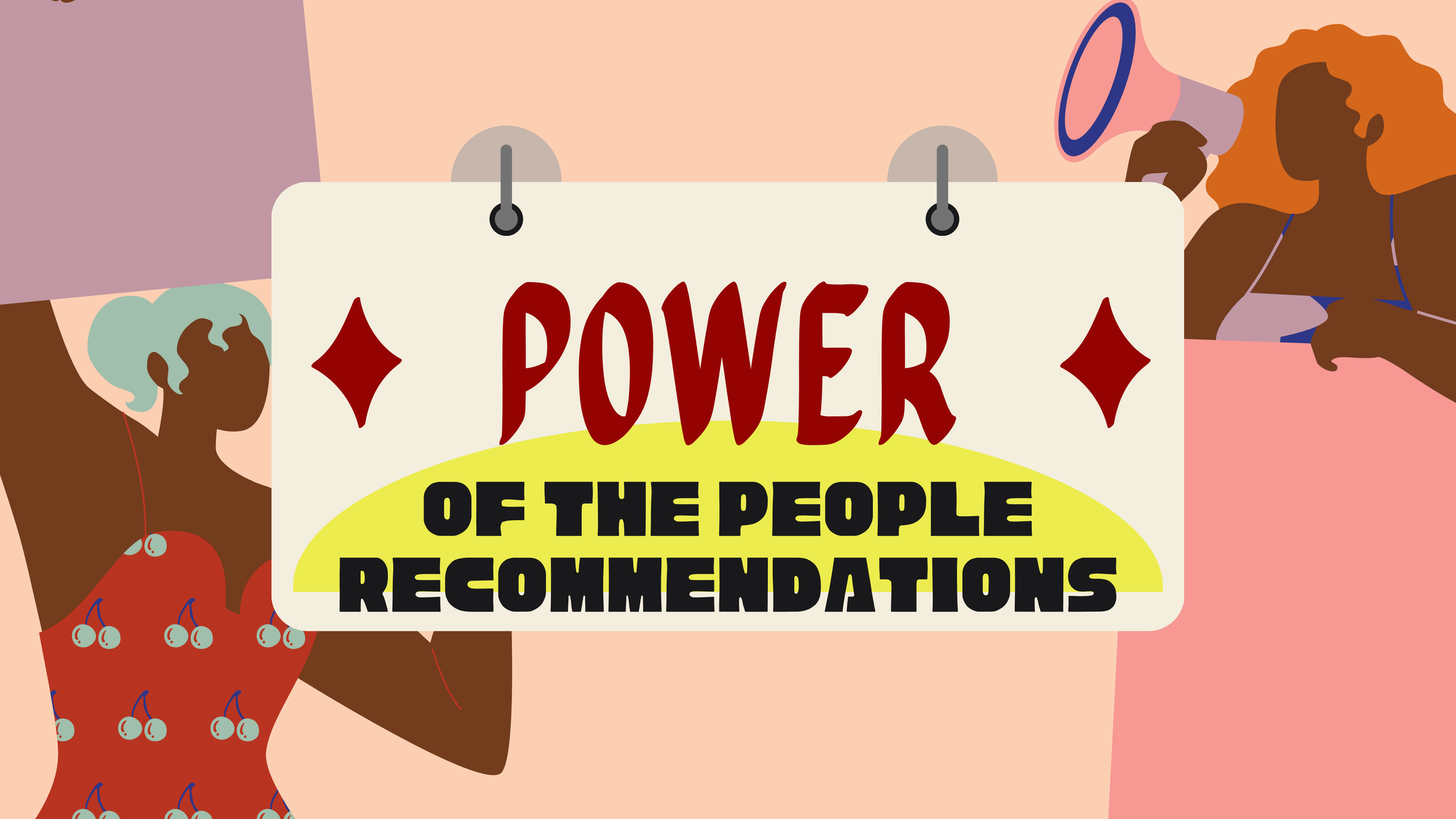
The authority of the office of police accountability shall be prescribed by ordinance and should include: independent investigatory powers, review and analysis of conduct of sworn officers that have been the subject of a complaint and the use of force by city law enforcement officers regardless of whether it has been the subject of a complaint; and review and analysis of internal investigations conducted and disciplinary action taken by the Chief of Police regarding that conduct or use of force. The authority of the office should also include: the preparation and publication of findings, conclusions and recommendations related to the office's oversight of the Tacoma Police Department, with the authority to recommend specific disciplinary actions to the chief. Council shall establish a transparent and systemic process for monitoring and evaluating the implementation of disciplinary recommendations made by the office.

SECTION 3.X- POLICE ACCOUNTABILITY

To enable the office of police accountability to exercise its authority effectively, the office shall be authorized by ordinance to have full access and cooperation from the Chief and internal affairs staff to obtain all relevant information, including authority to review and copy relevant department files, subpoena witnesses, documents and other evidence relating to its investigations or review and administer oaths, inspect crime scenes, conduct interviews, conduct independent investigations and review hearings and ensure an external and accessible civilian complaint process. Any subpoenaed witness shall have the right to be represented by counsel.

SECTION 3.X- POLICE ACCOUNTABILITY

Council shall establish by ordinance an oversight committee for police accountability to review, advise and report on the office of police accountability in a manner that may be prescribed by ordinance. The committee shall review the office of police accountability's reports, findings, and recommendations before the office finalizes the report and presents it to the council. The committee shall engage in community outreach, seek community input on equity and social justice matters, and advise the chief and the council on these matters as they relate to the police department. The committee may also advise the chief and the council on systemic problems and opportunities for improvement in the law enforcement practices of the Tacoma Police Department. Council shall prescribe by ordinance the committee's membership, qualifications, and rules and procedures, and the process for appointment of committee members, and may prescribe by ordinance additional duties of the committee.


POWER
OF THE PEOPLE
RECOMMENDATIONS

SPECIAL THANKS

- Polly Grow- SEEC Campaign Finance Law, Education, and Compliance Advisor
- Rene LeBeau- SEEC Democracy Voucher Program Manager
- All the Neighborhood Councils- including The South End Coalition (SENCo Committee)
- Beverly Allen- The Law Offices of Beverly Allen
- Estevan Munoz-Howard, People Powered Elections WA
- Cindy Black, Executive Director, Fix Democracy First
- and countless other community members

OUR APPROACH

DEMOCRACY ENSURES TRANSPARENCY & ACCOUNTABILITY

TACOMA ADAPTS & LEADS

TACOMA'S CHARTER SHOULD REFLECT TACOMA'S GOALS & VALUES

DEMOCRACY VOUCHERS

EMPOWERS RESIDENTS TO SUPPORT CAMPAIGNS AND/OR RUN FOR OFFICE

EMPOWERS THE CITY COUNCIL THROUGH AN EXPANDED DIVERSE CANDIDATE POOL

DEMOCRACY VOUCHERS

WHAT ARE THEY?

DEMOCRACY VOUCHERS

TANGIBLE BENEFITS IN SEATTLE

Successful Campaigns

- Most city council seats were up at the same time, all used Democracy Vouchers
- Only one sitting council member has not yet used the vouchers

Benefits in quality of donations

- The donation percentage went from 1.5% to 8-10%
- Higher than any jurisdiction
- Significant diversification of donor class
- Donations went from 30-35% outside city donations down to 5%
- Canvassing gets donations vs. dialing for dollars
- Pushes candidates to talk to voters
- Residents are 4-11x more likely to vote

Benefits to candidates

- More candidates have been running due to the vouchers
- “Makes for a better city council”
  - Had 5-6 viable mayoral candidates in the last race
- Many candidates have expressed that they would not have been able to run without the vouchers
- Designed to challenge, not oust incumbents
- Makes for more competitive campaigns
- More affordable campaign

“WE CAN’T THINK OF ANY DOWNSIDES” - SEEC

“  A YEAR”

CAMPAIGN FINANCE

ADD SECTIONS 5.6 AND 5.7

Section 5.6- Democracy Vouchers

1. The Elections Commission will distribute Democracy Vouchers to eligible Tacoma residents.
2. Candidates who may receive vouchers are listed on a participating candidates' page.
3. Residents will assign vouchers by writing in the eligible candidates' name, the date the voucher was assigned, and the resident's signature on each voucher.
4. Democracy Vouchers may be returned directly to a candidate's campaign or mailed to the Elections Commission.
5. The Elections Commission will verify the signature on each voucher before releasing funds to the campaigns.
6. All contributions are public information. Your name and the candidate(s) you give your voucher(s) to will be published on a program data page.

This section should also detail - resident eligibility, the democracy voucher form, democracy voucher assignment, delivery, and receipt, candidate qualification, democracy voucher redemption, campaign valuations, releases, and use of proceeds, transparency, and administration.

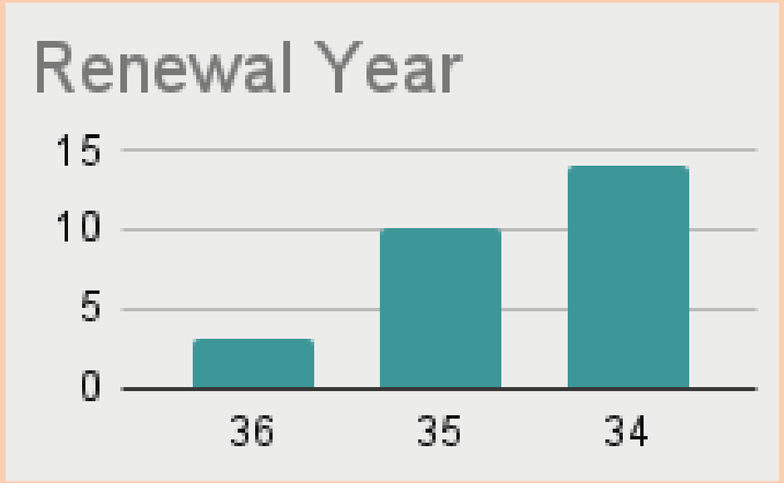
Section 5.7—Elections Commission

The Mayor and Council shall appoint an Elections Commission to determine campaign contribution limits, lobbying regulations, and oversee the creation and implementation of a democracy voucher program.

SECTION 2.25 CHARTER REVIEW COMMITTEE

CHANGE THE INTERVAL OF TIME BETWEEN CHARTER REVIEWS

- Collective bargaining agreements should adhere to new charter amendments
- About 52% of CBAs currently renew in the next charter review year, which is too late for adherence
- Allow time for proper outreach, research, and the initiative process



CHARTER REVIEW COMMITTEE

SECTION 2.25

Section 2.25 – The City Council shall ~~commence~~ **conclude** a review of this charter no less frequently than once every ~~ten~~ **nine** years, by appointing citizens to a charter review committee, or by the election of a board of ~~freeholders~~ **electors** in the manner provided in state law. **The charter review process shall commence no less than 12 months before its conclusion.** Any ~~freeholders~~ **electors** shall be nominated and elected by position and by district. The charter review committee, which shall be provided with sufficient staff and budget to perform a comprehensive review, shall report any recommended amendments to the City Council **and may publish its findings.** The City Council may accept, reject or modify the recommended amendments**. The Charter Review Committee may revise and/or appeal all rejected or modified recommended amendments then** ~~and may~~ submit any recommended charter amendments to the voters in the manner provided in state law. The recommendations of a board of ~~freeholders~~ **electors** shall be placed before the voters in the manner provided in state law. **Charter amendments may be proposed by the Commission, the Council, or the people in the** ~~. in this section shall limit the right of citizens to initiate amendments to this charter in any other~~ manner allowed by state law.

Section 2.18

Amendments to this charter may be submitted to the voters by the City Council, by initiative petition of the voters**, or by electors** in the manner provided by the state constitution and laws.

INITIATIVES AND REFERENDUMS

SECTIONS 2.20 AND 2.22

Section 2.20

(i) Petitioners have ~~thirty (30)~~ **one hundred and eighty (180)** days to collect signatures from registered voters.

Section 2.22

The Council, by its own motion, may submit any proposed ordinance to the qualified electors for their approval or rejection in the same manner as provided for its submission upon petition, **except that any proposed ordinance submitted by the Council may not contain provisions that would substantially conflict with any proposed ordinance that has been provided to the city clerk in the form of an initiative petition. The Council may seek a declaratory judgment as to whether a substantial conflict exists in regards to its own proposed ordinance, and if such conflict is in regards to the constitutionality of the proposed ordinance, no legal fees shall be awarded to any party upon rendering of a declaratory judgment. If the Council, any representative of the City, or the citizen or organization that provided the original citizen's petition to the clerk should file a petition with the court or seek relief beyond declaratory judgment, the Superior Court shall grant the citizen or organization an award of reasonable attorney fees upon rendering a final judgment if the citizen or organization prevails.**

NEIGHBORHOOD COUNCILS

ENSURE REPRESENTATION

- Some Tacoma residents feel they need more adequate representation than they currently have through their district city council members.
- Neighborhood Councils are established and capable of achieving desired levels of representation.
- Neighborhood Councils can easily form and adapt as the makeup and goals of the city change and diversify.
- Neighborhood Council’s inclusion in the charter ensures the city support that is essential to fulfill the program’s goals.
- Redistricting may also be necessary if the form of government changes, but empowering Neighborhood Councils is still required for adequate civil engagement and representation.

NEIGHBORHOOD COUNCILS

ADD SECTION 2.26

Section 2.26 – In order to foster communication and to promote citizen-based neighborhood involvement, there shall be independent neighborhood councils and a Community Council. The neighborhood councils and Community Council shall act as advisory entities to the City Council, Mayor, and City Manager.

Subject to applicable law, the City Council may delegate its authority to neighborhood councils to hold public hearings prior to the City Council making a decision on a matter of local concern. The City Council shall also:

- determine the boundaries of the neighborhood councils with the intention of recognizing neighborhood groups,
- set those boundaries by resolution,
- monitor the delivery of City services in their respective areas and have periodic meetings with responsible officials of City departments, subject to their reasonable availability,
- Collectively make bylaws and rules for the conduct of their business.

Each neighborhood council may present to the Mayor and Council an annual list of priorities for the City budget. The Mayor shall inform certified neighborhood councils of the submission deadline so that the input may be considered in a timely fashion.

The Mayor and Council shall:

- appropriate funds for the Department of Neighborhood Empowerment and for the startup and functioning of neighborhood councils.
- guarantee a cash match for neighborhood council fundraising,
- ensure adequate training in areas like grant writing, diversity, equity, and inclusion, civic engagement, board governance, community outreach,
- ensure adequate technical, administrative, and legal support,
- Support and encourage Neighborhood Council’s independent efforts to create grass-roots, community-based change,
- Measure the fulfillment of the aforementioned duties on an annual basis.


THANK YOU
FOR LISTENING!

LAW OFFICE OF
BEVERLY ALLEN

Sent via email only

March 11, 2024

Re: Charter Review Amendments Regarding Legal Fees

Dear Members of the Charter Review Committee:

This letter serves to advise members of the Charter Review Committee regarding the legality of a charter amendment requiring the city to pay legal fees to citizens related to litigation brought in good faith regarding citizen's initiatives. This letter also speaks to recommended changes in the City Charter to preserve the right of citizens to bring initiatives without being locked in political fights or litigation over competing ballot initiatives put forth by the city to confuse the voters or water-down the effect of the citizen initiative.

It is my opinion that it is a valid exercise of the Charter Review Committee's authority to recommend that the court can award legal fees to citizens in litigation over citizen initiatives so long as no attorney fees are awarded concerning a declaratory action (i.e. a request for the court to decide the legality of an issue) regarding the constitutionality of the initiative. In addition, minor wording changes to the charter would also protect the citizen initiative process from competing ballot initiatives brought by the city to water down the citizen initiative.

SUGGESTED CHARTER AMENDMENT LANGUAGE

Present Charter Language:
Section 2.22 – The Council by its own motion may submit any proposed ordinance to the qualified electors for their approval or rejection in the same manner as provided for its submission upon petition.

Suggested Amended Language:
Section 2.22 – The Council by its own motion may submit ~~any~~ a proposed ordinance to the qualified electors for their approval or rejection in the same manner as provided for its submission upon petition, except that any proposed ordinance submitted by the Council may not contain provisions which would substantially conflict with any proposed ordinance that has been provided to the city clerk in the form of an initiative petition. The Council may seek a declaratory judgement as to whether substantial conflict exists in regards to its own proposed ordinance, and if such conflict is in regards to the

constitutionality of the proposed ordinance, no legal fees shall be awarded to any party upon rendering of a declaratory judgement. If the Council, any representative of the City, or the citizen or organization that provided the original citizen's petition to the clerk should file a petition with the court or seek relief beyond declaratory judgement, the Superior Court shall grant the citizen or organization an award of reasonable attorney fees upon rendering a final judgement, regardless of which party filed a petition or sought relief from the court and regardless of which party prevailed in the action.

LEGALITY OF CHARTER AMENDMENT AWARDING LEGAL FEES

The law provides that the state and counties are liable for attorney fee awards in the same manner as private parties,[1] with one exception explained below. Cities have not been found to be immune to awards of attorney fees, as there is no case law suggesting they are exempt.

A charter amendment requiring the city to pay legal fees to citizens who find themselves in court with the city over the legality of the city's actions is lawful, so long as it contains a provision that enables the city to seek a declaratory judgement *as to the constitutionality of the ordinance* (essentially asking the court for an opinion before proceeding with any further legal action) at the beginning of the case. The reason this caveat is required is based on the court's analysis in *Clark v. Seiber*, 49 Wn.2d 502, 304 P.2d 708 (1956) which found that the court could not assess legal fees against the state for seeking declaratory relief[2] in regard to the constitutionality of a proposed ordinance.

RECOMMENDED CHANGES TO CHARTER RE COMPETING BALLOT INITIATIVES

A second question that should be addressed in the charter amendment process is whether the city should have the power to put competing ballot initiatives up in response to citizen initiatives. The ruling by Judge Ashcraft last summer is attached hereto. In that ruling, Judge Ashcraft ruled that the city's ballot initiative was misleading but also ruled that the charter should be read broadly such that "any" referendum (Tacoma City Charter Section 2.22) should be read to include a competing ballot initiative. This is a non-binding ruling (i.e. it does not limit what other judges can decide), but this

[1] RCW 4.84.170 - Costs against state or county.

In all actions prosecuted in the name and for the use of the state, or in the name and for the use of any county, and in any action brought against the state or any county, and on all appeals to the supreme court or the court of appeals of the state in all actions brought by or against either the state or any county, the state or county shall be liable for costs in the same case and to the same extent as private parties.

[2] A declaratory judgment is a method by which a litigant can seek an opinion from the court even apart from any question of damages or liability. See the Uniform Declaratory Judgements Act, RCW Chapter 7.24.

interpretation does have a chilling effect, as it will likely embolden the City of Tacoma to place competing initiatives on the ballot when citizens run a ballot initiative in the future. In the interests of protecting the spirit of democracy and citizen's right to have their voice heard, the charter review committee should consider strengthening protections for citizen initiatives found in the city's charter.

Please advise if you have additional questions or need clarification regarding any issues raised in this letter.

Very respectfully,

Beverly Allen

Attorney at Law

Enclosures:

Tacoma For All and United Food and Commercial Workers Local 367 v. City of Tacoma Order Regarding Preliminary Injunction

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IN OPEN COURT
AUG 30 2023
PIERCE COUNTY, Clerk
By
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

TACOMA FOR ALL and UNITED FOOD AND COMMERCIAL WORKERS LOCAL 367, Plaintiffs, vs. CITY OF TACOMA, PIERCE COUNTY, and LINDA FARMER, in her official capacity. Defendants	No. 23-2-08684-3 ORDER REGARDING PLAINTIFFS' MOTION FOR PRELIMINARY INJUCTION AND DECLARATORY RELIEF

This matter comes before the Court on Plaintiffs Tacoma for All's and United Food and Commercial Works Local 367's affidavit and motion for an order to prevent election errors under RCW 29A.68 and for declaratory and injunctive relief.

This case involves the Plaintiffs' challenge to the Tacoma City's Council adoption of a resolution that places an alternative ordinance to the Plaintiffs' citizen initiative regarding tenant rights on the November ballot. Plaintiffs argue that the City Council lacks the authority to put the City Council's tenants' rights ordinance on the ballot as an alternative to the citizen initiative. Plaintiffs seek a declaration from the Court that the City Council's actions are void and enjoining the placement of the City's alternate ordinance on the November ballot.

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A. Standing and Pre-Election Review

The first issue is whether the plaintiffs have standing and whether review prior to the election is appropriate. Regarding standing, the Court agrees with the plaintiffs that they have standing, as the interest they seek to protect is within the zone of interests addressed by the initiative and they would suffer an injury in fact if the City's alternative ballot measure were to pass. *Spokane Entrep. Ctr. v. Spokane Moves to Amend the Const.*, 185 Wn.2d 97, 105-06, 369 P.3d 140 (2016). Likewise, the Court finds that pre-election review is appropriate because a pre-election challenge to the scope of initiative power is permitted. *Am. Traffic Solutions, Inc. v. City of Bellingham,* 163 Wn. App. 427, 432, 260 P.3d 245 (2011), *review denied*, 173 Wn.2d 1029 (2012).

B. Source of Authority

The second issue is the source of the City's authority, if any. Plaintiffs argue that the City's authority with respect to ballot measures is found only in the Tacoma City Charter. In its brief, the City argued that its authority was much broader, positing that the "City Council does not require an express grant of legislative authority to place the proposed ordinance (Measure No. 2) on the ballot." *Tacoma brief at 7;* Rather, the City argues that the State Constitution and statewide legislation grants it broad powers that allows it to put Measure 2 on the ballot as an alternative to the Plaintiffs' Initiative. *See generally, Tacoma brief at 7-12.* However, at oral argument, the City seemed to abandon or at least de-emphasize that argument, stating that it was primarily relying on the Tacoma City Charter as the basis for its authority. Thus, it is unclear whether the City is still relying on this argument. To the extent that the City is still arguing that its authority exists from sources outside of the City Charter, the court disagrees. The statute at issue RCW 35.22.200, is an enabling statute, in which the "Washington Legislature granted charter cities the opportunity to afford city voters the initiative process." *Glob. Neighborhood v. Respect Washington*, 7 Wn. App. 2d 354, 391, 434 P.3d

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1024, 1044 (2019). It is not, as the City argues, a general statute that allows a City initiative authority outside of the City Charter. Nor is any other statute cited by the City. Thus, if Tacoma has the right to submit an alternative ballot measure (or any ballot measure), that right must be found in Tacoma's City Charter. *See also, City of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 385-86, 93 P.3d 176 (2004), *review denied,* 153 Wn.2d 1020 (2005) ("Under the [Seattle] city charter, the council had three options: (1) accept the initiative and enact it into law, (2) reject the initiative and submit it to the voters, or (3) enact an alternative measure and present both its version and the initiative to the voters.")

C. Whether the City has the Authority to Propose an Alternative Ordinance

The relevant portions of Tacoma's City Chart are found in Sections 2.19, 2.21, 2.22 and 2.23. Section 2.19 provides that the "[c]itizens of Tacoma may by initiative petition ask the voters to approve or reject ordinances or amendments to existing ordinances." Pursuant to Section 2.19, if the County Auditor validates the petition, "the City Council may enact or reject the Initiative, but shall not modify it. If it rejects the Initiative or within thirty (30) calendar days fails to take final action on it, the City Council shall submit the proposal to the people at the next Municipal or General Election that is not less than ninety (90) days after the date on which the signatures on the petition are validated." If the initiative is submitted to the people, a majority of votes is required for the initiative to pass. Section 2.23.

The Tacoma City Council also has the right to submit an ordinance to the people. Section 2.22 of the Charter provides that "[t]he Council by its own motion may submit any proposed ordinance to the qualified electors for their approval or rejection in the same manner as provided for its submission upon petition." Plaintiffs, however, argue that the City does not have authority to submit an ***alternative*** ballot measure. They reference the Seattle City Charter, which expressly

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allows for the City to submit an alternative to a citizen proposed initiative. Because the Tacoma City Charter does not have this "alternative" language, plaintiffs argue that no such express authority exists. The City counters that Section 2.22 provides that the City may submit "any proposed ordinance" and therefore the City's measure is within its authority.

The Court agrees with the City. The word "any" when used in legislation means all and is interpreted broadly. *See, e.g., NOVA Contracting, Inc. v. City of Olympia*, 191 Wn.2d 854, 865 426 685 (2018). The Court does not find that an "alternative" ordinance is a separate category from "any proposed ordinance" found in the City Charter at Section 2.22. The use of the word "alternative" is not categorical, but merely descriptive. To conclude that "any" does not include alternatives is contrary to standard statutory construction principles. As such, the Tacoma City Charter provided the City with authority to present an alternative ordinance.

Notwithstanding this general authority, in their briefing Plaintiffs further argued the City Charter and RCW 29A.72.050(4) preclude the offering of an alternative ballot measure. The parties agree that the Tacoma City Council did not present its ordinance as a stand-alone ballot measure. Rather, it is presented as an alternative to the citizen initiative. As such, the parties agree that under state law, this arrangement results in a plurality-vote situation, in which either measure may prevail by a plurality of the vote. *In re Ballot Title Appeal of City of Seattle Initiatives 107-110*, 183 Wash. App. 379, 387 (2014); RCW 29A.72.050. The dispute is over whether this is permissible under the Tacoma City Charter. Plaintiffs argue that the City Charter does not allow for this alternative, plurality prevails situation. At the second oral argument, however, plaintiffs appeared to have abandoned this argument. The case cited for the plaintiffs' argument, *In re Ballot Title Appeal of City of Seattle Initiatives 107-110*, 183 Wash. App. 379, 387 (2014), approved of the alternative ballot measure format found in 29A.72.050(4) despite the Seattle City Charter having the same

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majority required language found in the Tacoma City Charter. As such, plaintiffs conceded that 29A.72.050(4) had the effect of modifying the City Charter. To the extent this argument was not abandoned, it fails.

In summary, the Court concludes that the City Charter does provide the authority to present an alternative ordinance to the voters. However, that that does not end the inquiry. The issue then becomes whether this authority was exercised in a valid manner under the State Constitution.

D. State Constitutional Limitations on the Initiative Process

A constitutional analysis can either be a facial challenge or an as applied challenge. See *Haines-Marchel v. Washington State Liquor & Cannabis Bd.*, 1 Wn. App. 2d 712, 736–37, 406 P.3d 1199, 1213–14 (2017).

> To prevail on a facial challenge, the party must show "no set of circumstances" where the regulation "as currently written ... can be constitutionally applied." *City of Redmond v. Moore*, 151 Wash.2d 664, 669, 91 P.3d 875 (2004). To prevail on an as-applied challenge, the party must prove an otherwise valid regulation is unconstitutional as applied to that individual." *Moore*, 151 Wash.2d at 668-69, 91 P.3d 875.

Id.

Plaintiffs argue that *Eyman v. Wyman*, 191 Wn. 2d 581, 589 (2018) prohibits the actions taken by the City. In the context of the citizen initiative process, the Washington Supreme Court quoted with approval from a Massachusetts Supreme Court case holding that

> "[t]he language and structure of [the constitution] thus demand that a legislative substitute for an initiative petition must offer a true alternative and may not constitute a second approach which departs from the basic purpose of the initiative petition." To hold otherwise, the court explained, would "countenance the [debilitation] of the initiative petition," "fly in the face of the evident intent of the distinguished members of the Constitutional Convention," and "interfere with the ability of the people to declare their position on the basic question originally proposed" by the initiative.

Eyman v. Wyman, 191 Wn.2d 581, 605, 424 P.3d 1183, 1196 (2018) quoting *Buckley v. Secretary of Commonwealth,* 371 Mass. 195, 200, 355 N.E.2d 806 (1976). The Court further held that no finding of bad faith, i.e. an intent to violate the constitution, is required to find a constitutional violation. *Eyman v. Wyman*, 191 Wn.2d 581, 605-06, 424 P.3d 1183, 1196 (2018).

The City argues that *Eyman v. Wyman* is inapplicable because local initiative power is not derived from the State Constitution. But *Eyman* is not cited here for the source of authority, but rather the constitutional limits rooted in fundamental fairness, due process and separation of powers. See *Eyman v. Wyman*, 191 Wn.2d 581, 424 P.3d 1183, 1196 (2018); *see also, In re Recall of W.,* 155 Wn.2d 659, 671, 121 P.3d 1190 (2005).

Here, the City passed Amended Resolution 41328. This Resolution proffered the alternative measure (known as Measure 2) to the Citizen Initiative (Measure 1). This alternate ordinance was passed by the City Council and enacted into law. The Amended Resolution provides that if Measure 2 received the majority of votes, it would be repealed and re-enacted, thus remaining a valid, voter-approved law. But if Measure 1 received the majority of votes Measure 2 would fail, meaning that Measure 2 is ***not*** repealed, but "would remain in effect as a City Council enacted ordinance." Amended Resolution 41328 at 3-4. In other words, whether Measure 1 or Measure 2 received more votes, Measure 2 would still be law.

Pursuant to RCW 29A.72.050(4), the ballot presented to the voters would read as follows: 1) Should either Measure 1 or Measure 2 be enacted into law?; and 2) Regardless of whether you voted yes or no above, if one of these measures is enacted, which one should it be? [Measure 1 or Measure 2]. The problem is that neither the ballot title nor explanatory statements clearly explain that

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Measure 2 already is law and will remain law regardless of the vote. Moreover, both questions ask whether Measure 2 should be enacted, when it was already enacted by the vote of the City Council.[1]

Plaintiffs argue this is misleading and confusing. The Court agrees. This is really a false choice as it implies that, at most, one proposed measure will be approved. The reality is that Measure 2 was already approved and would remain law regardless, and Measure 1 may also be approved. Plaintiffs argue that this prejudices them because an individual may want both Measures to pass but might slightly favor Measure 2 and vote for Measure 2. But if that person knew that Measure 2 would be law regardless of the vote, that person might vote for Measure 1.

To be clear, this Court is not ascribing bad faith or ill intent to the City Council. The Court does not know the City Council's motives. But under the *Eyman* case, the City's motives are irrelevant to the analysis. The Court concludes that Measure 2 is not a true alternative (because it would be law regardless of the outcome of the vote), and "interfere[s] with the ability of the people to declare their position on the basic question originally proposed" by the initiative. *Eyman v. Wyman*, 191 Wn.2d 581, 605, 424 P.3d 1183, 1196 (2018) quoting *Buckley v. Secretary of Commonwealth,* 371 Mass. 195, 200, 355 N.E.2d 806 (1976).

As noted above, the Court finds that the City, in theory, had the authority to present an alternate ordinance to the voters. In this Court's opinion, the presentation of an un-adopted Measure 2 as an alternative to Measure 1 would have complied with Washington law. But when the City adopted that ordinance prior to sending it to the voters and approved the Amended Resolution with

[1] This also raises the issue of whether Section 2.22 in the City Charter gives the City the ability to present an already-approved ordinance to the people, as Section 2.22 reads that the Council by its own motion may submit any ***proposed*** ordinance.

the repeal and re-enact language, it resulted in a false choice between Measure 1 and Measure 2 as discussed above, and ran afoul of the State Constitution as described *in Eyman v. Wyman.*

E. Ballot Title

Plaintiffs also request the Court rule on the language of the ballot title, regardless of the Court's ruling on the substantive question discussed above. To that end, in the event a higher court determines that both measures should go to the voters, this Court agrees with the language changes proposed by plaintiffs on page 25 of their August 3,2023 memorandum.

CONCLUSION

Based on the foregoing, the Court enjoins and prohibits Pierce County and the Pierce County Auditor from placing the City Council alternative (Measure 2, also known as 1B)[2] on the November 2023 general election ballot (or subsequent election ballots), tabulating votes on the alternative, or otherwise furthering an election on the alternative.

SO ORDERED this 30 day of August, 2023.

Judge Timothy L. Ashcraft

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AUG 30 2023
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By _____
DEPUTY

[2] The parties agreed that if both measures went to the voters, naming the City Council alternative as Measure 1B is appropriate.

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