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**CITY OF SEATTLE**  
**ETHICS AND ELECTIONS COMMISSION**

IN THE MATTER OF APPEAL AND  
OBJECTION TO SEATTLE CITY ATTORNEY’S  
EXPLANATORY STATEMENT FOR THE  
AUGUST 5, 2014 PROPOSITION ONE  
(METROPOLITAN PARK DISTRICT)

APPELLANTS’ REPLY

Appellants offer the following reply to the City Attorney’s (or City) Response to our May 19, 2014 Appeal of the City’s explanatory statement regarding Proposition One, the Metropolitan Park District (MPD) measure being proposed for consideration by the Seattle electorate in the August 5, 2014 primary election. We accept two of the City’s comments, one in which the City agrees to a change we have proposed, and the other in which the City identifies a more precise statement of the current value of an average home; we do not agree with the City’s proposed “rounding down” of that figure.

However, we ask the Ethics and Elections Commission to find that there is no merit to the City’s other objections to our proposed changes, and we ask the Commission to adopt them as proposed. Our proposal incorporating the two changes stemming from the City’s Response is in the last section of this Reply.

The City Attorney’s language does not comply with SMC 2.14.030(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.” The City’s explanatory statement is not clear or concise, nor does it accurately describe the law as it presently exists or the effect of the measure if approved. Our proposed explanatory statement does meet those standards.

1 **I. CITY ATTORNEY ACCEPTS OUR SUGGESTED SENTENCE ON HOW AN MPD'S**  
2 **TAXING AUTHORITY IS SEPARATE FROM SEATTLE'S PROPERTY TAX LID**

3 Appellants welcome the City Attorney's agreement (Response at p. 5) to our proposed replacement  
4 of this sentence:

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

7 to this:

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

10 We appreciate the City Attorney's recognition that our proposed sentence better meets the requirements of  
11 state law.

12 **II. THE AVERAGE HOME VALUE EXPECTED IN THE FIRST YEAR OF PROPOSED**  
13 **NEW TAXATION IS A MORE ACCURATE AMOUNT TO INFORM VOTERS OF THE**  
14 **LIKELY IMPACT OF PASSING PROPOSITION ONE**

15 In the May 28 filing, the City Attorney objects to our proposed change of language from this:

16 Among the District's powers is the ability to levy a property tax, up to \$0.75 per thousand dollars of  
17 assessed value....

18 to this (our earlier suggested addition is underlined):

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

21 We proposed here to incorporate part of the City Attorney comments and thus we suggest the revision of  
22 this sentence to read as follows:

23 Among the District's powers is the ability to levy an annual property tax, up to \$0.75 per thousand  
24 dollars of assessed value (or \$330 on \$440,000)

25 Here is our explanation for this compromise language:

We keep the words "an annual," which the City's Response makes no objection to; these two words  
avoid confusion by clarifying that what is being talked about is a possible yearly tax payment, not an  
overall valuation for the purposes of tax assessment.

1           However, in the sentence as revised above we make the change to a potential tax of \$330 on a  
2 \$440,000 home based on the City Attorney objection to our earlier proposal to list the potential tax liability  
3 for 2016 as being \$375 on a \$500,000 home. We propose here to accept the City Attorney’s suggested  
4 figure from the City Budget Office for an estimated 2016 median house valuation of \$440,000. At the “up  
5 to \$.75 per thousand dollars of assessed value” that was listed in the original City Attorney-proposed  
6 explanatory statement, the tax liability would be \$330 on a median value \$440,000 home.

7  
8           We do not agree with the City Attorney’s proposal (Response at p. 6) to “round” the \$440,000 down  
9 to \$400,000. We suggest that \$440,000 is a plenty round number, and moreover one with the merit of being  
10 what the City Budget Office actually projects as the median home valuation in 2016, the first year of a  
11 possible MPD tax.

12           We are puzzled that the City Attorney’s Response (p. 6) appears to propose to remove the mention  
13 of up to 75 cents per \$1000 of assessed property value, in favor of the 33 cents per \$1,000 of assessed value  
14 “that the Park District actually intends to levy.” As addressed in the next section, statements about what the  
15 District “actually intends to levy” should not be used because the District has not yet been created, and  
16 speculations about its long term actions have no place in an explanatory statement, which must instead  
17 address the District’s powers under state law.

18           The reference to “up to 75 cents per \$1000 of assessed property value” must remain in the  
19 explanatory statement; these exact words were in the City Attorney’s originally proposed explanatory  
20 statement, and we did not appeal these words because we believe they should remain. It is ironic that the  
21 City Attorney is attempting to back away from its words in the explanatory statement, because in the  
22 Superior Court challenge to the Proposition One ballot title [*Seattle Displacement Coalition and David*  
23 *Bloom vs. City of Seattle*, King County Superior Court No. 14-2-13720-6 SEA], the City argues that the  
24 reference to “up to 75 cents per \$1,000 of assess property value” is “spelled out in the Explanatory  
25 Statement that follows the ballot title.” City of Seattle’s Response to Ballot Title Challenge, at p. 5.

1 The figure of 75 cents per \$1000 of assessed property value needs to be in the explanatory statement  
2 because it is the exact amount up to which a new MPD could raise annual taxes without any further vote by  
3 the electorate; it was accurate when the City Attorney originally proposed it, and removing it would be  
4 prejudicial to an accurate description of Proposition One to the voters.

5 **III. THE CITY’S EXPLANATORY STATEMENT INAPPROPRIATELY SPECULATES**  
6 **ABOUT FUTURE ACTIONS OF A METROPOLITAN PARK DISTRICT RATHER THAN**  
7 **DESCRIBING ITS ACTUAL POWERS**

8 It must be recalled what SMC 2.14.030(A) requires;

9 The City Attorney shall prepare an explanatory statement on each City measure, describing in clear  
10 and concise language, the law as it presently exists and the effect of the measure if approved.  
(Emphasis added)

11 As explained in our May 19 appeal, the City Attorney’s proposed explanatory statement falls woefully  
12 short of this requirement, providing voters no real description of what relation a Metropolitan Park District  
13 would have to the City Charter and laws, and what powers the District would have under state law. While  
14 there is a mention that a new Seattle Park District (District) would have “all the powers granted by state law  
15 in RCW chapter 35.61” the voters are given little information about what those powers are or the  
16 implications.

17 Our proposed explanatory statement includes three sentences that capsulize a wide range of powers  
18 explicitly granted to a metropolitan park district by the Legislature:

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

22 Among the District’s powers is the ability to levy a annual property tax, up to \$0.75 per thousand  
23 dollars of assessed value (or \$375 on a \$500,000 home); to buy, sell, or condemn land; to raise  
24 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.

25 Instead of thus describing how the powers of a metropolitan park district stem from state law and  
consequently are outside the authority of the City Charter and ordinances, the City Attorney’s explanatory

1 statement devotes most of its words to speculation on what an authorized metropolitan park district might  
2 do without any further review by the Seattle electorate—speculation which the City Attorney unjustifiably  
3 presents as a legal certainty.

4 The City laments (Response at p. 4) that the appellants

5 want the explanatory statement to focus on powers that are generally granted to a metropolitan park  
6 district under RCW 35.61, even though there is no plan for the Seattle Park District to actually  
7 implement many of these powers.

8 Similarly, the City complains that the appellants

9 want to focus on statutory powers that, while possibly “sweeping” in nature, are ones that the  
10 Seattle Park District does not plan to exercise (and in some instances are even prohibited by the  
11 ILA).

12 Response at p. 5 (emphasis added). The City says that the explanatory statement should “discuss what is  
13 actually planned for the Seattle Park District, and what the impact of those plans would be for voters.” Id.  
14 The City chides appellants for wanting to discuss the proposed District’s maximum taxing authority, and  
15 suggest that it would be better to focus on the tax rate that the District “actually intends to levy.”

16 The problem with these statements by the City Attorney is clear: it is speculation to refer in any  
17 sense what the Seattle Park District “plans” to do, because the District has not been created yet and thus has  
18 done no planning. Whether and how a metropolitan park district in Seattle, soon or in the future, will make  
19 use of the sweeping powers granted to it by state law--these are not questions that can be answered at this  
20 point, nor should the explanatory statement attempt to do so. Appellants agree with the City that the  
21 explanatory statement should reveal “what the impact of those plans would be for voters.” Because all of  
22 the described powers can be exercised immediately by the District, or at any time in the future, without any  
23 further review by the voters, the explanatory statement should state clearly and concisely what powers the  
24 new District will have, **and could exercise without further vote by the electorate**, if its creation is  
25 approved at the August 5, 2014 primary.

1 Repeatedly in the City Response, any need for the explanatory statement to list or describe the  
2 actual powers of a metropolitan park district is dismissed on the ground that these powers would not be  
3 used. On page 4, the City claims that the voters need only be told “what would actually happen if the  
4 creation of the Seattle Park District is approved.” The City Attorney’s prejudicial treatment of the  
5 explanatory statement is most dramatically seen in its failure to inform Seattle voters that their treasured  
6 initiative and referendum powers would not apply to a state-chartered Seattle Park District. Rather than be  
7 straight with the voters, the City tries to argue that nothing is lost in accountability:  
8

9 Metropolitan park districts are indeed a creature of state law, but in this case the governing board  
10 would be the nine Seattle City Councilmembers, all of whom are bound by Seattle laws, regulations  
11 and code of ethics as are the City employees who will staff the Park District. And, as noted, the nine  
12 Councilmembers who will be the Park District commissioners are directly answerable to Seattle’s  
13 voters.

14 This is inaccurate; by the Metropolitan Parks District statute’s explicit terms, **the council is not acting as**  
15 **the Seattle City Council when sitting as *ex officio* members of the District’s governing body.** RCW  
16 35.61.050(3). To follow the City’s logic, Seattle voters have no need for their initiative and referendum  
17 powers over the District because they can simply vote the council members out of office if they act counter  
18 to the voters’ interests while sitting as the District board of commissioners!

19 Seattle voters have on a number of occasions used their City Charter reserved powers at the ballot to  
20 enforce the public interest, sometimes explicitly overriding City Council opposition; preservation of the  
21 Pike Place Market, and prevention of expenditures of public funds on sports stadia are two notable  
22 examples. The voters must be informed that they will be losing substantial control over how the Seattle  
23 Parks Department is managed if they approve Proposition One. It is not even a certainty that the current  
24 Seattle Parks Department would be the administrative entity in charge of Seattle’s parks; “All work ordered  
25 [by the District], the estimated cost of which is in excess of twenty thousand dollars, shall be let by contract  
and competitive bidding.” RCW 35.61.135(1).

1 **IV. THE EXPLANATORY STATEMENT SHOULD INCLUDE ONLY BRIEF AND**  
2 **NONCOMMITTAL MENTION OF THE PROPOSED INTERLOCAL AGREEMENT**

3 The City Attorney’s explanatory statement replaces factual description of the powers of a Seattle  
4 Park District in favor of speculation about what such a District might do is nowhere more misplaced than in  
5 discussion of the proposed inter-local agreement (ILA). The City argues that “the powers that the Park  
6 District would actually exercise are expressed in the ILA.” Response at pages 8-9, emphasis added. The  
7 City questions the need to mention state-granted powers of a Seattle Park District if they are “prohibited by  
8 the ILA.” Response at page 5. Thus the City argues that state-granted powers of a metropolitan park district  
9 to build airports, condemn land, and own and manage and for parks and other purposes, have employees  
10 (including a police force) need not be mentioned to the voters because “the ILA provides” that the Seattle  
11 Park District shall not engage in these activities.

12 Unfortunately, none of these official-sounding statements in the City Attorney’s Response, and  
13 none of the City’s similar references to the inter-local agreement in the explanatory statement, are accurate.  
14 The ILA provisions should not be included in the explanatory statement since SMC 2.14.030(A) requires a  
15 description of “the law as it presently exists and the effect of the measure if approved.” The City justifies  
16 its failure to tell voters in the explanatory statement that the inter-local agreement has not yet been  
17 executed, by including the words “should its creation be approved by the voters.” Response at page 9. But  
18 this is not a straightforward way of addressing a serious need for openness, and fails to meet the standards  
19 of being clear and concise or of accurately describing the “the law as it presently exists.”  
20

21 While it is true that the Mayor and City Council have approved a **draft** of the inter-local agreement,  
22 the inter-local agreement has not been approved, and its approval is not a part of voting yes or no on  
23 Proposition One, and its specific terms are expressly subject to change before final adoption. An inter-local  
24 agreement cannot be concluded without action by a Seattle Park District, and voters have not yet decided  
25 whether to create such a District. Should a Seattle Park District be created, approval of an inter-local

1 agreement cannot be considered automatic, because the District is a separate government, and the City  
2 Council members serving as its board *ex officio* would be required to engage in the basic diligence to  
3 review the proposed agreement and engage the public about any changes in its content before any approval  
4 could be considered.

5 Even if a Seattle Park District is created and an inter-local agreement were it to be approved, that  
6 agreement would not provide the assurances that the City Attorney claims for it that the sweeping powers  
7 granted by state law to the Park District Board would not be exercised. There is not even a guarantee for the  
8 City's claim that the inter-local agreement "will govern the operation of the Park District should it be  
9 created." Response at page 5. The agreement can be canceled by either party on 180 days' notice; long term  
10 governance of the City's parks by the District is not assured even if the ILA is adopted as drafted.

11 The powers enjoyed by a metropolitan park district board are inherent in state law; while they can  
12 be left unused, they cannot be renounced; while one generation of City Council members may avoid using  
13 these powers, their successors could easily exercise them. For example, while it is true that some  
14 metropolitan park districts have been created specifically to construct and maintain a swimming pool and  
15 nothing more, there is nothing to prevent such a district's board from deciding at any time to make use of  
16 the broad powers granted by the state to all metropolitan park districts.

17 Because the proposed inter-local agreement does not have legal standing to restrict a metropolitan  
18 park district from making full use of its powers under state law, we stand by the position in our appeal that  
19 the proposed agreement be mentioned only briefly and in a noncommittal way. Our proposed language  
20 remains the same as before:  
21

22 The City also has proposed an "inter-local agreement" [web link] describing the District and City's  
23 relationship and a \$47.9 million per year levy (\$.33 per thousand dollars of assessed value) with  
24 spending plan. Both parties may sign it upon creation of the District but may void it upon 180 day  
25 notice.



1 **V. APPELLANTS’ PROPOSED EXPLANATORY STATEMENT--AS PROPOSED MAY 19**  
2 **WITH TWO SUBSTANTIVE CHANGES STEMMING FROM THE CITY’S RESPONSE**

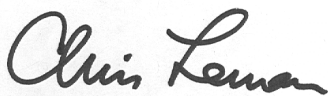
3 Following is our proposed 250-word explanatory statement—the same as we proposed May 19 with  
4 two changes stemming from the City Attorney’s May 28 Response as described in sections I and II above;  
5 and four copyedits: add “a” on the first line, delete “an” on the fifth line, change “a” to “an” on the sixth  
6 line, and add “or” on the eleventh line (please note that the lined-out “an” should not be included in the  
7 word count):

8 If approved, creates the “Seattle Park District”, a metropolitan park district with the same  
9 boundaries as Seattle. The District would be a distinct municipal corporation and separate taxing  
10 authority with powers granted by state law (RCW 35.61). Its governing board would be Seattle  
11 councilmembers acting ex-officio. As a separate taxing authority from the City, the District could  
12 levy ~~an~~ additional property tax above current “lid” restrictions that state law imposes on Seattle.  
13 Among the District’s powers is the ability to levy an annual property tax, up to \$0.75 per thousand  
14 dollars of assessed value (or \$33075 on a \$50440,000 home); to buy, sell, or condemn land; to raise  
15 revenues for roads, airports, performing venues, and other park or non-park uses; and to engage in  
16 any business activity inside or outside Seattle as it shall judge desirable or beneficial for the public,  
17 or for the production of revenue for expenditure incidental to its park duties. Once approved, the  
18 District’s powers and taxing authority are not subject to City laws or its Charter, nor can Seattle  
19 voters reverse any board action via a local initiative or referendum. The District may be dissolved  
20 only by its board, the state legislature, or statewide initiative.

21 The City also has proposed an “interlocal agreement” [weblink] describing the District and  
22 City’s relationship and a \$47.9 million per year levy (\$.33 per thousand dollars of assessed value)  
23 with spending plan. Both parties may sign it upon creation of the District but may void it upon 180  
24 day notice.

25 Thank you for your consideration. We declare under penalty of perjury of the laws of the State of  
Washington that we are registered voters of the City of Seattle, and that the information in the above  
complaint is true and correct.

Dated this 30<sup>th</sup> day of May, 2014



Chris Leman

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Toby Thaler

John Fox