

Seattle Displacement Coalition

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SEATTLE COMMUNITY COUNCIL FEDERATION

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May 19, 2014

Wayne Barnett, Executive Director
Seattle Ethics and Elections
Seattle Municipal Tower
700 5th Ave, Suite 4010

Re: An appeal and objection to the Seattle City Attorney's Explanatory Statement for the Metropolitan Park District ballot measure (also delivered to City Attorney Pete Holmes)

Dear Director Barnett,

The Seattle Displacement Coalition is a 37 year-old non-profit and the Seattle Community Council Federation is 68-year-old non-profit; the members of both groups are made up of Seattle residents and voters directly affected by the measure that would create a Metropolitan Park District (MPD) for Seattle

We are herein filing an appeal and formal objection to the explanatory statement recently filed by the City Attorney describing this ballot measure. We are filing this under our organization's names, myself, John Fox, signing as its SDC Director, Chris Leman as SCCF Treasurer, and Toby Thaler as an affected Seattle resident and voter.

Summary of Objection and Appeal

The City Attorney's language includes inaccuracies, is vague, and lacking in information necessary for voters to understand what they are voting for or against. As such, it is misleading, not "clear and concise", nor is it an accurate or full description of the measure. No voter could begin to understand the "effect of the measure" on them, their community, or our city. By any standard of reasonableness, it does not meet the requirements of SMC 2.14.030.

Below, we provide the City Attorney's statement, then a point by point objection to key points of it, with our suggested additions and deletions, and then the entirety of our proposed substitute statement. We believe that our proposed substitute complies with SMC 2.14.030 by providing a full, concise, and accurate description for voters of the measure.

We also attach relevant sections of the state enabling law RCW 35.61 that authorizes creation of metropolitan park districts. Most importantly for this appeal, it is this statute that spells out, in precise detail, the broad powers and scope of authority of an MPD. An MPD with these powers is what voters will be called on to authorize and this is what must be encapsulated in the explanatory statement.

Instead, one-half of the 250 word explanatory statement is taken up describing the contents of an “interlocal agreement”. This “agreement,” has not been agreed to and, effectively now exists only in draft form while purporting to regulate how the MPD would operate. The “agreement” is irrelevant to this ballot measure that creates an MPD. The MPD, once created, is bestowed with all the powers outlined in RCW 35.61, regardless of what a possible interlocal agreement might say in the future.

In the City Attorney’s explanatory statement, a substantive and full description of an MPD and its broad powers, according to RCW.35.61, is sacrificed so that the City Attorney can wax on about a purported “interlocal agreement” which is not even on the ballot. Furthermore, the interlocal agreement has not yet even been signed. Before it can be considered or signed, first, voters must decide whether to create an MPD. Only then, can an interlocal agreement be negotiated or approved - after the MPD board is seated. . For this reason, there is no assurance that the final interlocal agreement will be the same as what the City Attorney’s explanatory statement claims. Finally, when an interlocal agreement is adopted, either party can void it upon 180 day notice. None of these facts are found in the City Attorney’s explanatory statement. As such paragraph 2 is very misleading.

Rather than distract and confuse voters with discussion of an interlocal agreement which is not on the ballot, the explanatory statement must inform voters that they are being asked whether to create a new and separate taxing authority with broad power that is permanent and on-going including the ability to raise their property taxes above current city levy “lid” restrictions; and that once approved, the new entity is not subject to City laws, the City charter, or the right of Seattle voters to make use of the initiative process either to reverse an MPD tax hike, other MPD decisions, or dissolve or change the MPD. Only State Law applies as covered by RCW 35.61.

With voter creation of a metropolitan park district, Seattle citizens would no longer enjoy the form of accountability they have with current a parks levies to review city performance under the current levy (typically for six years) and then decide whether to vote for renewal of the next levy. This is a critical means for citizens to make sure these funds are properly spent and our parks are properly managed. With an MPD, there is no future vote on the renewal of funding, a fact which is missing from the City Attorney’s explanatory statement.

Also missing from the City Attorney’s explanatory statement is any mention of the sweeping powers of a metropolitan park district under RCW 35.61.010 and 130, including “management, control, improvement, maintenance, and acquisition of parks” [RCW 35.61,010], and the power to buy, sell and condemn land either inside or outside the Seattle city limits; to enter into “business as it shall judge desirable or beneficial for the public.” It may fund and operate “the giving of vocal or instrumental concerts or other entertainments,” as well as “boulevards, avenues, aviation landings...within or without the limits of said city.” These powers are not restricted to its parks duties, but are allowed “incidental to its duties.” [RCW 35,61.130(3)]

And as mentioned above, these powers are held under state law and thus are immune from restrictions in Seattle laws or the charter. Once created, an MPD an MPD can be overturned only by action of the

MPD board itself, or by action of the state legislature or via state-wide initiative. Yet none of these basics are even mentioned in the City Attorney's explanatory statement.

Unless the Ethics and Elections Commission adopts a more accurate explanatory statement, voters will be deceived into thinking they are voting on some minor adjustment or administrative change rather than creating a new and powerful governmental entity without clear accountability to the City Charter, laws, and voters.

Here is the City Attorney's current explanatory statement:

Seattle Proposition 1, if approved, creates the Seattle Park District, a metropolitan park district with the same boundaries as the City of Seattle. The Seattle Park District would be a distinct municipal corporation with all the powers granted by state law in RCW chapter 35.61. The governing body of the District would be the councilmembers on the Seattle City Council. The District's governing body may choose to dissolve the District if requested by either the City or by petition with 10% of Seattle voters. Among the District's powers is the ability to levy a property tax, up to \$0.75 per thousand dollars of assessed value, to raise revenues to provide ongoing funding to maintain, operate and improve parks, community centers, pools, and other recreation facilities and programs. As a separate taxing district from the City of Seattle, the Seattle Park District levy would not be included when determining the limits on the City's ability to levy property taxes.

When the City placed this measure on the ballot, the Mayor and the Council also approved an ordinance that authorized the Mayor to sign an interlocal agreement with the District should its creation be approved by the voters. This agreement provides that the City would maintain its current general fund support of the Seattle Park system and that the District would pay the City to increase support to the Park System. The District would pay for this increased support by imposing a property tax of approximately \$47.9 million per year for the first six years of the District. That would be \$0.33 per thousand dollars of assessed value or \$133 per year for an average home with a value of \$400,000. The money would be used to pay the City to improve and maintain City parks, address a maintenance backlog of projects, increase programs for seniors, improve park safety, and support other Parks programs. The City will retain ownership of all parks property and the District will not hire its own staff.

The companion ordinance, proposed interlocal agreement and spending plan is available at: <http://go.usa.gov/8avh>

Here is a point by point list of our objections and recommended changes to the City Attorney's statement; then following is the entirety of our proposed substitute:

1. The City Attorney's explanatory statement does not state that upon voter approval, under RCW 35.61 and especially 35.61.210 a separate taxing authority is created with new taxing authority and broad power to raise the property tax above current city "lid" taxing restrictions. In the last sentence of the first paragraph, the City Attorney's statement instead offers this vague and confusing description of the MPD's taxing powers:

"As a separate taxing district from the City of Seattle, the Seattle Park District levy would not be included when determining the limits on the City's ability to levy property taxes.

That sentence should be replaced to read:

“As a separate taxing authority from the City, the District could levy an additional property tax above current “lid” restrictions that state law imposes on Seattle.”

In addition, so that voters are correctly informed of the new entity’s annual taxing authority, the following phrase contained in the statement’s 5th sentence should also be amended to read (see our underlined addition):

Among the District’s powers is the ability to levy an annual property tax, up to \$0.75 per thousand dollars of assessed value (or \$375 on a \$500,000 home);

The average valued home now is approaching \$500,000 (not \$400,000), and voters need a full and complete description of the tax impact on a typical home.

2. Delete the third sentence of the 1st paragraph which now reads:

The District’s governing body may choose to dissolve the District if requested by either the City or by petition with 10% of Seattle voters.

The operative word in the above sentence is “may”. It is pointless and is wasteful of precious words for the explanatory statement to say the District’s governing body MAY choose to dissolve the district if requested by either the City or by petition from 10% of Seattle voters (about 40,000 signatures). The MPD board is not bound to do anything more than to CONSIDER the petition. Of course, the MPD board doesn’t need a petition from voters to consider whether to dissolve itself. It has that option to start with. If the Explanatory Statement were not limited to 250 words, there might be some justification for mentioning this obscure part of state law regarding MPDs [RCW 35.61.310]. But, given the much more fundamental facts contained in the statute are left out of the City Attorney’s explanatory statement, this sentence should be deleted.

3. It is essential for voters to be informed that if they approve creation of the MPD, the new entity will not be subject to City laws or the City Charter, but rather would be subject to the rules and requirements spelled out in RCW 35.61 and other state statutes referenced therein. Voters need to be told that the Seattle initiative and referendum process would not apply to any action of the MPD including on the question of whether to repeal the MPD or alter its structure. An MPD may only be dissolved or changed by the MPD board, the legislature or by statewide initiative.

Therefore, we suggest that the following language be added to the statement:

Once approved, the District’s powers and taxing authority are not subject to City laws, its Charter, nor can Seattle voters reverse any board action via a local initiative or referendum. The District may be dissolved only by its board, the state legislature, or statewide initiative.

4. In the fifth sentence of the first paragraph, delete the following language (see our strikethrough):

Among the District’s powers is the ability to levy annual property tax, up to \$0.75 per thousand dollars of assessed value (or \$375 on a \$500,000 home) ~~;-to raise revenues to provide ongoing funding to~~

~~maintain, operate and improve parks, community centers, pools, and other recreation facilities and programs.~~

The words “to raise revenues to provide ongoing funding to maintain, operate and improve parks, community centers, pools, and other recreation facilities and programs” are not even mentioned in the state statute. To include this phrase, as the City Attorney has done, would actively mislead voters into believing the MPD board has a narrow focus when, in fact, the state statute gives it far broader powers. The explanatory statement fails to mention such broad authority as explicitly defined especially in 35.61.010 and 35.61.130. Therefore the fifth sentence should be deleted, and replaced with the following new sentence that does draw explicitly from these provisions:

Among the District’s powers is the ability to levy a annual property tax, up to \$0.75 per thousand dollars of assessed value (or \$375 on a \$500,000 home); to buy, sell, or condemn land; to raise revenues for roads, airports, performing venues, and other park or non--park uses; and to engage in any business activity inside or outside Seattle as it shall judge desirable or beneficial for the public, or for the production of revenue for expenditure incidental to its park duties.

This sentence therefore more accurately and fully describes the MPD’s broad scope in contrast to the City Attorney’s explanatory statement.

5. Finally, we suggest sharply cutting back the explanatory statement’s last paragraph which inordinately dwells upon the draft “interlocal agreement” which is not even on the ballot and replace with the following paragraph:

The City also has proposed an “interlocal agreement” (<http://clerk.ci.seattle.wa.us/~scripts/nph-brs.exe?s3=&s4=&s5=park+district&s1=&s2=&S6=&Sect4=AND&l=0&Sect2=THESON&Sect3=PLURON&Sect5=CBORY&Sect6=HITOFF&d=ORDF&p=1&u=%2F%7Epublic%2Fcbor1.htm&r=3&f=G>) describing the District and City’s relationship and a \$47.9 million per year levy (\$.** per thousand dollars of assessed value) with spending plan. Both parties may sign it upon creation of the District but may void it upon 180 day notice.*

To restate, the interlocal is largely irrelevant to this ballot measure that creates the MPD and effectively bestows upon it all the powers outlined in RCW 35.61. Don’t let a full description of the MPD be sacrificed so the City Attorney can wax on about the “interlocal agreement”. Don’t let him confuse voters as to what they are actually voting for or against. To top it off, the City Attorney has left out the most important piece of information in that paragraph - the interlocal agreement hasn’t even yet been signed. And even when it is signed, assuming its not altered first, either party can void it upon 180 day notice. (See City Ordinance Approving the Interlocal Agreement – link in above paragraph)

In total, with our changes, here is our completed revised version that we request that the Ethics and Elections Commission adopt as the explanatory statement:

Begins here:

If approved, creates the “Seattle Park District”, metropolitan park district with the same boundaries as Seattle. The District would be a distinct municipal corporation and separate taxing

authority with powers granted by state law (RCW 35.61). Its governing board would be Seattle councilmembers acting ex-officio. As a separate taxing authority from the City, the District could levy an additional property tax above current “lid” restrictions that state law imposes on Seattle. Among the District’s powers is the ability to levy a annual property tax, up to \$0.75 per thousand dollars of assessed value (or \$375 on a \$500,000 home); to buy, sell, or condemn land; to raise revenues for roads, airports, performing venues, and other park or non-park uses; and to engage in any business activity inside or outside Seattle as it shall judge desirable or beneficial for the public, or for the production of revenue for expenditure incidental to its park duties. Once approved, the District’s powers and taxing authority are not subject to City laws, its Charter, nor can Seattle voters reverse any board action via a local initiative or referendum. The District may be dissolved only by its board, the state legislature, or statewide initiative.

The City also has proposed an “interlocal agreement” (<http://clerk.ci.seattle.wa.us/~scripts/nph-brs.exe?s3=&s4=&s5=park+district&s1=&s2=&S6=&Sect4=AND&l=0&Sect2=THESON&Sect3=PLURON&Sect5=CBORY&Sect6=HITOFF&d=ORDF&p=1&u=%2F%7Epublic%2Fcbor1.htm&r=3&f=G>) describing the District and City’s relationship and a \$47.9 million per year levy (\$*.** per thousand dollars of assessed value) with spending plan. Both parties may sign it upon creation of the District but may void it upon 180 day notice.

. END OF STATEMENT

Conclusion:

The extraordinarily broad new and added taxing power given to this MPD entity under state law carries substantial regressive tax impacts on low income and working class homeowners already hard hit by layer upon layer of other regressive special levies, user fees, and charges. This is what voters are voting on – not next year’s parks budget. Nor are they voting on whether to authorize a \$47, \$50, or \$54 million levy or a simple administrative change to the parks system.

Voters would be giving a new quasi-independent entity the taxing authority to raise nearly three times that amount and to raise property taxes accordingly over a period of many years. Once an MPD were

to be approved voters will have given up give up the right to vote on a substantial portion of their future tax burden. Nowhere in the title is this even hinted at.

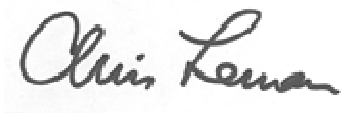
Notwithstanding the proposed “interlocal agreement” (which is not on the ballot and could be voided by either party on 180 days’ notice), voter approval would hand near unlimited and irrevocable power over to this separate municipal corporation. Nowhere in the title is any of this even hinted at

As written, the City Attorney’s explanatory statement must be altered to bring it into conformance with city law SMC 2.14.030 so that voters are actually given a true description of what they’re voting for. The statement as the City Attorney has written it now can only be described at best as an unintended misrepresentation. At worst it is a willful attempt to deceive voters. We ask the Ethics and Elections Commission to reject the City Attorney’s statement and to adopt our proposed substitute.

Sincerely,



John V. Fox for the Coalition 206-632-0668



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signing for
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Copies to:
City Attorney Pete Holmes, Councilmembers
Members of the press and public

Title 2 - ELECTIONS
Chapter 2.14 - ELECTION PAMPHLETS

2.14.030 Explanatory statement.

A. The City Attorney shall prepare an explanatory statement on each City measure, describing in clear and concise language, the law as it presently exists and the effect of the measure if approved. No explanatory statement need accompany an advisory referendum.

B. Within five (5) days after its filing with the Executive Director, anyone dissatisfied with the explanatory statement prepared by the City Attorney may appeal to the Seattle Ethics and Elections Commission by filing an objection with the Executive Director and serving a copy of the objection upon the City Attorney. The objection shall identify the appellant's grievance and contain a proposed amendment or substitution. The Seattle Ethics and Elections Commission shall convene as soon as practical to consider the explanatory statement and the objection; and its decision shall be final. There shall be no appeal to the Hearing Examiner.

RCW 35.61: attached most relevant sections – for full statute see State Legislature’s webpage...

RCW 35.61.010
Creation — Territory included.

A metropolitan park district may be created for the management, control, improvement, maintenance, and acquisition of parks, parkways, boulevards, and recreational facilities. A metropolitan park district may include territory located in portions or all of one or more cities or counties, or one or more cities and counties, when created or enlarged as provided in this chapter.

[2002 c 88 § 1; 1994 c 81 § 60; 1985 c 416 § 1; 1965 c 7 § [35.61.010](#). Prior: 1959 c 45 § 1; 1943 c 264 § 1; Rem. Supp. 1943 § 6741-1; prior: 1907 c 98 § 1; RRS § 6720.]

RCW 35.61.130
Eminent domain — Park commissioners' authority, generally — Prospective staff screening.

(1) A metropolitan park district has the right of eminent domain, and may purchase, acquire and condemn lands lying within or without the boundaries of said park district, for public parks, parkways, boulevards, aviation landings and playgrounds, and may condemn such lands to widen, alter and extend streets, avenues, boulevards, parkways, aviation landings and playgrounds, to enlarge and extend existing parks, and to acquire lands for the establishment of new parks, boulevards, parkways, aviation landings and playgrounds. The right of eminent domain shall be exercised and instituted pursuant to resolution of the board of park commissioners and conducted in the same manner and under the same procedure as is or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the state of Washington in the acquisition of property rights: PROVIDED, HOWEVER, Funds to pay for condemnation allowed by this section shall be raised only as specified in this chapter.

(2) The board of park commissioners shall have power to employ counsel, and to regulate, manage and control the parks, parkways, boulevards, streets, avenues, aviation landings and playgrounds under its control, and to provide for park police, for a secretary of the board of park commissioners and for all necessary employees, to fix their salaries and duties.

(3) The board of park commissioners shall have power to improve, acquire, extend and maintain, open and lay out, parks, parkways, boulevards, avenues, aviation landings and playgrounds, within or without the park district, and to authorize, conduct and manage the letting of boats, or other amusement apparatus, the operation of bath houses, the purchase and sale of foodstuffs or other merchandise, the giving of vocal or instrumental concerts or other entertainments, the establishment and maintenance of aviation landings and playgrounds, and generally the management and conduct of such forms of recreation or business as it shall judge desirable or beneficial for the public, or for the production of revenue for expenditure for park purposes; and may pay out moneys for the maintenance and improvement of any such parks, parkways, boulevards, avenues, aviation landings and playgrounds as now exist, or may hereafter be acquired, within or without the limits of said city and for the purchase of lands within or without the limits of said city, whenever it deems the purchase to be for the benefit of the public and for the interest of the park district, and for the maintenance and improvement thereof and for all expenses incidental to its duties: PROVIDED, That all parks, boulevards, parkways, aviation landings and playgrounds shall be subject to the police regulations of the city within whose limits they lie.

(4) For all employees, volunteers, or independent contractors, who may, in the course of their work or volunteer activity with the park district, have unsupervised access to children or vulnerable adults, or be responsible for collecting or disbursing cash or processing credit/debit card transactions, park districts shall establish by resolution the requirements for a record check through the Washington state patrol criminal identification system under RCW [43.43.830](#) through [43.43.834](#), [10.97.030](#) , and [10.97.050](#) and through the federal bureau of investigation, including a fingerprint check using a complete Washington state criminal identification fingerprint card. The park district shall provide a copy of the record report to the employee, volunteer, or independent contractor. When necessary, as determined by the park district, prospective employees, volunteers, or independent contractors may be employed on a conditional basis pending completion of the investigation. If the prospective employee, volunteer, or independent contractor has had a record check within the previous twelve months, the park district may waive the requirement upon receiving a copy of the record. The park district may in its discretion require that the prospective employee, volunteer, or independent contractor pay the costs associated with the record check.

[2006 c 222 § 1; 1969 c 54 § 1; 1965 c 7 § [35.61.130](#). Prior: (i) 1943 c 264 § 4, part; Rem. Supp. 1943 § 6741-4, part; prior: 1919 c 135 § 1, part; 1907 c 98 § 4; RRS § 6723, part. (ii) 1943 c 264 § 14; Rem. Supp. 1943 § 6741-14; prior: 1919 c 135 § 2; 1907 c 98 § 14; RRS § 6733.]