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March 30, 2012

Via Legal Messenger Service

Renton City Council
Attn: Mayor and City Council Members
1055 South Grady Way
Renton, WA 98057

Re: Cedar River Library

Dear Mayor Denis Law and Council Members:

We represent Citizens for the Preservation of the Cedar River Library ("Citizens"), the sponsor of the City of Renton initiative regarding the downtown library. This letter is to provide you with a response to the March 5, 2012, memorandum to the Mayor and City Council from Larry Warren, the City Attorney regarding the initiative on the downtown library. We will address each issue in the order of his memorandum:

1. Impairment of Contract.

   Citizens will not take the time to address whether or not the initiative will or will not unconstitutionally impair contracts because courts have made clear that questions about the constitutionality of an initiative must not be resolved until after the election. *Coppernoll v. Reed,* 155 Wn.2d 290, 300 (2005) (court "may not rule on the constitutional validity of a proposed initiative."). Part of the reasoning for refusing to review the constitutionality of an initiative before the election is the reluctance of the courts to decide unnecessary constitutional issues. Obviously, if the people vote and don't approve the initiative, there is no reason to decide whether or not it would impair contractual obligations of the City. Additionally, *Coppernoll* is clear that, even though a proposed initiative may be unconstitutional, it still represents an expression of public will. Prohibiting people from registering their vote on a matter of public controversy has free speech implications regardless of the constitutional validity of the initiative. *Id.* at 298.

2. Infringement on the Council's Budget Authority.

   The City Attorney's Memo argues that if the initiative were adopted, it would create problems for the City's budgets and that "budgeting may not be done by initiative." Citing *Priorities First v. City of Spokane*, 93 Wn. App. 406 (1998). Citizens have two

responses. First, local initiatives change the local code and any changes typically require the City to do something differently than it did before. As a practical matter, there is always a budget implication for any change in the law. Second, there is no authority for the proposition that an initiative cannot impact existing budgets. The case cited in the City Attorney's Memo, *Priorities First*, does not stand for that proposition.

3. Initiative Improperly Directs Administrative Actions

The City Attorney's Memo confuses a valid reason for not placing an initiative on the ballot with an invalid reason. Initiatives cannot exercise administrative power; they are limited to exerting legislative power. But that does not mean an initiative cannot have an impact on administrative functions; most exercises of legislative power do. For instance, the legislature or voters can enact legislation that requires documents of state and local governments to be available to the public. *See Fritz v. Gorton,* 83 Wn.2d 275, (1974). This is a legislative power even though it undoubtedly effects the administrative actions of local governments.

Nevertheless, the City Attorney's Memo relies on *Bidwell v. Bellevue*, 65 Wn. App. 43 (1992), for support of this theory that the initiative is invalid because it affects administrative functions. The proposed initiative in *Bidwell* required a public vote prior to the issuance of bonds for the construction of a new convention center. The initiative made no attempt to repeal the prior ordinances regarding the siting and building of the convention center.

In contrast, the main thrust of the present initiative is to require a public vote for the siting of a library any place other than the existing library. The present initiative is more like the one in *Paget v. Logan*, 78 Wn.2d 349 (1970), where the Supreme Court held that a local initiative regarding the siting of the Kingdome was appropriate. The Court gave numerous examples of legislative functions involving the acquisition or siting of public facilities.

> In this vein it is pertinent to note that this court has heretofore characterized as legislative functions: the vacation of a municipal street, *Mottman v. Olympia*, 45 Wash. 361, 88 P. 579 (1907); the location, route and termini of a municipal viaduct, *In re Yesler Way*, Seattle, 94 Wash. 427, 162 P. 536 (1917); the purchase of a street car system, *State ex rel. Harlin v. Superior Court of King County*, 139 Wash. 282, 247 P. 4 (1926); the fixing of certain municipal salaries where not otherwise excluded, *State ex rel. Leo*

v. Tacoma, 184 Wash. 160, 49 P.2d 1113 (1935), *State ex rel. Payne v. City of Spokane*, 17 Wn.2d 22, 134 P.2d 950 (1943); and the location, purchase and condemnation of land for an airport, *State ex rel. Gray v. Martin*, 29 Wn.2d 799, 189 P.2d 637 (1948).

Paget, 78 Wn.2d at 358. The City would be wise to follow the weight of judicial authority that siting decisions regarding public facilities are legislative actions, even though they may be followed by administrative decisions regarding entering into specific construction contracts.

4. The Initiative is Really an Untimely Referendum

If this argument were valid, it could be raised in regard to any change in the law, which is exactly what initiatives purport to do. The fact that the City has ordinances that might conflict with the initiative does not transform the initiative into an untimely referendum. Referenda are different in that, when sufficient petition signatures are filed, the ordinances do not go into effect. There is nothing in the present initiative that would have that effect. Clearly, initiatives are a proper method to repeal existing ordinances. *See Postema v. Snohomish County*, 73 Wn.App. 465 (1994). Repealing or changing an existing ordinance does not transform an initiative into an untimely referendum.

5. The Initiative Challenges Elements of the Election to Join KCLS

To the extent the initiative, if passed at the polls, would change prior election results is immaterial. While the City Attorney's Memo concludes that the initiative "attacks" and challenges the election and agreement, concluding the "challenge is illegal and untimely," the City Attorney's Memo provides no statutory authority or court decisions to support this conclusion. It is relatively common for new initiatives to change legal provisions which people voted on previously. Consider, for example, the state liquor privatization initiative which was defeated one year and then passed the next.

Moreover, as addressed above, questions as to the legality of an initiative are supposed to wait until citizens are allowed to vote.

6. The Initiative is an Improper Attempt to Set Policy and not Initiate an Ordinance.

The problem with this conclusion in the City Attorney's Memo is two-fold. The conclusion that "a policy statement may not be the subject of an initiative" is contrary to

longstanding judicial interpretation of the initiative power. As the City Attorney's Memo recognizes in one place, an initiative must exercise legislative and not administrative power. The setting of policy is the quintessential legislative power. *See Kitsap County Deputy Sheriff's Guild v. Kitsap County,* 167 Wn.2d 428, 444, 219 P.3d 675 (2009); *Voters Educ. Committee v. Washington State Public Disclosure Com'n,* 161 Wn. 2d 470 (2007) (referencing policy set by initiative regarding campaign finance laws).

Moreover, the City Attorney's Memo recognizes that the "initiative seeks to impose a procedural requirement … which is not a law and at best a policy statement." Procedural requirements, like a public vote, are clearly laws. *See, e.g.*, RCW 43.135.034 (requiring a vote of the people before state may exceed expenditure limit, adopted as part of Initiative 1053). Open public meeting laws are clearly procedural requirements, which were created by a statewide initiative. *See Fritz v. Gorton*, 83 Wn.2d 275 (1974).

7. The Language of the Initiative is Fatally Flawed.

While it is true that the text of the initiative as it appears on the petitions asks the City Council to adopt an ordinance, that does not mean that this drafting form is a flaw or, more importantly, that it a fatal one. The City Attorney's Memo is internally inconsistent when it reads "it is not an ordinance but an ordinance to require the adoption of an ordinance." The text of the initiative proposes an ordinance regardless of how it is worded. The City Attorney's Memo further asserts that "it doesn't give any time limitations on the Council to adopt the ordinance and so is vague." Whether it is vague is inconsequential to it being placed on the ballot. The City might not want to adopt it because of the vagueness, but that does not mean people do not have a right to vote on it.

Regarding whether the language is fatally flawed, the City Council should be very reluctant to conclude that the initiative should not be placed on the ballot. If the City does so, it will be assuming that the Courts will not give leeway to citizen legislators entering into the initiative process. It is all too common for the legislature with a paid professional staff to enact legislation which is vague or unclear, but the Courts never rule that the Legislators can't vote on inartfully drafted language. *Janovich v. Herron,* 91 Wn.2d 767, 772, 592 P.2d 1096 (1979) (despite inartful language, "the spirit or intention of the law prevails over the letter of the law.") It would be a major presumption on the part of the City that courts will hold citizens to higher standards in drafting ordinances than it holds the State Legislature. The proper result is to let the people vote on the

measure and, if it passes at the ballot box, then determine what the supposedly confusing language means.

CONCLUSION

We urge the City to place the initiative regarding the downtown library on the ballot for a couple of overarching reasons. First, the issues raised in the City Attorney's memo do not clearly compel the conclusion that the initiative should not be voted upon. At best, the issues are disputed or are unclear. In cases of doubt, the City should resolve the doubt in favor of allowing a public vote. The City Attorney has given no reason to conclude that the City would be violating any law if placed this matter on the ballot.

Second, the Supreme Court has held that the opportunity for people to vote in the initiative process is the exercise of free speech values, even if the initiative itself has some flaw. *See Coppernoll,* 155 Wn.2d at 298 (discussing I-695 regarding $30 car tabs). If the City chooses not to place the initiative on the ballot, it will be frustrating First Amendment rights and potentially creating liability for itself. To place an initiative on the ballot, even if that initiative is flawed, removes that risk to the City of interfering with First Amendment rights.

Third, placing the initiative on the ballot is good public policy, regardless of the merits of the initiative. There is value in allowing people to express their views and there is value to the City in knowing the public's views. This is true regardless of whether the measure is valid or not. Public expression on a matter of public controversy is something the City should encourage. Placement on the ballot does mean the City agrees with the initiative's message or agrees that it has the force of law, if passed. The initiative can be a useful means for communicating to the City the public will, assuming the City wants to know the views of the public. For all of these reasons, the City should place the initiative regarding the downtown library on the next general election ballot.

Thank you for considering these comments.

Sincerely,

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