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No. 96575-7

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

PORT OF TACOMA, a Washington State Municipal Corporation;
ECONOMIC DEVELOPMENT BOARD FOR
TACOMA-PIERCE COUNTY, a Washington state
Non-profit Corporation; TACOMA-PIERCE COUNTY CHAMBER, a
Washington State Non-profit corporation, and CITY OF TACOMA,

Respondents.

v.

SAVE TACOMA WATER, a Washington political committee,

Appellant,

JOHN AND JANE DOES 1-5 (Individual sponsors and officers of Save
Tacoma Water), Donna Walters, Sherry Bockwinkel, City of Tacoma,
Julie Anderson in her official capacity as Pierce County Auditor,

Defendants.

CITY OF TACOMA'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Save Tacoma Water (“STW”) sponsored two local initiatives that the superior court declared invalid and enjoined from the ballot. Affirming the superior court, the Court of Appeals held the initiatives were outside the scope of the local initiative power because they conflict with state law regarding the provision of retail water service and are administrative in nature. STW does not dispute these conclusions or even defend the initiatives it sponsored. Rather, STW’s Petition for Review (“Petition”) raises theoretical questions about the constitutionality of pre-election review of local initiatives in general. This Court has repeatedly upheld pre-election review of local initiatives, most recently in a unanimous 2018 decision, *Protect Pub. Health v. Freed*, 430 P.3d 640 (Wash. 2018). The Court of Appeals’ decision below follows that well-settled precedent. STW’s Petition raises neither significant constitutional issues nor issues of substantial public importance. The Petition should be denied. *See* RAP 13.4.

II. IDENTITY OF RESPONDENT

Respondent is the City of Tacoma (“City”), appellee and respondent in the proceedings below.

III. COUNTERSTATEMENT OF ISSUES

1. Whether STW has raised a significant question of constitutional law sufficient to warrant this Court's review, where STW has failed to defend its invalid initiatives and this Court has repeatedly upheld the propriety of pre-election review of local initiatives.

2. Whether STW has raised an issue of substantial public interest sufficient to warrant this Court's review, where STW concedes its initiatives exceed the scope of the local initiative power and there is no public interest in allowing invalid initiatives to appear on the ballot.

IV. COUNTERSTATEMENT OF THE CASE

A. The City's Duty to Provide Municipal Water Service Subject to State and Local Law.

The City operates its own municipal water system through Tacoma Water, a division of Tacoma Public Utilities. App. 67.¹ The City's provision of water service is subject to a broad statutory scheme regulating water supplies. *See* RCW 43.20.050(2)(a). The City has a duty to provide retail water service to all new service connections within their retail service areas if certain threshold factors are met. RCW 90.03.015(3); RCW 43.20.260; WAC 246-290-106; *see also* App. 68. State law also requires water rates to be "just, fair, reasonable and sufficient," and

¹ Filings from the trial court and appellate record relevant to the Counterstatement of the case are attached as an Appendix ("App.").

prevents rate discrimination by water companies like Tacoma Water. *See* RCW 80.28.010; RCW 80.28.090, RCW 80.28.100; *see also* RCW 80.28.110 (requiring water companies like Tacoma Water to furnish water “as demanded” to “all persons and corporations who may apply therefore and be reasonably entitled thereto” upon “reasonable notice”).

Consistent with these state laws and regulations, individuals and entities may apply to Tacoma Water for water service under Tacoma Municipal Code section 12.10.040. The application, when approved, constitutes a contract whereby the applicant agrees as a condition of water service to comply with the City’s regulatory and rate scheme. *Id.*

The City has also committed to providing water service concurrent with development pursuant to Washington’s Growth Management Act (“GMA”). The GMA, Chapter 36.70A RCW, requires cities like Tacoma to adopt planning policies called “comprehensive plans” that address, among other things, “capital facilities” and “utilities” to ensure that there is an adequate level of public facilities and services in place to meet community needs over time. *See* RCW 36.70A.070(3), (4); *see also* *City of Seattle v. Yes For Seattle*, 122 Wn. App. 382, 388 n.1, 93 P.3d 176 (2004). The City’s GMA-mandated Comprehensive Plan sets the City’s goals and policies regarding public utilities like water. *See* App. 117-18, 121-65 (setting out the Plan).

B. History and Purpose of the Initiatives.

The two initiatives at issue here—a Tacoma City Charter Amendment and a proposed city ordinance (collectively, “the Initiatives”)—arose in response to citizen concerns regarding large water users, specifically in opposition to a proposed (but now defunct) methanol refinery plant in the City. The Initiatives propose to add new municipal water regulations via a new Section 4.24 to the Tacoma City Charter (Charter Initiative) and a new ordinance under Title 12 of the Tacoma Municipal Code (Code Initiative). App. 172, 175. Both Initiatives are entitled “The People’s Right to Water Protection.” *Id.*

The Initiatives contain identical substantive terms. Part A of each Initiative requires a public vote on any applicant’s request for water utility service where the applicant proposes to use one million gallons or more of water per day. *Id.* Part B expressly purports to preempt state law that conflicts with the Initiatives, stating,

To prevent subsequent denial of the People’s Right to Water Protection by state law preemption, all laws adopted by the legislature of the State of Washington, and rules adopted by any state agency, shall be the law of the City of Tacoma only to the extent that they do not violate the rights or mandates of this Article [Ordinance].

Id. Part C purports to remove corporate “personhood” from “corporations that violate, or seek to violate the rights and mandates” of the Initiatives

and further attempts to deprive state courts of jurisdiction to uphold any water license or permit that conflicts with the Initiatives. *Id.* Finally, Part D of each Initiative authorizes the City or any resident of the City to enforce the new water service provisions by court action, including an injunction to stop prohibited activities and provides for the recovery of damages and costs of litigation, including expert and attorney's fees. *Id.*

In June 2016, the Pierce County Auditor's Office verified that the Code Initiative had collected a sufficient number of valid signatures. *See* App. 183-91. Signature gathering for the Charter Initiative was ongoing when this action began.

C. Both the Superior Court and Court of Appeals Confirm the Propriety of Pre-election Review and Invalidity of the Initiatives.

In June 2016, the Port of Tacoma ("the Port"), the Economic Development Board for Tacoma-Pierce County, and the Tacoma-Pierce County Chamber filed this action requesting that the superior court invalidate the Initiatives as outside the scope of the local initiative power and enjoin the City from placing the Initiatives on the November 2016 general election ballot. App. 1-27. The complaint named the City as a defendant as well as STW, various individual sponsors and officers of STW, and the Pierce County Auditor. *Id.* The City filed an answer and

cross claims against STW, agreeing with the Plaintiffs that the Initiatives exceeded the scope of the initiative power. App. 28-64.

In response to the City's and the Plaintiffs' Motions for Preliminary and Permanent Injunction, STW filed a "Motion to Dismiss for Lack of Jurisdiction over the Subject Matter," arguing (among other things) that pre-election review of initiatives is an illegitimate interference with the people's lawmaking process, violates federal and state constitutional rights, and violates the principles of separation of powers and judicial restraint. App. 192-203.

In July 2016, the Pierce County Superior Court denied STW's Motion to Dismiss and found that the dispute was justiciable. App. 206, 210; *see also* 263-64 (oral ruling). The court then ruled the Initiatives were outside the scope of the local initiative power and could not be severed. App. 209-10; *see also* App. 264-66. The court then permanently enjoined both Initiatives from being placed on the ballot. App. 209, 264.

STW appealed and the Court of Appeals, Division Two, affirmed the superior court on July 25, 2018. In a published decision, the Court of Appeals held that under this Court's precedent, the superior court had authority to review whether the Initiatives exceeded the scope of the local initiative power and, further, that such review does not offend separation of powers principles. Petition, Appendix D at 5-7 ("Opinion"). The Court

of Appeals affirmed the superior court's findings that the Initiatives' challenged provisions were administrative in nature and conflicted with state law governing the City's duty to provide retail water service, and therefore exceeded the scope of the local initiative power. *Id.* at 9-10. The Court of Appeals also concluded that the Initiatives were not severable because all of their provisions were designed to implement or to protect the invalid provisions. *Id.* at 11. Finally, the Court held that precluding the Initiatives from appearing on the ballot did not violate STW's free speech rights. *See id.* at 12-15. The Court of Appeals denied STW's Motion for Reconsideration. Petition, Appendix F.

V. ARGUMENT

The Court of Appeals' decision is consistent with decades of authority from this Court upholding the propriety of pre-election review of local initiatives. *See Protect Pub. Health*, 430 P.3d 640; *Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend Constitution*, 185 Wn.2d 97, 102-110, 369 P.3d 140 (2016) ("*Spokane Moves*"); *Seattle Bldg. & Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 745-50, 620 P.2d 82 (1980); *Ford v. Logan*, 79 Wn.2d 147, 152-57, 483 P.2d 1247 (1971); *City of Port Angeles v. Our Water-Our Choice*, 145 Wn. App. 869, 872, 874-83, 188 P.3d 533 (2008). STW offers no basis on which to depart from these controlling decisions. Nor does STW argue that the Initiatives

are properly within the scope of the initiative power. Rather, STW offers only theoretical objections to the practice of pre-election review in general—a practice STW describes as an impermissible “judicial veto.”²

STW’s Petition should be denied. STW’s objections to pre-election review have been addressed by this and other courts, and do not present a significant constitutional question or issue of substantial public importance that warrant this Court’s review. *See* RAP 13.4(b)(3), (4).

A. STW’s Petition Fails to Present a Significant Constitutional Question Under RAP 13.4(b)(3).

STW grounds its Petition in a so-called “right of local community self-government,” the separation of powers doctrine, and state and federal constitutional protections for political speech. Petition at 17. Each of these arguments ignores the wealth of this Court’s authority upholding pre-election review of local initiatives.

1. The Court of Appeals Properly Declined to Establish the New Right of “Community Self-Government” Urged by STW.

Contrary to STW’s claims, there is no broad right of “local community self-government” that justifies placing invalid local initiatives

² STW effectively concedes that the Initiatives are invalid by failing to defend them in the Petition for Review, calling into question STW’s standing to even seek review of the Court of Appeals’ decision in the first instance. *See To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411–12, 416, 27 P.3d 1149 (2001) (even where statute at issue caused party economic loss, when party failed to show their interest in dispute was direct and substantial, as opposed to potential, theoretical, abstract or academic, they lacked standing and thereby invited Court into “the prohibited area of advisory opinions”).

on the ballot. *See* Petition at 17-18. As this Court has repeatedly held, municipalities have no inherent power superior to the laws of the state and the state and federal constitutions. *See e.g., City of Port Angeles*, 170 Wn.2d at 8 (under Washington constitution, municipal governments are not fully sovereign); *Massie v. Brown*, 84 Wn.2d 490, 492, 527 P.2d 476 (1974) (municipal corporations are not exempt from legislative control and have no inherent right to self-government); *see also* Wash. Const. art. I, § 2 (providing that the Constitution of the United States is the supreme law of the land); Wash. Const. art. XI, § § 10, 11 (requiring that city charters and city regulations be consistent with and subject to state law). Stated another way, municipal power is delegated from the state legislature and thus is always subservient to state and federal law.

STW ignores this authority, and its argument amounts to a contention that citizens of municipalities should be permitted, through the local initiative power, to exempt themselves from certain state and federal laws with which they disagree. *See* Petition at 8, 18. That is not the law. As this Court recently held, unlike the statewide initiative power, the local initiative power is subject to applicable limits in statutes and municipal charters as well as the “multiple limits” courts have imposed through decades of case authority. *Protect Pub. Health*, 430 P.3d at 643 (quoting *Spokane Moves*, 185 Wn.2d at 107). These limitations on local initiatives

are mere extensions of the limitations on initiatives in general, including state initiatives. *See Spokane Moves*, 185 Wn.2d at 104-105 (discussing the nature of review for state and local initiatives). For example, just as state initiatives cannot legislate on subject matters preempted by federal law, local initiatives cannot legislate on subject matters preempted by state law. *See Philadelphia II v. Gregoire*, 128 Wn.2d 707, 719, 911 P.2d 389 (1996) (holding it was not within the scope of state initiative power to enact federal law); *Seattle Bldg. & Constr. Trades Council*, 94 Wn.2d at 747 (stating local municipality may not enact initiative which conflicts with state law). Finally, the initiative powers in Tacoma City Charter Section 2.18 and 2.19 are by their own terms subordinate to state law.³

In sum, STW's claim of a novel right to local community self-government is contrary to established limitations on local legislation and raises no significant constitutional question.

2. Pre-election Review of Local Initiatives Comports with Separation of Powers Principles.

Limited pre-election review of local initiatives ensures that the people act within the scope of the local legislative power to enact law.

Such limited review fits well within our system of checks and balances

³ Charter Section 2.18 ("Amendments to this charter may be submitted to the voters by the City Council or by initiative petition of the voters in the manner provided by the state constitution and laws."); Section 2.19 ("Citizens of Tacoma may by initiative petition ask the voters to approve or reject ordinances or amendments to existing ordinances, subject to any limitation on topics in state law") (emphasis added).

and raises no separation of powers concerns. STW's arguments to the contrary mischaracterize the nature of local initiatives and disregard the power of the courts to interpret the law. STW thus fails to raise a significant constitutional question under the separation of powers doctrine.

The separation of powers doctrine ensures each branch of government's fundamental functions remain inviolate. *Carrick v. Locke*, 125 Wn.2d 129, 135, 882 P.2d 173 (1994). The doctrine is implicated where the activity of one branch threatens the independence or integrity or invades the prerogatives of another. *Id.* (internal citation omitted). Separation of powers, however, "does not depend on the branches of government being hermetically sealed off from one another." *Id.* Rather, separate branches "must remain partially intertwined" in order to "maintain an effective system of checks and balances, as well as an effective government." *Id.*

Limited pre-election review of local initiatives is part of this balancing system. The judiciary's province and duty is to interpret the law, in some instances as a check on the activities of another branch. *Matter of Salary of Juvenile Dir.*, 87 Wn.2d 232, 241, 244, 552 P.2d 163 (1976) (internal citations omitted); *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177, 2 L.Ed. 60 (1803). Relevant here, courts have long recognized the people's power of local initiative as provided in municipal charters,

but have also recognized limits on such power under the state constitution and laws. *Protect Pub. Health*, 430 P.3d at 643 (describing the limits on local initiative power); *see also State v. Superior Court In & For Thurston Cty.*, 92 Wash. 16, 26, 159 P. 92, 94 (1916) (stating the people’s initiative power in Washington is subordinate to the Constitution and laws passed in obedience and compliance with the Constitution). These limits are enforced, in part, by judicial review of whether proposed local initiatives exceed the scope of the local initiative power.

The “strictly limit[ed]” scope of pre-election review ensures that such review does not violate separation of powers. *Spokane Moves*, 185 Wn.2d at 104. Contrary to STW’s argument that courts permit “any legal challenge” to an initiative pre-election, *see* Petition at 8, “[c]ourts will generally review only two types of challenges—procedural challenges (such as sufficiency of signatures and ballot titles) and whether the subject matter is proper for direct legislation.” *Spokane Moves*, 185 Wn.2d at 104 (internal citation omitted). The latter challenge type is “typically aimed at local initiatives because of the more limited powers of initiatives under city or county charters.” *Id.* Rather than assessing an initiative’s substance or prudence, this challenge type is confined to reviewing whether the proposed law is beyond the scope of those limited powers. *Id.*

This narrowly defined scope of pre-election review takes into

account separation of powers principles. *See Spokane Moves*, 185 Wn.2d at 104 (expressly stating that the strict limits on pre-election review are in place to address concerns about interfering with the electoral and legislative process and about improperly issuing advisory opinions). The Court of Appeals properly recognized this. *See* Opinion at 7 (observing this Court has upheld considerations “at the heart of the inquiry into the separation of powers,” when applying pre-election review of local initiatives). STW cites no contrary authority.⁴

Nonetheless, STW likens pre-election review to enjoining proposed legislation by a local government. This analogy fails. First, the local initiative power is already inherently more limited than the power of a local law making body. *See Our Water—Our Choice!*, 170 Wn.2d at 8 (local administrative matters not subject to initiative or referendum); *City of Sequim v. Malkasian*, 157 Wn.2d 251, 261, 138 P.3d (2006) (local initiative power does not reach powers granted to governing body of a city, rather than the city itself). Second, just like legislation proposed by a city council, proposed initiatives would be subject to substantive challenge only after passage. *Spokane Moves*, 185 Wn.2d at 105 (stating the limits

⁴ STW’s critiques the Court of Appeals’ decision on this point as improperly relying on “implicit holdings.” Petition at 9. STW misunderstands the Court’s analysis, which recognized that separation of powers concerns were fundamental to this Court’s long-standing approval of limited pre-election review. Moreover, STW cites no substantive basis on which to question the Court of Appeals’ well-reasoned analysis of this Court’s decisions. STW’s philosophical disagreement is not enough.

on pre-election review ensure that courts “do not address the substantive validity of a statute before it is enacted”). Pre-election review is properly limited to whether the initiative is within the inherently more limited scope of the local initiative power. This Court has repeatedly acknowledged and upheld such limitations. *Id.* at 107.⁵

In sum, as this Court has recognized, pre-election review of local initiatives furthers the separation of powers. STW offers no authority to the contrary and thus fails to raise a constitutional question.

3. Pre-election Review of Local Initiatives Does Not Violate Free Speech Rights.

STW devotes the bulk of its Petition to arguing that pre-election review of local initiatives violates the First Amendment as a “content-based” restriction on speech or an unlawful prior restraint. STW fails to cite applicable authority raising constitutional issues warranting review.

a.) There is no First Amendment Right to Place an Invalid Initiative on the Ballot.

At the outset, STW’s First Amendment claims should be rejected because STW does not defend its sponsored Initiatives, nor contend their exclusion was substantively improper under applicable Washington law. Rather, the thrust of STW’s speech arguments is that every citizen has a

⁵ STW claims without support that this Court’s decision in *Spokane Moves* removed the distinction between scope and substantive review. Petition at 10. To the contrary, *Spokane Moves* emphasized the importance of the scope analysis and detailed its limitations. 185 Wn.2d at 104-105.

constitutional right to require an election, funded by a municipality, on any initiative, even when patently invalid on its face. No case holds this, and STW fails to address the published Court of Appeals’ opinion holding the opposite. *See City of Longview v. Wallin*, 174 Wn. App. 763, 791-92, 301 P.3d 45 (2013), *review denied*, 178 Wn.2d 1020, 312 P.3d 650 (2013) (declining to find a “First Amendment right to have any initiative, regardless of whether it is outside the scope of the initiative power, placed on the ballot.”).⁶

Rather, STW contests the Court of Appeals’ reliance on *Angle v. Miller*, 673 F.3d 1122 (9th Cir. 2012), a Ninth Circuit case that reached the same conclusion set forth in *Wallin*. *Angle* concerned a Nevada state law that required statewide initiative proponents to collect a certain number of signatures from each congressional district (“All Districts Rule”). 673 F.3d at 1126. The plaintiffs alleged that the law violated the First Amendment “by significantly increasing the burdens and expenses placed upon individuals seeking to qualify initiatives for the ballot.” *Id.* at 1127. The Ninth Circuit ultimately rejected these claims and upheld the

⁶ Other courts have come to similar conclusions. *See Initiative and Referendum Inst. v. Walker*, 450 F.3d 1082, 1099 (10th Cir. 2006) (“Although the First Amendment protects political speech incident to an initiative campaign, it does not protect the right to make law, by initiative or otherwise.”); *Wright v. Mahan*, 478 F.Supp. 468, 474 (E.D.Va. 1979) (“[A] right to petition for, have access to the ballot for, and vote in a municipal initiative election, is a wholly State created right, and is not a right secured by the federal Constitution. . .”).

All Districts Rule, holding the burden was not significant and that strict scrutiny did not apply. *Id.* at 1134.

Here, the Court of Appeals appropriately relied on *Angle* for the broad and relevant proposition that “[t]here is no First Amendment right to place an initiative on the ballot.” Opinion at 13; 673 F.3d at 1133. In its Petition, however, STW argues that the Court of Appeals should have invoked *Angle* to evaluate the “burden” placed on proponents of local initiatives by limited pre-election review. Petition at 12. This analogy fails for multiple reasons. First, *Angle* did not concern local initiatives, which as detailed above, are subject to greater restrictions than statewide initiatives. Second, recognizing there is no “First Amendment right to place an initiative on the ballot,” the burden analysis in *Angle* focused on whether the challenged regulation would impact core political speech by reducing the chances that initiative proponents would gather enough signatures to qualify their initiatives. *Angle*, 673 F.3d at 1133-34. There are no analogous “ballot access restrictions” at issue in this case and no limitations on STW’s speech. Finally, as the Court of Appeals properly observed, STW fails to cite any authority “for the proposition that one has a free speech right to have a local measure beyond the scope of the initiative power appear on a ballot.” Opinion at 13. The Petition should be denied.

b.) Pre-Election Review is Neither an Unlawful Content-Based Restriction nor a Prior Restraint on Speech.

Pre-election review does not amount to unconstitutional content-based restriction on speech. Such review does not distinguish among measures based on the speaker or content of the measure. For this reason the cases STW relies on, *Police Department of Chicago v. Mosely*, 408 U.S. 92 (1972), and *Collier v. City of Tacoma*, 121 Wn.2d 737, 854 P.2d 1046 (1993), are inapposite. Those cases concerned laws that directly prohibited speech in public forums based on the message conveyed. *Mosely*, 408 U.S. at 94-96; *Collier*, 121 Wn.2d at 746-48, 52-53.⁷

By contrast, pre-election review asks only whether the subject matter of the measure is beyond the scope of local initiative power or not. *Spokane Moves*, 185 Wn.2d at 104. As the Court of Appeals properly concluded, the superior court's decision "rests on the principles that a measure is beyond the local initiative power if it is administrative or in conflict with state law." Opinion at 14. The same test would have been applied and appropriate regardless of the type of policy or message STW wished to convey. In short, no authority equates pre-election review with content-based discrimination under the First Amendment.

⁷ STW's argument that "[t]he issue is not whether the ballot is a public forum," Petition at 10, n.2 thus conflicts with its reliance on *Mosley* and *Collier*, which are in fact dependent upon the forum analysis. See 408 U.S. 92, 94-96 (1972) (analyzing the restricted area as a "public place" and "public forum" throughout); 121 Wn.2d at 746-48 (analyzing ordinances at issue as time, place, manner restrictions in public forum).

Nor is pre-election review of local initiatives an unlawful prior restraint on speech. A prior restraint is an order prohibiting future speech. *Voters Educ. Comm. v. Washington State Pub. Disclosure Comm'n*, 161 Wn.2d 470, 494, 166 P.3d 1174 (2007). Pre-election review does not target, let alone prohibit future speech—it determines only whether proposed local initiatives are within the scope of local initiative power. *Spokane Moves*, 185 Wn.2d at 104. STW’s citation to *Meyer v. Grant*, 486 U.S. 414, 421-22 (1988) is thus not on point. Petition at 15-17. There, the Court invalidated a state law prohibiting paid petition-signature gatherers because the law directly restricted who was able to convey the initiative’s message, thereby limiting the people’s ability to have their voices heard through the initiative process. 486 U.S. at 424-25. Pre-election review imposes no such restrictions. As STW concedes, it was free to (and did) gather signatures to support the Initiatives, submit them to the county auditor, and have them counted. Petition at 6. STW freely exercised its First Amendment rights. *See Meyer*, 486 U.S. at 421-22 (“[T]he circulation of [an initiative] petition involves the type of interactive communication” that is “appropriately described as ‘core political speech.’”) (emphasis added); *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 192-205 (1999) (holding that various restrictions on petition circulation infringed on First Amendment rights).

4. The Standards for Pre-Election Review are Well-Established.

Finally, STW claims that this Court should accept review in part because courts have “never articulated review standards” for pre-election review, thereby allowing it to become an “illegitimate political weapon.” Petition at 19-20. Citing a single law review article, STW ignores the dozens of cases that have in fact established and defined the appropriate standards for pre-election review of local initiatives.

Most recently, in *Spokane Moves*, this Court plainly identified the two limited types of pre-election review: procedural and scope. 185 Wn.2d at 104. Relevant here, an initiative exceeds the scope of the local initiative power (1) if it is administrative, furthering or hindering an adopted plan of local government; (2) if it involves powers granted by the legislature to the governing body of a city rather than the city itself; or (3) if it conflicts with state or federal law. *Id.* at 107-108, 110. This Court also described the parameters of each of those inquiries. *See id.* at 107-109. Further “articulation” of standards is unnecessary. In sum, STW has not raised a significant question of constitutional law warranting this Court’s review. The Petition should be denied.

B. STW Fails to Raise an Issue of Substantial Public Interest.

Tellingly, STW identifies no specific issue of substantial public interest in its Petition. Rather, STW summarily claims that all of the

issues identified in its Petition constitute both constitutional questions and public interest issues. STW's failure to adequately brief the public interest argument waives it. Petition at 8; *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (the court need not consider arguments that are not developed); *see also* RAP 10.3(a)(6).

Regardless, placing admittedly invalid initiatives on the ballot serves no legitimate public interest. As the Court of Appeals correctly concluded, the Initiatives exceeded the scope of local initiative power and were not severable, and therefore the Initiatives were invalid. Opinion at 9-12. STW does not contest these conclusions in its Petition, nor state why it is in the public's interest to hold an election on the invalid Initiatives. Placing invalid initiatives on the ballot is a waste of public funds and resources. *See Wallin*, 174 Wn. App. at 782 ("requiring a city to place an invalid initiative on the ballot would result in an undue financial burden on local government"). This case does not present an issue of substantial public interest warranting review.

VI. CONCLUSION

For the reasons stated herein, the City respectfully requests the Petition be denied.

RESPECTFULLY SUBMITTED this 17th day of January, 2019.

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PROOF OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, over the age of 21 years, and not a party to this action. On the 17th day of January, 2019, I caused to be served, via the Washington State Appellate Court's Portal System, and via electronic mail, a true copy of the foregoing document and Appendix upon the parties listed below:

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DATED this 17th day of January, 2019.



Sydney Henderson

APPENDIX

APPENDIX

Description	Date	Pages
First Amended Complaint for Declaratory Judgment and Injunctive Relief	6/16/16	App. 1 – App. 27
City of Tacoma’s Answer and Affirmative Defenses	6/17/16	App. 28 – App. 64
Declaration of Robert Mack In Support of City of Tacoma’s Motion for Preliminary and Permanent Injunction	6/17/16	App. 65 – App. 115
Declaration of Peter Huffman In Support of City of Tacoma’s Motion for Preliminary and Permanent Injunction	6/17/16	App. 116 – 166
Declaration of Kymberly Evanson In Support of City of Tacoma’s Motion for Preliminary and Permanent Injunction	6/17/16	App. 167 – App. 178
Second Declaration of Kymberly Evanson In Support of City of Tacoma Motion for Prelim and Permanent Injunction	6/29/16	App. 179 – App. 191
Motion to Dismiss for Lack of Jurisdiction Over Subject Matter	6/29/16	App. 192 – App. 203
Order Granting P’s and City’s Motion for Declaratory Judgement and Permanent Injunctive Relief	7/1/16	App. 204 – App. 210
Verbatim Report of Proceedings	7/1/16	App. 211 – App. 270

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

PORT OF TACOMA, a Washington State
Municipal Corporation, ECONOMIC
DEVELOPMENT BOARD FOR TACOMA-
PIERCE COUNTY, a Washington State Non-
profit Corporation, and the TACOMA-
PIERCE COUNTY CHAMBER, a Washington
State Non-profit corporation.

Plaintiffs,

vs.

SAVE TACOMA WATER, a Washington
political committee, DONNA WALTERS,
sponsor and Treasurer of SAVE TACOMA
WATER, JON AND JANE DOES 1-5,
(Individual sponsors and officers of SAVE
TACOMA WATER), CITY OF TACOMA, a
Washington State Municipal Corporation,
and PIERCE COUNTY, a political
subdivision by and through JULIE
ANDERSON, IN HER CAPACITY AS
PIERCE COUNTY AUDITOR

Defendants.

No. 16-2-08477-5

**FIRST AMENDED
COMPLAINT FOR
DECLARATORY JUDGMENT
& INJUNCTIVE RELIEF**

1 **I. INTRODUCTION**

2 1. On or around March 7, 2016, Defendants SAVE TACOMA WATER, a
3 Washington political action committee, DONNA WALTERS, sponsor and Treasurer of
4 SAVE TACOMA WATER, and JON AND JANE DOES (Individual sponsors and officers
5 of SAVE TACOMA WATER) 1-5 (collectively “STW”) submitted what became “Charter
6 Amendment 5” (“Charter Initiative”). See Copy **Attachment A**. The Charter Initiative
7 seeks that any land use proposal requiring water consumption of 1336 CCF (one million
8 gallons) of water or more daily from Tacoma be submitted to a public vote prior to “the
9 City” “providing water service” for such a project. (Section 4.24 (A)). STW’s Charter
10 Initiative expressly purports to elevate its proposed Charter amendment above state law,
11 by pronouncing that “all laws adopted by the legislature of the State of Washington, and
12 rules adopted by any state agency, shall be the law of the City of Tacoma only to the
13 extent that they do not violate the rights or mandates of this Article. (Section 4.24 (B)).
14 STW’s Charter Initiative expressly also purports to overrule and/or disavow the United
15 States Constitution, along with “international, federal [and] state laws” that “interfere”
16 with the proposed amendment. (Section 4.24 (C)). STW’s Charter Initiative further
17 expressly purports to curtail the jurisdiction of state and federal courts, and to eliminate
18 certain rights of corporations, in conflict with the Washington and Federal
19 Constitutions, as well as U.S. Supreme Court rulings. STW apparently seeks all of these
20 results by proclamations sought to be contained in the Tacoma City Charter.

21 2. On or around April 15, 2016, STW submitted what became “Initiative 6”
22 (“Code Initiative”). STW’s Code Initiative seeks to amend the City of Tacoma Municipal

1 Code Title 12 to require that any proposal which will use 1336 CCF (one million gallons)
2 of water or more daily from Tacoma be submitted to a public vote prior to “the City”
3 “providing water service” for such a project. The Code Initiative repeats all the same
4 defective provisions of the Charter Initiative, which conflict with the US and
5 Washington Constitutions and state and federal law.

6 3. The Plaintiffs Port of Tacoma (“Port”), Economic Development Board for
7 Tacoma-Pierce County (“EDB”) and the Tacoma-Pierce County Chamber (“Chamber”)
8 seek a declaration that both the Charter Initiative and Code Initiative are beyond the
9 proper scope of the local initiative power, and seek injunctive relief.

10 4. Local initiatives are limited in permissible scope.

11 5. The City of Tacoma's Charter provides that the "initiative shall be
12 exercised ... in accordance with the general laws of the state." *Tacoma Charter* 2.19.

13 6. Local initiatives that exceed the scope of the initiative power of a city in
14 any manner are invalid and should not be placed on the ballot. Pre-election challenges
15 to the scope of the initiative power are both permissible and appropriate.

16 7. STW’s proposed Charter and Code Initiatives are beyond the scope of local
17 initiative power for one or more of the following reasons:

18 a. STW’s Charter and Code Initiatives invalidly attempt to administer a
19 proprietary function of Tacoma, which exceeds the scope of initiative powers.

20 b. STW’s Charter and Code Initiatives improperly attempt to oversee and classify
21 utility customers which delve into an expressly legislative matter and thus
22 exceed the valid scope of initiative powers.

- 1 c. The operation of Tacoma City utilities exceeds the scope of initiative power
2 given to the electorate.
- 3 d. STW’s Charter and Code Initiatives are flatly inconsistent with the plain terms
4 of Tacoma’s Charter. Tacoma’s Charter delegates the power to operate its
5 water utility to the Tacoma Public Utility (“TPU”) Board. *Tacoma Charter*
6 4.10.
- 7 e. STW’s Charter and Code Initiatives fail because their provisions are directly
8 contrary to the water rights system established by the State.
- 9 f. STW’s Charter and Code Initiatives conflict with Washington law that holds
10 zoning and development matters are not subject to initiative power.
- 11 g. STW’s Initiatives impermissibly seek to interfere with Tacoma’s role as a
12 regional water service provider, which role extends beyond the territorial
13 jurisdiction of the City of Tacoma.
- 14 h. STW’s Initiatives impermissibly seek to transfer grants of property rights from
15 Tacoma’s water utility to the “people”.
- 16 i. STW’s Initiatives are an invalid attempt to interfere with the authority vested
17 in the Tacoma City Council to control Tacoma’s budget.
- 18 j. STW’s Initiatives conflict with state law by attempting to apportion between
19 classes of utility users.
- 20 k. STW’s Initiatives seek to strip the legal rights of any corporation that
21 “violates” the “rights” sought to be established in Tacoma’s Charter and Code
22 by these Initiatives, which directly conflicts with the US and Washington state

1 Constitutions and the United States Supreme Court's ruling in *Citizens United*
2 *v. Federal Election Commission*, 558 U.S. 310, 342-43, 130 S. Ct. 876, 175 L.
3 Ed. 2d 753 (2010), which held corporations have rights under the federal
4 constitution.

5 l. STW's Initiatives must be invalidated because they expressly and
6 impermissibly purport to disavow such superior law as state laws, state rules,
7 federal laws, the United States Constitution, and the Washington State
8 Constitution.

9 m. STW's Initiatives are wholly invalid and cannot be severed, salvaged, or
10 salvaged in part.

11 8. The Plaintiffs seek resolution of these legal issues in accordance with the
12 Washington State Supreme Court ruling in *Philadelphia II v. Gregoire*, 128 Wash.2d
13 707 (1996), which held that the proper method for resolving whether a proposed local
14 initiative exceeds the scope of local initiative power as seeking a judicial determination
15 under Washington's Uniform Declaratory Judgment Act, RCW Ch. 7.24, before the
16 County Auditor validates signatures and or places the matters on a ballot.

17 9. The Court should declare the Charter and Code Initiatives invalid and
18 enjoin the County Auditor from (a) validating Petition signatures and (b) from placing
19 the Initiatives on the 2016 November general election ballot.

20 **II. PARTIES, JURISDICTION AND VENUE**

21 10. Plaintiff Port is a special purpose public port district organized under the
22 laws of the State of Washington. The Port has a legislative mandate to foster economic

1 development in Tacoma and Pierce County. The Port has standing to challenge
2 Defendants' Charter and Code Initiatives because the Port also is owner of land both
3 within and outside of Tacoma city limits. A critical segment of the Port's state
4 mandated mission, use of tax dollars and business is to lease lands to tenants, which
5 tenants can and do include industrial entities that may and do use over one million
6 gallons of water a day.

7 11. More than 29,000 jobs are generated by Port activity, which also provides
8 \$195 million per year in state and local taxes to support education, roads and police and
9 fire protection for our community. [Port Economic Impact Study, 2014]. The Tacoma-
10 Puyallup Industrial Subarea's 21,300 jobs make up 4 percent of the Puget Sound
11 Region's industrial employment. [PSRC Industrial Lands Analysis, 2015]. These jobs
12 pay an average \$80,000 a year. [PSRC Industrial Lands Analysis, 2015].

13 12. The state legislatively-mandated mission of the Port will be adversely
14 affected by the passage of the Charter Initiative and Code Initiatives which, if adopted,
15 would interfere with Tacoma's administration of its longstanding program to provide
16 necessary water service to industrial and commercial users throughout Pierce County.

17 13. Plaintiff EDB is a nonprofit Washington corporation headquartered in
18 Tacoma, Washington. The EDB receives funding by its member investors, including
19 businesses, individuals, municipalities, and other governmental entities. The EDB's
20 mission is to retain, expand and recruit primary company jobs in, to, and within
21 Tacoma-Pierce County. To accomplish its mission and annual work plan, the EDB
22 actively engages in public advocacy, business and economic development, physical

1 improvement projects, public safety, beautification, and marketing programs. Each of
2 these programs is intended to ensure the continued success of Tacoma and Pierce
3 County's economic vibrancy. The EDB's member investors have pledged approximately
4 \$500,000 toward the EDB's five-year work plan, which necessarily includes active
5 engagement of elected officials, as well as businesses and industrial entities that may use
6 over one million gallons of water a day. The EDB and its member investors have
7 interests they are seeking to protect that are within the zone of interests (determination
8 of water availability and interests) that the proposed Initiatives seek to protect or
9 regulate. Moreover, the EDB and its member investors would suffer economic impact
10 and injury should the Initiatives pass and serve to restrict the EDB's funded work plan
11 to recruit, expand, and retain primary company jobs in Tacoma-Pierce County. Further,
12 individual members of the EDB include Tacoma residents who are eligible to vote.¹ As
13 such, the EDB has standing to challenge the Initiatives because the mission of the EDB
14 and the economic interests of its member investors would be adversely affected by the
15 passage of legislation in any form which interferes with Tacoma's administration of its
16 longstanding program to provide necessary water service to industrial and commercial
17 users throughout Pierce County.

18 14. Plaintiff Chamber is a nonprofit Washington corporation headquartered in
19 Tacoma, Washington. The Chamber serves as a Tacoma/ Pierce County economic
20 advocate, and strives to lead the way to exceptional business and community growth. It

21 ¹ *Mukilteo Citizens for Simple Government v. City of Mukilteo*, 174 Wn.2d 41, 46, 272 P.3d 227 (2012),
22 finding that an association of city residents had standing to challenge a proposed initiative because the
individual members had standing as "Mukilteo residents who are eligible to vote."

1 is dedicated to enhancing the quality and economic vitality of Tacoma and Pierce
2 County. The Chamber is involved in public advocacy, business and economic
3 development, physical improvement projects, public safety, beautification, and
4 marketing programs, all of which contribute to building a prosperous community. Each
5 of these programs is intended to ensure the continued success of Tacoma and Pierce
6 County's economic vibrancy, growth and prosperity. The Chamber's membership
7 includes individuals and businesses throughout the City of Tacoma and Pierce County
8 and the surrounding area. On behalf of its membership, the Chamber engages elected
9 officials, (including elected members of the Tacoma City government and candidates for
10 elected office) and promotes efforts to attract and support investment in Tacoma and
11 Pierce County, which can include industrial entities that may use over one million
12 gallons of water a day. Further, individual members of the Chamber include Tacoma
13 residents who are eligible to vote.² The mission of the Chamber would be adversely
14 affected by the passage of legislation which interferes with Tacoma's administration of
15 its longstanding program to provide necessary water service throughout Pierce County.

16 15. Even in the unlikely event that the Court finds that one or more Plaintiffs
17 lack standing, the Court should still address the issues raised in the matter because the
18 issues of the validity of the two local initiatives involve significant importance that
19 merit judicial resolution. *American Traffic Solutions, Inc., v. The City of Bellingham*
20 *et al, Washington Campaign For Liberty et al , 163 Wn. App. 427; 260 P.3d*

21
22 ² *Id.*

1 245;(2011), see also *See Farris v. Munro*, 99 Wn.2d 326, 330, 662 P.2d 821 (1983)
2 (addressing challenge to state lottery even though plaintiff lacked standing); see also
3 *Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish County*, 77 Wn.2d 94,
4 96, 459 P.2d 633 (1969).

5 16. Defendant SAVE TACOMA WATER by information and belief is a political
6 action committee, listing an address of 5020 South Asotin, Tacoma, WA 98408 on its
7 Washington state Political Committee Registration. STW claims to exist for the sole
8 purpose of advocating Tacoma Initiative No. 1 for the 2016 election year.³

9 17. Defendant Donna Walters is listed as the “sponsor” and “treasurer” of
10 SAVE TACOMA WATER.

11 18. Defendants Jon and Jane Does 1-5⁴ are the officers and/or responsible
12 leaders connected to the political committee SAVE TACOMA WATER. Under
13 Washington law, initiative drafters and sponsors are proper defendants in
14 challenges to the scope of an initiative.

15 19. This Court has personal jurisdiction over Defendants STW, Donna Walters
16 and Jon and Jane Does 1-5 because these Defendants have registered as a Washington
17 state Political Committee, or as Officer or Manager thereof and/or maintain offices and
18 transact business in Pierce County, and seek results within Pierce County.

19 ³ STW claims in its PDC Registration to handle less than \$5,000. (“No more than \$5,000 will be raised
20 or spent and no more than \$500 in the aggregate will be accepted from any one contributor”).

21 ⁴ State law requires SAVE TACOMA WATER to register with the Public Disclosure Commission, and
22 nominate “The names, addresses, and titles of its officers; or if it has no officers, the names, addresses,
and titles of its responsible leaders...” RCW 42.17A.025(9)(c). Plaintiffs may seek to name additional
Jon and Jane Doe defendants meeting the description set forth in RCW 42.17A.0255, as those persons
become known.

1 20. Defendant Tacoma is a first class charter city and a municipal corporation
2 organized and existing under the laws of the State of Washington and does business in
3 Pierce County, Washington.

4 21. Tacoma must be named as a defendant because a challenge concerning the
5 local initiative power necessarily involves the issues of the City's authority to consider
6 and enact legislation that conflicts with federal and state laws, and Tacoma's own
7 Charter.

8 22. This Court has personal jurisdiction over Tacoma because Tacoma
9 maintains offices and transacts business in the State of Washington.

10 23. Defendant Pierce County by and through Julie Anderson, in her capacity
11 as Pierce County Auditor, must be named as a defendant because the local initiative
12 process involves the County Auditor. Defendant Pierce County Auditor Anderson is
13 responsible for certifying the Initiatives for the election ballots. RCW § 35.09.020
14 requires the Auditor take certain actions with regards to a petition for a city charter
15 amendment petition. RCW § 35A.29.170 requires the Auditor take certain actions with
16 regards to a petition for a city ordinance initiative petition.

17 24. This Court has jurisdiction over the Pierce County and its Auditor because
18 the Auditor maintains offices and transacts business in Pierce County, Washington.

19 25. Because Plaintiffs seek a determination of the validity of the Charter and
20 Code Initiatives, the Court has subject matter jurisdiction over this matter under RCW
21 7.24 et seq.

22 26. The Court's grant of declaratory and injunctive relief to (1) declare the

23 FIRST AMENDED COMPLAINT FOR DECLARATORY
JUDGEMENT & INJUNCTIVE RELIEF --10 of 27

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1 Initiatives invalid and out outside the lawful scope of local initiative powers, and (2)
2 to enjoin the Auditor’s time, work and expense in validating petition signatures and
3 (3) to enjoin the Auditor from placing the Initiatives on the November 2016 ballot
4 and (4) enjoining the Defendant City of Tacoma from placing the Ordinance
5 Initiative before the City Council for consideration and from submitting the
6 proposal to the people at any municipal or general election will directly redress the
7 harms caused by the Initiatives.

8 27. Venue is proper in Pierce County pursuant to RCW 4.12.020.

9 **III. BACKGROUND FACTS**

10 28. The City of Tacoma (“Tacoma”) is a first class, charter city organized and
11 operating under Title 35 RCW and the Tacoma City Charter.⁵

12 29. Tacoma has operated a municipal water system for over one hundred
13 twenty three years.⁶ Under the Tacoma City Charter, Tacoma Water is a
14 regional water utility established in the City's Department of Public Utilities.

15 30. Tacoma has a lengthy history of administering the supply of water to
16 commercial, manufacturing, technological and industrial consumers.

17
18 ⁵ “A first class city is a city with a population of 10,000 or more at the time of organization or
19 reorganization that has adopted a charter”. RCW 35.01.010, 35.22.010. “The form of the organization
20 and the manner and mode in which cities of the first class shall exercise the powers, functions and
21 duties conferred upon them by law, with respect to their own government, shall be as provided in the
22 charters thereof”. RCW 35.22.020.

⁶ *Griffin v. Tacoma*, 49 Wn. 524, 526-7, 95 P. 1107 (1908) (“Under the terms of Ordinance No. 790 the
electors of the city [of Tacoma] did hold an election in 1893 to determine, among other things, whether
the city should purchase of the Tacoma Light and Water Company its water works and all sources of
water supply then owned or operated by said company as part of its water system..”).

1 31. Tacoma’s Charter, Section 2.19, includes a citizen initiative process⁷.

2 32. The Defendants STW and/or the individual officers or sponsors of STW
3 named as Defendants have attempted several times to file initiative petitions seeking in
4 one way or another, to have the Tacoma City Council enact an ordinance for Tacoma
5 Municipal Code amendments entitled "Large Water Use Ordinance", "The People’s

6
7 ⁷ Section 2.19 – Citizens of Tacoma may by initiative petition ask the voters to approve or reject
8 ordinances or amendments to existing ordinances, subject to any limitation on topics in state law, by the
9 following process:

- 10 (a) The petitioners shall file an Initiative Petition with the City Clerk.
11 (b) The City Clerk shall forward the petition to the City Attorney within one (1) working day of receipt.
12 (c) Within ten (10) working days of receipt, the City Attorney shall review the petition and make contact
13 with the petitioner as necessary, and if the petition is proper in terms of form and style, the City
14 Attorney will write a concise, true, and impartial statement of the purpose of the measure, not to exceed
15 the number of words as allowed under state law for local initiatives. The statement will be phrased in
16 the form of a positive question.
17 (d) The City Attorney shall file this concise statement with the City Clerk as the official ballot title.
18 (e) The City Clerk shall assign an initiative number to the ballot title and notify the petitioner that the
19 ballot title becomes final and signature gathering may begin in ten (10) working days if there is no
20 judicial review. Notification of the ballot title shall be posted at City Hall and on the City’s web page.
21 (f) Persons dissatisfied with the ballot title prepared by the City Attorney may seek judicial review by
22 petitioning the Pierce County Superior Court within ten (10) working days of the notification of the
23 ballot title having been posted as required under (e). The Court shall endeavor to promptly review the
24 statements and render a decision as expeditiously as possible. The decision of the Court is final.
25 (g) Petitions must include the final, approved ballot title, initiative number, the full text of the
 ordinance, or amendment to existing ordinance, that the petitioners seek to refer to the voters, and all
 other text and warnings required by state law.
 (h) Petitioners have one hundred and eighty (180) calendar days to collect signatures from registered
 voters.
 (i) The number of valid signatures shall be equal to ten percent (10%) of the votes cast in the last
 election for the office of Mayor.
 (j) The City Clerk shall forward the signatures to the County Auditor to be verified. Based on the
 Auditor’s review, the City Clerk shall determine the validity of the petition. If the petition is validated,
 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.

1 Right to Water Protection Ordinance”, “The People’s Right to Water Protection
2 Amendment” or have the Tacoma City Council amend the Tacoma City Charter, or
3 submit measures to a vote of the residents of Tacoma.

4 33. Upon knowledge and belief, STW is presently circulating for signatures
5 two active Initiative Petitions in Tacoma.

6 34. On or around March 7, 2016, STW filed an Initiative to have the City
7 Council enact the changes to the Tacoma City Charter. **Attachment A.**

8 35. On or around March 17, 2016, the Tacoma City Clerk published the
9 Initiative No. 5 Ballot Title, which finalized the Charter Initiative. Upon knowledge and
10 belief, STW commenced signature gathering for the Charter Initiative shortly
11 thereafter.

12 36. On or around April 15, 2016, STW filed an Initiative to require Tacoma to
13 put to the voters amendments to the Tacoma Municipal Code Title 12. **Attachment B.**

14 37. On or around April 25, 2016, the Tacoma City Clerk published the
15 Initiative No. 6 Ballot Title, which finalized the Code Initiative. Upon knowledge and
16 belief, STW commenced signature gathering for the Code Initiative shortly thereafter.

17 **IV. THE INITIATIVES EXCEED VALID LOCAL INITIATIVE
18 POWER**

19 38. State Statute Authorizes Local Initiatives. First class charter cities such
20 as Tacoma are authorized by state statute to provide in their charter "for direct
21 legislation by the people through the initiative and referendum upon any matter
22 within the scope of the powers, functions, or duties of the city." RCW 35.22.200.

1 39. Tacoma's Charter Authorizes Local Initiatives, Subject to State Law. The
2 City of Tacoma's Charter provides that the power of "initiative shall be exercised ... in
3 accordance with the general laws of the state." Tacoma City Charter Section 2.19.

4 40. Local Initiatives are Limited in Permissible Scope. Cities may not adopt
5 local initiatives that exceed the City's authority to legislate. For example, cities may
6 not adopt local initiatives that purport to create local laws conflicting with the United
7 States or Washington constitutions, or with other state or federal laws. Similarly,
8 cities may not adopt local initiatives involving powers delegated by the Washington
9 legislature to a city council or other local board, rather than the city itself. In
10 addition, cities may not adopt local initiatives that are administrative, rather than
11 legislative, in nature.

12 41. Invalid Initiatives Should Not Appear on the Ballot. Local initiatives that
13 exceed the scope of the initiative power of a city in any manner are invalid and should
14 not be placed on the ballot.

15 42. Pre-Election Challenges To The Scope Of The Initiative Power Are Both
16 Permissible And Appropriate. Courts generally refrain from reviewing the validity of
17 a proposed law, including an initiative or referendum, before it has been enacted.
18 *Coppernoll v. Reed*, 155 Wash.2d 290, 297, 119 P.3d 318 (2005); *see also Futurewise*
19 *v. Reed*, 161 Wash.2d 407, 410, 166 P.3d 708 (2007). But, "It is well established,
20 however, that a pre-election challenge to the scope of the initiative power is both
21 permissible and appropriate". *Am. Traffic Sols., Inc. v. City of Bellingham*, 163
22 Wn.App. 427, at 432, 260 P.3d 245 (Div. 1, 2011), *review denied*, 173 Wn.2d 1029;

1 *citing Futurewise*, 161 Wn.2d at 411; *Coppernoll*, 155 Wash.2d at 299, 119 P.3d 318;
2 *City of Sequim v. Malkasian*, 157 Wash.2d 251, 255, 138 P.3d 943 (2006).

3 **V. CLAIMS**

4 43. STW's proposed Charter and Code Initiatives are beyond the scope of local
5 initiative power for one or more of the following reasons:

6 A. STW's Charter and Code Initiatives invalidly attempt to administer a
7 proprietary function of Tacoma, which exceeds the scope of local initiative powers.

8 Initiatives may validly address only legislative subjects. An administrative subject falls
9 outside the scope of the local initiative power in a charter city. Washington State's
10 Supreme Court has held that the operation of the municipal water system vests in the
11 city's legislature as a proprietary administrative function. *City of Port Angeles v. Our*
12 *Water-Our Choice*, 145 Wn. App. 869, 188 P.3d 533 (Div. 2, 2008). Washington's
13 Supreme Court has long held that setting water rates for the city's utility also constitutes
14 "administrative" action. *State ex rel. Haas v. Pomeroy*, 50 Wn.2d 23, 28, 308 P.2d 684
15 (1957), and not a governmental function. The operation of the Tacoma City water
16 system, including the authority to contract to provide for water service and what
17 quantities and by what means, are all administrative functions. These functions are
18 beyond the scope of local initiative powers.

19 B. STW's Charter and Code Initiatives improperly attempt to oversee and
20 classify utility customers which delve into an expressly legislative matter and exceed the
21 valid scope of local initiative powers. Even if, for argument, the law deemed operation
22 of the Tacoma City water system a legislative matter, Washington's state laws vest

1 operation of the City water system in the Tacoma City Council. For a matter to be
2 subject to petition and initiative, the legislative power sought to be exercised must be
3 expressly delegated by the legislature to “the city” and not to the “legislative body” or
4 “legislature” of the city. “An initiative is beyond the scope of the initiative power if the
5 initiative involves powers granted by the legislature to the governing body of a city,
6 rather than the city itself.” *Am. Traffic Sols., Inc. v. City of Bellingham*, 163 Wn. App.
7 427, 433, 260 P.3d 245 (Div. 1, 2011), *review denied* 173 Wn.2d 1029. State law
8 specifically vests the right to operate City utilities in the legislative authority of the City,
9 via the City Council. The Initiatives in this case attempt to thwart the legislative purpose
10 of “classifying customers served or service furnished” as embedded in RCW 35.92.010⁸.
11 The attempt by STW’s Charter and Code Initiatives to classify utility customers thus
12 delves into an expressly legislative matter and exceeds the scope of local initiative

13 ⁸ A city or town may construct, condemn and purchase, purchase, acquire, add to, alter, maintain and
14 operate waterworks, including fire hydrants as an integral utility service incorporated within general
15 rates, within or without its limits, for the purpose of furnishing the city and its inhabitants, and any
16 other persons, with an ample supply of water for all purposes, public and private, including water power
17 and other power derived therefrom, with full power to regulate and control the use, distribution, and
18 price thereof: PROVIDED, That the rates charged must be uniform for the same class of customers or
19 service. Such waterworks may include facilities for the generation of electricity as a by-product and such
20 electricity may be used by the city or town or sold to an entity authorized by law to distribute electricity.
21 Such electricity is a by-product when the electrical generation is subordinate to the primary purpose of
22 water supply.

18 **In classifying customers served or service furnished, the city or town governing body may
19 in its discretion consider any or all of the following factors:** The difference in cost of service to
20 the various customers; location of the various customers within and without the city or town; the
21 difference in cost of maintenance, operation, repair, and replacement of the various parts of the system;
22 the different character of the service furnished various customers; the quantity and quality of the water
23 furnished; the time of its use; the achievement of water conservation goals and the discouragement of
24 wasteful water use practices; capital contributions made to the system including, but not limited to,
25 assessments; and any other matters which present a reasonable difference as a ground for distinction.
No rate shall be charged that is less than the cost of the water and service to the class of customers
served.

1 powers. The operation of Tacoma City utilities falls outside the scope of local initiative
2 power given to the electorate.

3 C. STW's Charter and Code Initiatives are flatly inconsistent with the plain
4 terms of Tacoma's Charter. Tacoma's Charter delegates the power to operate its water
5 utility to the Tacoma Public Utility ("TPU") Board. *Tacoma Charter* 4.10: "The Public
6 Utility Board, subject only to the limitations imposed by this charter and the laws of
7 this state, shall have full power to construct, condemn and purchase, acquire, add to,
8 maintain, and operate the electric, water, and belt line railway utility systems". An
9 ordinance that requires a vote of the people in order to operate certain aspects of the
10 water system would usurp the TPU Board's authority. The subject Initiatives which
11 attempt to direct a public vote on certain aspects of the operation of Tacoma's water
12 system are flatly inconsistent with the plain terms of Tacoma's Charter.

13 D. STW's Charter and Code Initiatives fail because their provisions are
14 directly contrary to the water rights system established by the State. These local
15 Initiatives that purport to allow a public vote on whether to grant or deny water service
16 with in TPU's water service area conflict with State law. TPU has a legal obligation
17 under state laws (RCW 80.28.110, 80.04.010, 80.04.380, and 80.04.385) to serve
18 water demand within its service territories, and to acquire supplies and develop
19 facilities (if necessary) to do so. The proposed local Initiatives includes
20 pronouncements that go beyond the scope of Tacoma's city limits, affecting hundreds
21 if not thousands of customers outside the Tacoma City limits, which STW concedes:

22 "Residents of Tacoma, Fife, Milton, Kent, Covington, Lakewood, Bonney Lake, Federal

23 FIRST AMENDED COMPLAINT FOR DECLARATORY
JUDGEMENT & INJUNCTIVE RELIEF --17 of 27

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1 Way, the Muckleshoot and Puyallup Reservations and portions of Auburn and Des
2 Moines are dependent on fresh water from Tacoma Public Utility....” Initiative
3 Petitions, **Attachments A & B.** “While the inhabitants of a municipality may enact
4 legislation governing local affairs, they cannot enact legislation which conflicts with
5 state law”. *Seattle Bldg. & Constr. Trades Council v. Seattle*, 94 Wn.2d 740, 747, 620
6 P.2d 82 (1980); *citing* Wash. Const. Art. 11 § 10.

7 E. STW’s Charter and Code Initiatives conflict with Washington law that
8 holds zoning and development matters are not subject to initiative power. The local
9 Initiatives are an indirect attempt to assert initiative powers over what is essentially a
10 zoning/permitting decision over certain types of water users which use one million
11 gallons of water or more. Tacoma’s TMC Chapter 13 *Land Use Regulatory Code*
12 establishes comprehensive planning and policies under the terms of the State
13 Growth Management Act and other applicable federal, state, regional and local
14 mandates.

15 Tacoma also is the lead agency and responsible official conducting the State
16 Environmental Policy Act (SEPA) review for most Tacoma developments. Any
17 issues involving water and power supply will be addressed in Tacoma’s permitting
18 and SEPA process. Public comments and discussion on those issues will be dealt
19 with in that SEPA process. TPU works with Tacoma to provide information and
20 analysis on those issues related to TPU utility services.

21 Washington's general law grants and limits the zoning power to the legislative
22 body of charter cities as well as code cities". *Lince v. Bremerton*, 25 Wn. App. 309,

1 311, 607 P.2d 329 (Div. 2, 1980). Both zoning and platting power are delegated to the
2 legislative body and, therefore, initiative is not permitted in those areas. See RCW
3 35.63.110 and RCW 58.17.070. "The initiative law and the zoning law are hopelessly
4 inconsistent and in conflict as to the manner of the preparation and adoption of a
5 zoning ordinance". *Lince* at 25 Wn. App. at 313 (quoting *Hurst v. Burlingame*, 207
6 Cal. 134, 141, 277 P. 308, 311 (1929)). *Save Our State Park v. Bd. of Clallam Cty.*
7 *Comm'Rs*, 74 Wash. App. 637, 645-46, 875 P.2d 673, 678 (1994). STW's Initiatives are
8 an indirect attempt to assert local initiative powers over what is essentially are
9 zoning/permitting decisions, and as such are beyond the valid scope of local initiative
10 powers.

11 F. STW's Initiatives Impermissibly Seek to Regulate Matters Beyond the
12 Territorial Jurisdiction of the City of Tacoma. STW's attempt through the local
13 Initiatives to regulate the authority of Tacoma to provide water service also exceeds
14 local initiative power because the water resources extend far beyond the borders and
15 jurisdiction of the City of Tacoma to serve millions of people in different cities and
16 throughout the County and State. The local Initiatives' reach would extend far beyond
17 the City of Tacoma boundaries because TPU's water service area extends beyond city
18 borders and would affect hundreds if not thousands of people in the non-Tacoma areas
19 that depend on these resources. Tacoma cannot validly be compelled through local
20 initiative to enact regulations that limit the rights of other jurisdictions to access
21 Tacoma's water service.

1 G. STW's Initiatives impermissibly seek to transfer grants of property rights
2 from Tacoma's water utility to the "people". STW's Initiatives seek to grant a new
3 property right that it does not exist now, and seeks to do so without consideration, in
4 violation of Article VIII §7 of the Washington State Constitution.

5 H. STW's Initiatives are an invalid attempt to interfere with the authority
6 vested in the Tacoma City Council to control the budget of the City. Tacoma is a first
7 class charter city governed under Title 35 RCW and its Charter. Both the Charter and
8 Chapter 35.33 RCW provide that the Tacoma city legislative authority (the City Council)
9 alone is authorized to budget. The City Council alone may make changes and
10 adjustments to the budget. TPU, a division of the City of Tacoma accounts for forty-one
11 percent of Tacoma's budget. STW's Initiatives would interfere with the budgeting power
12 of the Tacoma City Council because the Initiatives would, outside of the statutory budget
13 process, create a significant revenue impact upon the City.

14 I. STW's Charter and Code Initiatives Conflict With State law by Attempting
15 to Apportion Between Classes of Users. The Charter and Code Initiatives also purport to
16 improperly apportion water between various classes of users:

- 17 • The people want policies and contractual requirements made to industry
18 secondary to the human needs of the citizens and households, schools,
19 hospitals, and homes for the aged for fresh potable water that should take
20 priority except in the case of emergency fire-fighting needs or any other natural
21 disaster that cannot reasonably be forecasted;
- Industrial users that would require excessive amounts of water to operate will
22 have potential long-term negative impacts on the local and regional
23 environment and future community development in the Tacoma;
- Industries that use large amounts of water daily would place human, economic,
24 environmental and homeland securities at risk....; and

- 1 • Community developments must take into account droughts that will become
2 more frequent in the Pacific Northwest as the result of climate change....

3 See Petition language for Charter and Code Initiatives, **Attachments A & B**. The
4 proposed local Initiatives fail because their provisions are directly contrary to the
5 water rights system established by the State and are outside the scope of the local
6 initiative power. See: *Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend the*
7 *Constitution*, 185 WA 2d. 97 (Feb. 4, 2016).

8 J. STW's Initiatives must be invalidated because they expressly and
9 impermissibly purport to disavow such superior law as state laws, state rules, federal
10 laws, and the United States Constitution. STW's local Initiatives in several instances
11 expressly violate the maxim that "Where a statewide initiative creates new state law,
12 binding upon all, a local initiative can create only new law that is not inconsistent with
13 or inapposite to state and federal law". *City of Port Angeles v. Our Water-Our Choice*,
14 145 Wn. App. 869, 879, 188 P.3d 533 (Div. 2, 2008); citing *Seattle Bldg. & Constr.*
15 *Trades Council*, 94 Wn.2d at 747.

16 First, STW's Initiatives are invalid because they expressly purport to strip and/or
17 disavow state and federal law:

18 To prevent subsequent denial of the People's Right to Water Protections by
19 state law preemption, all laws adopted by the legislature of the State of
20 Washington, and rules adopted by any state agency, shall be the law of the
21 City of Tacoma only to the extent that they do not violate the rights or
22 mandates of this Ordinance.

23 *Proposed Ordinance § B and Proposed Charter § 4.24(B).*

24 Second, STW's Initiatives are invalid because they purport to adjudicate rights

1 protected by the United States Constitution, and directly conflict with the United
2 States Supreme Court ruling in *Citizens United v. Federal Election Commission*, 558
3 U.S. 310, 342-43, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010), which held corporations
4 have rights under the federal constitution:

5 In addition, corporations that violate, or seek to violate the rights or
6 mandate of this Ordinance shall not be deemed “persons” to the extent
7 that such treatment would interfere with the rights or mandates
8 enumerated by this Ordinance, nor shall corporations possess any other
9 legal rights, powers, privileges, immunities, or duties that would interfere
10 with the rights or mandates enumerated by this Ordinance....”

11 *Proposed New Ordinance § C and Proposed Charter § 4.24(C).*

12 Third, STW’s Initiatives are also invalid because they purport to strip at least
13 Washington State and Federal Courts of jurisdiction conferred by their respective
14 constitutions:

15 [N]o government actor, including the courts, will recognize as valid any
16 permit, license, privilege, charter, or other authorization, that [*sic*] would
17 violate the rights or mandate of this Article, issued for any corporation, by
18 any state, federal or international entity.

19 *Proposed new Ordinance § C and Proposed Charter § 4.24(c).*

20 Fourth, STW’s Initiatives also are invalid because they *also* purport to create a
21 new legal cause of action against anyone “violating” the provisions:

22 The City or any resident of the City may enforce this Ordinance through an
23 action brought in any court possessing jurisdiction over activities
24 occurring within the City of Tacoma, including, but not limited to, seeking
25 an injunction to stop prohibited practices.

Proposed New Ordinance § D and Proposed Charter § 4.24(D). The local Charter and
Code Initiatives should be invalidated, since they expressly seek to supersede state and

1 federal laws and state city administrative matters.

2 44. An actionable and substantial controversy exists between the Plaintiffs
3 Port, EDB and Chamber and the Defendants SAVE TACOMA WATER, Donna Walters
4 and Jon & Jane Does 1-5 regarding whether the local Charter and Code Initiatives are
5 within the proper scope of local initiative power, which adjudication by this Court would
6 resolve.

7 **VI. DECLARATORY JUDGMENT ACTION**

8 45. Plaintiffs incorporate the previous allegations in Paragraph 1-44 as if fully
9 set forth herein.

10 46. Pursuant to the Washington Declaratory Judgment Act, RCW 7.24 et seq.,
11 this Court may declare the validity of a proposed initiative.

12 47. The matter is ripe for declaratory relief because an actual and substantial
13 dispute exists as to the validity of the two Initiatives.

14 48. A declaratory judgment action is proper to determine whether STW's
15 Initiatives exceed valid local initiative power and thus whether they may be submitted to
16 the qualified electors at election.

17 **VII. INJUNCTIVE RELIEF**

18 49. Plaintiffs incorporate the previous allegations in Paragraph 1-48 as if fully
19 set forth herein.

20 50. Plaintiffs Port, EDB, and Chamber would be adversely affected by the passage
21 of legislation in any form that interferes with Tacoma's administration of its
22 longstanding program to provide necessary water service to industrial and commercial

1 users throughout Pierce County.

2 51. Plaintiff Port will suffer injury and irreparable harm if the Initiatives are
3 placed on the ballots or adopted because the Initiatives will interfere with the Port's
4 state legislative mandate to foster economic development in Tacoma and Pierce
5 County. A critical segment of the Port's mission to use public tax dollars is to lease
6 lands to tenants, which tenants can and do include manufacturing, technological and
7 industrial entities that may and do use over one million gallons of water a day from
8 TPU.

9 52. Plaintiff EDB will suffer injury and irreparable harm if the Initiatives are
10 placed on the ballots or adopted because the Initiatives will interfere with the EDB's
11 mission as a Tacoma/ Pierce County economic advocate, which is dedicated to
12 enhancing the quality and economic vitality of and supporting a diverse manufacturing,
13 technological and industrial base within Tacoma and Pierce County, which prospective
14 businesses can and do include entities that may and do use over one million gallons of
15 water a day supplied by TPU.

16 53. Plaintiff Chamber will suffer injury and irreparable harm if the Initiatives
17 are placed on the ballots or adopted because the Initiatives will interfere with Tacoma's
18 administration of its longstanding program to provide necessary water service
19 throughout Pierce County, including to new prospective businesses that use over one
20 million gallons of water a day to be supplied by TPU.

21 54. All Plaintiffs will be injured by the Initiatives' requirement for a public
22 vote on the designated water service users and the Initiatives' grant of "enforcement

1 powers” to “the people” without any further clarifying definition or defined process
2 because the Initiatives will:

- 3 • Inject uncertainty into already complicated and costly zoning requirements,
- 4 • Prevent Plaintiffs from completing real estate and construction projects
already underway, or from entering into and attracting new real estate and
construction projects,
- 5 • Surrender important community developments to the subjective and
unpredictable will of unidentified "majorities," and
- 6 • Expose the Port or its tenants to litigation over legitimate water uses.

7 55. All Plaintiffs have a well-grounded fear of immediate invasion of their
8 rights, based on the current signature gathering actions which are aimed at
9 placing the two Initiatives on the ballot or before the City Council for passage.

10 56. No adequate remedy at law exists to remedy the invasion of Plaintiffs’
11 rights caused by the adoption or placement of the Charter and Code Initiatives on the
12 ballot.

13 57. Mere damages would not remedy the harm which would result if the
14 Initiatives appeared on the ballot or were adopted. The Port, EDB and Chamber also
15 have a strong interest in avoiding the confusion that would result from voting on invalid
16 initiatives that would ultimately lack legal effect and from enduring post-election
17 litigation over the invalidity of enacted initiatives.

18 58. Plaintiffs also have a clear and equitable right in these issues, because
19 Plaintiffs have a strong likelihood to prevail on the merits. *Kucera, et al., v. The
20 Department Of Transportation, et al., 140 Wn.2d 200; 995 P.2d 63; (2000).*

21 59. Washington courts have long exercised their power to grant private
22 parties' requests to enjoin invalid initiatives from appearing on ballots. *See Seattle Bldg.*

23 FIRST AMENDED COMPLAINT FOR DECLARATORY
JUDGEMENT & INJUNCTIVE RELIEF --25 of 27

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1 DATED this 16th day of June 2016. GOODSTEIN LAW GROUP PLLC

2 By /s/ Carolyn A. Lake
3 By /s/ Seth Goodstein
4 Carolyn A. Lake, WSBA #13980
Seth Goodstein, WSBA #45091
Attorneys for Plaintiff Port of Tacoma

5 DATED this 16th day of June 2016. LEDGER SQUARE LAW, P.S.

6 By: /s/ Jason M. Whalen
7 Jason M. Whalen, WSBA #22195
Attorneys for Plaintiff EDB

8 DATED this 16th day of June 2016. GORDON THOMAS HONEYWELL LLP.

9 By: /s/ Warren E. Martin
10 By: /s/ Shelly Andrew
11 Warren E. Martin WSBA #17235
Shelly Andrew, WSBA # 41195
Attorneys for Plaintiff Chamber

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HONORABLE JACK NEVIN

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

PORT OF TACOMA, a Washington State
Municipal Corporation, ECONOMIC
DEVELOPMENT BOARD FOR
TACOMA-PIERCE COUNTY, a
Washington State Non-profit Corporation,
and the TACOMA-PIERCE COUNTY
CHAMBER, a Washington State Non-
profit corporation,

Plaintiffs,

v.

SAVE TACOMA WATER, a Washington
political committee, DONNA WALTERS,
sponsor and Treasurer of SAVE
TACOMA WATER, JON AND JANE
DOES 1-5, (Individual sponsors and
officers of SAVE TACOMA WATER),
CITY OF TACOMA, a Washington State
Municipal Corporation; and PIERCE
COUNTY, a political subdivision by and
through JULIE ANDERSON, IN HER
CAPACITY AS PIERCE COUNTY
AUDITOR,

Defendants.

No. 16-2-08477-5

DEFENDANT CITY OF
TACOMA'S ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT, CROSS CLAIM
AND THIRD-PARTY
COMPLAINT

CITY OF TACOMA'S AMENDED ANSWER,
AFFIRMATIVE DEFENSES, CROSS CLAIM,
AND THIRD PARTY COMPLAINT - 1

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<p>CITY OF TACOMA,</p> <p style="text-align: center;">Cross-Claimant/ Third-Party Plaintiff,</p> <p style="text-align: center;">v.</p> <p>SAVE TACOMA WATER, a Washington political committee, DONNA WALTERS, Co-Chair and Treasurer of SAVE TACOMA WATER; JON AND JANE DOES 1-5, (Individual sponsors and officers of SAVE TACOMA WATER); and PIERCE COUNTY, a political subdivision by and through JULIE ANDERSON, IN HER CAPACITY AS PIERCE COUNTY AUDITOR,</p> <p style="text-align: center;">Cross-Defendants,</p> <p style="text-align: center;">v.</p> <p>SHERRY BOCKWINKEL, Co-Chair of SAVE TACOMA WATER;</p> <p style="text-align: center;">Third-Party Defendant.</p>
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In response to Plaintiffs’ Complaint for Declaratory Judgment and Injunctive Relief, Defendant City of Tacoma (the “City”) herein files its Answer to the Complaint’s enumerated paragraphs and further files (1) a Cross-Claim against Save Tacoma Water, Donna Walters, Jon and Jane Does 1-5, and Pierce County, by and through Julie Anderson, in her capacity as Pierce County Auditor; and (2) a Third-Party Complaint against Sherry Bockwinkel as follows:

I. INTRODUCTION

1. The City admits the allegation in the first sentence of this paragraph. To the extent the remaining allegations in this paragraph attempt to characterize the contents

1 of the Charter Initiative, the City responds that the Charter Initiative speaks for itself.
2 The remaining allegations in this paragraph also contain legal conclusions and legal
3 argument to which no response is required, but to the extent a response is required, the
4 City agrees with Plaintiffs' statements of the law.

5 2. The City admits the allegation in the first sentence of this paragraph
6 except that the Code Initiative was filed on March 11, 2016. To the extent the remaining
7 allegations in this paragraph attempt to characterize the contents of the Code Initiative,
8 the City responds that the Code Initiative speaks for itself. The remaining allegations in
9 this paragraph also contain legal conclusions and legal argument to which no response is
10 required, but to the extent a response is required, the City agrees with Plaintiffs'
11 statements of the law.

12 3. The allegations in this paragraph contain a statement of Plaintiffs'
13 requested relief to which no response is required.

14 4. The City admits the allegations of this paragraph.

15 5. The City admits the allegations of this paragraph.

16 6. The City agrees with the allegations of this paragraph.

17 7. The City agrees that the proposed Charter and Code Initiatives are beyond
18 the scope of the initiative power as set forth in the City's Cross-Claim. The allegations in
19 paragraphs 7(a) through 7(m) contain legal conclusions and legal argument to which no
20 response is required. Further, to the extent that paragraphs 7(a) through 7(m) contain
21 factual allegations, the City admits the same.

22 8. The allegations in this paragraph contain legal conclusions and legal
23 argument with which the City agrees.

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CITY OF TACOMA'S AMENDED ANSWER,
AFFIRMATIVE DEFENSES, CROSS CLAIM,
AND THIRD PARTY COMPLAINT - 3

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9. The City agrees with the allegations of this paragraph..

II. PARTIES, JURISDICTION AND VENUE

10. – 14. Paragraphs 10 through 14 and their associated footnotes set forth allegations of standing with respect to Plaintiffs. The City agrees that Plaintiffs have standing to challenge the Charter and Code Initiatives.

15. The City agrees with Plaintiffs’ statements of the law and further agrees that the issue of the validity of the Charter and Code Initiatives involves significant public importance meriting judicial resolution.

16. The City agrees with the allegations in this paragraph as set forth in the City’s Cross Claim.

17. The City agrees with the allegations in this paragraph as set forth in the City’s Cross Claim.

18. The City agrees with the allegations in this paragraph as set forth in the City’s Cross Claim.

19. Admit.

20. Admit.

21. Admit.

22. Admit.

23. The City admits that Pierce County by and through Julie Anderson, in her capacity as Pierce County Auditor, is a proper defendant in this action. To the extent the remaining allegations in this paragraph attempt to characterize the provisions of RCW 35A.09.020 and RCW 35A.29.170, the City responds that the statutes speak for themselves.

CITY OF TACOMA’S AMENDED ANSWER,
AFFIRMATIVE DEFENSES, CROSS CLAIM,
AND THIRD PARTY COMPLAINT - 4

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- 24. Admit.
- 25. Admit.
- 26. Admit.
- 27. Admit.

III. BACKGROUND FACTS

28. The City admits that it is a first class charter city organized and operating under Title 35 RCW and the Tacoma City Charter.

29. The City admits that it has operated a municipal water system for over one hundred and twenty three years and that under the Tacoma City Charter, Tacoma Water is a regional water utility established in the City’s Department of Public Utilities.

- 30. Admit.

31. The City admits that Section 2.19 of the Tacoma City Charter includes a citizen initiative process. The City further admits that the footnote to this paragraph accurately represents Section 2.19 of the Tacoma City Charter.

32. The allegations in this paragraph do not allege conduct by the City, and as such the City lacks sufficient knowledge to admit or deny.

- 33. Admit.

- 34. Admit.

35. The City admits that the Charter Initiative was filed with the City Clerk on March 7, 2016.

36. The City admits the allegations in this paragraph except that the Code Initiative was filed on March 11, 2016.

- 37. The City admits the allegations in this paragraph, except that the City

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Clerk published the ballot title for the Code Initiative on March 18, 2016.

IV. THE INITIATIVES EXCEED VALID LOCAL INITIATIVE POWER

- 38. The City agrees with Plaintiffs’ statements of the law.
- 39. Admit.
- 40. The City agrees with Plaintiffs’ statements of the law.
- 41. The City agrees with Plaintiffs’ statements of the law.
- 42. The City agrees with Plaintiffs’ statements of the law.

V. CLAIMS

43. The allegations in paragraphs 43(A) through 43(J) and their associated footnotes contain legal conclusions and legal argument to which no response is required, but to the extent a response is required, the City agrees with Plaintiffs’ statements of the law contained in each of these paragraphs and footnotes. To the extent that the allegations in paragraphs 43(A) through 43(J) contain factual allegations, the City admits the same. The City’s claim that the initiatives are beyond the scope of the initiative power are set forth more fully in the City’s Cross-Claim.

- 44. The City agrees with Plaintiffs’ statements of the law.

VI. DECLARATORY JUDGMENT ACTION

- 45. The City incorporates its answers as set forth above.
- 46. The City agrees with Plaintiffs’ statements of the law.
- 47. The City agrees with Plaintiffs’ statements of the law.
- 48. The City agrees with Plaintiffs’ statements of the law.

VII. INJUNCTIVE RELIEF

- 49. The City incorporates its answers as set forth above.

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CITY OF TACOMA'S AMENDED ANSWER,
AFFIRMATIVE DEFENSES, CROSS CLAIM,
AND THIRD PARTY COMPLAINT - 8

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1 **CITY OF TACOMA’S (1) CROSS CLAIM AGAINST SAVE TACOMA WATER,**
2 **DONNA WALTERS, JON AND JANE DOES 1-5, AND PIERCE COUNTY, BY**
3 **AND THROUGH JULIE ANDERSON, IN HER CAPACITY AS PIERCE**
4 **COUNTY AUDITOR; AND (2) THIRD-PARTY COMPLAINT AGAINST**
5 **SHERRY BOCKWINKEL**

6 **I. INTRODUCTION**

7 1. Citizens Charter Amendment Initiative No. 5 (“Charter Initiative”) and
8 Citizens Initiative No. 6 (“Code Initiative”) (collectively “the Initiatives”)¹ would amend
9 the Tacoma City Charter and the Tacoma Municipal Code to insert new requirements for
10 the provision of municipal water service that conflict with and purport to preempt state,
11 federal and international law. Specifically, the Initiatives would require the City to hold a
12 public vote on an application for water service that exceeds 1 million gallons per day, and
13 require the water service applicant to pay for the costs of such an election. As detailed
14 below, the Initiatives also attempt to restrict the powers of the state courts and remove the
15 constitutional and statutory rights of corporations. For the reasons set forth herein, the
16 Initiatives exceed the scope of the local initiative power and should be declared invalid
17 and enjoined from the ballot.

18 2. The people’s local initiative power is no greater than the legislative power
19 of the City Council of Tacoma. The supremacy clauses of both the State and Federal
20 Constitutions provide that neither the people nor the City Council have the power to enact
21 a Charter amendment or law that conflicts with or preempts state, federal or international
22 law. Here, the Initiatives conflict with or attempt to preempt numerous provisions of
23 state, federal and international law, and are therefore beyond the scope of the local
24

25 _____
26 ¹ The Charter and Code Initiatives were attached as exhibits to Plaintiffs’ Complaint. The material terms of
27 the Charter and Code Initiatives are substantively identical. The Charter and Code Initiatives are herein
referred to collectively as the “Initiatives” and, unless otherwise indicated, all claims and allegations stated
herein apply equally to both Initiatives.

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initiative power.

3. The City of Tacoma has authority to regulate development under the state constitution and statutes, including the Growth Management Act (“GMA”). The GMA delegates planning and development authority exclusively to the City Council as the legislative authority of the City, and not to the people exercising their initiative power. Thus, because the Initiatives attempt to regulate development via restrictions on municipal water service, the subject matter of the Initiatives is outside the scope of the initiative power of the citizens of Tacoma.

4. The Initiatives attempt to restrict the power of the state’s courts to decide challenges to the Initiatives. The Washington Constitution vests the courts with broad jurisdiction to decide challenges to the constitutionality of laws and initiatives. Accordingly, this restriction is beyond the scope of the initiative power because it conflicts with the state constitution and violates the separation of powers doctrine.

5. The local initiative power only extends to the legislative power to enact laws; it does not extend to administrative decisions. The provision of municipal water service is inherently administrative in nature and is therefore not the proper subject for a local initiative.

6. Finally, the Initiatives contain numerous argumentative or controvertible statements, which are improper in an initiative and exceed the scope of the people’s initiative power.

7. As a result, the Initiatives exceed the scope of the legislative authority granted to the people of Tacoma. The Court should declare the Initiatives invalid and

1 enjoin the placement of the Initiatives on the ballot in the November 2016 and 2017
2 general elections.

3 **II. PARTIES**

4 8. The City is a first class charter city and municipal corporation of the State
5 of Washington, acting by and through its City Council. Under the Tacoma City Charter,
6 Tacoma Water is a regional water utility established in the City's Department of Public
7 Utilities.
8

9 9. Cross-Defendants are Save Tacoma Water ("STW"), a Washington
10 political action committee; Donna Walters, co-chair of STW and sponsor and promoter of
11 the Initiatives; Jon and Jane Does 1-5, individual drafters, sponsors, and promoters of the
12 Charter and Code Initiatives via STW; and Pierce County, a political subdivision, by and
13 through Julie Anderson, in her official capacity as Pierce County Auditor.
14

15 10. Third-Party Defendant is Sherry Bockwinkel, co-chair of STW and
16 sponsor and promoter of the Initiatives.

17 **III. JURISDICTION AND VENUE**

18 11. This Court has jurisdiction over this matter pursuant to chapter 2.08 RCW
19 and chapter 7.24 RCW.

20 12. Venue is proper in this Court because the City is located within Pierce
21 County, the actions complained of arise within Pierce County, and this is an action
22 against a Pierce County public officer with respect to acts done in virtue of her public
23 office.
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27 CITY OF TACOMA'S AMENDED ANSWER,
AFFIRMATIVE DEFENSES, CROSS CLAIM,
AND THIRD PARTY COMPLAINT - 11

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IV. STANDING

13. The City has standing to challenge the validity of the Initiatives because the City is within the zone of interests the Initiatives regulate and because the City will suffer injury in fact as a result of placing the Initiatives on the ballot.

14. Tacoma Water is a division of the City's Department of Public Utilities and is a municipal utility responsible for providing water services to citizens and businesses in the City. The Initiatives impose new requirements on the provision of municipal water service that are inconsistent with state law, the Growth Management Act, and the City's Public Facilities Policies and Comprehensive Plan. As such, as the municipality and the municipal provider of water service, the City is within the zone of interests that the Initiatives regulate. *Washington Ass'n for Substance Abuse & Violence Prevention v. State*, 174 Wn. 2d 642, 653, 278 P.3d 632, 639 (2012).

15. Placing the Initiatives on the 2016 and/or 2017 ballots will cause injury to numerous of the City's direct and substantial interests, including: 1) providing municipal water service in a manner consistent with state and federal law; 2) ensuring that only valid charter amendments and ordinances are placed on the ballot and ultimately enacted; 3) protecting the City's administrative functions from encroachment and interference; and 4) preserving the rights of the City's citizens to vote only on valid charter amendments and ordinances that are within the scope of the local initiative power.

16. The financial and administrative burden of placing a potentially unlawful initiative on the ballot is also a sufficient injury to confer standing on the City. *City of Longview v. Wallin*, 174 Wn. App. 763, 783, 301 P.3d 45, 55 (2013).

17. Finally, the City has standing because this is a matter of serious public

1 importance, immediately affects substantial segments of the population, and its outcome
2 will have a direct bearing on commerce, finance, labor, industry or agriculture generally.

3 18. Cross-Defendant Pierce County, by and through Julie Anderson in her
4 capacity as Pierce County Auditor, is a proper party to defend the Initiatives because Ms.
5 Anderson is responsible for certifying the Initiatives for the November 2016 and
6 November 2017 general election ballots.

7
8 19. Cross-Defendant Walters and Third-Party Defendant Bockwinkel are
9 proper parties to defend the Initiatives because they sponsored and promoted the passage
10 of the Initiatives via STW. STW's website identifies Cross-Defendant Walters and
11 Third-Party Defendant Bockwinkel as co-chairs of STW. STW's Public Disclosure
12 Commission registration as a political committee identifies Cross-Defendant Walters as
13 the Treasurer of STW and Third-Party Defendant Bockwinkel as the Campaign Manager
14 or Media Contact. Further, Cross-Defendants Jon and Jane Does 1-5 are proper parties to
15 defend the Initiatives because they are the individual officers of STW responsible for
16 drafting, sponsoring, and promoting the Initiatives via STW. Under Washington law,
17 initiative drafters and sponsors are proper defendants in challenges to the scope of an
18 initiative.
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21 20. The Court's grant of declaratory and injunctive relief preventing the
22 placement of the Code Initiative on the November 2016 ballot and the Charter Initiative
23 on the November 2017 ballot will directly redress the harms caused by the Initiatives.
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V. FACTS

A. The Process for Amending the City Charter and the Exercise of the Local Initiative Power

21. Pursuant to Chapter 35.22 RCW, the City has adopted a City Charter for its own government.

22. RCW 35.22.120 permits the direct submission of a “specified amendment” to the City Charter by initiative petition. If sufficient signatures are obtained, then the proposed amendment is submitted for a public vote at the next regular election. This process follows the process set forth in Wash. Const. art. XI, § 10, which provides that city charters “may be amended by proposals... submitted by the legislative authority of such city to the electors thereof...” after proper publication and notice.

23. RCW 35.22.200 provides that the City Charter may “provide for direct legislation by the people through the initiative and referendum upon any matter within the scope of the powers, functions, or duties of the city.”

24. Section 2.18 of the Tacoma City Charter provides “Amendments to this charter may be submitted to the voters by the City Council or by initiative petition of the voters in the manner provided by the state constitution and laws.” Similarly, Section 2.19 of the Tacoma City Charter provides in relevant part, “Citizens of Tacoma may by initiative petition ask the voters to approve or reject ordinances or amendments to existing ordinances, subject to any limitation on topics in state law”. The initiative power to amend the City Charter under Section 2.18, and the initiative power to propose ordinances or amendments to existing ordinances under Section 2.19, are thus limited by the state constitution and state laws.

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B. Tacoma Public Utilities

25. The City has operated its own municipal water system for over 100 years.

26. Tacoma Public Utilities is a City of Tacoma Department. Tacoma Public Utilities comprises Tacoma Power, Tacoma Rail, and Tacoma Water. The Tacoma City Council appoints five people to serve on the Tacoma Public Utility Board to govern the operation of Tacoma Public Utilities. Under Section 4.10 of the Tacoma City Charter, the Board has “full power” to operate the Tacoma Public Utilities systems, including supplying customers with water.

27. The Washington State legislature has vested the State Department of Health with the power and duty to regulate the health and safety of drinking water and has directed the State Department of Health to adopt rules governing, among other things, public water system planning and management. RCW 43.20.050(2)(a). The State Department of Health has promulgated detailed regulations governing public water systems such as the City’s, including a duty to provide retail water service when certain conditions are met. *See* WAC 246-290-106; RCW 43.20.260.

28. The Washington State Legislature has vested the State Department of Ecology with the power to issue permits and certificates for the use of surface and ground waters. Tacoma Water holds permits and certificates authorizing and regulating the use of surface and ground waters.

C. The Growth Management Act

29. In addition to State Department of Health regulations, Washington’s Growth Management Act (“GMA”), Chapter 36.70A RCW, requires certain counties and cities to address growth by implementing comprehensive land use planning. Cities

1 required to plan under the GMA must adopt planning policies called “comprehensive
2 plans” that address several mandatory elements. Among other things, a city’s
3 comprehensive plan must address “capital facilities” and “utilities” to ensure that there is
4 an adequate level of public facilities and services in place to meet community needs over
5 time. The GMA contemplates that cities and other communities planning under the
6 GMA will balance the various interests involved in planning: “It is in the public interest
7 that citizens, communities, local governments, and the private sector cooperate and
8 coordinate with one another in comprehensive land use planning.” RCW 36.70A.010.

10 30. RCW 36.70A.040(3) requires the City to adopt a comprehensive plan in
11 compliance with the GMA. The City has adopted such a plan (the “Comprehensive
12 Plan”) that addresses each of the GMA’s mandatory elements. The City’s
13 Comprehensive Plan includes a “Public Facilities + Services” element (“PFS”) that
14 establishes the City’s goals and policies with respect to provision of public facilities and
15 services, including public utilities like water.

17 31. Goal 4 of the PFS establishes the City’s intent to “[p]rovide public
18 facilities that address past deficiencies, particularly those in underserved areas, meet the
19 needs of growth, and enhance the quality of life through acceptable levels of service and
20 priorities.”

22 32. The City has established several specific policies under PFS Goal 4 that
23 are relevant to the City’s management and provision of public utilities, including
24 municipal water service. Under Policy PFS 4.1, the City has set standards for level of
25 service and has committed to use these standards, in combination with the current needs
26 analysis of providers, to determine the need for public facilities, test the adequacy of such

1 facilities to serve proposed development concurrent with the impacts of the development,
2 and ensure that appropriate levels of capital resources are allocated. Policy PFS 4.5
3 establishes the City’s intent to “[i]dentify needs for additional public facilities and
4 services based on adopted levels of service and forecasted growth, and determine the
5 means and timing for providing needed additional facilities.”

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7 33. Policy PFS 4.6 establishes the City’s intent to “[p]rovide public facilities
8 and services that achieve the levels of service concurrent with development as defined in
9 City code and Washington State Law.” And under Policy PFS 4.7, the City has
10 committed to “[e]nsure that those public facilities and services necessary to support
11 development shall be adequate to serve the development at the time the development is
12 available for occupancy or use, or within a reasonable time as approved by the City,
13 without decreasing current service levels below locally established minimum standards.”

14
15 **D. State and Local Regulation of Water Rates**

16 34. RCW 80.28.010 regulates the rates that can be charged by water
17 companies such as Tacoma Water and requires rates to be “just, fair, reasonable and
18 sufficient.” RCW 80.28.090 prohibits water companies such as Tacoma Water from
19 granting “unreasonable preference or advantage to any person, corporation, or locality, or
20 to any particular description of service in any respect whatsoever” and imposing “any
21 undue or unreasonable prejudice or disadvantage in any respect whatsoever.” RCW
22 80.28.100 prevents rate discrimination by water companies such as Tacoma Water.
23 RCW 80.28.110 requires water companies such as Tacoma Water to furnish water to “all
24 persons who may apply therefore and may reasonably be entitled thereto” upon
25 “reasonable notice.”
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27 CITY OF TACOMA’S AMENDED ANSWER,
AFFIRMATIVE DEFENSES, CROSS CLAIM,
AND THIRD PARTY COMPLAINT - 17

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1 35. Consistent with state law and regulations, the City has also adopted in
2 Chapter 12.10 of the Tacoma Municipal Code a regulatory and rate scheme applicable to
3 the City’s provision of water through its municipal water system.

4 36. Under section 12.10.040 of the Tacoma Municipal Code, individuals and
5 entities may apply to Tacoma Public Utilities/Tacoma Water for water service. The
6 application, when approved by Tacoma Public Utilities/Tacoma Water, constitutes a
7 contract whereby the applicant agrees as a condition of water service to comply with the
8 City’s regulatory scheme.

9
10 **E. The Initiatives**

11 37. The Initiatives are a response to a proposed refinery project that has now
12 been cancelled and other potential similar projects. Cross-Defendants STW, Walters, and
13 Jon and Jane Does 1-5 and Third-Party Defendant Bockwinkel opposed the construction
14 of the refinery. They drafted the Charter Initiative and filed it with the City Clerk on
15 March 7, 2016 on behalf of STW. They and other STW supporters are currently
16 circulating petitions for signature by citizens of the City. Cross-Defendants STW,
17 Walters, and Jon and Jane Does 1-5 and Third-Party Defendant Bockwinkel have stated
18 their intent to continue to collect signatures even though the refinery project has been
19 cancelled. If the Charter Initiative receives the required 5,559 signatures, Cross-
20 Defendant Anderson will be required to certify that it has received a sufficient number of
21 signatures to be placed on the ballot for the November 2017 general election.

22 38. Similarly, Cross-Defendants STW, Walters, and Jon and Jane Does 1-5
23 and Third-Party Defendant Bockwinkel drafted the Code Initiative and filed it with the
24 City Clerk on March 11, 2016 on behalf of STW. If the Code Initiative receives the
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1 required 3,160 signatures, Cross-Defendant Anderson will be required to certify that it
2 has received a sufficient number of signatures to be placed on the ballot for the
3 November 2016 general election.

4 39. The Charter Initiative is titled as an “amendment” to the Tacoma City
5 Charter and purports to amend the existing Charter by adding new sections. The Code
6 Initiative is titled as an “ordinance” that would add a new section to Title 12 of the
7 Tacoma Municipal Code.
8

9 40. Both Initiatives contain a preamble with 18 separate “Whereas” clauses.
10 Numerous of these clauses contain language expressing the Initiative sponsors’ opinions
11 and arguments in favor of the Initiatives, including but not limited to the following
12 examples: “Residents of Tacoma do not want to return to our polluted past”; “the City of
13 Tacoma is responsible to the city’s residents and small businesses first and must use all
14 caution when issuing water utility services to any potential water user that wants to use
15 more than one million gallons of water per day”; “the concerns for the environmental
16 impacts of large water users are valid...”; “the people want policies and contractual
17 requirements to make industry secondary to the human needs of the citizens and
18 households...”; “fresh potable water should take priority except in the case of emergency
19 fire-fighting needs or any other natural disaster...”; “the sustained availability of
20 affordable and potable water for the residents and businesses of Tacoma must be
21 paramount over considerations such as potential tax revenues or investor profits”;
22 “industries that use large amounts of water daily would place human, economic,
23 environmental and homeland securities at risk”; and “a proposed methanol refinery does
24 not meet the requirements of a clean, renewable and sustainable energy production
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CITY OF TACOMA’S AMENDED ANSWER,
AFFIRMATIVE DEFENSES, CROSS CLAIM,
AND THIRD PARTY COMPLAINT - 19

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1 facility”.

2 41. Following the preambles, the Initiatives propose to add new municipal
3 water regulations by adding a new Section 4.24 to the Tacoma City Charter (Charter
4 Initiative) and by adding a new ordinance under Title 12 of the Tacoma Municipal Code
5 (Code Initiative)—both entitled “The People’s Right to Water Protection.” The
6 Initiatives contain identical substantive terms.
7

8 42. Part A of each Initiative requires a public vote on any applicant’s request
9 for water utility service where the applicant proposes to use one million gallons or more
10 of water per day:

11 The people of the City of Tacoma find that there is a compelling need to carefully
12 consider the consequences of providing water utility service to an applicant that
13 intends to use large amounts of fresh water. Before providing water utility service
14 to any applicant for 1336 CCF (one million gallons), or more, of water daily from
15 the City, the City shall place the applicant’s request for water utility service
16 before the voters on the next available General Election Ballot, in a manner
17 substantially conforming to the rules for Section 2.22 of this Charter. The
18 applicant shall pay for the costs of the vote of the people. Only if a majority of
19 the voters approve the water utility service application and all other application
20 requirements are met may the City provide the service. The vote by the people is
21 binding, and not advisory. Any water users currently authorized to use 1336 CCF
22 or more of water daily are grandfathered in, however, their water utility service is
23 not transferable.

24 43. Part B of each Initiative asserts, among other things, that “the City of
25 Tacoma has a foundational duty to maintain a sustainable provision of water for the
26 people” and requires that “[t]o prevent subsequent denial of the People’s Right to Water
27 Protection by state law preemption, all laws adopted by the legislature of the State of
Washington, and rules adopted by any state agency, shall be the law of the City of
Tacoma only to the extent that they do not violate the rights or mandates of this Article
[Ordinance].”

CITY OF TACOMA’S AMENDED ANSWER,
AFFIRMATIVE DEFENSES, CROSS CLAIM,
AND THIRD PARTY COMPLAINT - 20

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44. Part C of each Initiative provides that the People’s Right to Water Protection supersedes “Corporate Interests”:

As the People’s Right to Water Protection is foundational to the people’s health, safety, and welfare, and must be held inviolate, no government actor, including the courts, will recognize as valid any permit, license, privilege, charter, or other authorization, that would violate the rights or mandate of this Article [Ordinance], issued for any corporation, by any state, federal, or international entity. In addition, corporations that violate, or seek to violate the rights and mandates of this Article [Ordinance] shall not be deemed “persons” to the extent that such treatment would interfere with the rights or mandates enumerated by this Article [Ordinance], nor shall corporations possess any other legal rights, powers, privileges, immunities, or duties that would interfere with the rights or mandates enumerated by this Article [Ordinance]. “Rights, powers, privileges, immunities, and duties” shall include the power to assert international, federal, or state preemptive laws in an attempt to overturn this Article [Ordinance], and the power to assert that the people of the City of Tacoma lacked the authority to adopt this Article [Ordinance].

45. Part D of each Initiative provides that the City or any resident of the City may enforce the new water service provisions through an action brought in any court possessing jurisdiction over activities occurring within the City, including seeking an injunction to stop prohibited activities, and further provides for the recovery of damages and costs of litigation, including expert and attorney’s fees.

VI. CITY’S AUTHORITY TO BRING PRE-ELECTION CHALLENGE TO LOCAL INITIATIVES

46. The City has the authority to bring a pre-election challenge to the Initiatives on the grounds that they exceed the scope of the local initiative power.

47. Though the right to state-wide initiative is protected by the state constitution, there is no similar constitutional protection or right for local initiatives. *See* Wash. Const. art. II, § 1.

48. The local initiative power is limited to legislative matters that are within the authority of the city. A local initiative exceeds the scope of the local initiative power

1 if it deals with matters outside the city’s authority. *Spokane Entrepreneurial Ctr. v.*
2 *Spokane Moves to Amend Constitution*, 185 Wn.2d 97, 107-08, 369 P.3d 140 (2016)
3 (“*Spokane*”).

4 49. A local initiative also exceeds the scope of the local initiative power if it
5 intrudes on administrative matters. Administrative matters, particularly local
6 administrative matters, are not subject to initiative or referendum. *City of Port Angeles v.*
7 *Our Water-Our Choice!*, 170 Wn.2d 1, 8, 239 P.3d 589, 593 (2010); *Spokane*, 185 Wn.2d
8 at 107.

10 50. A local initiative also exceeds the scope of the local initiative power if it
11 involves powers granted by the legislature to the governing body of a city, here the
12 Tacoma City Council, rather than the city itself. *Spokane*, 185 Wn.2d at 108.

14 51. The local initiative power is limited and subordinate to superior law. The
15 local initiative power cannot be used to enact local legislation or to adopt city charter
16 amendments that conflict with state or federal law, nor can it be used to preempt state,
17 federal, or international law. *Seattle Bldg. & Constr. Trades Council v. City of Seattle*,
18 94 Wn.2d 740, 747, 620 P.2d 82, 86-87 (1980); *see also* Wash. Const. art. XI, §§ 10, 11;
19 Wash. Const. art. I, § 2.

21 52. The local initiative power cannot be used to limit the role of courts in
22 interpreting the law or otherwise influence the division of functions among the different
23 branches of government.

24 53. The local initiative power cannot be used to limit the constitutional rights
25 of corporations. *Spokane*, 185 Wn.2d at 109-10.

26 54. Argumentative or controvertible statements in an initiative exceed the

1 scope of the local initiative power. *State ex rel. Berry v. Superior Court In and For*
2 *Thurston Cnty.*, 92 Wash. 16, 28-32, 159 P. 92, 95-96 (1916); *State ex rel. Griffiths v.*
3 *Superior Court In and For Thurston Cnty.*, 92 Wash. 44, 45-46 159 P. 101, 101-02
4 (1916).

6 VII. STATUTORY AND CONSTITUTIONAL VIOLATIONS

7 A. The Initiatives Exceed the Scope of the Local Initiative Power Because 8 they Conflict with and Purport to Preempt, State and Federal Law.

9 55. While the inhabitants of a municipality may enact legislation governing
10 local affairs, they cannot enact legislation that conflicts with state law. Article XI,
11 section 10 of the state constitution requires that city charters be consistent with and
12 subject to the constitution and laws of the State of Washington. Article XI, section 11 of
13 the state constitution allows local governments to create “such local police, sanitary and
14 other regulations as are not in conflict with general laws.” And Article I, section 2 of the
15 state constitution provides that the Constitution of the United States is the supreme law of
16 the land.

17 56. The local initiative power cannot be used to preempt state, federal, or
18 international law.

19 57. RCW 35.22.120 requires that city charter amendments address matters
20 “within the realm of local affairs, or municipal business”. RCW 35.22.200 permits direct
21 legislation by the people of a city through the initiative power upon matters “within the
22 scope of the powers, functions, or duties of the city.”

23 58. The Initiatives address matters of state law regarding provision of water
24 service by municipalities and payment of election costs.
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27 CITY OF TACOMA’S AMENDED ANSWER,
AFFIRMATIVE DEFENSES, CROSS CLAIM,
AND THIRD PARTY COMPLAINT - 23

1 59. The Initiatives address matters of state constitutional and statutory law and
2 federal law regarding rights of corporations, freedom of speech, access to courts,
3 separation of powers, and preemption.

4 60. The Initiatives are thus beyond the scope of the local initiative power
5 because they conflict with and purport to preempt state, federal, and international law,
6 contrary to Article XI, sections 10 and 11 and Article I, section 2, and address matters
7 outside the realm of municipal affairs contrary to RCW 35.22.120 and RCW 35.22.200.

9 **B. The Initiatives Are Beyond the Scope of the Local Initiative Power**
10 **Because Their Public Vote Provisions Conflict With Numerous**
11 **Provisions of State Law.**

12 **i. RCW 43.20.260 and WAC 246-290-106 (Municipal Water Suppliers)**

13 61. The Initiatives are beyond the scope of the local initiative power because
14 they seek to require a public vote for certain water service applicants, contrary to the
15 requirements of RCW 43.20.260 and WAC 246-290-106.

16 62. RCW 43.20.260 and WAC 246-290-106 impose upon municipal water
17 suppliers a duty to provide retail water service to all new service connections within their
18 retail service areas if four threshold factors are met: (1) the service can be available in a
19 timely and reasonable manner; (2) the municipal water supplier has sufficient water rights
20 to provide the water service; (3) the municipal water supplier has sufficient capacity to
21 serve the water in a safe and reliable manner as determined by the Department of Health;
22 and (4) the service is consistent with the requirements of local plans and regulations and
23 for water service by the water utility of a city or town, consistent with the utility service
24 extension ordinances of the city or town.

26 63. The City is a “municipal water supplier” within the meaning of RCW

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43.20.260 and WAC 246-290-106.

64. By imposing additional requirements for water service not found in RCW 43.20.260 and WAC 246-290-106, the Initiatives’ public vote requirement for applicants who seek to use more than one million gallons of water per day conflicts with the City’s statutory duty to provide water service to new service connections.

ii. RCW 80.28 (Gas, Electrical and Water Companies)

65. The Initiatives are beyond the scope of the local initiative power because they seek to impose a charge for water service – requiring a water service applicant to pay for the cost of an election – that is unfair, unjust and unreasonable and discriminatory contrary to the requirements of RCW 80.28.010 and RCW 80.28.100.

66. The Initiatives are beyond the scope of the local initiative power because they grant an unreasonable preference and impose an unreasonable disadvantage by treating current large-volume customers differently than new large-volume customers in conflict with RCW 80.28.090.

67. The Initiatives are beyond the scope of the local initiative power because they prevent the City from furnishing water to “all persons who may apply therefore and may reasonably be entitled thereto” upon “reasonable notice” in conflict with RCW 80.28.110.

iii. RCW 36.70A (Growth Management Act)

68. The Initiatives are beyond the scope of the local initiative power because their public vote requirements conflict with various provisions of the City’s PFS adopted pursuant to the GMA, including but not limited to Policy PFS 4.1, 4.5, 4.6, and 4.7. The Initiatives would further cause the Tacoma City Charter and the Tacoma Municipal Code

1 to be in conflict with the City’s obligations under the GMA, including but not limited to
2 its responsibility to balance the various interests involved when planning for capital
3 facilities and utilities management.

4 69. The City’s Comprehensive Plan, including its PFS element, was adopted
5 to satisfy the goals required by the GMA. The City’s PFS sets forth various goals and
6 policies governing the provision and maintenance of public facilities and services.

7 70. The Initiatives’ public vote requirements would impose additional
8 requirements on the City that are inconsistent with the City’s own adopted policies and
9 procedures with respect to water service. The Initiatives thus attempt impermissibly to
10 amend policies adopted to implement the goals of the City’s Comprehensive Plan.

11 **iv. RCW 29A.04.410 (Election Costs)**

12 71. The Initiatives are beyond the scope of the local initiative power because
13 they seek to require water service applicants to pay the election costs associated with a
14 public vote on water service, contrary to the requirements of RCW 29A.04.410.

15 72. RCW 29A.04.410 provides that “[e]very city, town, and district is liable
16 for its proportionate share of the costs when such elections are held in conjunction with
17 other [general and special elections].”

18 73. The Initiatives require the City to submit to voters for a public vote—on
19 the “next available General Election Ballot”—any applicant’s request for water service
20 where the applicant seeks to use at least one million gallons of water per day. The
21 Initiatives state that “[t]he applicant shall pay for the costs of the vote of the people,” and
22 thus purport to shift the costs of such a public vote to the water service applicant in
23 violation of RCW 29A.04.410.

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74. Shifting the costs of the election to the applicant for water service also violates RCW 43.20.260 by adding a requirement for water service not provided by state law.

C. The Initiatives Exceed the Scope of the Initiative Power Because Their Public Vote Provisions Are Administrative in Nature.

75. Local administrative matters are not subject to the initiative power. *Spokane*, 185 Wn.2d at 107.

76. A local government action is administrative in nature if it furthers or hinders a plan the local government or some power superior to it has previously adopted. *Id.*

77. Pursuant to RCW 43.20.260, the State Department of Health has adopted extensive regulations governing provision of water services by municipal governments, including WAC 246-290-106. Further, the GMA requires the City to plan for the provision of water service and other public utilities in its Comprehensive Plan. Pursuant to this regulatory scheme, the City through its Municipal Code and Comprehensive Plan has adopted regulations addressing the provision of water services to individual and corporate applicants. Tacoma Public Utilities/Tacoma Water administers this regulatory scheme.

78. By imposing a public vote requirement on applications for municipal water service, the Initiatives attempt to administer and interfere with the details of the City's and the state's existing water service regulatory schemes. The Initiatives also attempt to dictate the future course of administrative decisions of City officials.

79. The Initiatives are outside the scope of the local initiative power because

1 their public vote provisions are administrative in nature.

2 **D. The Initiatives Exceed The Scope of the Local Initiative Power**
3 **Because they Address Powers Granted Exclusively To the Tacoma**
4 **City Council.**

5 80. A local initiative “is beyond the scope of the initiative power if the
6 initiative involves powers granted by the legislature to the governing body of a city,
7 rather than the city itself.” *Spokane*, 185 Wn.2d at 108.

8 **i. Growth Management Act**

9 81. The power to adopt development regulations under the GMA is delegated
10 exclusively to the legislative authority of a city or county. Thus, citizens cannot use the
11 initiative process to enact development regulations or otherwise impose controls on
12 development under the GMA. *Whatcom Cnty. v. Brisbane*, 125 Wn.2d 345, 349, 884
13 P.2d 1326, 1329 (1994).

14 82. The Initiatives constitute an attempt to place controls on development by
15 requiring a public vote before water service may be extended to developers who propose
16 using at least 1 million gallons of water per day. The Initiatives thus attempt to usurp
17 powers granted exclusively to the legislative body of the City and are beyond the scope
18 of the local initiative power.

19 **ii. RCW 35.92.010 (Classification of Municipal Water Services)**

20 83. RCW 35.92.010 grants to the City Council the authority to classify water
21 services and customers and sets forth criteria to guide the Council’s exercise of its
22 classification discretion. The public vote provisions of the Initiatives attempt to usurp
23 this authority by creating a new class of water customers subject to an additional
24 requirement not set forth in the statute and not imposed by the Council. The creation of a
25

1 classification by initiative thus exceeds the scope of the local initiative power.

2 **E. The Initiatives Exceed the Scope of the Local Initiative Power Because**
3 **They Conflict With the Statutory and Constitutional Rights of**
4 **Corporations.**

5 84. Article XII, section 5 of the Washington Constitution grants corporations
6 the right to sue and be sued:

7 The term corporations, as used in this article, shall be construed to
8 include all associations and joint stock companies having any powers or
9 privileges of corporations not possessed by individuals or partnerships,
and all corporations shall have the right to sue and shall be subject to be
sued, in all courts, in like cases as natural persons.

10 85. RCW 23B.03.020 likewise provides that “every corporation has the same
11 powers as an individual to do all things necessary or convenient to carry out its business
12 and affairs, including without limitation, power: (a) To sue and be sued, complain, and
13 defend in its corporate name....”

14 86. The Supreme Court has held that the United States Constitution guarantees
15 to corporations the rights of free speech, equal protection and due process of law.
16 *Citizens United v. Federal Election Commission*, 558 U.S. 310, 342–43, 130 S.Ct. 876,
17 175 L.Ed.2d 753 (2010).

18 87. The Initiatives purport to strip the legal rights of any corporation that
19 violates the rights secured in the proposed charter amendment or the proposed ordinance
20 and deny corporations the right to assert defenses to enforcement of the Initiatives. For
21 example, Part C of both Initiatives provides that “corporations that violate, or seek to
22 violate the rights and mandates of this Article [Ordinance] shall not be deemed
23 “persons”. Part C also restricts a corporation’s ability “to assert international, federal, or
24 state preemptive laws in an attempt to overturn this Article [Ordinance], and the power to
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CITY OF TACOMA’S AMENDED ANSWER,
AFFIRMATIVE DEFENSES, CROSS CLAIM,
AND THIRD PARTY COMPLAINT - 29

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1 assert that the people of the City of Tacoma lacked the authority to adopt this Article
2 [Ordinance].”

3 88. The Initiatives are beyond the scope of the local initiative power because
4 they seek to deny corporations certain rights associated with the right to “sue and be sued,
5 complain, and defend” in their corporate names, contrary to the provisions of Article XII,
6 section 5, RCW 23B.03.020, and the United States Constitution.
7

8 **F. The Initiatives Violate the Separation of Powers Doctrine.**

9 89. The doctrine of separation of powers creates a clear division of functions
10 among each branch of government and limits each branch’s power to interfere with the
11 functions of the others. Within this framework, the fundamental function of the judicial
12 branch is judicial review, including the authority to interpret the law.
13

14 90. The people acting through the local initiative power do not have the
15 authority to limit the role of the courts in interpreting the law.

16 91. Part C of both Initiatives states that “no government actor, including the
17 courts, will recognize as valid any permit, license, privilege, charter, or other
18 authorization, that would violate the rights or mandate of this Article [Ordinance], issued
19 for any corporation, by any state, federal or international entity.”
20

21 92. The Initiatives are beyond the scope of the local initiative power because
22 they purport to remove the power of the courts or any other governmental body to
23 determine the validity of any action that would violate the rights secured in the charter
24 amendment or the proposed ordinance, contrary to the doctrine of separation of powers.

25 **G. The Initiatives Contain Inappropriate Argumentative Language.**

26 93. Initiatives proposed under the local initiative power must be legislative in
27

1 nature. Argumentative or controvertible statements are improper in an initiative and
2 exceed the scope of the people’s legislative power. *Berry*, 92 Wash. at 28-32; *Griffiths*,
3 92 Wash. at 45-46.

4 94. The Initiatives are beyond the scope of the local initiative power because
5 their preambles contain numerous statements expressing the Initiative sponsors’ opinions
6 and arguments in favor of the Initiatives. These preamble statements are argumentative,
7 controvertible, and non-legislative.

8
9 **H. The Invalid Provisions of the Initiatives Are Not Severable.**

10 95. As detailed above, each of the substantive provisions in the Initiatives is
11 invalid and outside the scope of the local initiative power. Specifically, in summary, Part
12 A requires a public vote on a water application in contravention of multiple provisions of
13 state law, Part B expressly purports to preempt state law that conflicts with the Initiatives,
14 and Part C unlawfully revokes the constitutional and statutory rights of corporations and
15 violates the separation of powers doctrine by restricting the power of the state courts.

16
17 96. While each of these sections is plainly beyond the scope of the local
18 initiative power, to the extent the Court finds that any substantive provision is valid, the
19 Initiatives must nonetheless be invalidated in their entirety because they are not
20 severable. No provision of the Initiatives is “grammatically, functionally, and
21 volitionally severable” from any other, and therefore, no portion of the Initiatives can be
22 severed and upheld. *McGowan v. State*, 148 Wn.2d 278, 295, 60 P.3d 67 (2002); *League*
23 *of Women Voters of Washington v. State*, 184 Wn. 2d 393, 411-12, 355 P.3d 1131 (2015),
24 *as amended on denial of reconsideration* (Nov. 19, 2015) (initiative not severable where
25 “elimination of the invalid part would render the remaining part useless to accomplish the
26
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1 legislative purpose.”).

2 **VIII. FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT**

3 97. The City repeats and re-alleges each of the foregoing allegations as though
4 fully set forth herein.

5 98. For reasons including but not limited to those set forth herein, an actual
6 dispute exists between the City and Cross-Defendants and between the City and Third-
7 Party Defendant, which parties have genuine and opposing interests, which interests are
8 direct and substantial, and of which a judicial determination would be final and
9 conclusive.
10

11 99. The City is entitled to a declaratory judgment pursuant to Chapter 7.24
12 RCW that the Initiatives are invalid insofar as they exceed the scope of the local initiative
13 power.
14

15 100. The City is entitled to a declaratory judgment pursuant to Chapter 7.24
16 RCW that the Code Initiative should not be placed on the ballot for the November 2016
17 general election, and that the Charter Initiative should not be placed on the ballot for the
18 November 2017 general election, because both Initiatives exceed the scope of the local
19 initiative power.
20

21 **IX. SECOND CAUSE OF ACTION: INJUNCTIVE RELIEF**

22 101. The City repeats and re-alleges each of the foregoing allegations as though
23 fully set forth herein.

24 102. For reasons including but not limited to those set forth herein, the City has
25 clear legal rights to prevent and enjoin placement of the Code Initiative on the ballot for
26 the general election in November 2016 and the Charter Initiative on the ballot for the
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CITY OF TACOMA’S AMENDED ANSWER,
AFFIRMATIVE DEFENSES, CROSS CLAIM,
AND THIRD PARTY COMPLAINT - 32

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1 general election in November 2017. The City is within the zone of interests that the
2 Initiatives seek to protect or regulate.

3 103. In the absence of an injunction, the City will suffer irreparable harm in the
4 form of the costs and administrative burden of holding unlawful elections on the
5 Initiatives.

6 104. The City will also suffer irreparable harm if the Initiatives are placed on
7 the November 2016 and 2017 ballots and pass because the Initiatives will require the City
8 to employ a water permitting scheme that conflicts with state statutes and the state
9 constitution.

10 105. The Court should enjoin Cross-Defendant Pierce County, by and through
11 Julie Anderson in her capacity as Pierce County Auditor, from placing the Code Initiative
12 on the ballot for the November 2016 general election and from placing the Charter
13 Initiative on the ballot for the November 2017 general election.

14 106. No adequate remedy at law exists to remedy the invasion of the City's
15 rights caused by the placement of the Initiatives on the ballot by Cross-Defendants and
16 Third-Party Defendant.

17
18
19 **X. PRAYER FOR RELIEF ON CROSS CLAIM**

20 WHEREFORE, the City requests the following relief:

- 21 1. That the Court enter a declaratory judgment that the Initiatives are invalid
22 because they exceed the scope of the local initiative power under the Tacoma City
23 Charter and state law;
- 24 2. Such other relief as may follow from entry of a declaratory judgment;
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CITY OF TACOMA'S AMENDED ANSWER,
AFFIRMATIVE DEFENSES, CROSS CLAIM,
AND THIRD PARTY COMPLAINT - 33

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3. Entry of an injunction prohibiting placement of the Code Initiative on the ballot for the November 2016 general election and prohibiting placement of the Charter Initiative on the ballot for the November 2017 general election; and

4. Any further relief this Court deems necessary and proper.

DATED this 17th day of June, 2016.

PACIFICA LAW GROUP LLP

By s/ Kimberly K. Evanson
Paul J. Lawrence, WSBA # 13557
Kimberly K. Evanson, WSBA #39973
Sarah S. Washburn, WSBA #44418

Attorneys for Defendant, Cross-
Claimant, and Third-Party Plaintiff
City of Tacoma

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CERTIFICATE OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, competent to be a witness in the above action, and not a party thereto; that on the 17th day of June, 2016, I caused to be served a true copy of the foregoing document upon:

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clake@goodsteinlaw.com
sgoodstein@goodsteinlaw.com

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Co-Chair of Save Tacoma Water

Donna Walters
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Co-Chair and Treasurer of Save Tacoma Water

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- via hand delivery

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Save Tacoma Water
P.O. Box 8841
Tacoma, WA 98419

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- via overnight courier
- via first-class U.S. mail
- via email per agreement
- via electronic court filing
- via hand delivery, via legal messenger

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 17th day of June, 2016.



Sydney Henderson

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

PORT OF TACOMA, a Washington State
Municipal Corporation, ECONOMIC
DEVELOPMENT BOARD FOR
TACOMA-PIERCE COUNTY, a
Washington State Non-profit Corporation,
and the TACOMA-PIERCE COUNTY
CHAMBER, a Washington State Non-
profit corporation,

Plaintiffs,

v.

SAVE TACOMA WATER, a Washington
political committee, DONNA WALTERS,
sponsor and Treasurer of SAVE
TACOMA WATER, JON AND JANE
DOES 1-5, (Individual sponsors and
officers of SAVE TACOMA WATER),
CITY OF TACOMA, a Washington State
Municipal Corporation; and PIERCE
COUNTY, a political subdivision by and
through JULIE ANDERSON, IN HER
CAPACITY AS PIERCE COUNTY
AUDITOR,

Defendants.

No. 16-2-08477-5

DECLARATION OF ROBERT E.
MACK IN SUPPORT OF CITY OF
TACOMA'S MOTION FOR
PRELIMINARY AND PERMANENT
INJUNCTION

DECLARATION OF ROBERT E. MACK IN SUPPORT OF
CITY'S MOTION FOR PRELIMINARY AND
PERMANENT INJUNCTION - 1

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FACSIMILE: (206) 245-1750

1 CITY OF TACOMA,

2 Cross-Claimant/
3 Third-Party Plaintiff,

4 v.

5 SAVE TACOMA WATER, a Washington
6 political committee, DONNA WALTERS,
7 Co-Chair and Treasurer of SAVE
8 TACOMA WATER; JON AND JANE
9 DOES 1-5, (Individual sponsors and
10 officers of SAVE TACOMA WATER);
11 and PIERCE COUNTY, a political
12 subdivision by and through JULIE
13 ANDERSON, IN HER CAPACITY AS
14 PIERCE COUNTY AUDITOR,

11 Cross-Defendants,

13 v.

14 SHERRY BOCKWINKEL,

15 Third-Party Defendant.

16 I, Robert E. Mack, declare as follows:

17 1. I am Deputy Director for Public Affairs of Tacoma Public Utilities. In that
18 capacity, I serve as the manager of the agency's public affairs and communications, including
19 government relations. I am also the supervisor for two other sections: Communications and
20 Media Services, and Market Development. Market Development includes the account
21 executives for our non-residential customers. Before I joined Tacoma Public Utilities, I provided
22 state government relations services to Tacoma Public Utilities and also provided legal counsel on
23 matters involving water rights for both Tacoma Power and Tacoma Water. I am over the age of
24 18, am competent to testify, and offer this declaration based on my personal knowledge.
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DECLARATION OF ROBERT E. MACK IN SUPPORT OF
CITY'S MOTION FOR PRELIMINARY AND
PERMANENT INJUNCTION - 2

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1 2. The City of Tacoma (the "City") is a first class charter city and municipal
2 corporation of the State of Washington, acting by and through its City Council. The City
3 adopted a City Charter in November 1952. Attached hereto as **Exhibit A** is a true and correct
4 copy of excerpts of the Tacoma City Charter that pertain to the above-captioned case.

5 3. The City has operated its own municipal water system for over 100 years.

6 4. Tacoma Public Utilities is a Department of the City of Tacoma. Tacoma Public
7 Utilities comprises Tacoma Power, Tacoma Rail, and Tacoma Water. The Tacoma City Council
8 appoints five people to serve on the Tacoma Public Utility Board to govern the operation of
9 Tacoma Public Utilities. Under Section 4.10 of the Tacoma City Charter, the Board has full
10 power to operate the Tacoma Public Utilities systems, including supplying customers with water.

11 5. Under the Tacoma City Charter, Tacoma Water is a division of Tacoma Public
12 Utilities. Tacoma Water is a regional water utility responsible for providing retail water services
13 to citizens and businesses of Tacoma.

14 6. Tacoma Water also provides retail water services to businesses and residences
15 outside of the Tacoma city limits, including in the city of University Place, the town of Ruston,
16 and portions of Federal Way, Puyallup, Bonney Lake, Fircrest, Lakewood, and unincorporated
17 Pierce and King Counties. Tacoma Water is also a wholesale purveyor, selling water to 14 other
18 water utilities in both Pierce and King Counties.

19 7. Tacoma Water holds permits and certificates issued by the State Department of
20 Ecology authorizing and regulating the use of surface and ground waters. In addition, Tacoma's
21 original water right for diversion from the Green River is in good standing and predates the
22 statute under which the State of Washington issues permits and certificates for surface water
23 diversion.

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DECLARATION OF ROBERT E. MACK IN SUPPORT OF
CITY'S MOTION FOR PRELIMINARY AND
PERMANENT INJUNCTION - 3

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APP. 067

1 8. State statutes and regulations require that Tacoma Water provide retail water
2 service to all new service connections within its retail service areas if four threshold factors are
3 met: (1) the service can be available in a timely and reasonable manner; (2) the municipal water
4 supplier has sufficient water rights to provide the water service; (3) the municipal water supplier
5 has sufficient capacity to serve the water in a safe and reliable manner as determined by the
6 Department; and (4) the service is consistent with the requirements of local land use plans and
7 regulations and the utility service extension ordinances of the city or town. RCW 43.20.260;
8 WAC 246-290-106. State law also requires water rates to be “just, fair, reasonable and
9 sufficient”, and prevents rate discrimination by water companies such as Tacoma Water. *See*
10 RCW 80.28.010, .090, 100, 110.

11
12 9. The City of Tacoma has adopted in Chapter 12.10 of the Tacoma Municipal Code
13 a regulatory and rate scheme applicable to the City’s provision of water by Tacoma Water.
14 Attached hereto as **Exhibit B** is a true and correct copy of the relevant excerpts of the Tacoma
15 Municipal Code.

16
17 10. Citizens Charter Amendment Initiative No. 5 (“Charter Initiative”) and Citizens
18 Initiative No. 6 (“Code Initiative”) impose new requirements on the provision of municipal water
19 service by Tacoma Water that conflict with Tacoma Water’s duty under state law to provide non-
20 discriminatory water service.

21
22 11. To my knowledge, Tacoma Water has never required a public vote upon any
23 application for water service.

24 I declare under penalty of perjury under the laws of the State of Washington that the
25 foregoing is true and correct.

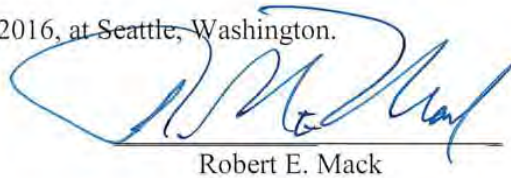
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DECLARATION OF ROBERT E. MACK IN SUPPORT OF
CITY’S MOTION FOR PRELIMINARY AND
PERMANENT INJUNCTION - 4

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Executed this 16th day of June, 2016, at Seattle, Washington.



Robert E. Mack

DECLARATION OF ROBERT E. MACK IN SUPPORT OF
CITY'S MOTION FOR PRELIMINARY AND
PERMANENT INJUNCTION - 5

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EXHIBIT A



TACOMA CITY CHARTER

Effective June 1, 1953
Last Amended November 4, 2014

**CHARTER OF THE
CITY OF TACOMA**

PREPARED BY A BOARD OF FIFTEEN
FREEHOLDERS ELECTED MARCH 11, 1952

SUBMITTED TO AND ADOPTED BY THE
QUALIFIED ELECTORS AT A SPECIAL ELECTION
HELD NOVEMBER 4, 1952

EFFECTIVE JUNE 1, 1953
AMENDED NOVEMBER 4, 1958
AMENDED SEPTEMBER 15, 1970
AMENDED SEPTEMBER 18, 1973
AMENDED NOVEMBER 6, 1979
AMENDED SEPTEMBER 16, 1980
AMENDED NOVEMBER 8, 1983
AMENDED NOVEMBER 3, 1992
AMENDED NOVEMBER 2, 2004
AMENDED NOVEMBER 4, 2014

EXPLANATORY NOTES

1. The Charter of the City of Tacoma has, in some instances, been superseded by the adoption of state laws subsequent to the effective date of the Charter. In this compilation, references are made to those sections of state law which supersede this Charter, setting forth the Revised Code of Washington citation and a brief statement of the effect of the law.

2. Footnote references to the Charter as contained herein, such as, "see Chapter 1.02," refer to the Official Code of the City of Tacoma duly adopted pursuant to the laws of the State of Washington and ordinances of the City of Tacoma.

CHARTER OF THE CITY OF TACOMA

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CHARTER OF THE CITY OF TACOMA

Preamble

We, the people of the City of Tacoma, a city of the first class of the State of Washington, pursuant to the authority granted by the Constitution and Laws of the State of Washington, and in order to avail ourselves of all powers granted such cities and to obtain the benefits of local self-government, do hereby enact this charter.

Article I

INCORPORATION AND GENERAL POWERS

Incorporation and Boundaries¹

Section 1.1 – The municipal corporation now existing and known as the “City of Tacoma” shall continue to be a body politic and corporate under the same name, with the boundaries as now established or as may hereafter be legally changed, and by such name shall have perpetual succession. The City may have and use a common seal and sue and defend in all matters and proceedings.

General Powers of the City²

Section 1.2 – The City shall have all powers now or hereafter granted to like cities by the constitution and laws of the state, and all powers implied thereby, and shall have and exercise all municipal rights, powers, function, privileges and immunities except as prohibited by law or by this charter. The City may acquire property within or without its corporate limits for any City purpose by purchase, condemnation, lease, gift, and devise and may hold or dispose of such property as the interests of the City may require. No enumeration of particular powers by this charter shall be deemed to be exclusive.

Article II

THE LEGISLATIVE BRANCH

Creation and Composition of City Council

Section 2.1 – The Council shall be composed of the Mayor and eight (8) Council Members nominated and elected, as provided hereinafter. At the next general municipal election to be held in the year 1975 on the date prescribed by state law, there shall be elected eight (8) Council Members for terms beginning on the second Monday in January 1976, as set out hereinafter in Section 5.3. Biennially thereafter, on the date prescribed by state law for general municipal elections, four (4) Council Members shall be elected for like terms of four years. Council Members shall continue in office until their successors are elected and qualified. The Council shall constitute the legislative and governing body of the City and shall have authority, except as otherwise provided in this charter, to exercise all powers of the City.

(Amendments approved by vote of the people September 18, 1973 and November 4, 2014)

Qualifications and Compensation of Council Members

Section 2.2 – Council Members shall be qualified electors and shall be residents of the City for two years immediately preceding the time of filing as a candidate and, if running for a district position, shall be residents of their districts for one year immediately preceding the time of filing as candidate or, if appointed to fill a vacancy, the time of appointment. No person shall be eligible for the office of Council Member while holding any other elective public office.

(Amendments approved by vote of the people September 18, 1973 and November 4, 2014)

¹ See TMC Chapter 1.02 - City Limits and Annexations.

² Authority to frame charter - State constitution Art, XI § 10 and RCW 35.22.030, General Powers - RCW 35.21.010 and RCW chapter 35.22.

Section 2.3 – A Citizen Commission on Elected Salaries will determine the compensation and salary of the Mayor and each Council Member. The Commission shall set the salary and any salary changes for the Mayor and Council Members. The salary and any salary changes set by the Commission shall be adopted by the City Council.

- (a) The Salary Commission shall consist of seven members appointed as follows:
 - (1) Five of the seven Commission members shall be selected by lot by the County Auditor from among those registered City of Tacoma voters eligible to vote at the time the persons are selected for appointment to the Commission. There shall be one member selected from each of the City’s Council districts. The Auditor shall establish policies and procedures for conducting the selection by lot to be forwarded to the City Council for appointment.
 - (2) The remaining two of the seven Commission members must be residents of the City of Tacoma and shall be appointed by the Mayor and confirmed by the Council. One person shall have experience in human resource management. The second person shall have experience in the legal profession.
- (b) Members of the Commission may not include any public office holder, filed candidate for public office, officer, official or employee of the City of Tacoma or any of their immediate family members. For the purpose of this section, the phrase “immediate family member” means the parents, spouse, siblings, children or dependent relative of any officer, official or employee whether or not living in the household of the officer, official or employee.
- (c) The terms of the Commission shall be as follows:
 - (1) The terms of office for the members shall be three years, except initial appointment to the Commission shall be for the following terms:
 - (2) For the members selected by lot by the Auditor, two shall be appointed to serve a one-year term, two shall be appointed to a two-year term, and the remaining member shall be appointed to serve a three-year term.
 - (3) For the members selected by the Mayor and confirmed by the Council, one shall serve a one-year term and one shall serve a three-year term.
- (d) Upon a vacancy in any position on the Commission, a successor shall be selected and appointed to fill the unexpired term in the same manner as outlined in this section.

The Commission shall meet each year beginning in 2015 in one or more regular or special meetings to carry out its duties set forth in this section. Determinations for any change in the salaries of these elected officials shall be filed with the City Clerk and transmitted to the Council for adoption no later than September 1 of the calendar year.³

(Amendment approved by vote of the people November 4, 2014)

Section 2.35 – No person shall be allowed to serve on the Council for more than ten (10) consecutive years, either as a Council Member, Mayor, or combination thereof.

(Amendments approved by vote of the people September 18, 1973 and November 4, 2014)

The Mayor

Section 2.4 – On the date prescribed by state law for the general municipal elections, commencing in the year 1973, the Mayor shall be elected for a term of four (4) years. The Mayor shall become a member and presiding officer of the City Council with the right to speak and vote as any other Council Member. The Mayor shall be the official head of the City government for purposes of ceremony and military law and upon declaration of an emergency or disaster which constitutes an event or set of circumstances which

³ See RCW 35.21.015 Salary Commissions

demands immediate action to preserve public health, protect life, protect public property, or which reaches such a dimension or degree of destructiveness that exceeds the resources of the City of Tacoma to respond to the situation.⁴ The Mayor shall authenticate by signature such instruments as may be required by law, ordinance, or this charter. The Mayor shall have such appointive and other powers, duties, and authority as may be conferred by law, ordinance, or this charter; provided, however, that all appointments where not in conflict with state law shall be made by majority vote of the Council Members from nominees whose names are presented in writing to the Council by the Mayor or by any three members of the Council. This provision shall supersede and prevail over any other provision or ordinance or of the charter inconsistent with or in conflict herewith. A candidate for the office of Mayor shall not be ineligible by reason of holding the office of Council Member; provided that, if elected, the Council office of any such candidate shall, upon taking office as Mayor, be and become vacant. The compensation to be paid to the Mayor for the performance of the Mayor's duties as such shall be fixed by ordinance, which sum shall be inclusive of compensation as a Council Member. Except as otherwise provided herein, all provisions relating to the office of Council Member shall relate also to the office of Mayor. Vacancies in the office of Mayor shall be filled by appointment by the City Council for a term expiring at the time a successor has been elected and qualified as hereinafter provided. In the event such a vacancy occurs during the first or second year of the Mayor's term of office, then the office of Mayor shall also be placed upon the ballot for the primary and general elections. The Mayor elected at such general election shall be elected for a full four-year term and shall take office at the same time as City Council Members elected at said general election. In the event that the vacancy occurs subsequent to such time for filing, the appointment shall be for the unexpired term.

(Amendments approved by vote of the people September 18, 1973, November 3, 1992, and November 4, 2014)

Removal from or Forfeiture of Office

Section 2.5 – Any member of the City Council and any other elected officer of the City of Tacoma may be removed from office by recall as provided by law.

(Amendment approved by vote of the people November 2, 2004)

Section 2.6 – Any Council Member who shall cease to possess any of the qualifications herein required for eligibility for election to the Council, or shall fail to attend three consecutive meetings of the Council without being excused by the Council, shall be deemed to have forfeited their office. The Council shall take the necessary action to enforce this provision and shall cause such action to be entered upon its journal.

(Amendment approved by vote of the people November 2, 2004)

Council Vacancies

Section 2.7 – Whenever a vacancy occurs in the office of Council, the Council shall fill such vacancy by appointment by a majority vote of its remaining members until the commencement of the term of office of municipal officials succeeding the next general municipal election occurring after the date of such appointment, and if any unexpired term remains, it shall be filled by election; however, that in the event a majority of the Council fails to make an appointment to fill a vacancy on the Council within a period of sixty (60) days from the date the vacancy occurs, then the Mayor shall make the appointment, subject to the confirmation of the remaining members of the Council.

(Amendments approved by vote of the people September 18, 1973, September 16, 1980, and November 4, 2014)

⁴ RCW 35.18.200 establishes that the Mayor, in time of emergency, and if authorized by the Council, shall take command of the Police, maintain law, and enforce order.

Procedure of the Council

Section 2.8 – The Council shall meet at such times and places as it may determine, provided it shall hold regular periodic meetings, not oftener than once a week, at least forty-six (46) times each calendar year.⁵ Special meetings shall be called by the City Clerk on the written request of the Mayor or any three Council members.⁶ Such request shall state the subject or subjects to be considered at such meeting, and no other subject shall be considered thereat. Each Council member shall be given such notice that may be required by State law, but in no event less than twelve hours' notice, of the time and place of such special meetings. All meetings of the council shall be public as prescribed by State law.

(Amendment approved by vote of the people November 6, 1979)

Section 2.9 – Subject to the limitations imposed by law and by this charter, the Council shall establish its own rules and order of business. It shall keep a journal of its proceedings which shall be a public record. Five Council Members shall be a quorum for the transaction of business, but in the absence of a quorum, the members present may adjourn the meeting to a later date.⁷ The Council shall have the authority to punish its members and others for disorderly or otherwise contemptuous behavior in its presence and to compel the attendance of its members and witnesses, and the production of papers and things, before the Council.

(Amendment approved by vote of the people November 4, 2014)

Section 2.10 – Every ordinance and resolution shall require an affirmative vote of at least five (5) Council Members for passage, and the ayes and nays shall be taken and entered upon the journal. Upon the request of any member, the ayes and nays shall be taken on any question and entered upon the journal. Members present but not voting shall be recorded as abstaining from the vote.

(Amendments approved by vote of the people September 18, 1973 and November 4, 2014)

Legislation

Section 2.11 – Every legislative act of the Council shall be by ordinance,⁸ which shall be numbered consecutively, clearly entitled and contain but one subject which shall be expressed in the title. The enacting clause of all ordinances shall be: “Be it ordained by the City of Tacoma.”

Section 2.12 – No ordinance shall be finally passed within five days of its introduction, except when the Council declares in such ordinance that a public emergency exists and therein states the facts constituting such emergency, and except ordinances relating to local improvements and assessments and authorization of bonds therefor. All ordinances passed as emergency measures shall require an affirmative vote of at least six Council Members. No ordinance granting any franchise, right, or privilege shall ever be passed as an emergency measure.

(Amendment approved by vote of the people November 4, 2014)

Section 2.13 – A summary of every ordinance shall, within ten days after its passage, be published once in the official newspaper of the City. Ordinances passed as emergency measures, or relating to local improvements and assessments and authorization of bonds therefore, or adopting annual budgets, or levying taxes, or making appropriations shall take effect immediately upon passage. Ordinances granting a franchise, right, or privilege, or authorizing the issuance of revenue bonds in an amount exceeding five million dollars, shall take effect at such time after publication as the City Council shall determine by

⁵ By Council Rules, regular meetings of the City Council are scheduled for 5:00 p.m. each Tuesday.

⁶ RCW 42.30.080 establishes the procedure for special meetings pursuant to the Open Public Meetings Act.

⁷ RCW 42.30.090 establishes the procedure for adjourning meetings pursuant to the Open Public Meetings Act.

⁸ No agency of the city has authority to suspend force and effect of an ordinance except the council and then only by enactment of another ordinance. *Rhodes v Tacoma* (1917) 97 Wash, 341, 166 P 647.

ordinance. All other ordinances shall take effect only after the expiration of ten days from publication, subject always to the provisions of this charter concerning referendum.

(Amendments approved by vote of the people November 2, 2004 and November 4, 2014)

Section 2.14 – No ordinance or section thereof shall be revised, reenacted or amended by reference to its title, but the ordinance or section to be revised, reenacted, or amended shall be reenacted at length as revised or amended. No ordinance or section thereof shall be repealed, suspended, or any person exempted from the provisions thereof, except by ordinance repealing the same.

Section 2.15 – All ordinances and their amendments shall be recorded in a book to be called the “Ordinance Record,” which record of each ordinance shall be authenticated by the signatures of the Mayor and the City Clerk.

Compilation and Codification of Ordinances

Section 2.16 – Within three years of the effective date of this charter, and at least every ten years thereafter, the Council shall arrange for the compilation or codification of the charter and all ordinances of a general, public, or permanent nature, or imposing a fine, penalty, or forfeiture, and shall file the same with the City Clerk. When adopted by the Council by ordinances, such codification shall become the official code of the City. All ordinances of like nature, not affecting private or contract rights passed prior to such adoption and not contained in such code, shall be deemed prima facie to have been repealed thereby.⁹

Penalties for Non-compliance with Ordinances

Section 2.17 – The Council may provide in any ordinance penalties for its violation; in the absence of a specific penalty provision for violation of an ordinance or a provision of this charter, such penalty shall be a fine of not to exceed three hundred dollars or imprisonment not to exceed ninety days, or both in the discretion of the court.

Powers of the People

Section 2.18 – Amendments to this charter may be submitted to the voters by the City Council or by initiative petition of the voters in the manner provided by the state constitution and laws.

(Amendment approved by vote of the people November 2, 2004)

Section 2.19 – Citizens of Tacoma may by initiative petition ask the voters to approve or reject ordinances or amendments to existing ordinances, subject to any limitation on topics in state law, by the following process:

- (a) The petitioners shall file an Initiative Petition with the City Clerk.
- (b) The City Clerk shall forward the petition to the City Attorney within one (1) working day of receipt.
- (c) Within ten (10) working days of receipt, the City Attorney shall review the petition and make contact with the petitioner as necessary, and if the petition is proper in terms of form and style, the City Attorney will write a concise, true, and impartial statement of the purpose of the measure, not to exceed the number of words as allowed under state law for local initiatives. The statement will be phrased in the form of a positive question.
- (d) The City Attorney shall file this concise statement with the City Clerk as the official ballot title.

⁹ See RCW 35.21.520 regarding procedures and requirements for Codification of Official City Code.

- (e) The City Clerk shall assign an initiative number to the ballot title and notify the petitioner that the ballot title becomes final and signature gathering may begin in ten (10) working days if there is no judicial review. Notification of the ballot title shall be posted at City Hall and on the City's web page.
- (f) Persons dissatisfied with the ballot title prepared by the City Attorney may seek judicial review by petitioning the Pierce County Superior Court within ten (10) working days of the notification of the ballot title having been posted as required under (e). The Court shall endeavor to promptly review the statements and render a decision as expeditiously as possible. The decision of the Court is final.
- (g) Petitions must include the final, approved ballot title, initiative number, the full text of the ordinance, or amendment to existing ordinance, that the petitioners seek to refer to the voters, and all other text and warnings required by state law.
- (h) Petitioners have one hundred and eighty (180) calendar days to collect signatures from registered voters.
- (i) The number of valid signatures shall be equal to ten percent (10%) of the votes cast in the last election for the office of Mayor.
- (j) The City Clerk shall forward the signatures to the County Auditor to be verified. Based on the Auditor's review, the City Clerk shall determine the validity of the petition. If the petition is validated, 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.

(Amendments approved by vote of the people November 2, 2004 and November 4, 2014)

Section 2.20 – Citizens of Tacoma may ask that ordinances passed by the City Council, except for ordinances which take effect immediately as allowed in Section 2.13 of the Charter, or as otherwise prohibited by state law, be referred to the voters for approval or rejection by the following process:

- (a) The petitioners shall file a Referendum Petition with the City Clerk not later than ten (10) calendar days after the City Council approved the ordinance.
- (b) The filing of a Referendum Petition, and progression by the petitioners through the steps outlined as follows, causes the suspension of the effective date of the ordinance.
- (c) The City Clerk shall forward the petition to the City Attorney within one (1) working day of receipt.
- (d) Within ten (10) working days of receipt, the City Attorney shall review the petition and make contact with the petitioner as necessary, and if the petition is proper in terms of form and style, the City Attorney will write a concise, true, and impartial statement of the purpose of the measure, not to exceed the number of words as allowed under state law for local referendums. The statement will be phrased in the form of a positive question.
- (e) The City Attorney shall file this concise statement with the City Clerk as the official ballot title.
- (f) The City Clerk shall assign a referendum number to the ballot title and notify the petitioner that the ballot title becomes final and signature gathering may begin in ten (10) working days if there is no judicial review. Notification of the ballot title shall be posted at City Hall and on the City's web page.
- (g) Persons dissatisfied with the ballot title prepared by the City Attorney may seek judicial review by petitioning Pierce County Superior Court within ten (10) working days of the notification of the ballot title having been posted as required under (f). The Court shall endeavor to promptly review the statements and render a decision as expeditiously as possible. The decision of the Court is final.
- (h) Petitions must include the final, approved ballot title, referendum number, the full text of the ordinance that the petitioners seek to refer to the voters, and all other text and warnings required by state law.
- (i) Petitioners have thirty (30) calendar days to collect signatures from registered voters.

- (j) The number of valid signatures shall be equal to ten percent (10%) of the votes cast in the last election for the office of Mayor.
 - (k) The City Clerk shall forward the signatures to the County auditor to be verified. Based on the Auditor's review, the City Clerk shall determine the validity of the petition. If the petition is validated, the City Council shall immediately reconsider the ordinance, and if it does not repeal the ordinance, 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.
- (Amendments approved by vote of the people November 2, 2004 and November 4, 2014)

Section 2.21 – Any ordinance initiated or referred may be submitted to the qualified electors for their approval or rejection at a special municipal election to be called in the manner provided by law for the submission of questions or propositions to the qualified electors.

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.

Section 2.23 – If a majority of the qualified electors voting upon any ordinance initiated or referred shall vote in favor thereof, the same shall take effect ten days after the certification of the result of the election thereof or at the time fixed therein; provided, that if the provisions of two or more proposed ordinances approved at the same election are inconsistent, the provisions of the ordinance receiving the highest vote shall prevail. Any ordinance initiated or referred failing of such majority shall be rejected. All initiative and referendum elections shall be conducted and publication of the proposed ordinance shall be had in the same manner as elections submitting questions or propositions to the qualified electors.

Section 2.24 – No ordinance heretofore or hereafter enacted by vote of the people shall be amended or repealed by the Council within two years after enactment, unless such amendatory or repealing ordinance shall be submitted to the qualified electors for their approval or rejection in the same manner as is required by this charter in respect to the submission of an ordinance initiated or referred.

Section 2.25 – The City Council shall commence a review of this charter no less frequently than once every ten years, by appointing citizens to a charter review committee, or by the election of a board of freeholders in the manner provided in state law. Any freeholders 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. The City Council may accept, reject or modify the recommended amendments and may submit any recommended charter amendments to the voters in the manner provided in state law. The recommendations of a board of freeholders shall be placed before the voters in the manner provided in state law. Nothing in this section shall limit the right of citizens to initiate amendments to this charter in any other manner allowed by state law.

(Amendment approved by vote of the people November 2, 2004)

Article III

THE ADMINISTRATIVE BRANCH

The City Manager

Section 3.1 – The Council shall appoint a chief administrative officer of the City government who shall be entitled City Manager, and who shall serve at the pleasure of the Council. Both the appointment and removal shall require the affirmative vote of five members of the Council. The Manager shall be selected on the basis of training, experience, and other administrative qualifications for the office and without regard to place of residence at the time of appointment, but during tenure of office, shall reside within the

responsibilities with reference to the control of animals. Such contract(s) shall provide, among other things, that said society or agency (agencies) shall faithfully operate said pounds, shall pay all expenses in connection therewith, shall receive all licenses, fines, penalties and proceeds of every nature connected therewith, and such other sums as may be legally appropriate therefor, subject only to accounting as provided by law. The Council is further authorized, notwithstanding the provisions hereof, to determine that the City shall operate its own city pounds or detention facility and otherwise regulate and control animals within its corporate limits. Any contract entered into pursuant to the authority hereof shall be subject to cancellation by the City for good cause.

(Amendment approved by vote of the people September 18, 1973)

Administrative Organization¹²

Section 3.11 – Within the framework established by this charter, the administrative service of the City government shall be divided into such offices, departments, and divisions as provided by ordinance upon recommendation of the City Manager. Such ordinance shall be known as the “Administrative Code.”

Section 3.12 – The City Council may remove any appointed member of any City board, commission, or board of trustees, for cause, after notice and public hearing, if that member is found to have knowingly violated the oath of office under this charter (Section 6.4) or has committed any acts specified in state law as grounds for the recall and discharge of an elective public officer. The City Council, in its discretion, may allow a hearings examiner to hear such a matter. Recommendation of a hearings examiner shall be subject to review by the City Council. The City Council’s final decision shall be based on the evidence in the record. A record of the proceedings shall be made.

(Amendments approved by vote of the people November 2, 2004, and November 4, 2014)

Section 3.13 – There shall be a Landmarks Preservation Commission, composed of members with such powers and duties as are provided by ordinance. The members shall be residents of the City of Tacoma and be appointed and confirmed by the City Council.

(Amendment approved by vote of the people November 4, 2014)

Article IV

PUBLIC UTILITIES¹³

General Powers Respecting Utilities

Section 4.1 – The City shall possess all the powers granted to cities by state law to construct, condemn and purchase, purchase, acquire, add to, maintain, and operate, either within or outside its corporate limits, including, but not by way of limitation, public utilities for supplying water, light, heat, power, transportation, and sewage and refuse collection, treatment, and disposal services or any of them, to the municipality and the inhabitants thereof; and also to sell and deliver any of the utility services above mentioned outside its corporate limits, to the extent permitted by state law.

Power to Acquire and Finance

Section 4.2 – The City may purchase, acquire, or construct any public utility system, or part thereof, or make any additions and betterments thereto or extensions thereof, without submitting the proposition to the voters, provided no general indebtedness is incurred by the City. If such indebtedness is to be incurred, approval by the electors, in the manner provided by state law, shall be required.

¹² See TMC Chapter 1,06

¹³ See TMC Title 12 - Utilities

Rates

Section 4.3 – The City shall have the power, subject to limitations imposed by state law and this charter, to fix and from time to time, revise such rates and charges as it may deem advisable for supplying such utility services the City may provide. The rates and charges for services to City departments and other public agencies shall not be less than the regular rates and charges fixed for similar services to consumers generally. The rates and charges for services to consumers outside the corporate limits of the city may be greater but shall not be less than the rates and charges for similar service to consumers within the corporate limits of the city.

Diversion of Utility Funds

Section 4.4 – The Council may by ordinance impose upon any of the City-operated utilities for the benefit of the general fund of the City, a reasonable gross earnings tax which shall not be disproportionate to the amount of taxes the utility or utilities would pay if privately owned and operated, and which shall not exceed eight percent; and shall charge to, and cause to be paid by, each such utility, a just and proper proportion of the cost and expenses of all other departments or offices of the City rendering services thereto or in behalf thereof.

Section 4.5 – The revenue of utilities owned and operated by the City shall never be used for any purposes other than the necessary operating expenses thereof, including the aforesaid gross earnings tax, interest on and redemption of the outstanding debt thereof, the making of additions and betterments thereto and extensions thereof, and the reduction of rates and charges for supplying utility services to consumers. The funds of any utility shall not be used to make loans to or purchase the bonds of any other utility, department, or agency of the City.

Disposal of Utility Properties

Section 4.6 – The City shall never sell, lease, or dispose of any utility system, or parts thereof essential to continued effective utility service, unless and until such disposal is approved by a majority vote of the electors voting thereon at a municipal election in the manner provided in this charter and in the laws of this state.

Franchises for Water or Electric Utilities

Section 4.7 – The legislative power of the City is forever prohibited from granting any franchise, right or privilege to sell or supply water or electricity within the City of Tacoma to the City or to any of its inhabitants as long as the City owns a plant or plants for such purposes and is engaged in the public duty of supplying water or electricity; provided, however, this section shall not prohibit issuance of temporary permits authorized by the Council upon the recommendation of the Utility Board of the City of Tacoma for the furnishing of utility service to inhabitants of the City where it is shown that, because of peculiar physical circumstances or conditions, the City cannot reasonably serve said inhabitants.

(Amendment approved by vote of the people September 18, 1973)

The Public Utility Board

Section 4.8 – There is hereby created a Public Utility Board to be composed of five members, appointed by the Mayor and confirmed by the City Council, for five-year terms; provided, that in the appointment of the first Board, on the first day of the month next following the taking of office by the first Council under this charter, one member shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years, and at the expiration of each of the terms so provided for, a successor shall be appointed for a term of five years. Vacancies shall be filled for the unexpired term in the same manner as provided for regular appointments.

(Amendment approved by vote of the people November 2, 2004)

Section 4.9 – Members of the Board shall have the same qualifications as provided in this charter for Council Members. Members shall be entitled to reimbursement for expenses incurred in carrying out their official duties, other than those incident to attending board meetings held within the City of Tacoma.

(Amendment approved by vote of the people November 4, 2014)

Powers and Duties of the Public Utility Board

Section 4.10 – The Public Utility Board, subject only to the limitations imposed by this charter and the laws of this state, shall have full power to construct, condemn and purchase, acquire, add to, maintain, and operate the electric, water, and belt line railway utility systems.

Section 4.11 – All matters relating to system expansion and the making of additions and betterments thereto or extensions thereof, the incurring of indebtedness, the issuance of bonds, and the fixing of rates and charges for utility services under the jurisdiction of the Board shall be initiated by the Board, subject to approval by the Council, and executed by the Board; provided, that all rates and charges for utility services shall be reviewed and revised or reenacted by the Board and Council at intervals not exceeding five years and beginning with the year 1954.

Section 4.12 – The Board shall submit an annual budget to the Council for approval, in the manner prescribed by state law.

Section 4.13 – The Board shall select from its own membership a chair, vice-chair, and secretary and shall determine its own rules and order of business. The time and place of all meetings shall be publicly announced, and all meetings shall be open to the public and a permanent record of proceedings maintained.¹⁴

(Amendment approved by vote of the people November 4, 2014)

Section 4.14 – The Board shall maintain such billing, cost and general accounting records as maybe necessary for effective utility management or required by state law. Expenditure documents shall be subject to pre-audit by the central fiscal agency of City government. The City Treasurer shall be responsible for receipt, custody, and disbursement of all utility funds. The Board shall submit such financial and other reports as may be required by the Council.

Section 4.15 – The Board shall have authority to secure the services of consulting engineers, accountants, special counsel, and other experts. At intervals not exceeding ten years the Council shall, at the expense of the utilities involved, cause a general management survey to be made of all utilities under the jurisdiction of the board by a competent management consulting or industrial engineering firm, the report and recommendations of which shall be made public; provided, that the first such survey shall be made within three years of the effective date of this charter.

Section 4.16 – Insofar as is permitted by state law, the Board shall have the same authority, and be governed by the same limitations, in respect to the purchase of materials, supplies, and equipment and awarding of contracts for all improvements for Department of Public Utilities' purposes as does the Council and City Manager for general government purposes.

Section 4.17 – The Department of Public Utilities shall use the services of the City's General Government finance department, purchasing agent, law department, human resources/personnel department, and other City departments, offices, and agencies, except as otherwise directed by the City Council.

(Amendment approved by vote of the people November 3, 1992)

¹⁴ Chapter 42.30 RCW establishes the rules of procedure for Board meetings pursuant to the Open Public Meetings Act.

Administrative Organization

Section 4.18 – The Board shall appoint, subject to confirmation by the City Council, a Director of Utilities who shall:

- (a) Be selected on the basis of executive and administrative qualifications;
- (b) Be appointed for an indefinite period and subject to removal by the Board;
- (c) Serve as the chief executive officer of the Department of Public Utilities, responsible directly to the Board, subject to review and reconfirmation as follows:

The Board shall review the Director's performance annually, and every two years shall, by an affirmative vote of at least three members of the Board in a public meeting, vote on whether to reconfirm the appointment, subject to reconfirmation by the City Council. The first review and vote on whether to reconfirm the Director shall be in 2015.

(Amendment approved by vote of the people November 4, 2014)

Section 4.19 – Except for purposes of inquiry, the Board and its members shall deal with officers and employees of the Department of Public Utilities only through the Director.

Section 4.20 – Insofar as is possible and administratively feasible, each utility shall be operated as a separate entity. Where common services are provided, a fair proportion of the cost of such services shall be assessed against each utility served.

Section 4.21 – Subject to confirmation by the Board, the Director of Utilities shall appoint a properly qualified superintendent for each utility system under the Director's administrative control.

(Amendment approved by vote of the people November 4, 2014)

Section 4.22 – There shall be such other officers and employees in the Department of Public Utilities as the Board may determine, who shall be appointed and removed by the Director of Utilities subject to the provisions of this charter relating to municipal personnel. These employees shall be entitled to participation in the general employee retirement system and to enjoy such other employee welfare benefits as may be provided for municipal employees. Within the limitations of the annual budget and salary ordinance, the salaries and wages of employees in the Department shall be determined by the Board.

Location and Relocation of Utility Works

Section 4.23 – The Board shall have authority to place poles, wires, vaults, mains, pipes, tracks and other works necessary to any utility operated by the Board in the public streets, alleys, and places of the city. Before any such works are commenced, plans and specifications showing the exact location thereof shall be submitted to the City Manager for approval. Whenever it shall be necessary by reason of the grading, re-grading, widening, or other improvement of any public street or alley to move or readjust the works of any utility, the Board shall cause such works to be so moved or readjusted and the expense thereof shall be charged against such fund as may be agreed upon by the Director of Utilities and the City Manager or as determined by the City Council. Upon placing the works of a utility in any public street, alley, or place, the Board, at the expense of the utility involved, shall cause the surface of such street or alley to be replaced as near as may be to its previous condition. Whenever the Board and the City Manager are unable to reach an accord concerning the moving, readjusting or installation of any utility, works or improvements, or the distribution of the expenses thereof, the matter shall be referred to the City Council, whose finding and determination shall be conclusive.

EXHIBIT B

TITLE 12

Utilities

Tacoma Municipal Code

TITLE 12

UTILITIES

Chapters¹:

- 12.01 Utility Charges
- 12.02 Franchises
- 12.04 Collection of Charges by Agents
- 12.05 Electric Energy – Other Utilities
- 12.06 Electric Energy – Regulations and Rates
- 12.07 Electric Energy – Interchange of Surplus Power
- 12.08 Wastewater and Surface Water Management – Regulation and Rates
- 12.09 Solid Waste, Recycling, and Hazardous Waste
- 12.10 Water – Regulations and Rates
- 12.11 Emergency Curtailment of Electric Energy
- 12.12 Transit System – Rates, Fares and Charges
- 12.13 CLICK! Network Cable TV Products

¹ Belt Line: Compensation – See Section 1.12.500.
Personnel Rules – See Sections 1.24.970 – 1.24.975.
Statutory authority to operate – RCW 80.40.060.
Garbage Collection – See Chapter 5.20.

Chapter 12.10

WATER - REGULATIONS AND RATES

Sections:

- 12.10.010 Rules established.
- 12.10.020 Definitions.
- 12.10.030 Water service inside/outside City limits.
- 12.10.035 Ability to supply water within City limits.
- 12.10.040 Application for service.
- 12.10.045 Services and meters.
- 12.10.050 Establishment of service account and request for turn-on.
- 12.10.060 Billing.
- 12.10.110 Turn-on and/or - Unauthorized use.
- 12.10.115 Turn-off, turn-on - Responsibility and liability.
- 12.10.120 Turn-off, turn-on - Condemned buildings.
- 12.10.125 Damage of water service installation.
- 12.10.130 Termination of service.
- 12.10.150 Interruption of service.
- 12.10.170 Ownership of water mains and appurtenances.
- 12.10.180 Operation of private water systems.
- 12.10.200 Private contract charges.
- 12.10.220 Cross connections.
- 12.10.250 Water service construction charges.
- 12.10.275 Property-side (private) in public rights-of-way.
- 12.10.300 Fire hydrant installation and relocation.
- 12.10.301 Fire hydrant services fee (inside City of Tacoma).
- 12.10.302 System capacity flow testing.
- 12.10.303 Franchise hydrant service fee (outside City of Tacoma).
- 12.10.305 Fire hydrant use (non-fire fighting).
- 12.10.310 System development charge ("SDC").
- 12.10.315 Water main charge.
- 12.10.350 Premises not abutting a permanent water main.
- 12.10.400 Rates - Inside and outside City limits.
- 12.10.485 City not liable for damages.
- 12.10.490 Protection of public health.
- 12.10.495 South Tacoma Groundwater Protection.
- 12.10.500 Waivers - By Superintendent.
- 12.10.505 Customer service policies - Additional rules and regulations.
- 12.10.515 Violations - Penalties - Enforcement.
- 12.10.520 Severability.
- 12.10.525 Interference with and/or damage to City water system.

12.10.010 Rules established.

This chapter is established for the regulation of water utility service by the municipal water supply system of the City of Tacoma.

(Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.020 Definitions.

For purposes of this chapter, the following words or phrases shall have the meaning set forth hereinbelow:

"Actual cost" or "cost" of any work performed for any person or other agency or City department by the Division includes the direct cost of all labor plus fringe benefits, the direct cost of all materials plus materials overhead, the direct cost of equipment used in connection with the work, all other direct costs incurred in connection with the work, plus administrative and supervisory cost.

"Accessory dwelling unit" refers to a second subordinate dwelling added to a single-family dwelling on a single parcel of property with provisions for independent cooking, living, sanitation, and sleeping.

"Assessable unit of frontage" is defined as set forth in Chapter 35.44 of the Revised Code of Washington (or as amended).

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“Authorized deposit waiver” means an approved option for residential and commercial customers to waive paying a deposit, which is normally required for electric, water, and/or commercial solid waste customers who do not meet the established criteria, as defined in the Tacoma Public Utilities Customer Service Policies. Waiver options are available for home or property owners; customers who are purchasing the property and/or home; and customers who are renting, leasing, or leasing with an option to purchase the property.

“Board” means the Public Utility Board of the Department of Public Utilities of the City of Tacoma.

“CCF” means 100 cubic feet of water (one unit or approximately 748 gallons).

“City” means the City of Tacoma.

“Commercial service” means water service to a business or businesses engaged in the manufacture and/or sale of a commodity or commodities, or the rendering of a service, including hotels, motels, hospitals, and schools.

“Contract business partner” refers to the person or persons who have sole financial responsibility with the City.

“Council” means the City Council of the City of Tacoma.

“County” means the county in which service is being provided.

“Cross connection” is any actual or potential physical connection between a public water system or the consumer’s water system and any source of non-potable liquid, solid, or gas that could contaminate the potable water supply by backflow.

“Customer” means all persons obtaining water service from the Division.

“Customer Service Policies” means the Customer Service Policies for the Division, as may be amended.

“Director” means the Director of the Department of Public Utilities of the City of Tacoma.

“Division” means the Water Division of the Department of Public Utilities of the City of Tacoma, and may also include the Department of Public Utilities.

“Fraud” means any act to deceive or defraud the Division including, but not limited to, false identity, failure to provide verifiable identification or obtaining water service and not making appropriate payments for said service.

“Frontage” refers to “frontage of property served” and shall mean the front footage of property to be served, or the short buildable side (50 LF minimum) abutting the water main. For properties not abutting the main, it shall mean the shortest buildable side (50 LF minimum).

“Industrial service” means water service to a business enterprise engaged in the manufacture of products, materials, equipment, machinery, and supplies on a substantial or major scale.

“Multiple dwelling units” means residential duplexes, triplexes, fourplexes, apartment buildings, condominiums, mobile home parks, trailer courts, or similar types of multiple dwelling unit arrangements on one parcel of land.

“Parks and irrigation service” means water service to a public park or irrigation customer with seasonal use for recreational, landscaping, and horticultural purposes or other similar uses. Irrigation shall include outdoor residential and commercial sprinkler services.

“Person” means all persons and all private and public entities, including districts, cities, towns, counties, and political subdivisions of the state, Native American tribes, partnerships, and corporations, whether acting by themselves or by a servant, agent, or employee. The singular number shall be held and construed to include the plural and the masculine pronoun to include the feminine.

“Premises” means public or private property, home, building, apartment house, condominium, trailer court, mobile home park, a group of adjacent buildings utilized under one ownership on one parcel of property and under a single control with respect to use of water and responsibility for payment therefor.

“Regular working hours” means 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding City holidays.

“Residential service” means water service to a single-family or multi-family dwelling using water for domestic use, or a single-family dwelling permitted to operate a business on the same premises.

“Service installation” means all piping and fittings from the main to and including the water meter assembly. All piping beyond the meter assembly is the customer's responsibility and is not considered a part of the service installation.

“Superintendent” means the Superintendent of the Water Division of the Department of Public Utilities of the City of Tacoma.

“System” means all water source, supply, and quality facilities, transmission pipelines and storage facilities, pumping plants, distribution mains and appurtenances, vehicles, and materials storage facilities.

“Tampering” means to alter, hinder, or obstruct the operation or maintenance of any water facility(ies) and/or their appurtenance(s), or failure to take reasonable care when operating any water facility(ies) and/or their appurtenance(s).

“Temporary water service” means water service obtained from a water main not abutting the parcel served or from a transmission or supply pipeline, or any main 2” or less in diameter.

“Treasurer” means the City Treasurer of the City of Tacoma.

(Ord. 27570 § 1; passed Dec. 19, 2006; Ord. 27522 § 1; passed Aug. 29, 2006; Ord. 27299 § 1; passed Dec. 7, 2004; Ord. 26800 § 1; passed Apr. 10, 2001; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.030 Water service inside/outside City limits.

These regulations are applicable to the Division and its customers both inside and outside the City limits, except as provided in Section 12.10.400 (Rates - Inside and outside City limits), or as otherwise specifically delineated.

(Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.035 Ability to supply water within City limits.

All persons wishing to construct any residential premises within the City limits shall be supplied with residential service by the Division subject to the provisions of this chapter and pursuant to RCW 19.27.097.

(Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.040 Application for service.

Applications for water service, hydrant permits, and work to be performed by the Division's staff shall be made at the Division's Permit Counter in the Public Utilities Administration Building or at such other place or places as the Superintendent may designate, by the owner or authorized agent. The application, when approved by the Division, shall constitute a contract whereby the applicant agrees as a condition of water service to comply with this chapter and the rules and regulations of the Division referred to in this chapter or as the same may be revised or amended by the Division from time to time.

(Ord. 27522 § 2; passed Aug. 29, 2006; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.045 Services and meters.

Each premises shall be served water by a Division-installed, separate water service and meter.

The Superintendent shall have the right to refuse or discontinue water service in any situation where it is discovered that applicable codes or City standards have not been satisfied.

Each new water service connection shall require payment of the water service construction charge in accordance with Section 12.10.250 and system development charge in accordance with Section 12.10.310. Premises that have not contributed to the cost of a permanent distribution water main shall also pay the applicable water main charge in accordance with Section 12.10.315 or 12.10.350.

(Ord. 26800 § 2; passed Apr. 10, 2001; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.050 Establishment of service account and request for turn-on.

A turn-on charge, as set forth in Chapter 12.01 of this code, will establish a service account.

The customer shall be responsible for all charges on the account. The account shall remain active and accrue charges until the customer notifies the Department's Customer Service Section to close the account, unless the account is delinquent. Water surcharge accounts and fire service accounts cannot be closed without Water Division authorization.

The person establishing a water service account shall be required to make a cash deposit or meet one of the authorized deposit waiver options with the City Treasurer as set under Utility Board resolution. Such deposit may be applied upon delinquent bills owed the City Division and shall be applied to that portion first incurred. A change in the amount of the deposit or security may be required of any customer who changes his or her status of service. The acceptance of a cash deposit or security by the City shall not constitute a bar to the enforcement of the City's lien or termination rights.

(Ord. 27522 § 3; passed Aug. 29, 2006; Ord. 26800 § 3; passed Apr. 10, 2001; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.060 Billing.

The Director shall cause a bill to be rendered to each customer for water services rendered during the preceding period. The utility bill shall become due and payable at the City Treasurer's office or at such other places designated by the Director, within 15 days from the date an invoice is issued per TMC 12.01.030 and shall become delinquent thereafter. The Water Division shall compute any amounts due under TMC 12.10 by carrying the computation to the third decimal place and rounding to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four. Any invoice that becomes delinquent shall be subject to a late payment fee as set forth in TMC 12.01.030.

(Ord. 28160 Ex. A; passed July 9, 2013; Ord. 28133 Ex. A; passed Feb. 26, 2013; Ord. 27778 Ex. A; passed Jan. 6, 2009; Ord. 27522 § 4; passed Aug. 29, 2006; Ord. 26800 § 4; passed Apr. 10, 2001; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.110 Turn-on and/or Unauthorized use.

A. If water service, with an established service account, is turned off by the Division for cause and later the water service to said premises is turned on without Division approval, upon discovery, a penalty of \$100 shall be assessed and said water service may be disconnected by the Division at the water main in the street.

B. Unauthorized use and/or tampering with any division appurtenance (except for fire hydrants which are covered in Section 12.10.305) may result in, a penalty of \$500 being assessed. If unauthorized use or tampering involves a water service and/or meter then said service may be disconnected by the Division at the water main in the street. Penalty is in addition to any fees for repair of damages as noted in Section 12.10.125.

Water service will not be reconnected in either subsection A or subsection B above until: (1) payment for all water consumed to date and the monthly meter charges as established or estimated by the division are made to the City; (2) the Division costs incurred related to disconnecting and reconnecting the service pipe are paid; and (3) the Division costs incurred related to repairing customer-caused damages are paid per Section 12.10.125.

(Ord. 27778 Ex. A; passed Jan. 6, 2009; Ord. 27570 § 2; passed Dec. 19, 2006; Ord. 27522 § 5; passed Aug. 29, 2006; Ord. 26800 § 5; passed Apr. 10, 2001; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.115 Turn-off, turn-on – Responsibility and liability.

The City shall not be liable for any damage to any person or property that may result from the turn-off or turn-on of the water service or from the service being left on when the premises may be unoccupied.

By requesting water service from the City, the customer assumes the responsibility for the flow and use of the water on his or her premises. Therefore, if water is desired to be turned off during remodeling, periods of freezing, or for other reasons, the customer agrees to turn off the water at the valve on his or her premises and the Division's turn-off valve shall not be relied upon for said purposes.

A customer's unpaid water service charges, penalties, and any cost to repair customer-caused damages to the water meter and appurtenances shall be paid at the time of application for turn-on, or a satisfactory arrangement for payment made with the City before water service to the premises is turned on.

(Ord. 26800 § 6; passed Apr. 10, 2001; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.120 Turn-off, turn-on – condemned buildings.

Whenever a premises supplied with water has been found by the appropriate authorities to be unsafe, dangerous to human life or unfit for human habitation, and notice of such finding has been received by the Division from said authorities, the Superintendent shall cause the domestic water service to such premises to be turned off. Water service to such premises shall not be restored until the owner and/or agent has secured a release or clearance from said authorities.

(Ord. 27570 § 3; passed Dec. 19, 2006; Ord. 26048 § 1; passed Mar. 25, 1997; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.125 Damage of water service installation or Division facilities.

The contract business partner will be liable to the Division for damages to the water service installation and any damages that are caused directly or indirectly as a result of its actions.

The cost to repair damages shall be paid prior to reconnection as set forth below:

	Effective 1/19/09
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1" Meter & smaller	\$200
1-1/2" Meter & larger	Actual Cost (Time & Material)
Other than Meters (i.e. hydrant, main, blowoff)	Actual Cost (Time & Material)

(Ord. 27778 Ex. A; passed Jan. 6, 2009; Ord. 27570 § 4; passed Dec. 19, 2006; Ord. 27522 § 6; passed Aug. 29, 2006)

12.10.130 Termination of service.

Delinquency and nonpayment of one or more water service charges or customer-caused damage to the water meter and appurtenances shall be sufficient cause for termination of service by turning off the water service or reducing the flow of water to the premises. Water service shall not be turned on again until all costs incurred by the Division, plus charges and penalties are paid, or satisfactory arrangements for payment of delinquent charges and penalties has been made with the Division.

In accordance with Section 12.10.495, the Superintendent may discontinue water service to a customer determined to be in violation of the applicable provisions of the South Tacoma Groundwater Protection District (TMC 13.09).

Upon discovery of fraud, water service shall be terminated immediately and shall not be restored until the matter is resolved satisfactory to the Superintendent, or his or her designee.

All charges for water or water service shall be the personal obligation of the customer applying for or signing for and/or receiving such service and, in addition thereto, the City shall have all the lien rights granted by state laws against the premises where such service is furnished. The Superintendent shall have the absolute authority, except as limited by said state laws, to refuse to furnish service to, to discontinue service to, or to refuse to resume service to any applicant or customer on account of the failure to pay delinquent bills owing the City by such person, whether such bills cover service at the premises sought to be served or other locations.

In addition to the other authority in this chapter (or other laws) to discontinue water service or reduce flow to a customer, the Superintendent, or his or her designee, is hereby authorized to discontinue or reduce flow to a customer's premises when the customer fails to make a cash deposit or meet one of the authorized deposit waiver options with the City Treasurer as approved by Utility Board resolution.

Except as set forth in TMC 12.10.130 and 12.10.150, termination of water service to a premises shall not occur until:

1. The City has provided or attempted to provide the customer reasonable notice of the intent to terminate water service; and
2. The customer has been offered the opportunity of a hearing before a hearing officer, with the exception of Health Department directed orders which are undisputable.

Reasonable notice may be accomplished by mailing such notice to the customer using the United States Postal Service.

(Ord. 27570 § 5; passed Dec. 19, 2006; Ord. 27522 § 7; passed Aug. 29, 2006; Ord. 27299 § 2; passed Dec. 7, 2004; Ord. 27024 § 1; passed Dec. 10, 2002; Ord. 26800 § 7; passed Apr. 10, 2001; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.150 Interruption of service.

A. In case of emergency, risk of damage to property, either public or private, or whenever public health, safety, or equitable distribution or conservation due to water shortage demands, the Director or Superintendent may authorize the Division to change, reduce or limit the time for, or temporarily discontinue the use of water for any or all customers. The water service may also be temporarily interrupted during the time necessary for purposes of making repairs, extensions, or doing other necessary work on the system. Before so requiring the changing, reducing, limiting or temporary discontinuance of the use of water, the Division will attempt to notify, insofar as practicable, all water customers affected. The City shall not be responsible for any damage resulting from any interruption, change, or failure of the water supply.

B. The Public Utility Board is authorized to approve, adopt, and/or amend a Water Shortage Response Plan ("Plan") applicable to all classes of customers, which Plan is consistent with the standards in this section. Any person who violates the adopted Plan or directives issued pursuant to the Plan, including a wholesale customer who fails to adopt similar use limitations, shall be subject to immediate reduction or discontinuance of service by the Division without notice or a hearing opportunity. All Water Shortage Response Plans previously adopted by the Public Utility Board are hereby approved and ratified.

(Ord. 27522 § 8; passed Aug. 29, 2006; Ord. 27299 § 3; passed Dec. 7, 2004; Ord. 26800 § 7; passed Apr. 10, 2001; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.170 Ownership of water mains and appurtenances.

The Division shall own, operate, and maintain all Division approved and accepted water mains and related appurtenances in established city, county, and state rights-of-way or other utility rights-of-way, including recorded easements. Any person responsible for the construction of such mains and related appurtenances shall transfer ownership to the Division upon final acceptance. No one may operate, remove, change, or connect to any part thereof without the approval of the Division.

(Ord. 27778 Ex. A; passed Jan. 6, 2009; Ord. 27522 § 9; passed Aug. 29, 2006; Ord. 27299 § 4; passed Dec. 7, 2004; Ord. 26800 § 8; passed Apr. 10, 2001; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.180 Satellite system management.

The Division may operate and maintain private distribution mains and other water system components outside of its service area in conjunction with its own facilities, provided an approved agreement has been entered into between the Division and the owners of such mains and components.

(Ord. 26800 § 9; passed Apr. 10, 2001; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.200 Private contract charges.

Extension of a permanent water main may be constructed by private contract. The developer of the privately financed project will be responsible for all costs and expenses incurred by the Division for preparation of plans and specifications, construction inspection, testing, flushing, sampling of the mains, and other related work necessary to complete the new water main construction to Division standards and specifications. The engineering charge for the preparation of plans and specifications will be estimated by the Division and will include all applicable permit fees. The developer will be required to pay a deposit in the amount of the estimated cost and sign an agreement acknowledging that they are responsible to pay all actual time and materials costs associated with the project. The actual costs for the work will be billed against the developer's deposit. Should the actual costs for engineering the project exceed the deposit amount; the developer will be required to pay the balance prior to receiving the plans and specifications. Prior to construction, a second deposit in the estimated amount for construction inspection, testing, sampling and hydrant painting will be due to the Division. Upon completion of the project, the developer will either be refunded the unused amount of the deposit or billed for the cost overrun. Included in the deposits described above is a \$50 per fire hydrant in the project for painting.

The developer will be responsible for protecting Division facilities, including yokes and boxes, until final acceptance by the Division. After final acceptance of the project, the responsibility for the stub, yoke, box, and meter will belong to each property owner who will be charged accordingly for any damage.

(Ord. 27778 Ex. A; passed Jan. 6, 2009; Ord. 27522 § 10; passed Aug. 29, 2006; Ord. 27024 § 2; passed Dec. 10, 2002; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.220 Cross connections.

The installation or maintenance of any uncontrolled cross connection that may endanger the quality of the public water supply of the City is prohibited. Any such cross connection now existing or hereafter installed is hereby declared unlawful and shall be abated immediately. The control and/or elimination of cross connections shall be in accordance with the applicable sections of the Washington Administrative Code ("WAC") the Tacoma Municipal Code, and the Policies and/or procedures approved by the Division. Failure to comply with Division cross connection control requirements may result in a penalty of \$100 per occurrence, installation of an approved backflow prevention assembly at the water meter at the expense of the customer, and/or termination of water service. For purposes of this section, an occurrence is defined as failure to install, test, repair, and/or replace a required backflow prevention assembly upon written notification by the Division delivered by hand or registered mail. Responsibility for backflow assembly testing and payment of all penalties and/or fees are the responsibility of the customer receiving the water service. The Division will assign a test due date for each backflow prevention assembly and will make every effort to provide notice to the customer of the testing due date. Annual backflow assembly testing will be required by the Division established due date regardless of the actual date previous tests were performed.

(Ord. 27778 Ex. A; passed Jan. 6, 2009; Ord. 27522 § 11; passed Aug. 29, 2006; Ord. 26800 § 11; passed Apr. 10, 2001; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.250 Water service construction charges.

All water service installations shall be constructed by the Division. For all service installations, the owner or applicant shall pay in advance the fixed charge or a deposit in the amount of the Division's estimated cost for the proposed work. For all estimated work the requestor will be required to sign a time and materials agreement noting their acceptance of the responsibility to pay the actual charges. The amount charged for work performed on an estimated basis will be actual costs to the Division, including overhead cost of installation of Automated Meter Reading ("AMR") equipment when applicable. If the

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actual cost is less than the estimated cost, the customer will be refunded the difference. Should the cost of the installation exceed the deposit amount, the additional amount will be billed to the customer that signed the time and materials agreement accepting the responsibility for actual charges. Failure to pay charges may result in, but not be limited to, termination of water service.

All required City, county, state, and/or other permits and fees are in addition to the charges listed below.

A. Water service construction charges on existing mains shall be as set forth below. In extraordinary circumstances where the Division determines that the fixed charges are not adequate to cover the actual costs, the water service construction charge will be based upon actual costs to the Division, including overhead and taxes.

	Effective 1/19/09
3/4-inch" Service & 5/8-inch" Meter	\$2,325
3/4-inch" Service & 3/4-inch" Meter	\$2,400
1-inch" Service & 5/8-inch" Meter	\$2,400
1-inch Service & 3/4-inch Meter	\$2,450
1-inch" Service & 1-inch" Meter	\$2,550
Meter exchange from 5/8" to 3/4"	\$625
Meter exchange from 3/4" to 5/8"	\$325

Service construction charges for services larger than 1-inch will be estimated based upon actual costs to the Division, including overhead. Service construction charges for water meters 3-inches and larger, or as required by the Division, will include the cost of installation of AMR equipment in accordance with the most current requirements. AMR is also required on all wholesale meters.

All services and meters applied for shall be installed within two years of the application. Those customers who have not requested their water service and meter be installed within the two-year period will be required to pay the difference in all current charges and the charges paid at time of application, including the system development charge ("SDC").

Where a service stub was previously installed at the option of the Division, activation of that service shall require payment of all current fees and charges including service construction charge in effect at the time of application for service.

B. Installation of Services and Meters on New Mains. Domestic service for residential will require the installation of 3/4-inch services and 5/8-inch meters. The developer requesting services and meters for use other than domestic service for residential will be required to provide additional information on the proposed use. Plan review will be required to determine sizing requirements.

Stub Only	Effective 1/19/09
a. 3/4-inch Service stubs installed after successful samples and pressure tests.	\$750/service
b. 1-inch Service stubs installed after successful samples and pressure tests.	\$800/service
Meter, Yoke and Box	Effective
a. 5/8-inch Meter, yoke and box installed when requested.	\$400/meter plus the SDC
b. 3/4-inch Meter, yoke and box installed when requested.	\$450/meter plus the SDC
Meter Only	Effective 1/19/09
a. 5/8-inch Meter installed when requested	\$175/meter plus the SDC
b. 3/4-inch Meter installed when requested.	\$225/meter plus the SDC

(Ord. 27778 Ex. A; passed Jan. 6, 2009; Ord. 27570 § 6; passed Dec. 19, 2006: Ord. 27522 § 12; passed Aug. 29, 2006: Ord. 27299 § 5; passed Dec. 7, 2004: Ord. 27024 § 5; passed Dec. 10, 2002: Ord. 26800 § 12; passed Apr. 10, 2001: Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.275 Property-side (private) in public rights-of-way.

A. When a customer requests a service and meter installation for a property not abutting a water main and the public entity having jurisdiction over the right-of-way does not allow privately owned water lines in the right-of-way then the customer must obtain easements from the adjacent property owners for installation of their property side pipe. Recorded copies of said easements must be provided to the Division before installation of the requested service and meter can occur.

Where a public entity requires that a customer's existing property-side (private) pipes be removed from public rights-of-way, the following four options are available to the customer:

1. The customer may arrange for a private contractor to install a new water main in the right-of-way using the private contract process noted in Section 12.10.200. The main would be designed by the Division and installed by the contractor, at the expense of the customer. Following the construction of the water main in the right-of-way, the customer's service and meter will be transferred to the new main at no charge.
2. The customer may organize with adjacent property owners to form a Local Improvement District ("LID") to install a new water main in the right-of-way. The design and construction process is similar to Option 1 above, but the project is financed and repaid over time through the Division, through the LID process.
3. The customer may obtain easements from adjacent property owners to allow relocation of its property-side (private) pipes out of the right-of-way into the easement obtained. In this option, the customer must provide verification to the Division that the easement has been recorded prior to the installation of the service and meter.
4. The Customer may arrange for the Division to design and install the necessary water main and appurtenances using the time and materials process. The Division will estimate all costs associated with design and construction of the proposed water main and appurtenances and the customer will be required to make a deposit in the estimated amount. If the final costs are more than the estimate the customer will be required to pay the balance, if the costs are less the difference will be refunded.

(Ord. 27778 Ex. A; passed Jan. 6, 2009; Ord. 27570 § 7; passed Dec. 19, 2006; Ord. 27522 § 13; passed Aug. 29, 2006)

12.10.300 Fire hydrant installation and relocation.

Fire hydrant installation and/or relocation shall be performed by the Division at the customer's expense. A deposit shall be paid to the Division in the amount of the Division's estimate of the cost to install or relocate a fire hydrant. If the actual cost is less than the estimated cost, the customer will be refunded the difference. Should the cost of installation exceed the deposit amount, the customer will be billed the additional amount.

All costs to acquire the necessary City, county, state, and/or other permits to accomplish the installation or relocation are in addition to the above costs.

(Ord. 27522 § 14; passed Aug. 29, 2006; Ord. 27299 § 6; passed Dec. 7, 2004; Ord. 27024 § 4; passed Dec. 10, 2002; Ord. 26800 § 13; passed Apr. 10, 2001; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.301 Fire hydrant services fee (inside City of Tacoma).

Pursuant to Chapter 70.315 of the Revised Code of Washington, the Water Division will charge and collect all costs associated with providing fire hydrant services inside the City of Tacoma from the City of Tacoma general government and the customers, "Residential Service," "Commercial and Industrial – General Service," and "Commercial and Industrial – Large Volume Service" rate categories, located inside the City following the rate schedules below:

Monthly Hydrant Service Fee		
	Commencing	
	4/1/15	1/1/16
City of Tacoma General Government	\$134.67 per hydrant located inside the city limits of Tacoma.	\$0.00

The City of Tacoma General Government portion of the fire hydrant service fee shall be calculated on a per-hydrant basis and invoiced and collected monthly, and the General Government portion of the fee will terminate effective January 1, 2016.

Monthly Hydrant Service Fee		
	Commencing	
	4/1/15	1/1/16
Inside City of Tacoma Customer	\$1.11	\$2.24

The inside City of Tacoma customer portion of the fire hydrant service fee shall be calculated on a monthly basis, invoiced and collected pursuant to the applicable customer service policies.

(Ord. 28286 Ex. A; passed Mar. 17, 2015; Ord. 28133 Ex. A; passed Feb. 26, 2013; Ord. 27970 Ex. A; passed Feb. 1, 2011)

12.10.302 System capacity flow testing.

To determine the capacity of a water system at a particular location for the purpose of a supply for automatic fire sprinkler systems or for other reasons, the Division can conduct a fire flow test using two (2) or more fire hydrants. The fire flow test shall be conducted by the Division upon request and after payment of a fee in the amount of \$350. The fee shall cover the cost of performing the flow test and any necessary system cleanup created by the increased water velocities during the test.

(Ord. 27778 Ex. A; passed Jan. 6, 2009; Ord. 27522 § 15; passed Aug. 29, 2006)

12.10.303 Franchise hydrant service fee.

Pursuant to the Washington State Supreme Court decision in City of Tacoma v. City of Bonney Lake, 173 Wn.2d 584 (2012) and Chapter 70.315 of the Revised Code of Washington, all costs associated with providing fire hydrant services in areas served through franchise agreements or other contract shall be charged and collected from ratepayers in these areas as a cost of doing business. Only those customers in the “Residential Service,” “Commercial and Industrial – General Service,” and “Commercial and Industrial – Large Volume Service” rate categories will be charged for these services. The total costs owed shall be calculated on a biennial basis as part of the Water Division’s approved budget and distributed to customers via a monthly service fee. The service fee is composed of two components:

1. a “historical service component” that is a temporary amortized recovery of historical service provided but not previously billed to customers outside the City of Tacoma during the time the City of Tacoma v. City of Bonney Lake case was litigated, with said component applying only to customers in the affected areas outside the City of Tacoma; and
2. an “ongoing service component.”

Monthly Franchise Hydrant Service Fee (Historical Service Component)		
	Commencing	
	4/1/15	1/1/16
Outside City, other contract	\$1.90	\$1.90
Fircrest Franchise	\$1.90	\$1.90
Lakewood, Puyallup, and University Place Franchises	\$1.90	\$1.90

Monthly Franchise Hydrant Service Fee (Ongoing Service Component)		
	Commencing	
	4/1/15	1/1/16
Outside City, other contract	\$2.90	\$2.90
Fircrest Franchise	\$2.90	\$2.90
Lakewood, Puyallup, and University Place Franchises	\$2.90	\$2.90

(Ord. 28286 Ex. A; passed Mar. 17, 2015; Ord. 28133 Ex. A; passed Feb. 26, 2013)

12.10.305 Fire hydrant use (non-fire fighting).

When water service is supplied through the use of a fire hydrant, other than for fire fighting, the proposed use must be disclosed and a permit must be obtained from the Division authorizing the hydrant use. A charge for all costs associated with hydrant and water usage shall be collected by the Division. A fire hydrant meter or a water service and meter may be required under certain circumstances as determined by the Division.

The use of the Division’s hydrant without a current permit, using a restricted hydrant or failing to conform to the Division’s hydrant operating procedures will result in a penalty of \$1,000 in addition to all other hydrant use charges. Refusal to pay the penalties and charges may be cause for the Division to refuse future hydrant use by the violator and/or discontinue service to the benefited premises.

Persons using a fire hydrant will be responsible for all damages to Division facilities and/or other private facilities that may result from the use of said hydrant. If the person refuses to pay the cost for all damages associated with fire hydrant use, the Division may refuse future service to the customer and/or discontinue water service to the benefited premises.

Applications for fire hydrant use for periods greater than six consecutive months for the purpose of supplying water to a business may require the business to purchase a water service connection of adequate size to accommodate the proposed water

usage as determined by the Division. Water service construction charges, SDC, and main charges shall be as specified in TMC 12.10.250, 12.10.310, and 12.10.315.

Fire hydrant use permits in Category 1 and 2 are good for a maximum of one year or until the backflow protection documentation expires, whichever comes first. Upon expiration a new permit application will be required and a new permit fee is due. Hydrant Permit charges will be as follows:

HYDRANT USE CATEGORY AND FEE SCHEDULE

Category	Fee
Category #1 ** Fixed (Single) Site Construction Project	Permit Fee \$100 Meter Deposit for Hydrant \$1,000* Permittee is required to submit meter reads on a monthly basis. Monthly Water Use Charge at the Inside/Outside Commercial Rate plus the Ready to Serve Charge for a 2-Inch Meter Penalty for Unauthorized Use \$1,000
*Deposit to be refunded by the Division after return of the meter and appurtenances. All costs for hydrant and/or meter repairs/replacement caused by improper operation or theft of said equipment shall be deducted from the deposit. Refund of deposit will be initiated after payment of closing/final water bill. Costs exceeding the deposit amount will be billed to customer. ** Subcontractor would be allowed to use same permit as general contractor provided subcontractor meets all cross-connection requirements and name is disclosed at issuance of permit.	
Category #2 *Multiple-Site Hydrant Use (Approved Hydrant Locations)	Permit Fee \$100 Monthly Water Use Charge at the Inside/Outside Commercial Rate (based on estimated consumption**) plus the Ready to Serve Charge for a 2-inch Meter Penalty for Unauthorized Use \$1,000
*Subcontractor would be allowed to use same permit as general contractor provided subcontractor meets all cross-connection requirements and name disclosed at issuance of permit. **Both general and subcontractors are required to submit a monthly log sheet of estimated water consumption per truck	
Category #3	
Short-Term (one day and minimal) Use	\$50 per truck per day* Penalty for Unauthorized Use \$1,000
*Approved hydrant only	

A Division-approved backflow protection assembly shall be installed by the person requesting the use of a fire hydrant. The assembly shall be accompanied by a current backflow assembly test report. The test report shall remain on the site for the duration of the hydrant use. The Division reserves the right to terminate any hydrant permit at any time for security and/or water quality control reasons.

(Ord. 27778 Ex. A; passed Jan. 6, 2009; Ord. 27522 § 16; passed Aug. 29, 2006; Ord. 27299 § 7; passed Dec. 7, 2004; Ord. 27024 § 5; passed Dec. 10, 2002)

12.10.310 System development charge ("SDC").

A. A system development charge ("SDC") shall be levied for each new water service connection to the City water system, for a service upgrade requiring a larger meter, or for any existing service with 3-inch and larger meters that exceeds 150 percent of their highest maximum annual daily average water use. The SDC fee is based on an equitable share of the cost of the entire existing water system and future facilities necessary to accommodate projected growth. This fee is established pursuant to RCW 35.92.025, the City Charter, and this chapter. SDCs are considered contributions for or in aid to construction, and shall be accounted for accordingly. Customer water consumption amounts on and after May 9, 1999, the original effective date of Ordinance No. 26408, will be examined to determine whether additional SDC amount is owed to the Department.

B. For retail meters 5/8-inch through 2-inches, the charge will be based on customer class and meter size.

Tacoma Municipal Code

For meters larger than 2-inches, the SDC shall be determined based on the customer’s anticipated water use as shown below:

Meter Size	Inside City Residential Charges		Inside City Commercial/Industrial Charges	
	Effective			
	1/1/03	1/1/04	1/1/03	1/1/04
5/8-inch	\$1,443	\$1,485	\$1,928	\$1,984
3/4-inch	2,166	2,229	2,894	2,978
1-inch	3,610	3,715	4,823	4,963
1-1/2-inch	7,218	7,427	9,647	9,927
2-inch	11,548	11,883	15,433	15,881
3-inch & Larger	Individually calculated based on consumption			

Meter Size	Outside City Residential Charges		Outside City Commercial/Industrial Charges	
	Effective			
	1/1/03	1/1/04	1/1/03	1/1/04
5/8-inch	\$1,732	\$1,782	\$2,315	\$2,382
3/4-inch	2,599	2,674	3,473	3,574
1-inch	4,330	4,456	5,786	5,954
1-1/2-inch	8,661	8,912	11,575	11,911
2-inch	13,860	14,262	18,520	19,057
3-inch & Larger	Individually calculated based on consumption			

The SDC for a multiple family dwelling unit arrangement to be served by a single meter shall be calculated by taking the number of units in the premise and multiplying by 60 percent of the SDC for a single-family dwelling (5/8-inch meter) . If said premise chooses in the future to separately meter each premise the additional 40 percent of the SDC for a single-family dwelling (5/8-inch meter) shall be due and payable at

For meters 3-inches and larger, estimates of anticipated average day use, peak day, and four-day maximum water use will be determined by the Division. Peak day is defined as the maximum 24-hour use during summer months of June through, and including, September. Four-day maximum use is defined as the average use per day of the four highest consecutive days of the customer’s water use in the summer months. For inside City customers, the average day SDC cost is \$2.64/gallon (effective 1/1/04). The peak day SDC cost is \$0.28/gallon (effective 1/1/04). The four-day maximum SDC cost is \$2.36/gallon (effective 1/1/04). For outside City customers, the average day SDC cost is \$3.17/gallon (effective 1/1/04). The peak day SDC cost is \$0.34/gallon (effective 1/1/04). The four-day maximum SDC is \$2.83/gallon (effective 1/1/04).

The SDC will be the sum of the average day use multiplied by the average day cost/gallon, the peak day use minus average day use multiplied by the peak day cost/gallon, and the four-day maximum use minus average day use multiplied by the four-day maximum cost/gallon.

As of April 23, 2001, the SDC paid for meters 3-inches and larger will be adjusted annually based on actual usage. If usage is greater than 110 percent of the anticipated average, peak day or four-day maximum use during a 12-month period of time, an additional SDC will be charged, using the same methodology for calculating average day, peak day, and four-day maximum water use and multiplying by the respective SDC cost per gallon in effect at the time of adjustment. This requirement for an additional SDC may be waived upon satisfactory demonstration by the customer that the increased water use was temporary in nature and will return to the originally anticipated level.

C. SDC Exemptions:

I. New water service connections dedicated exclusively for fire protection purposes shall be exempt from payment of the SDC. The conversion of a dedicated fire service to a service for use other than exclusively for fire protection shall require the payment of the SDC as provided for in subsection B above.

2. The Division requires that all new single family dwelling residential combination domestic/fire sprinkler service and meters be served by a 1-inch service and 3/4-inch meter. If a larger size meter is required for fire protection the customer must install separate fire service and domestic services. The customer is required to pay all fees to construct said 1-inch service and 3/4-inch meter and all applicable main charges. When such use is documented through the plan review process, the SDC for a 5/8-inch meter will apply. The monthly customer charge will be at the standard charge for a 3/4-inch meter as set forth in TMC 12.10.400.

3. If a residential customer has an existing 3/4-inch x 5/8-inch service and meter an exchange to a 3/4-inch meter will be allowed if the customer's fire protection engineer determines it will provide adequate flow. All applicable fees will apply. If flow tests after the meter exchange show inadequate flow the customer will be required to pay the additional fees to retire the 3/4" service and install a new 1" service. Residential customers requesting an upgrade to an existing meter to a 3/4-inch meter for a combination domestic/fire sprinkler service will be exempt from payment of the additional SDC when such use is approved through the plan review process. The monthly customer charge will be at the standard charge for a 3/4-inch meter as set forth in TMC 12.10.400.

4. Customers who are requesting a separate water service connection and are being provided with water service by way of another Division customer (i.e., multi-premises connection), shall be exempt from payment of the SDC if:

Billing record exists showing multi-premise rate for each premise on meter.

All premises served by meter of record were constructed prior to October 7, 1991.

D. Existing Facilities:

1. Multiple dwelling unit arrangements currently being served by a single meter shall be exempt from payment of the SDC when changing to separate water service connections for each unit if the original meter was installed prior to October 7, 1991. If the existing meter was installed after October 7, 1991, the customer will be required to pay the 40 percent differential for each individual meter installed as noted in B above.

E. Credit policy for retail customers previously or currently metered:

1. When a request or requirement for a larger meter is made, an SDC credit for the existing meter will be made. The credit for meters up to 2-inches will be the current published SDC amount using the rate in place prior to the requested or required up-sizing. For meters 3-inches and larger, the credit would be calculated based on 150 percent of the highest maximum annual daily average water use derived from billing records. If billing records are not available for a specific meter, the SDC credit calculation will be based on a system-wide use data for that size meter.

2. For situations where meters 3-inches or larger exist and water use will increase, but no change in the meter is required, an SDC will not be required unless the projected use is more than 150 percent of historical use. If the projected use exceeds the 150 percent historical use quantity, an SDC will be calculated for the quantity of water in excess of the 150 percent figure. Prior written commitments to deliver a specific quantity of water, if greater than 150 percent of historical use, will be honored.

3. Credit shall be given for inactive or previously removed meters that can be verified by Division records. The credit will be determined as stated in subsection E.1 above.

Multiple dwelling unit arrangements – Credit for existing multiple dwelling unit meters shall be calculated at 60 percent of the applicable 5/8-inch meter rate per unit and applied to the required SDC if previously served by a single meter.

4. Credits as computed will be subtracted from the determined SDC amount. If an available credit exceeds the SDC amount, the balance shall remain with the parcel previously receiving water service. No refunds shall be allowed for the amount of this credit.

5. All SDC credits are non-transferable unless parcels are combined to facilitate redevelopment.

6. This section is not applicable to RockTenn's existing services.

F. For wholesale meters, as sized by the Division, the SDC will be determined based on the customer's anticipated water use.

1. Estimates of anticipated average day use, peak day, and four-day maximum water use will be submitted to and approved by the Division. Peak day is defined as the maximum 24-hour use during summer months of June through, and including, September. Four-day maximum use is defined as the average use per day of the four highest consecutive days of water use in the summer months. The average day SDC cost is \$3.17/gallon (effective 1/1/04). The peak day SDC cost is \$0.34/gallon (effective 1/1/04). The 4-day maximum SDC cost is \$2.83/gallon (effective 1/1/04).

The SDC will be the sum of the average day use multiplied by the average day cost/gallon, the peak day use minus average day multiplied by the peak day cost/gallon, and the four-day maximum use minus average day multiplied by the four-day maximum cost/gallon.

Tacoma Municipal Code

The SDC, as of the effective date of this ordinance, will be adjusted annually based on actual usage. If usage is greater than 110 percent of the anticipated average, peak day or four-day maximum use during a 12-month period of time, an additional SDC may be charged using the same methodology for calculating average day, peak day, and four-day maximum water use and multiplying by the respective SDC cost per gallon in effect at the time of adjustment. This requirement for an additional SDC may be waived upon satisfactory demonstration by the customer that the increased water use was temporary in nature and that water use will return to the originally anticipated level.

2. For situations where an existing wholesale customer is increasing its purchase of water, SDC credit for existing service will be based on either maximum historic use or prior written commitments to deliver a specific quantity of water, whichever is greater.

G. SDCs for meters 2-inches and smaller are payable in full at the time the meter installation is requested. Time payments will be allowed for SDCs for meters 3-inches and larger, for up to ten years, at the discretion of the customer, as follows:

1. When a down payment of 20 percent or more is initially paid, the Division will accept annual payments, with interest, on the unpaid balance calculated using the then current prime rate of interest less 2 percent.

2. When a down payment of at least 10 percent, but less than 20 percent, is initially paid, the Division will accept annual payments, with interest, on the unpaid balance calculated using the then current prime rate of interest.

3. The time payment agreements shall provide that this obligation constitutes a lien on the benefited premises and that the City has the right to terminate water service for any nonpayment of the amounts due on the outstanding balance. In addition, unless the customer is a financially stable public entity, the customer shall be required to provide security such as a financial guarantee bond to guarantee payment of the SDC or make incremental prepayments of the SDC plus interest on the balance of the outstanding total amount of the SDC.

H. Rate Adder to Recover Capital Costs Not Covered by the SDC. In addition to paying the SDC set forth in this section, a customer who proposes to use water for a new or enlarged power plant, and who does not use best available water conservation technology (BAWCT), shall be required to pay, in addition to the applicable water rate, an adder to such rate in accordance with the Division's Customer Service Policy for New Power Plants. The adder shall be calculated to recover over a period of 20 years a portion of the capital costs that are not covered by the SDC for such customer. This present value of the adder (spread over 20 years) will be equivalent to an SDC on that portion of the customer's water consumption that is in excess of the amount of water the customer would have consumed had BAWCT been used. Said customers shall also be required to enter into a water service agreement with the Division, and such agreement shall be submitted to the Public Utility Board for approval.

(Ord. 28286 Ex. A; passed Mar. 17, 2015; Ord. 27778 Ex. A; passed Jan. 6, 2009; Ord. 27570 § 8; passed Dec. 19, 2006; Ord. 27522 § 17; passed Aug. 29, 2006; Ord. 27299 § 8; passed Dec. 7, 2004; Ord. 27024 § 6; passed Dec. 10, 2002; Ord. 26872 § 1; passed Nov. 6, 2001; Ord. 26800 § 14; passed Apr. 10, 2001; Ord. 26408 § 1; passed Apr. 27, 1999; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.315 Water main charge.

Where all or a portion of the premises to be served has not been previously assessed or contributed its share towards the cost of installing a permanent distribution main to serve such premises, or the property does not abut a distribution water main, water service shall be provided upon payment of a water main charge as provided for in this section, in addition to a water service construction charge, in accordance with TMC 12.10.250 and the SDC in accordance with TMC 12.10.310.

If the main is a temporary main and is not acceptable for meeting the water requirements of the customer, the service will be installed and connected to the nearest water main that is acceptable in accordance with TMC 12.10.350, Water main charge - Premises not abutting a water main. If the temporary main is a supply or transmission pipeline, the water service will be installed in accordance with the Customer Service Policies (Direct Service From Supply and Transmission Pipelines).

Credit shall be given for the portion of the property which has been previously assessed or has contributed its share toward the cost of installing a permanent water main. Water main charge shall be based on the frontage of the property served, as determined by the Division, in accordance with the following schedule and subject to the following terms and conditions:

A. Residential Service.

The water main charge shall be based on the frontage of the property served. The minimum charge shall be based on 50 front feet and the maximum charge on 100 front feet.

Commencing 1/1/07
\$50/per front foot

B. Commercial Service.

Where the property is zoned for the same, the water main charge shall be based on the entire frontage of the property served. The minimum charge shall be based on 50 front feet.

Commencing 1/1/07
\$50/per front foot

C. Industrial Service.

Where the property is zoned for the same, the water main charge shall be based on the entire frontage of the property served. The minimum charge shall be based on 50 front feet.

Commencing 1/1/07
\$55/per front foot

D. Water main charges for services abutting a permanent main shall be considered revenue of the Division.

The water main charge herein above provided for shall be credited to and considered as a benefit to the specific property served by said connection. Said property so benefited shall be described and recorded as a part of the Division's permanent records pertaining thereto.

(Ord. 27778 Ex. A; passed Jan. 6, 2009; Ord. 27522 § 18; passed Aug. 29, 2006: Ord. 27299 § 9; passed Dec. 7, 2004: Ord. 26800 § 14; passed Apr. 10, 2001: Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.350 Premises not abutting a permanent water main.

Where the premises to be served is not abutting a permanent water main (as described in the Customer Services Policies) and said premises owner has not previously paid a water main charge, the water service connection will be constructed by the Division to the nearest available temporary or permanent water main that is acceptable for meeting the water requirements of the customer upon application and payment of a temporary water main charge as provided for in TMC 12.10.315 in addition to a service construction charge, in accordance with TMC 12.10.250 and the SDC in accordance with TMC 12.10.310. The water main charge shall be paid to the Division in accordance with and subject to the same terms and conditions as detailed in TMC 12.10.315 above.

All water main charges received where no main abuts subject parcel shall be deposited by the City in the Water Main Deposit Fund and shall be credited to and considered as a benefit to the specific property served by said connection. The property so benefited shall be legally described and recorded as part of the Division's permanent records pertaining thereto.

When a public road is improved or resurfaced by a person where there is currently no water main or said public road has a temporary water main as defined in the Customer Service Policies, it shall be the person's responsibility to extend the water main/system to the extent of the road improvements or to a point that meets the approval of the Division. Said water main/system may be extended using the private contract process, TMC 12.10.200, or by the LID process as set forth in RCW 35.44, and Division standards.

If a permanent water main exists or is being constructed between the existing service and the specific benefited property, said service may be relocated to the permanent main at a point closer to the benefited property at no charge, provided the owner reroutes its property-side water pipe between the new meter location and the property.

Upon the installation of permanent mains, the main charge collected by the City shall be applied toward the payment for said mains for the benefit of the properties in accordance with Division records. The temporary water service will be relocated by the Division to the permanent main abutting the benefited property at no charge. The owner must reroute its property-side water pipe between the new meter location and the property and make the connection. If the property owner does not agree to relocate its property-side water pipe at the time of main installation and requests a service relocation at a later date, the work will be done at the expense of the property owner.

(Ord. 27522 § 19; passed Aug. 29, 2006: Ord. 27299 § 10; passed Dec. 7, 2004: Ord. 26800 § 15; passed Apr. 10, 2001: Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.400 Rates – Inside and outside City limits.

The standard charge for water supplied inside and outside the City for residential, commercial/industrial, parks and irrigation, and public facilities use shall consist of a customer charge, also termed a "monthly ready to serve charge," based on the meter size together with the rate for the quantity of water used.

Tacoma Municipal Code

For water supplied to a single premises which contains multiple dwelling units, i.e., two or more houses under the same ownership, duplexes, apartment buildings, condominiums, mobile home parks, trailer courts, industrial buildings, etc., the monthly charges will be the same as indicated above.

When water is being supplied to an existing multiple premises, i.e., two or more separate premises being served by one service and meter, the “monthly ready to serve charge” will be based on either the existing meter size or on a 5/8-inch meter size for each premises served, whichever is the greater charge.

When more than one service supplies a premises, the consumption of water for each meter shall be computed separately.

A. Standard charges:

1. The monthly ready to serve charge shall be in accordance with the following schedule for residential, commercial/industrial, commercial/industrial large volume, parks and irrigation, public facilities, and wholesale service.

Ready to Serve Charge				
Meter Size (Inches)	Inside Commencing		Outside Commencing	
	4/1/15	1/1/16	4/1/15	1/1/16
5/8	\$19.60	\$20.38	\$23.52	\$24.46
3/4	\$29.40	\$30.57	\$35.28	\$36.68
1	\$49.00	\$50.95	\$58.80	\$61.14
1.5	\$98.00	\$101.90	\$117.60	\$122.28
2	\$156.80	\$163.04	\$188.16	\$195.65
3	\$294.00	\$305.70	\$352.80	\$366.84
4	\$490.00	\$509.50	\$588.00	\$611.40
6	\$980.00	\$1,019.00	\$1,176.00	\$1,222.80
8	\$1,568.00	\$1,630.40	\$1,881.60	\$1,956.48
10	\$2,254.00	\$2,343.70	\$2,704.80	\$2,812.44
12	\$3,307.50	\$3,439.13	\$3,969.00	\$4,126.96

2. The schedule of rates for water used shall be as follows and billed to the nearest CCF (100 cubic feet or approximately 748 gallons):

Residential Service				
Range in CCF (100 cubic feet)	Rate per CCF			
	Inside Commencing		Outside Commencing	
	4/1/15	1/1/16	4/1/15	1/1/16
For each CCF of water consumption during the winter months of October through and including May	\$1.645	\$1.756	\$1.974	\$2.107
For the first five CCF of water consumption per month during the summer months of June through and including September	\$1.645	\$1.756	\$1.974	\$2.107
For each CCF of water consumption over five CCF during the summer months of June through and including September	\$2.056	\$2.195	\$2.468	\$2.634

Commercial and Industrial - General Service				
Range in CCF (100 cubic feet)	Rate per CCF			
	Inside Commencing		Outside Commencing	
	4/1/15	1/1/16	4/1/15	1/1/16
For each CCF of water consumption	\$1.817	\$1.945	\$2.180	\$2.334

Commercial and Industrial - Large Volume Service. Customers may qualify for this rate based on an established consumption history greater than 65,000 CCF annually.				
Range in CCF (100 cubic feet)	Inside Commencing		Outside Commencing	
	4/1/15	1/1/16	4/1/15	1/1/16
	For each CCF of water consumption	\$1.510	\$1.557	\$1.812

Parks and Irrigation Service				
Range in CCF (100 cubic feet)	Inside Commencing		Outside Commencing	
	4/1/15	1/1/16	4/1/15	1/1/16
	For each CCF of water consumption	\$2.586	\$2.769	\$3.103

B. Schedule of charges within the City of Fircrest:

1. The monthly ready to serve charge shall be in accordance with the following schedule for residential, commercial/industrial, commercial/industrial large volume, parks and irrigation, public facilities, and wholesale service.

Ready to Serve Charge - Fircrest		
Meter Size (Inches)	Commencing	
	4/1/15	1/1/16
5/8	\$24.30	\$24.46
3/4	\$36.44	\$36.68
1	\$60.74	\$61.14
1.5	\$121.48	\$122.28
2	\$194.37	\$195.65
3	\$364.44	\$366.84
4	\$607.40	\$611.40
6	\$1,214.81	\$1,222.80
8	\$1,943.69	\$1,956.48
10	\$2,794.06	\$2,812.44
12	\$4,099.98	\$4,126.96

Tacoma Municipal Code

2. The schedule of rates for water used shall be as follows and billed to the nearest CCF (100 cubic feet or approximately 748 gallons):

Residential Service - Fircrest		
	Rate per CCF	
Range in CCF (100 cubic feet)	Commencing	
	4/1/15	1/1/16
For each CCF of water consumption during the winter months of October through and including May	\$2.039	\$2.107
For the first five CCF of water consumption per month during the summer months of June through and including September	\$2.039	\$2.107
For each CCF of water consumption over five CCF during the summer months of June through and including September	\$2.549	\$2.634

Commercial and Industrial - General Service - Fircrest		
	Rate per CCF	
Range in CCF (100 cubic feet)	Commencing	
	4/1/15	1/1/16
For each CCF of water consumption	\$2.252	\$2.334

Commercial and Industrial - Large Volume Service - Fircrest. Customers may qualify for this rate based on an established consumption history greater than 65,000 CCF annually		
	Rate per CCF	
Range in CCF (100 cubic feet)	Commencing	
	4/1/15	1/1/16
For each CCF of water consumption	\$1.872	\$1.868

Parks and Irrigation Service - Fircrest		
	Rate per CCF	
Range in CCF (100 cubic feet)	Commencing	
	4/1/15	1/1/16
For each CCF of water consumption	\$3.206	\$3.323

C. Schedule of charges within the cities of Lakewood, Puyallup and University Place:

1. The monthly ready to serve charge shall be in accordance with the following schedule for residential, commercial/industrial, commercial/industrial large volume, parks and irrigation, public facilities, and wholesale service.

Ready to Serve Charge – Lakewood, Puyallup and University Place		
Meter Size (Inches)	Commencing	
	4/1/15	1/1/16
5/8	\$24.92	\$24.46
3/4	\$37.37	\$36.68
1	\$62.29	\$61.14
1.5	\$124.58	\$122.28
2	\$199.32	\$195.65
3	\$373.73	\$366.84
4	\$622.88	\$611.40
6	\$1,245.75	\$1,222.80
8	\$1,993.20	\$1,956.48
10	\$2,865.23	\$2,812.44
12	\$4,204.41	\$4,126.96

2. The schedule of rates for water used shall be as follows and billed to the nearest CCF (100 cubic feet or approximately 748 gallons):

Residential Service – Lakewood, Puyallup, and University Place		
Range in CCF (100 cubic feet)	Rate per CCF	
	Commencing	
	4/1/15	1/1/16
For each CCF of water consumption during the winter months of October through and including May	\$2.091	\$2.107
For the first five CCF of water consumption per month during the summer months of June through and including September	\$2.091	\$2.107
For each CCF of water consumption over five CCF during the summer months of June through and including September	\$2.614	\$2.634

Commercial and Industrial - General Service – Lakewood, Puyallup, and University Place		
Range in CCF (100 cubic feet)	Rate per CCF	
	Commencing	
	4/1/15	1/1/16
For each CCF of water consumption	\$2.310	\$2.334

Commercial and Industrial - Large Volume Service - Lakewood, Puyallup, and University Place. Customers may qualify for this rate based on an established consumption history greater than 65,000 CCF annually		
Range in CCF (100 cubic feet)	Commencing	
	4/1/15	1/1/16
For each CCF of water consumption	\$1.919	\$1.868

Parks and Irrigation Service – Lakewood, Puyallup, and University Place		
Range in CCF (100 cubic feet)	Commencing	
	4/1/15	1/1/16
For each CCF of water consumption	\$3.287	\$3.323

D. Public Facilities Service. Whenever water is provided for public use, such as fountains, rest rooms, or other publicly owned facilities, it shall be metered and charged for at the regular rates as prescribed under Commercial/Industrial or Parks and Irrigation, depending on the type and location of use.

E. Wholesale Service. Wholesale water service may be provided to community water systems that are in compliance with state Department of Health regulations. All wholesale water agreements are subject to Tacoma Public Utility Board approval. Any customer purchasing wholesale water must adopt or commit, in writing, to a water conservation and water shortage response program substantially equivalent to the Division's program as a condition of service.

1. Water Rates. A wholesale water service customer may choose, in writing, one of two available rate schedules for each meter in service, either the constant use schedule or the summer peaking schedule. Both of these rate schedules shall consist of the ready to serve charge based on the meter size, together with a rate for water used as shown below:

a. Constant Use Customer:

Wholesale Constant Use Customer		
Range in CCF (100 cubic feet)	Rate per CCF	
	Commencing	
	4/1/15	1/1/16
Per CCF for winter months (October - May)	\$2.112	\$2.112
Per CCF for summer months (June - September)	\$2.640	\$2.640

This option may be considered by those customers using water on a year-round basis where their average summer day use divided by their average winter day use results in a summer/winter use ratio of 2.5 or less.

b. Summer Season, Peaking:

Wholesale Summer Season, Peaking		
Range in CCF (100 cubic feet)	Rate per CCF	
	Commencing	
	4/1/15	1/1/16
For each CCF of water consumption	\$3.960	\$3.960

This option will be used for those customers using relatively large amounts of water in the summer months and little or no water in winter months. The ratio of average summer day use divided by average winter day use shall be greater than 2.5.

For purposes of these rates, summer-use months are defined as June through September and winter-use months are October through May.

Existing customers will be classified into one of the two rate schedules upon annual review of their usage patterns. New customers will select a rate based upon anticipated use. This selection will be subject to revision if usage is not consistent with the above options after a six-month period.

2. Additional Water. Additional or new water may be provided by the City to a wholesale customer conditioned upon satisfying the following:

- a. For every new customer of the wholesale customer that is provided with water from City’s surplus supply, the wholesale customer shall remit to the City (on a monthly basis or by other arrangement as agreed to by the Superintendent) the appropriate SDC for said customer based on meter size in accordance with TMC 12.10.310.
- b. That, in lieu of satisfying subsection A above, in the event the wholesale customer is in a water deficient status or later becomes water deficient as determined by the Superintendent in consultation with wholesale customer, then the Superintendent shall establish a SDC equivalent for said wholesale customer. This SDC equivalent shall not be less than what the total “retail customer equivalent” would have been for the total deficiency.
- c. That the City and wholesale customer shall enter into a letter agreement setting forth the above requirements and committing the wholesale customer to remit the SDC payment to City. The wholesale customer may be required to provide City with periodic reports, certified to be accurate, detailing pertinent data.

F. Emergency Intertie Service. Requests for one-way and two-way emergency intertie service between the City and another purveyor will be considered.

The Superintendent may enter into specific agreements, specifying the terms under which water will be furnished or accepted by the Division. Water furnished to a purveyor through an emergency intertie service will be billed as a wholesale service with a ready to serve charge and rate for water used. Billing will be at the constant use rate for up to 30 days. If use exceeds 30 days the Superintendent will have the discretion to change the constant use rate to the summer season peaking rate. Said agreement shall provide that neither party shall be liable for failure to deliver water to the other at any time.

G. Fire Protection Service. When a customer does not receive domestic water from the Division and requests a fire service from the Division the appropriate regular domestic service rates shall apply as detailed above. In addition all regular construction fees, main charges and SDC shall apply. Where City water is used for domestic purposes, such customers are entitled to a separate fire service at the regular fire service rate, payable monthly as follows:

Fire Protection Service – Ready to Serve Charge					
Meter Size (Inches)	Inside Commencing		Outside Commencing		Maximum Allowable Monthly Water Usage for Testing and Leakage, CCF
	4/1/15	1/1/16	4/1/15	1/1/16	
2	\$24.82	\$24.82	\$29.78	\$29.78	2.99
3	\$36.14	\$36.14	\$43.37	\$43.37	2.99
4	\$60.38	\$60.38	\$72.46	\$72.46	2.99
6	\$135.43	\$135.43	\$162.52	\$162.52	2.99
8	\$241.10	\$241.10	\$289.32	\$289.32	2.99
10	\$377.11	\$377.11	\$452.53	\$452.53	2.99
12	\$603.19	\$603.19	\$723.83	\$723.83	2.99

Fire Protection Service – Ready to Serve Charge – Fircrest			
Meter Size (Inches)	Commencing		Maximum Allowable Monthly Water Usage for Testing and Leakage, CCF
	4/1/15	1/1/16	
2	\$30.77	\$29.78	2.99
3	\$44.80	\$43.37	2.99
4	\$74.85	\$72.46	2.99
6	\$167.88	\$162.52	2.99
8	\$298.87	\$289.32	2.99
10	\$467.47	\$452.53	2.99
12	\$747.71	\$723.83	2.99

Fire Protection Service – Ready to Serve Charge – Lakewood, Puyallup, and University Place			
Meter Size (Inches)	Commencing		Maximum Allowable Monthly Water Usage for Testing and Leakage, CCF
	4/1/15	1/1/16	
2	\$31.55	\$29.78	2.99
3	\$45.94	\$43.37	2.99
4	\$76.75	\$72.46	2.99
6	\$172.16	\$162.52	2.99
8	\$306.48	\$289.32	2.99
10	\$479.37	\$452.53	2.99
12	\$766.76	\$723.83	2.99

Where such fire service is provided, the monthly rate shall include usage of up to a maximum of 2.99 units of water per month. The 2.99 units of allowable water use is for incidental water use for monthly leakage and system testing and is the maximum amount allowed in a single month. In any month where the total consumption is in excess of the amount shown above, the rate for water consumed shall be as noted below.

Fire Protection Service - Rate per CCF		
	Rate per CCF	
	Commencing	
	4/1/15	1/1/16
All CCF - Inside City	\$3.960	\$3.960
All CCF - Outside City	\$4.752	\$4.752
All CCF - Fircrest	\$4.909	\$4.752
All CCF - Lakewood, Puyallup, and University Place	\$5.034	\$4.752

If the Water use in excess of the maximum monthly allowable amount was used in extinguishing fires of incendiary or accidental origin and the customer at the location where the use occurs gives written notice to the Division within ten days from the time of such fire the customer shall pay only for actual water used at the rate noted above. If the Division is not notified the Division will conclude that water is being used for purposes other than extinguishing fires and charge the additional fee noted below of 12 times the monthly rate.

Whenever water from the Division is available on a premise through a service being charged the rate for fire protection only and is used for purposes other than extinguishing fires of incendiary or accidental origin including ongoing leakage of the fire service line and the amount of water used is in excess of the amount shown in the table above, 12 times the ready to serve charge for the specific service in question shall be the monthly minimum charge and the charge for water consumed shall be as noted in the "Fire Protection Service – Rate per CCF" table above. Waivers may be granted from the assessment of the 12 times the ready to serve charge for leaks or other accidental use upon written request with all supporting documentation but the charge for water consumed shall not be waived.

Nonpayment of invoices related to the construction of or monthly use of a fire service will result in the service being turned off and notification of the appropriate fire official who may then disallow occupancy of the premise.

Unauthorized use of water through a detector check meter more than once per calendar year may be cause for installation of a turbine meter assembly, UL/FM approval for fire service assemblies at the expense of the customer. Within the City of Tacoma, whenever water is used for purposes other than extinguishing fires, the amount of water used may be subject to the appropriate sanitary sewer charge as defined in TMC 12.08, in addition to the rates noted above and assessment of the 12 times the ready to serve charge.

Should the unauthorized use continue, including leakage in excess of the maximum amount of water allowed, the service will be considered as other than standby fire protection and be billed in accordance with the type of use pursuant to this section, and shall be subject to payment of the applicable SDC pursuant to TMC 12.10.310. Refusal to pay for the installation of the fire line meter and/or the SDC shall result in termination of service pursuant to TMC 12.10.130.

When a customer desires a fire service for the protection of a premises and the domestic water for said premises is provided from another source, the applicable single-family residential, multi-family residential, or commercial/industrial rates shall apply for the requested fire protection service inside and outside the City, respectively. When any outlet for fire protection purposes is installed on a residential, commercial or industrial service, no rebate will be allowed for water used for extinguishing a fire.

H. Special Contracts. The Superintendent, with the approval of the Board, shall have the right to enter into contracts for periods up to 20 years where service conditions are extraordinary; provided, that such contracts shall contain applicable rates as adopted by the Board and the City Council.

I. RockTenn Contract. The rates, terms, and conditions in the contract between the City and RockTenn CP, LLC (“RockTenn”) are applicable, except as modified by this section. For a nominated contract demand, the water rate will be based on a monthly distribution charge and the daily supply charge. If the monthly water use exceeds 103% of the contract demand or the daily water use exceeds 109% of the contract demand, an excess water usage charge will be applied. The excess water usage charge will be either the daily excess water use charge or the monthly excess water use charge, whichever is greater.

1. Water use within the range of contract demand plus 3 percent: The charge will consist of a monthly distribution charge and daily supply charge per ccf metered as stated below.

2. Daily water use greater than one hundred and nine percent (109%) of the contract demand: The charge will consist of a monthly distribution charge, daily supply charge, plus a Daily Excess Water Usage Charge (based upon the commercial and industrial-large volume rate) for water metered daily in excess of the contract demand plus 9 percent as stated below.

3. Monthly water use greater than one hundred and three percent (103%) of the contract demand: The charge will consist of a monthly distribution charge, daily supply charge, plus a Monthly Excess Water Usage Charge (based on the commercial and industrial-large volume rate) for water metered during a month in excess of the contract demand plus 3 percent, as stated in the following table.

Billing Components	Commencing	
	4/1/15	1/1/16
Distribution Charge per Month	\$71,377.26	\$74,232.35
Supply Charge/CCF	\$0.6609151	\$0.6873517
Daily or Monthly Excess Water Usage Charge (Commercial and Industrial - Large Volume Rate) per CCF	\$1.510	\$1.557

4. The Superintendent is hereby authorized to execute a contract with RockTenn to provide additional terms and conditions of service and other provisions consistent with this ordinance.

J. Meter Tests. If a customer has informed the Division that its water consumption has been above its normal billing consumption and verification discovers no leaks on the customer facilities, the customer may request that the Division test the meter. If the test discloses the meter is accurate within the American Water Works Association (“AWWA”) specifications, the customer will be billed for the test and their water bill will not be adjusted. If the test discloses the meter is not accurate within the AWWA specifications and the inaccuracy is the cause of the recorded high consumption, the customer’s water bill will be adjusted and credit given for the excessive consumption and the customer will not be billed for the test. The charge for testing meters shall be added to the customer’s bill as follows:

Meter Size	Cost
1-inch and smaller	\$75.00
>1-inch	*Estimated Cost

*The customer shall pay a deposit in the amount of the Division’s estimated cost.

If the actual cost differs from the estimated cost, the customer will be refunded or billed the difference.

The Division will not test meters owned by others.

K. Low Pressure or Low Flow Concerns. The customer may request the Division to conduct a flow and pressure test on the service to its premises. If the cause of the problem is found to be located on the property side of the meter yoke outlet, the customer will be invoiced for a fee of \$25.

If the test discloses that the low flow and/or pressure is caused by Division facilities, the Division will attempt to correct the problem and the customer will not be charged.

L. Low-income Senior and/or Low-income Disabled Residential Rate Discount. Residential customers who qualify as low-income senior or low-income disabled shall be eligible for a 30 percent reduction from the regular residential water rates. The determination of low-income senior and low-income disabled shall be made as set forth in TMC 12.06.165 for City Light Division (d.b.a. "Tacoma Power") customers. Customers must submit an application for review and acceptance by the authorized administering agency to qualify for this reduction. For the water rate discount, there is no requirement that a customer be a Tacoma Power customer or submit to an energy audit.

M. Water System Acquisition. A water system may be acquired by the City under an agreement between the water system owner(s) and the City with Board and City Council approval. When all or a portion of the acquired system requires upgrading equal to Division standards, the agreement shall provide for funds to achieve compliance with said standards. Under the agreement, a surcharge may be levied by the City for a period of time or an LID may be formed in accordance with RCW Title 35. The surcharge shall be an additional charge equivalent to the Ready to Serve charge per month times a multiplier, or an actual dollar amount as stated in the acquisition agreement and set forth below. The current surcharge areas include:

Former Water System	
Hyada Mutual Service Company	Total Monthly Charge \$30.00 per month through July 2022

If allowed by the acquisition agreement, a customer in a surcharge area may opt to pay off the outstanding surcharge amount.

(Ord. 28305 Ex. A; passed Jul. 14, 2015; Ord. 28286 Ex. A; passed Mar. 17, 2015; Ord. 28133 Ex. A; passed Feb. 26, 2013; Ord. 27971 Ex. A; passed Feb. 8, 2011; Ord. 27970 Ex. A; passed Feb. 1, 2011; Ord. 27778 Ex. A; passed Jan. 6, 2009; Ord. 27570 § 9; passed Dec. 19, 2006; Ord. 27522 § 20; passed Aug. 29, 2006; Ord. 27299 § 11; passed Dec. 7, 2004; Ord. 27137 § 2; passed Sep. 9, 2003; Ord. 27076 § 1; passed Apr. 8, 2003; Ord. 27024 § 7; passed Dec. 10, 2002; Ord. 26872 § 2; passed Nov. 6, 2001; Ord. 26800 § 16; passed Apr. 10, 2001; Ord. 26409 § 1; passed Apr. 27, 1999; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.485 City not liable for damages.

The Division reserves the right to require any customer to install as a condition of water service a pressure reducing valve, backflow prevention assembly, pressure relief valve or similar devices at any location where the Superintendent determines a need to protect the Division's facilities, water quality or customer's service.

The City shall not be liable for damages and allowances will not be made for loss of production, sales or service in case of: (1) water pressure variations, (2) revisions to pressure within the system, (3) operation of the City's source of water supply or means of distribution fails or is curtailed, suspended, interrupted or interfered with, or (4) for any cause reasonably beyond the Division's control. Pressure variations, equipment failure, failure to supply, curtailment, suspension, interruption or interference shall not constitute a breach of contract on the part of the City, or in any way affect any liability for payment for water made available or for money due on or before the date of such occurrence. The customer shall notify the Division as soon as possible in the event of unusual occurrences. The Division reserves the right to make system modifications as deemed necessary for the operation and maintenance of the system.

When water service is turned on or left on at the request of the customer, or the Division discontinues service for "nonpayment" or "no contract," the Division shall not be liable for damages incurred to the premises because of such actions.

If a water meter or other Division pipes and equipment is located on the customer's premises, as a condition of water service the customer agrees not to make claim against nor sue the City for any damages due to water leakage and shall hold the City harmless from any and all claims and litigation which allege damages resulting from water leakage occurring at such meter, pipes, and equipment.

The responsibility for customer facilities installed by the Division for the benefit of the customer shall be that of the owner of the premises served and the City shall not be liable for any part of the cost nor for any damage resulting from its use.

(Ord. 27778 Ex. A; passed Jan. 6, 2009; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.490 Protection of public health.

The Superintendent may arrange for a periodic inspection of the water system in coordination with the appropriate State Director of Health. The Superintendent shall from time to time promulgate, publish and enforce such rules and standards deemed necessary by the Division to protect the municipal potable water supply from pollution. Copies of such rules and standards, and amendments thereto, shall be placed on file with the Clerk of the Public Utility Board.

(Ord. 27299 § 12; passed Dec. 7, 2004; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.495 South Tacoma Groundwater Protection.

Upon receipt of written request and documentation from the Director of the Tacoma-Pierce County Health Department, or his or her designee, that a customer is in violation of the requirements of TMC 13.09, the Superintendent may order water service to be discontinued.

(Ord. 27522 § 21; passed Aug. 29, 2006)

12.10.500 Waivers – By Superintendent.

The Superintendent is authorized to grant minor waivers to specific requirements contained in this chapter. The Superintendent may grant a minor waiver upon Division initiation or upon a clear demonstration by the applicant that such waiver will not be in conflict with the intent and spirit of this chapter.

(Ord. 26048 § 1; passed Mar. 25, 1997.)

12.10.505 Customer service policies – Additional rules and regulations.

The Superintendent, with the approval of the Director, may promulgate and enforce Customer Service Policies and related additional rules and standards as may be deemed appropriate to implement this chapter, to encourage conservation and the efficient use of water, and for further clarification of service.

Legal criminal enforcement shall be vested in the Police Department of the City, and all prosecutions for violations hereof shall originate in the Municipal Court of the City of Tacoma. The penalties provided herein are in addition to any civil remedy provided at law.

(Ord. 27522 § 22; passed Aug. 29, 2006; Ord. 27299 § 13; passed Dec. 7, 2004; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.515 Violations – Penalties – Enforcement.

Any person violating any of the provisions relating to the rate schedules, general provisions, and customer service policies governing the sale of water shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine in any sum not exceeding \$1,000.00, or imprisonment for a period not to exceed one year, or both; and, in addition to the penalty herein above provided, the service to the premises of any person found guilty of violating these provisions shall be discontinued. The person violating same shall be liable for all damages resulting and for all water used by reason of such violation.

Legal criminal enforcement shall be vested in the Police Department of the City and all prosecutions for violations hereof shall originate in the Municipal Court of the City of Tacoma. The penalties provided herein are in addition to any civil remedy provided by law.

(Ord. 26800 § 17; passed Apr. 10, 2001; Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.520 Severability.

If any clause, sentence, paragraph, subdivision, section or part of the provisions relating to the rate schedules, general provisions and customer service policies governing the sale of water shall for any reason be adjudged to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this chapter.

(Ord. 26048 § 1; passed Mar. 25, 1997)

12.10.525 Interference with and/or damage to City water system.

Any person causing damage to any property belonging to the Division shall be liable to the Division for any and all damages resulting either directly or indirectly therefrom.

It shall be unlawful for any person to willfully disturb, break, deface, damage or trespass upon any property belonging to or connected with the water system of the Division in any manner whatsoever.

It shall be unlawful for any person to build, store, maintain or keep any goods, merchandise, materials or rubbish that will interfere with the access to or operation and maintenance of any water facilities, or any of their appurtenances.

(Ord. 27299 § 14; passed Dec. 7, 2004; Ord. 26048 § 1; passed Mar. 25, 1997)

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

PORT OF TACOMA, a Washington State
Municipal Corporation, ECONOMIC
DEVELOPMENT BOARD FOR
TACOMA-PIERCE COUNTY, a
Washington State Non-profit Corporation,
and the TACOMA-PIERCE COUNTY
CHAMBER, a Washington State Non-
profit corporation,

Plaintiffs,

v.

SAVE TACOMA WATER, a Washington
political committee, DONNA WALTERS,
sponsor and Treasurer of SAVE
TACOMA WATER, JOHN AND JANE
DOES 1-5, (Individual sponsors and
officers of SAVE TACOMA WATER),
CITY OF TACOMA, a Washington State
Municipal Corporation; and PIERCE
COUNTY, a political subdivision by and
through JULIE ANDERSON, IN HER
CAPACITY AS PIERCE COUNTY
AUDITOR,

Defendants.

No. 16-2-08477-5

DECLARATION OF PETER
HUFFMAN IN SUPPORT OF CITY
OF TACOMA'S MOTION FOR
PRELIMINARY AND PERMANENT
INJUNCTION

DECLARATION OF PETER HUFFMAN IN SUPPORT OF
CITY'S MOTION FOR PRELIMINARY AND
PERMANENT INJUNCTION - 1

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1
2 CITY OF TACOMA,

3 Cross-Claimant/
4 Third-Party Plaintiff,

5 v.

6 SAVE TACOMA WATER, a Washington
7 political committee, DONNA WALTERS,
8 Co-Chair and Treasurer of SAVE
9 TACOMA WATER; JON AND JANE
10 DOES 1-5, (Individual sponsors and
11 officers of SAVE TACOMA WATER);
and PIERCE COUNTY, a political
subdivision by and through JULIE
ANDERSON, IN HER CAPACITY AS
PIERCE COUNTY AUDITOR,

12 Cross-Defendants,

13 v.

14 SHERRY BOCKWINKEL,

15 Third-Party Defendant.
16

17 I, Peter Huffman, declare as follows:

18 1. I am the Director of the Planning and Development Services Department for the
19 City of Tacoma. As the Director, I am responsible for all aspects of building, long-range and
20 current planning, and site development within the City of Tacoma. I am over the age of 18, am
21 competent to testify, and offer this declaration based on my personal knowledge.

22 2. The City of Tacoma (the "City") has adopted a Comprehensive Plan in
23 accordance with the requirements of the Growth Management Act ("GMA"). Attached hereto as
24 **Exhibit A** is a true and correct copy of excerpts of the City's Comprehensive Plan.

25 3. The City's Comprehensive Plan includes a "Public Facilities + Services" element
26
27

DECLARATION OF PETER HUFFMAN IN SUPPORT OF
CITY'S MOTION FOR PRELIMINARY AND
PERMANENT INJUNCTION - 2

10017 00013 ff13be07s3

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1 (“PFS”) that establishes the City’s goals and policies with respect to public utilities like water
2 service. Goal 4 of the PFS establishes the City’s intent to “[p]rovide public facilities that address
3 past deficiencies, particularly those in underserved areas, meet the needs of growth, and enhance
4 the quality of life through acceptable levels of service and priorities.”

5
6 4. The City has established several specific policies under PFS Goal 4 that are
7 relevant to the City’s management and provision of municipal water service.

8 5. Under Policy PFS 4.1, the City has set standards for level of service and has
9 committed to use these standards, in combination with the current needs analysis of providers, to
10 determine the need for public facilities, test the adequacy of such facilities to serve proposed
11 development concurrent with the impacts of the development, and ensure that appropriate levels
12 of capital resources are allocated.

13
14 6. Policy PFS 4.5 establishes the City’s intent to “[i]dentify needs for additional
15 public facilities and services based on adopted levels of service and forecasted growth, and
16 determine the means and timing for providing needed additional facilities.”

17 7. Policy PFS 4.6 establishes the City’s intent to “[p]rovide public facilities and
18 services that achieve the levels of service concurrent with development as defined in City code
19 and Washington State Law.”

20
21 8. Under Policy PFS 4.7, the City has committed to “[e]nsure that those public
22 facilities and services necessary to support development shall be adequate to serve the
23 development at the time the development is available for occupancy or use, or within a
24 reasonable time as approved by the City, without decreasing current service levels below locally
25 established minimum standards.”

26
27
DECLARATION OF PETER HUFFMAN IN SUPPORT OF
CITY’S MOTION FOR PRELIMINARY AND
PERMANENT INJUNCTION - 3

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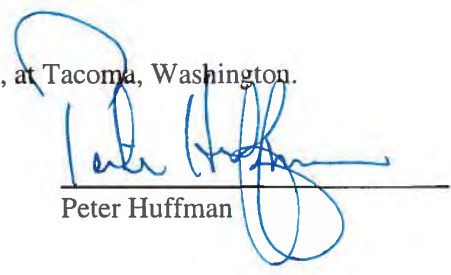
9. Taken together, these Comprehensive Plan policies commit the City to provide public water service concurrent with development. Citizens Charter Amendment Initiative No. 5 (“Charter Initiative”) and Citizens Initiative No. 6 (“Code Initiative”), if passed, would impose additional requirements on the City that are inconsistent with this commitment as expressed in the City’s adopted policies and goals.

10. As a result, implementation of the City’s Comprehensive Plan would be undermined by the additional requirements imposed upon applications for water service created by the Charter and Code Initiatives.

11. The City has never imposed a public vote requirement on planning and development decisions under the GMA.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 16 day of June, 2016, at Tacoma, Washington.



Peter Huffman

DECLARATION OF PETER HUFFMAN IN SUPPORT OF
CITY’S MOTION FOR PRELIMINARY AND
PERMANENT INJUNCTION - 4

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EXHIBIT A

nine

PUBLIC FACILITIES + SERVICES



PUBLIC SERVICES + FACILITIES GOALS

GOAL PFS-1 Provide public facilities and services necessary to support existing and new development envisioned in the Urban Form Element.

GOAL PFS-2 In partnership with residents, service providers and adjoining jurisdictions, incorporate the City's Urban Growth Area by 2040.

GOAL PFS-3 Collaborate with regional partners to site essential public facilities in an equitable and practical manner.

GOAL PFS-4 Provide public facilities that address past deficiencies, particularly those in underserved areas, meet the needs of growth, and enhance the quality of life through acceptable levels of service and priorities.

GOAL PFS-5 Strengthen the economic base, diversify industrial and commercial enterprises, increase employment opportunities, increase the income level of residents, and enhance and revitalize neighborhoods and mixed-use centers.

GOAL PFS-6 Ensure that planned public facilities are financially feasible.

GOAL PFS-7 Design, locate and provide public facilities with features and characteristics that support the environment, energy efficiency, aesthetics, technological innovation, cost-effectiveness, livability, sustainability, and equity.

GOAL PFS-8 Equitably maintain public facilities so that they are reliable, functional, safe, sanitary, clean, attractive, and financially sustainable.

NINE

PUBLIC FACILITIES + SERVICES

WHAT IS THIS CHAPTER ABOUT?

The Public Facilities and Services Element of the Comprehensive Plan makes the rest of the plan a reality by identifying infrastructure investments that support and implement many of the goals and policies in other elements of the Plan.

The Public Facilities and Services Element fulfills the GMA requirements for capital facilities and utilities. Throughout this element, the term “public facilities” includes all types of public infrastructure, including utilities.

The Public Facilities and Services Element uses two components to comply with GMA requirements for capital facilities. The first component is this chapter which contains the goals and policies.

The goals and policies in this chapter convey the City’s intent to:

- Set clear goals for service delivery and system expansion for public rights-of-way, sanitary and stormwater systems, water, parks and recreation, public safety and emergency response, solid waste management, school facilities, technology access, and energy infrastructure.
- Ensure that public facilities and services support the local and regional growth planning objectives.
- Emphasize the development of facilities that serve multiple goals.
- Advance an adaptive management approach to improve reliability and resilience.
- Provide more equitable service delivery.
- Reduce risks to human and environmental health and safety.

Book I: Goals + Policies

- 1 Introduction + Vision
- 2 Urban Form
- 3 Design + Development
- 4 Environment + Watershed Health
- 5 Housing
- 6 Economic Development
- 7 Transportation
- 8 Parks + Recreation
- 9 **Public Facilities + Services**
- 10 Container Port
- 11 Engagement, Administration + Implementation
- 12 Downtown

Book II: Implementation Programs + Strategies

- 1 Shoreline Master Program
- 2 Capital Facilities Program
- 3 Downtown Regional Growth Center Plans
- 4 Historic Preservation Plan



Tacoma Fire Department



Vassault Park



*Pergola at
Wapato Park*

The second component is the background information in this chapter. The background information is based in large part on the City's Capital Facilities Program, which is a separate document and is adopted by reference. The background information fulfills the requirements of GMA to:

- Provide an inventory of existing public facilities.
- Identify deficiencies in capital facilities and the actions necessary to meet such deficiencies.
- Forecast future needs for facilities.
- Propose capital improvements and their costs.
- Plan for financing proposed capital improvements.
- Inform the capital budget process.

WHY IS THIS IMPORTANT?

High-quality and dependable basic public services, like clean water and reliable sewer and stormwater management services, are essential to Tacoma's future success. Cost-effective and dependable services improve quality of life, affordability, and make Tacoma a more attractive place to do business. Well-built and well-maintained facilities also help the city recover from damaging natural events and emergencies.

The City's public facilities and services can also help create a vibrant public realm. The City's public facility systems provide water, sewer, transportation, parks and civic services. Public facilities include the varied and extensive networks of streets and pipes, as well as parks and natural

areas that not only manage stormwater and flooding, but also help provide places for recreation. Public services include things like public transportation and police, fire, and emergency response. In addition, services such as access to broadband technology, electricity and natural gas, and comprehensive waste, recycling, and composting services are essential for households and businesses. It takes the collective and coordinated effort of multiple agencies and regulated utilities to maintain and operate the complex systems used to manage and provide these necessities to Tacomans.

Public agencies aim to provide basic services to all Tacomans. However, for a variety of reasons, not all services are distributed equitably across the city. The agencies charged with managing public facility systems must balance the need to maintain existing services and infrastructure with the need to bring new or improved services to under-served communities, and to new residents and businesses. Future investments will need to align with the City's vision of achieving equitable service delivery to all residents and visitors. In addition, these improvements must be made in ways that meet federal, state, and regional regulations.

Given the likelihood of environmental, economic, and technological change in the next twenty years, the agencies that deliver, build, and manage services and facilities must reinvent systems and facilities to satisfy multiple uses, withstand environmental stress, and adapt to changing circumstances. The goals and policies in this chapter support the equitable, efficient, and adaptive management approaches that are needed to provide high-quality facilities and services to all Tacomans, including those in future generations.

The public facilities and services will meet the community's current and future needs by providing acceptable levels of service in a reliable, effective, efficient, economic and environmentally responsible manner for existing and future residents, visitors and businesses.

The Public Facilities and Services Element is also important because Tacoma's public facilities and services must address the requirements of the Growth Management Act, state, regional and county planning, and they must relate to other elements of Tacoma's comprehensive plan. They must also fulfill the capital improvement requirements of the City of Tacoma.



Tacoma Police at the Sprague Enhancement Project groundbreaking



Tacoma Fire Department demonstrates an emergency passenger extraction using the 'jaws of life'

GOALS + POLICIES

PUBLIC FACILITIES + SERVICES FOR CURRENT + FUTURE DEVELOPMENT

Development depends on the availability and adequacy of necessary facilities and services to support growth. As growth and development occurs, existing facilities may need to be upgraded or expanded, and new facilities may be needed.

Tacoma's urban growth area is an area surrounding the city that is characterized by urban growth. The Growth Management Act states that cities should be the primary providers of urban services within urban growth areas. Tacoma intends to meet this provision of the Act by becoming the primary provider of public facilities and services in its urban growth areas over time, and to provide the same level of service as it provides within the City limits.

Tacoma already provides some facilities and services in its urban growth areas. Tacoma encourages other service providers within Tacoma's urban growth area to provide similar level of service standards that the City provides for those facilities and services provided by the City in its urban growth area. For its urban growth area, the City intends to jointly plan the provision of public facilities and services with Pierce County, other jurisdictions and service providers.

Annexation of new areas will have an impact upon the provision of facilities and services. The City of Tacoma encourages and accommodates annexations. Newly annexed areas are intended to be served at the same level of service standards as those imposed within the city limits. However, if necessary, the level of service may be phased in over time.

Regional public facilities are designated by GMA as essential public facilities. The City realizes that these facilities are often difficult to site, but they provide needed public services. Tacoma will coordinate with other jurisdictions in the region to site public facilities and will not exclude such facilities from its jurisdiction.

Facilities for Land Use

GOAL PFS-1 Provide public facilities and services necessary to support existing and new development envisioned in the Urban Form Element.

Policy PFS-1.1 Plan public facilities and services that have the capacity and are located to serve existing development and future growth planned in the Urban Form Element.

Policy PFS-1.2 Provide public facilities and services that are the responsibility of the City, and coordinate with other agencies for their provision of public facilities and services for which they are responsible.

Policy PFS-1.3 Coordinate and cooperate with federal, state, regional, and local jurisdictions, private industry, businesses, and citizens in the planning, siting, design, and development of facilities serving and affecting the community.

Policy PFS-1.4 Adopt by reference the capital facilities plans of the following providers of public facilities and services in Tacoma.

- a. Parks: Metropolitan Park District
- b. Schools: Tacoma School District
- c. Transportation: Pierce Transit, Sound Transit and Washington State Department of Transportation

Annexation Areas

GOAL PFS-2 In partnership with residents, service providers and adjoining jurisdictions, incorporate the City's Urban Growth Area by 2040.

Policy PFS-2.1 Promote growth and development within Tacoma's urban growth area that is consistent with the City's adopted policies, the County-wide Planning Policies for Pierce County, and Vision 2040 in order to discourage sprawl, direct higher intensity and density uses into designated centers, and support enhanced public transit.

Policy PFS-2.2 Anticipate public facility and service needs of possible future annexation areas through long range planning, and when feasible



Tacoma School District bus



LINK light rail operated by Sound Transit

POTENTIAL ANNEXATION AREAS

POTENTIAL ANNEXATION AREAS are lands that may become part of the City in the future. Tacoma's potential annexation areas include lands within the City's unincorporated Urban Growth Areas, shown in Figure 38.



FIGURE 38. Potential Annexation Areas

develop facility capacities within the city to meet these needs prior to or after annexation.

Policy PFS-2.3 Conduct joint planning with Pierce County and other adjacent jurisdictions for land use development, transportation and services within urban growth areas to ensure development is orderly, compatible and sufficiently served, and consistent with City plans.

Policy PFS-2.4 Ensure through interlocal agreement or other mechanism, the compatible development of land—including the rate, amount, type and location of growth, and the provision and phasing of service within Tacoma’s urban growth area—are consistent with the adopted policies and standards of the city.

Policy PFS-2.5 Extension of utility services within Tacoma’s urban growth areas should occur only upon annexation or if a commitment for annexation is in place.

Policy PFS-2.6 Provide for active participation by affected residents and property owners in the joint planning, annexation proposals, or agreements for service within Tacoma’s urban growth area.

Policy PFS-2.7 Expand the city’s boundaries within established urban growth areas in a manner that will benefit both the citizens of Tacoma and the citizens of the area to be annexed.

See UGA-4 Joint Planning in the Countywide Planning Policies for more information on adopted joint planning policies and procedures.



Tacoma Solid Waste

Essential Public Facilities

GOAL PFS-3 Collaborate with regional partners to site essential public facilities in an equitable and practical manner.

Policy PFS-3.1 Actively participate as stakeholders in processes for determining the location of public facilities of regional or statewide importance, also known as essential public facilities.

Policy PFS-3.2 Consider land use compatibility, capital facility needs and financial costs when siting essential public facilities.

Policy PFS-3.3 Essential public facilities shall be developed in a timely and orderly manner and arranged efficiently so as not to adversely affect the safety, health, or welfare of the citizens residing in the surrounding community.

The JBLM JLUS is a collaborative process among federal, regional, and local governments and agencies; tribes; the public; and the south Puget Sound region's military installations: Joint Base Lewis-McChord (JBLM) and Camp Murray. The study area generally encompasses those communities within two miles of the JBLM boundary.

Policy PFS-3.4 Major essential public facilities that generate substantial travel demand should be sited along or near major transportation and public transit corridors.

Policy PFS-3.5 If Tacoma is selected as a site for a regional or statewide essential public facility, or is otherwise impacted by a regional or statewide facility's development, expansion or operation, ensure that impacts on Tacoma are mitigated.

Policy PFS-3.6 Active public involvement at the earliest point in the siting process shall be encouraged through timely notification, public meetings, and hearings.

Policy PFS-3.7 Notify and coordinate with adjacent jurisdictions that are affected by the siting of an essential public facility. Equitable distribution of facilities for the populations they serve will be cooperatively established through inter-local agreements in order to ensure that all jurisdictions share the burden of providing essential public facilities.

Policy PFS-3.8 Protect the viability of existing airports as essential public facilities by encouraging compatible land uses and reducing hazards that may endanger the lives and property of the public and aviation users. Evaluate and implement appropriate policy and code amendments recommended by the Joint Base Lewis-McChord Joint Land Use Study (JLUS).

NEEDS + PRIORITIES FOR PUBLIC FACILITY IMPROVEMENTS

Tacoma strives to provide adequate public facilities and services, as efficiently and cost-effectively as possible, to serve both existing and new development. Such facilities and services will be designed to meet the capital facility needs of the community and to support Tacoma's land use growth and development concept. In situations where the public facility is not owned directly by the City, the City will encourage the provision of adequate services and coordinate with the responsible agency. Additionally, the City requires certain public facilities and services to be available concurrent with development (shown in Table 8).

A significant factor in determining the need for and priorities among capital improvements is the level of service. It is an indicator of the extent or degree of service provided by a facility. The levels of service are the

minimum thresholds necessary to adequately serve future development, as well as the minimum thresholds to which the City will strive to provide for existing development.

The City will select and budget capital projects through the preparation of the Capital Facilities Program, which is the City’s multi-year plan for capital improvements.

GOAL PFS-4 Provide public facilities that address past deficiencies, particularly those in underserved areas, meet the needs of growth, and enhance the quality of life through acceptable levels of service and priorities.

Policy PFS-4.1 Use the following levels of service, in combination with current needs analysis of providers, to determine the need for public facilities, test the adequacy of such facilities to serve proposed development concurrent with the impacts of the development, and ensure that appropriate levels of capital resources are allocated.

LEVEL OF SERVICE

(LOS) describes the amount, type or quality of facilities needed to serve the community. It establishes a minimum threshold for provision of services and facilities.

TABLE 8. Level of Service Standards for Concurrency

PUBLIC FACILITIES	LEVEL OF SERVICE STANDARD
Electric Utilities	Voltage level + or- 5%; Average annual system outage duration 75 minutes or less
Transportation Pedestrian Bicycle Transit Auto/Freight	The system completeness LOS as defined in the <i>Transportation Master Plan</i>
Sanitary Sewers Maximum Month Flow Peak Hydraulic or Peak—Instantaneous Flow	200 gallons per capita per day (GPCD) 400 gallons per capita per day (GPCD)
Solid Waste	1.13 tons per capita per year
Storm Water Management Private facilities less than 24 inches in diameter All public facilities, and private facilities greater than or equal to 24 inches in diameter	10 year, 24 hour design storm 25 year, 24 hour design storm
Water (Potable)	442 gallons per day per Equivalent Residential Unit (ERU) and/or as contained in Tacoma Water’s current Washington State Department of Health approved water system plan



Tacoma Public Library

Policy PFS-4.2 Maintain level of service standards and provide capital improvements needed to achieve and maintain the standards for existing and future populations.

Policy PFS-4.3 Use the following levels of service to assist in determining the need for public facilities, and as a management tool for monitoring the sufficiency of the facilities:

TABLE 9. Level of Service Standards Not Subject to Concurrency

PUBLIC FACILITIES	LEVEL OF SERVICE STANDARD
Emergency Medical Services (EMS)	0.016 units per 1,000 people
Fire	0.109 apparatus per 1,000 people
Law Enforcement	288.58 square feet of facility space per 1,000 people
Library	60 square feet per 1,000 circulation
Parks	
Local	3 acres per 1,000 people, and within ¼ mile of all residents
Regional	7 acres per 1,000 people
Open Space/Wildlife Habitat	2 acres per 1,000 people

Note: These LOS standards are subject to periodic review and updates by providers. This table will be updated to reflect current information as part of the annual Comprehensive Plan review process.

Policy PFS-4.4 Coordinate with other agencies to ensure that the levels of service are consistent between the providers' plans and this Element, and that the providers can continue to achieve their level of service over the 20-year timeframe of the Comprehensive Plan.

Policy PFS-4.5 Identify needs for additional public facilities and services based on adopted levels of service and forecasted growth, and determine the means and timing for providing needed additional facilities.

Policy PFS-4.6 Provide public facilities and services that achieve the levels of service concurrent with development as defined in City code and Washington State Law.

Policy PFS-4.7 Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at

the time the development is available for occupancy or use, or within a reasonable time as approved by the City, without decreasing current service levels below locally established minimum standards.

Policy PFS-4.8 Jointly develop with other jurisdictions level of service standards for City of Tacoma owned utilities that provide service within their boundaries.

Policy PFS-4.9 Provide equitable levels of service by accounting for existing community conditions, considering how decisions will impact varied geographic, racial and socio-economic groups, and embedding service equity criteria into decision-making processes

Policy PFS-4.10 Consistent with the other policies within this section and the Comprehensive Plan, prioritize capital improvements that meet one or more of the following criteria:

- a. Addresses a public health or safety concern
- b. Is needed to correct existing public facility and services deficiencies or replace key facilities that are currently in use and are at risk of failing
- c. Aligns with *Tacoma 2025*
- d. Is required or mandated by law
- e. Has a high level of public support
- f. Is financially responsible, for instance by leveraging grant funding or other non-City funding sources, reducing operating costs, avoiding future costs, or by having a sustainable impact on the operating budget
- g. Reduces greenhouse gas emissions or supports the adaptation to climate change

Projects that meet one or more of criteria (a) through (g) will be further reviewed to determine the extent to which it supports the following:

- h. The project improves the equitable access to public facilities and services
- i. The project is located within a designated center and is intended to stimulate or respond to growth and development within the designated centers
- j. The project is located on a corridor serving a center or within a designated 20-minute neighborhood



*Street sweeper operated
by Tacoma's Environmental
Services Department*

ECONOMIC DEVELOPMENT + NEIGHBORHOOD REVITALIZATION

Public facilities and services are one of the most direct ways to help develop and sustain a safe, healthy and livable community, as well as a balanced and vibrant economy. Strategic use of public funds that assist and encourage private investment and development will foster economic diversity and vitality, preserve quality neighborhoods, and support the health and economic opportunity of underinvested communities.

Since a deteriorating infrastructure may well be an economic deterrent, it is desirable for the City to maintain its facilities to both attract and retain private enterprise and residents. Tacoma will use its limited resources to its best advantage by strengthening the link between economic development planning and public facilities planning, and emphasizing the support role that infrastructure and capital improvements provide to development and neighborhoods.

GOAL PFS-5 Strengthen the economic base, diversify industrial and commercial enterprises, increase employment opportunities, increase the income level of residents, and enhance and revitalize neighborhoods and mixed-use centers.

Policy PFS-5.1 Encourage projects which stimulate the economy by expanding employment opportunities, strengthening the tax base or providing for private investment opportunities.

Policy PFS-5.2 Encourage the development of capital improvement projects that promote tourism and convention trade.

Policy PFS-5.3 Encourage capital improvements in areas with existing service disparities and those areas in need of neighborhood revitalization and provide services to neighborhoods at a level commensurate with the respective needs of each.

Policy PFS-5.4 Support economic revitalization through encouraging early installation of utilities infrastructure to create pad-ready development sites.

Policy PFS-5.5 Initiate and encourage programs that improve and maintain the physical environment of the City's designated centers, corridors, and business districts.

Policy PFS-5.6 Use capital facility improvements within mixed-use centers to enhance and revitalize these areas, support compact development and encourage transit use.

Policy PFS-5.7 Identify and implement infrastructure improvements which enhance the viability and attractiveness of manufacturing/industrial centers and stimulate growth of new and existing manufacturing and industrial businesses.

FINANCIALLY FEASIBLE

Public facilities and services are expensive, and their costs generally increase from one year to the next. But the money to pay for the growing costs is subject to many limits. State and federal grant funds are usually restricted to specific types of improvements and are often one-time funds for unique purposes. The amount of grant funding has decreased with changes in policies at state and national levels. Real estate excise taxes and impact fees are the only additional sources provided by GMA, and both are subject to the ups and downs of the real estate market. Citizens are reluctant to tax themselves further to pay for expensive facilities unless there are compelling reasons for the improvements. In spite of the financial obstacles facing local governments today, the City needs to provide funding for public facilities and services to meet existing and future needs.



Construction on Pacific Ave

GOAL PFS-6 Ensure that planned public facilities are financially feasible.

Policy PFS-6.1 Identify specific sources and realistic projected amounts of public money that will provide full funding for the capital improvement projects needed for existing and future development.

Policy PFS-6.2 Identify the public process and actions needed to develop and implement new or increased sources of revenue that are needed to make the Public Facilities and Services Element financially feasible.

Policy PFS-6.3 Ensure that existing and future developments pay for some or all of the costs of capital improvements or new facilities that are deemed necessary, by reason of their respective developments, to reduce existing deficiencies or replace obsolete facilities.

Policy PFS-6.4 Consider specific funding strategies subject to the policy criteria described for each of the following:

- a. Charge impact fees when the City Council determines that new development should pay its proportionate share of the public facilities that it needs.
- b. Use grants, public/private partnerships, and investments by businesses locating in Tacoma to leverage local funding.
- c. Use debt when the City Council determines that it is appropriate to advance the construction of priority capital improvements and to amortize the cost over the life of the public facility.
- d. Encourage public-private partnerships to finance infrastructure and public facilities which fulfill mutual interests of the public and private sectors.
- e. Facilitate the formation of local improvement districts to construct needed infrastructure improvements.

Policy PFS-6.5 If projected funding is inadequate to finance needed public facilities that provide the City's adopted levels of service, adjust the level of service, the planned growth, and/or the sources of revenue to maintain a balance between available revenue and needed public facilities.

Policy PFS-6.6 Use the City's Capital Facilities Program as the short-term processes for implementing the long-term Public Facilities and Services Element.

Policy PFS-6.7 Work with other providers of public facilities to ensure that their individual capital improvement plans are financially feasible.

Policy PFS-6.8 Consider the fiscal impacts of major public projects or projects involving the expansion of capacity or service areas as a major factor in the selecting and budgeting of capital projects.

Policy PFS-6.9 Programming flexibility shall be provided for appropriate public facilities projects to allow for contingent expenditures needed to

respond to emergency situations or to obligate unexpected funds that become available.

Policy PFS-6.10 Ensure that the operating and maintenance costs of a facility are financially feasible prior to constructing the facility.

DESIGNED + LOCATED FOR COMMUNITY VALUES

Tacoma needs public facilities and services that are equitably distributed throughout the community; located and designed to be safe and convenient to the people they serve; provide flexible use and maximum efficiency; and are compatible with adjacent uses and the environment.

Tacoma can also pursue alternatives to developing additional facilities. Design standards and conservation can be used as mechanisms to defer additional facilities.

The built environment also has an aesthetic role in the community. The use and appearance of public utilities which are exposed to public view or have public access can enrich our lives through attention to use, design, aesthetics and location. Facilities can be located and designed to complement the aesthetics, social interactions and urban design of the community.

Older public facilities sites, structures, or equipment may have historical or cultural values that deserve physical or photographic preservation.

GOAL PFS-7 Design, locate and provide public facilities with features and characteristics that support the environment, energy efficiency, aesthetics, technological innovation, cost-effectiveness, livability, sustainability, and equity.

Policy PFS-7.1 Design natural infrastructure into projects whenever feasible to mimic ecological processes and minimize the need for built infrastructure.

Policy PFS-7.2 Incorporate consideration of physical health and well-being into decisions regarding the location, design, and operation of public facilities.

Policy PFS-7.3 Incorporate community values and goals in decisions on location, design, and operation of facilities.



TacomaFIRST Customer Support Center at the Tacoma Municipal Building



Volunteers replace asphalt with plantings along Division Ave and Sprague Ave to compliment the City's adjacent new rain garden



Volunteers attach “No Dumping, Drains to Puget Sound” markers next to storm drains

Policy PFS-7.4 Provide public facilities that support and implement sustainability, reduction of greenhouse gas emissions, and environmental stewardship, and evaluation of their carbon footprints.

Policy PFS-7.5 Reduce energy use and consumption of potable water by city buildings and operations, and promote the use of renewable energy sources.

Policy PFS-7.6 Use environmentally sensitive building techniques and low impact surface water methods.

Policy PFS-7.7 Design public facilities that are oriented towards and accessible by transit and non-motorized modes of travel.

Policy PFS-7.8 Ensure that public facilities preserve registered historical sites and provide cultural enrichment.

Policy PFS-7.9 Promote the co-location of public facilities, when feasible, to enhance efficient use of land, reduce public costs, reduce travel demand, and minimize disruption to the community.

Policy PFS-7.10 Promote water reuse and water conservation opportunities that diminish impacts on water, wastewater, and surface water systems.

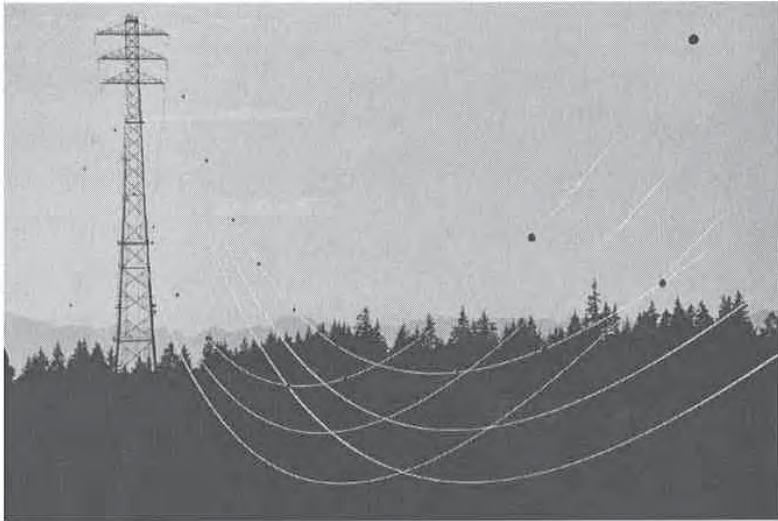
Policy PFS-7.11 Consider maintenance, replacement, rehabilitation or reuse of existing facilities to meet the projected needs before planning for major investments in new facilities.

Policy PFS-7.12 Support and encourage habitat restoration within utility properties and corridors which are intended to remain relatively undeveloped and can support significant habitat functions while accommodating vegetation management necessary for the safe operation and maintenance of utility features.

Policy PFS-7.13 Design, locate and build public facilities that are models for the private sector.

Policy PFS-7.14 Encourage public facilities visible to the public or used by the public to be of the highest design quality by implementing a City-sponsored design review process.

Policy PFS-7.15 Whenever feasible, ensure that utilities in designated centers, business districts, and priority pedestrian areas are undergrounded.



MAINTAINED FOR THE FUTURE

Maintenance of public facilities is important to protect the public's investment in them. A comprehensive maintenance program includes: 1) an inventory and assessment of existing facilities; 2) a routine preventative maintenance schedule; and 3) an evaluation of the maintenance needs of proposed new facilities.

GOAL PFS-8 Equitably maintain public facilities so that they are reliable, functional, safe, sanitary, clean, attractive, and financially sustainable.

Policy PFS-8.1 Maintain public spaces and public facilities and enhance their appearance.

Policy PFS-8.2 Develop, adopt and use schedules and plans for replacement of public facilities upon completion of their useful lives.

Policy PFS-8.3 Provide public facilities that minimize operating and maintenance costs of the facility.

Policy PFS-8.4 Operate and manage public facilities to minimize their carbon footprints.

BACKGROUND INFORMATION

OVERVIEW

The Growth Management Act (GMA) requires communities to plan for capital facilities and utilities to ensure that there is an adequate level of public facilities and services in place to meet community needs over time. As shown in Table 10, public facilities and services in Tacoma are provided by the City and by other entities. The following pages contain background information about these different types of public facilities and services. The information, together with the provider plans that are adopted by reference in this element, is intended to meet GMA requirements and provide a discussion of location and capacity of utilities as well as a discussion of inventory, future needs, capital projects and financing for capital facilities. Figure 39 shows the location of some of the key public facilities in Tacoma.

TABLE 10. List of Public Facilities + Service Providers

TYPE	PROVIDER
Provided by City	
Electric	Tacoma Public Utilities
General Municipal Facilities	Public Works Department
Fire	Fire Department
Libraries	Tacoma Public Libraries
Police	Police Department
Solid Waste	Environmental Services Department
Stormwater	Environmental Services Department
Wastewater	Environmental Services Department
Water	Tacoma Public Utilities
Provided by City + Other Entities	
Parks (including special public assembly facilities)	Public Works Department, Environmental Services Department Metro Parks Tacoma
Telecommunications	Tacoma Public Utilities Private providers
Transportation	Public Works Department Tacoma Public Utilities Pierce Transit Sound Transit
Provided by Other Entities	
Natural Gas	Puget Sound Energy
Schools	Tacoma Public Schools



FIGURE 39. Key Public Facilities

TACOMA PUBLIC UTILITIES (TPU)

TPU was formed in 1893 when the City of Tacoma purchased the water and electrical systems of the Tacoma Water and Light Company for \$1.75 million. TPU provides water, electric, telecommunications and rail service to the greater Tacoma area, including nearby cities and unincorporated areas. The Tacoma City Charter provides for Tacoma Public Utilities to be governed by a five-member Public Utility Board. The Tacoma City Council appoints the five Public Utility Board members to five-year terms. While the Public Utility Board is the governing body and provides policy guidance, some matters, such as issuing bonds and fixing utility rates, also require formal Tacoma City Council approval.



TPU power line workers

Over the next 25 years, the City plans to continue to work with service providers to maintain existing infrastructure and invest in expanded or new infrastructure to support planned growth and the development patterns that are called for in the Land Use Element. The City will also continue providing water, electric, and telecommunications services to areas outside of its boundaries through Tacoma Public Utilities (TPU) in coordination with the relevant jurisdictions.

PUBLIC FACILITIES + SERVICES PROVIDED BY THE CITY

Electricity

The City of Tacoma's 2015 Capital Facilities Program and TPU's 2011 *Transmission and Distribution Horizon Plan* and 2013 *Integrated Resource Plan* provide an inventory of existing facilities, forecast of future needs, proposed projects and financing for proposed projects. These plans are adopted by reference herein. A summary of this information is provided below.

TPU's power utility serves a 180 square mile area that includes the cities of Tacoma, University Place and Fircrest; portions of the cities of Fife, Lakewood, Federal Way and Steilacoom; Joint Base Lewis-McChord; and portions of Pierce County as far south as Roy. The area is diverse, ranging from industrial and high-density urban areas to sparsely populated rural areas.

TPU acquires its power from a diverse mix of resources. The utility's present power requirements are supplied from seven hydroelectric dams owned by TPU, purchases from hydroelectric resources owned by others, purchases



TPU's administration building

from the Bonneville Power Administration, and through contractual arrangements with the Grand Coulee Project Hydroelectric Authority and Grant County Public Utility District. Additional power supplies are procured from the wholesale energy market through both short-term and medium-term contracts as needed. TPU's transmission system is interconnected with the regional transmission network and includes high voltage 230 kV facilities and high voltage 115 kV facilities. The transmission facilities provide wholesale transfer service, integrate generation and serve retail loads. TPU also owns, operates, and maintains overhead and underground distribution facilities to serve its customers. This includes both 12.5 kV and 13.8 kV distribution lines, which are fed from distribution substations.

From the 1990s to the early 2000s, TPU's overall load decreased from around 660 aMW per year to around 550 aMW. TPU's conservation efforts were likely partially responsible for the decrease, as well as the economic recession. Conservation is an integral component in TPU's resource strategy. From 1990 to 2012, the utility spent approximately \$101.2 million on conservation. Because of these expenditures, TPU's overall load in 2012 was estimated to be 35 aMW lower than it would otherwise have been.

TPU has sufficient surplus energy to meet forecast loads well into the 2020's. Over the past decade, the utility has experienced load growth. Loads are forecasted to reach pre-2000 levels again around 2028. The

South Service Area (which includes communities south of Tacoma), Tideflats (which includes the Port of Tacoma), and downtown Tacoma are expected to experience the most load growth. Tacoma Power anticipates transmission constraints in meeting future load growth, system reliability and operational flexibility. It will be necessary to address these transmission constraints in order to operate and maintain a reliable and safe system. Certain high load growth areas will also require one or more new distribution substations and expansion of the existing distribution substations to meet the future load. Furthermore, aging electrical facilities require replacement programs to ensure the system is reliable. Projects planned for the next six years are shown in Table 11.

TABLE 11. 2015–2020 Power Capital Projects + Funding Sources

PROJECT	2015-2020 EXPENDITURES	FUNDING SOURCES
CLICK! Network & Electrical Systems Reliability	\$16,549,000	Utility participation
General Plant Improvements	37,591,440	Utility participation
Power Generation Facility Improvements	148,571,700	Utility participation
Power Management	65,743,000	Utility participation
Transmission and Distribution Projects	190,337,000	Utility participation
Utility Technology Services—Smart Grid	52,407,000	Utility participation
TOTAL	511,199,140	

Source: Tacoma 2015 Capital Facilities Program

General Municipal Facilities + Other Community Facilities Projects

The City of Tacoma’s 2015 Capital Facilities Program provides an inventory of existing facilities, forecast of future needs, proposed projects and financing for proposed projects. A summary of this information is provided below.

The City’s general municipal facilities provide locations to directly serve the public and to house City employees. The City has five such facilities, including the Fleet Services located at 3639 S Pine St, Municipal Service Center located at 1224 Martin Luther King Jr. Way, Tacoma Municipal Building located at 747 Market St, Union Station located at 1717 Pacific Ave and Tacoma Municipal Building North located at 733 Market St.



Environmentally friendly vehicle from the City of Tacoma fleet

Within the next six years, there is the need to maintain existing facilities. Also, the City plans to construct a new consolidated Public Works Maintenance Facility. The proposed facility is approximately 28,500 square feet and will provide parking for service vehicles. Given the City's population growth target, it is likely that additional capital improvements including new or expanded general municipal facilities will be needed by 2040. Capital projects planned for the next six years are listed in Table 12.

TABLE 12. 2015–2020 General Municipal Facility Capital Projects + Funding Sources

PROJECT	2015–2020 EXPENDITURES	FUNDING SOURCES
ADA Transition Plan Implementation	\$516	Debt financing (2010 LTGO Bond D)
Municipal Complex—Deferred Maintenance	2,680,000	City fund 5700 (municipal building acquisitions and operations)
Municipal Complex—Elevator Upgrades	1,311,487	City fund 3211 (capital projects), City fund 5700 (municipal building acquisitions and operations), REET contribution
Municipal Complex—Exterior	3,000,000	City fund 5700 (municipal building acquisitions and operations)
Municipal Complex—Fire Pump Replacement	200,000	City fund 5700 (municipal building acquisitions and operations)
Municipal Complex—Interior & Access Improvements	814,483	City fund 5700 (municipal building acquisitions and operations)
Municipal Complex—Mechanical & Electrical Replacement	300,000	City fund 5700 (municipal building acquisitions and operations)
Municipal Complex—Shower & Locker Facility	500,000	City fund 5700 (municipal building acquisitions and operations), city fund 0010 (general fund)
Municipal Complex—Various Tenant Improvements	1,200,000	City fund 5700 (municipal building acquisitions and operations)
Public Works, Proposed New Maintenance Facility	10,000,000	Debt financing
Public Works, Streets Operations, Deferred Maintenance ¹	1,676,000	City fund 5700 (municipal building acquisitions and operations)
TOTAL	21,682,486	

¹ Deferred maintenance refers to maintenance projects that were previously planned but postponed due to lack of funding or other factors.

Source: Tacoma 2015 Capital Facilities Program

In addition to general municipal facilities, the City also makes capital investments in other types of community facilities projects including arenas, stadiums and theaters; exhibition and convention facilities; community and human service facilities; and community development projects. Table 13 shows the total cost and funding sources for these types of projects that are planned for the next six years. Please see the 2015 Capital Facilities Program for additional details.

TABLE 13. 2015–2020 Community Facilities Capital Projects + Funding Sources

PROJECT	2015-2020 EXPENDITURES	FUNDING SOURCES
Arenas, Stadiums + Theaters	\$38,840,000	City fund 0010 (general fund), City fund 3211 (capital projects), City fund 4180 (Tacoma Dome capital reserve)
Exhibition + Convention Facilities	450,000	City fund 4165 (convention center)
Community + Human Service Facilities	9,567,464	City fund 0010 (general fund), City fund 5700 (municipal building acquisitions and operations), debt financing, state grants, Metro Parks Tacoma contribution
Community Development Projects	114,769,851	City fund 0010 (general fund), City fund 1060 (gas tax), City fund 3211 (capital projects), City fund 6660 (Foss Waterway Agency fund), debt financing, state grants, federal grants, property owner assessments, REET contribution, utility participation, additional funding TBD
TOTAL	163,627,315	

Source: Tacoma 2015 Capital Facilities Program



Tacoma Fire Department

Fire + Emergency Medical Service

The City of Tacoma’s 2015 Capital Facilities Program and the Tacoma Fire Department’s Facilities Master Plan provide an inventory of existing facilities, forecast of future needs, proposed projects and financing for proposed projects. The Tacoma Fire Department’s Facilities Master Plan is adopted herein. A summary of this information is provided below.

The Tacoma Fire Department is responsible for delivering fire protection, emergency rescue and EMS to residents of a 71.6 mile service area

including Tacoma, Fife, Fircrest and the unincorporated area of Pierce County protected by Pierce County Fire District 10. The Department's inventory of fire assets includes 18 fire stations, a marine security joint operations center, alarm repair building, central fire alarm, radio repair facility, training center, vehicle shop, prevention center and 32 fire apparatus (ladder trucks, engines, fireboats, command units, air units, hazardous materials units, water tender units, technical rescue support vehicles, and emergency medical support vehicles and units). Additionally, two fire stations located in Fife and Fircrest, owned by Pierce County Fire District No. 10 and the City of Fircrest respectively, provide fire protection and emergency medical service through joint service agreements with those. Fire Station 6 (1015 E. "F" Street) has been temporarily closed as a result of reductions in the General Fund 2011–2012 and 2013–2014 budgets due to the impact of the Great Recession.



Tacoma Fire Department

The Department's mission drives its service delivery model—an operational structure and response system that ensures it is always prepared and ready to respond to any type of emergency. The Department recently completed a comprehensive assessment of its facilities needs with a goal of more effectively mitigating risk to the community and as part of its Commission on Fire Accreditation International (CFAI) reaccreditation effort. The assessment included development of a Facilities Master Plan and Standards of Cover (level of service standards). It found that the Department needs to replace and remodel existing facilities and create a campus facility to improve operational efficiency. Seventy-two percent of existing fire stations and facilities are 40 to 100 years old and many are well beyond their useful life expectancy.

The Department's Facilities Master Plan calls for replacing Stations 1, 2, 4, 6, 7, 9, 10, 11, 13, 14, 15 and creating one new station; remodeling Stations 3, 5, 8, 12, 16, 17, 18; and creating a campus facility. The estimated combined cost for these projects is \$180–190 million. City staff were planning to propose a multi-year levy or capital bond to help finance the projects but this financing strategy was delayed due to the Great Recession. Projects planned for the next six years are focused on maintaining existing facilities and are shown in Table 14 on the following page. The City will consider the projects called for in the Department's *Facilities Master Plan* during the Comprehensive Plan timeframe (2015–2040).

TABLE 14. 2015–2020 Fire Capital Projects + Funding Sources

PROJECT	2015–2020 EXPENDITURES	FUNDING SOURCES
Fire Facilities Deferred Maintenance ¹ , Exterior Repairs	\$1,500,000	City debt financing (2010 LTGO Bond E)
Fire Facilities Deferred Maintenance, HVAC Repair	640,000	City fund 5700 (municipal building acquisitions and operations)
Fire Facilities, Deferred Maintenance	8,280,000	City fund 5700 (municipal building acquisitions and operations)
Marine Security Operations Center ²	0	City debt financing (2009 LTGO Bond D, 2010 LTGO Bond E), federal grant
Port Area Fire Station Improvements	3,200,000	*Funding sources TBD, if no funding is secured the project will be delayed
Renovation & Remodeling of Existing Fire Stations	350,000	City fund 3211 (capital projects)
TOTAL	\$13,970,000	

1 Deferred maintenance refers to maintenance projects that were previously planned but postponed due to lack of funding or other factors.

2 There are no new expenditures planned for 2015–2020 for the Marine Security Operations Center project due to carryover funding from prior years.

Source: Tacoma 2015 Capital Facilities Program

Libraries



The Northwest Room and Special Collections at the Tacoma Public Library

The City of Tacoma’s 2015 Capital Facilities Program provides an inventory of existing facilities, forecast of future needs, proposed projects and financing for proposed projects. Tacoma Public Library staff provided updated input on forecast of future needs as part of the Comprehensive Planning process. A summary of this information is provided below.

Tacoma Public Library provides library services to residents of Tacoma. There are currently eight library facilities open to the public. The main library is located at 1102 Tacoma Ave and the other seven are distributed in neighborhoods throughout the City. In recent years the City has struggled to maintain existing facilities with limited funding. It has had to reduce open hours and to close two library facilities—the Martin Luther King

Branch at 1902 S Cedar and the Swan Creek Branch at 9828 Portland Ave E. Tacoma Public Library has seen an increase in use of digital resources and services in recent years and anticipates that this demand will continue to grow. The library is partnering with institutions and schools to increase patrons' ability to access library resources.

Over the coming years, the City plans to maintain existing library facilities. There is a need to develop a capital facilities plan with a detailed strategy for maintenance and repairs. If buildings are properly maintained, the library system has the capacity to meet increasing demand through 2040 by expanding open hours and by increasing digital access. Currently, facilities are open 40-45 hours per week and could be open as much as 65-70 hours per week with the proper funding. Capital projects planned for the next six years are listed in Table 15.

TABLE 15. 2015–2020 Library Capital Projects + Funding Sources

PROJECT	2015-2020 EXPENDITURES	FUNDING SOURCES
Fern Hill Library Refurbishment	\$450,900	City fund 0010 (general fund)
Kobetich Branch Refurbishment	65,000	City fund 0010 (general fund)
Libraries Automatic Doors Replacement	480,000	City fund 0010 (general fund)
Library Heat Pump Replacements Master Plan	260,000	City fund 0010 (general fund)
Library Parking Lot Resurfacing Master Plan	80,000	City fund 0010 (general fund)
Main Branch Refurbishment	1,050,000	City fund 0010 (general fund)
Main Library Elevator Upgrade	80,000	City fund 0010 (general fund)
Moore Branch Refurbishment	80,000	City fund 0010 (general fund)
South Tacoma Library Refurbishment	309,000	City fund 0010 (general fund)
Swasey Library Refurbishment	1,071,000	City fund 0010 (general fund)
Wheelock Refurbishment	600,000	City fund 0010 (general fund)
TOTAL	\$4,525,900	

Source: Tacoma 2015 Capital Facilities Program



Tacoma Police Headquarters



Tacoma Police Department

Police

The City of Tacoma’s 2015 Capital Facilities Program provides an inventory of existing facilities, forecast of future needs, proposed projects and financing for proposed projects. A summary of this information is provided below.

The Tacoma Police Department provides law enforcement for the City of Tacoma. Police facilities include the Police Headquarters located at 3701 South Pine Street, five substations, a firing range and a warehouse. Their combined square footage is 85,043 feet. Tacoma’s level of service standard for police facilities is 288.58 square feet per 1,000 people. The City is currently exceeding this standard. However, based on Tacoma’s population growth target, the City will require an additional 9,582 square feet by 2040 to maintain this standard. The City will consider expanding existing facilities or constructing a new facility to meet the projected need for additional police facilities. The police department has adequate capacity for the next six years and more. Capital projects planned for the next six years are listed in Table 16 and are focused on maintaining existing facilities.

TABLE 16. 2015–2020 Police Capital Projects + Funding Sources

PROJECT	2015–2020 EXPENDITURES	FUNDING SOURCES
Police Headquarters, LEED EBOM	\$150,000	City fund 5700 (municipal building acquisitions and operations)
Police Sector 4 (McKinley), Deferred Maintenance ¹	707,000	City fund 5700
Police—Fleet Warehouse, Deferred Maintenance ¹	765,000	City fund 5700
Police—Fleet Warehouse, Rooftop Unit Replacements	800,000	City fund 5700
TOTAL	\$2,422,000	

¹ Deferred maintenance refers to maintenance projects that were previously planned but postponed due to lack of funding or other factors.

Source: Tacoma 2015 Capital Facilities Program

Solid Waste

The City of Tacoma’s 2015 Capital Facilities Program provides an inventory of existing facilities, forecast of future needs, proposed projects and financing for proposed projects. A summary of this information is provided below.

The City provides solid waste collection service for single and multi-family housing units, commercial and industrial customers and all other solid waste customers within the City limits. Every other week garbage collection service is mandatory for all residents. Recycling and yard waste collection is an optional biweekly service that is available at no additional cost to residential customers.

The City owned and operated the Tacoma Landfill at 3510 S Mullen St from 1960 to 2013. Since the closure of the active landfill, the site continues to operate as a base of operations and as a transfer station and material recovery facility. The City, under a 20-year contract with Pierce County that was established in 2000, delivers all items that cannot be processed, non-recyclable materials, and waste to the 304th Street Landfill located in Pierce County.

Current landfill capacity is expected to be sufficient for at least six years. Before the City’s contract with Pierce County expires in 2020, the City will have the option to extend or renegotiate the contract, or to put out a bid for alternative landfill services. The City does not anticipate constructing a new landfill in the future. The City is currently working to develop a waste management plan and is studying ways to divert waste from the landfill, which may help to reduce the rate of increasing demand for solid waste service between now and 2040. There is only one capital project planned for the next six years, as shown in Table 17.



Tacoma Solid Waste Management crews delivery larger garbage containers to homes in North Tacoma



A hydraulic hybrid garbage collection truck consumes 33% less fuel than a traditional garbage truck

TABLE 17. 2015–2020 Solid Waste Capital Projects + Funding Sources

PROJECT	2015–2020 EXPENDITURES	FUNDING SOURCES
Upgrades and Maintenance to 3510 S Mullen St Facility	\$17,153,000	Utility participation

Source: Tacoma 2015 Capital Facilities Program



Environmental Services inspects its stormwater pipes using a hydraulic-powered video camera

Stormwater

The City of Tacoma's 2015 Capital Facilities Program provides an inventory of existing facilities, forecast of future needs, proposed projects and financing for proposed projects. A summary of this information is provided below.

The City's stormwater infrastructure includes over 775 miles of pipe and ditch flow paths, 26 holding basins, four pump stations, 660 outfalls, over 11,000 manholes and over 22,500 catch basins. Once it enters the system, stormwater is conveyed to various water courses or bodies in and around the City. All stormwater eventually ends up in Puget Sound. There are a limited number of streets within the City that have no storm pipes or ditches. Surface water on these streets flows to the nearest stormwater facility or is absorbed into the ground. These streets are not concentrated in any particular area.

The City is constantly working to maintain, upgrade and expand its stormwater system. It anticipates continuing to do so for the foreseeable future, with an increasing emphasis on green infrastructure. Determinations are made by the City on a case-by-case basis regarding whether there is adequate capacity to serve new development within established level of service standards. If this cannot be accomplished, detention facilities are required that comply with the current State Surface Water Management Manual. Capital projects planned for the next six years are listed in Table 18.

TABLE 18. 2015–2020 Stormwater Capital Projects + Funding Sources

PROJECT	2015–2020 EXPENDITURES	FUNDING SOURCES
Asphalt Plant Site Cleanup	\$471,788	State grant, City fund 0010 (general fund)
Asset Management Program	40,688,700	Utility participation
Facilities Projects	11,500,000	Utility participation
Ongoing LID/Extension Projects	7,050,000	Utility participation
Treatment + Low Impact Projects	6,570,000	Utility participation
TOTAL	\$66,280,488	

Source: Tacoma 2015 Capital Facilities Program

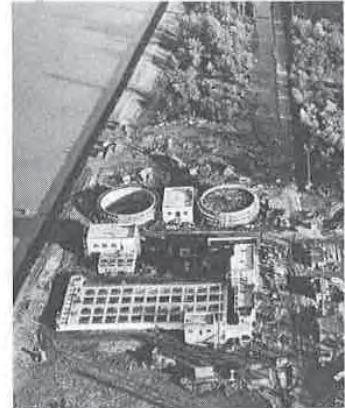
Wastewater

The City of Tacoma's 2015 Capital Facilities Program provides an inventory of existing facilities, forecast of future needs, proposed projects and financing for proposed projects. A summary of this information is provided below.

Tacoma's wastewater facilities include the Central, North End and Western Slopes Wastewater Treatment Plants, over 3.5 million feet of main and sewer flow paths and 45 pump stations. The Central and North End Wastewater Treatment Plants provide sanitary sewer service to Tacoma, Ruston, Fircrest, Fife, Milton, parts of Federal Way and parts of unincorporated Pierce County including Dash Point and Browns Point. Wastewater from Tacoma's Western Slopes service area is conveyed to the Pierce County Chambers Creek Facility for treatment. The Western Slopes Wastewater Treatment Plant was taken out of service in 1990.

Between the Central and North End Wastewater Treatment Plants and the City's agreement with Pierce County, the City currently has a total permitted peak hydraulic treatment capacity of 179.9 MGD. This treatment capacity, and the capacity of the overall collection system, is sufficient to meet anticipated demand for the next six years or more. However, collection system capacity is not uniformly distributed throughout the system and no guarantee can be made that there is capacity in every line for every new development. Determinations are made by the City on a case-by-case basis for new developments to ensure that capacity is either available in the existing collection system or is required to be provided by the applicant.

The City is planning to develop a comprehensive sewer plan in the next few years. This plan will provide a long-term strategy for the City's wastewater facilities. It is anticipated that expanded wastewater capacity will be required before 2040. To meet this need, the City will consider upgrading existing facilities, contracting for additional service or building new facilities. The City also plans to maintain and expand the existing collection system to serve projected growth. Capital projects planned for the next six years are listed in Table 19 on the following page.



Construction of the Central Wastewater Treatment Plant



North End Wastewater Treatment Plant

TABLE 19. 2015–2020 Wastewater Capital Projects + Funding Sources

PROJECT	2015-2020 EXPENDITURES	FUNDING SOURCES
Central Treatment Plant Projects	\$27,070,000	Utility participation
Collection System Projects	47,000,000	Utility participation
North end Treatment Plant Projects	3,550,000	Utility participation
Pump Station Projects	5,000,000	Utility participation
TOTAL	\$82,620,000	

Source: Tacoma 2015 Capital Facilities Program

Water

The City of Tacoma’s 2015 Capital Facilities Program provides an inventory of existing facilities, forecast of future needs, proposed projects and financing for proposed projects. A summary of this information is provided below.

TPU provides water service to residences, businesses and industries located in the cities of Tacoma, University Place, Puyallup, Bonney Lake, Fircrest, Lakewood, Federal Way, the town of Ruston and portions of Pierce and King Counties. TPU also provides wholesale water supplies to independent water purveyors operating in Pierce and King Counties, and is a participant in a regional partnership known as the Regional Water Supply System formed by Tacoma Water, the Lakehaven Utility District, the City of Kent and the Covington Water District.

TPU’s water utility facilities include two office buildings located at S 35th St and S Union Ave and at 130th Ave E and Reservoir Road, 1.2 miles of distribution mains, 150 miles of smaller distribution lines, 25 pump stations, 12 reservoirs, five standpipes and 32 wells. The Green River, located in King County, is TPU’s primary source of water. TPU’s Green River First Diversion Water Right can supply up to 73 million gallons of water each day, but is subject to minimum river flows as established in an agreement reached with the Muckleshoot Indian Tribe. The supply under this water right can be replaced with water from seven wells when water in the Green River is turbid, or cloudy. TPU’s Green River Second Diversion Water Right can provide up to 65 million gallons of water each day. The



The Green River is TPU’s primary source of water



Residential water use

supply under the Second Diversion Water Right is subject to minimum streamflow standards and is the source of supply for the Regional Water Supply System. This water right allows water to be stored in the spring behind the Howard Hanson Dam for use in the summer. In addition to surface and groundwater sources in the Green River Watershed, TPU's wells have a short-term combined pumping capacity of approximately 60 million gallons a day. Based a demand forecast conducted by TPU in 2012 that took into account peak day requirements, the utility has sufficient water capacity through 2060.



Howard Hanson Dam

TPU's Water Strategic Plan, completed in April 2012, establishes the direction and focus for Tacoma Water capital facilities planning. Capital projects planned for the next six years are listed in Table 20. Over the next twenty years, TPU plans to build a decant facility, water facilities for the Tehelah community in east Pierce County, a fish restoration facility and 4,800 linear feet of distribution mains in a newly acquired service area in Puyallup previously served by Andrain Road Water Association.

TABLE 20. 2015–2020 Water Capital Projects + Funding Sources

PROJECT	2015–2020 EXPENDITURES	FUNDING SOURCES
General Improvements	\$13,093,435	Utility participation
RWSS Cost Share Eligible Projects	1,771,094	Utility participation
Water Distribution	46,196,730	Utility participation
Water Quality	2,160,000	Utility participation
Water Supply/Transmission/Storage	35,360,391	Utility participation
TOTAL	\$98,581,650	

Source: Tacoma 2015 Capital Facilities Program

PUBLIC FACILITIES + SERVICES PROVIDED BY THE CITY + OTHER ENTITIES



Trail on the east side of Snake Lake at the Tacoma Nature Center



Roosevelt Park

Parks

Park service in Tacoma is provided by the City and by Metro Parks Tacoma. For City-owned facilities, the City of Tacoma's 2015 Capital Facilities Program provides an inventory of existing facilities, forecast of future needs, proposed projects and financing for proposed projects. The Green Vision 2030 plan provides the same information for Metro Parks Tacoma, in combination with Metro Parks Tacoma's current Capital Improvement Plan. These plans are adopted by reference herein. A summary of this information is provided below.

There are approximately 1,480 acres of active parks and 3,900 acres of passive open space within the City of Tacoma. Park and open space areas are distributed throughout the City. Active parks are parks intended to meet community needs for a wide range of recreational activities, such as playing team sports, practicing individual physical activities such as running or bicycling, playing on play equipment, having a picnic, and hosting events and classes. Passive open space includes lands that are intended to be left primarily in their natural state with little or no facility improvements.

The City and Metro Parks Tacoma have identified a need to maintain and expand parks facilities in the future. Additionally, community members have provided input that Tacoma's parks should have greater connectivity, be managed in a way that promotes environmental stewardship, provide programming that is accessible to all community members, and provide opportunities for special events and activities that improve cultural awareness and support economic development. Figure 40 shows park and recreation service area gaps in the City of Tacoma, assuming a 3/4 mile service area around active use parks.

Capital projects planned for the next six years by the City are listed in Table 21.



FIGURE 40. Park + Recreation Service Area Gaps

TABLE 21. 2015–2020 City Parks Capital Projects + Funding Sources

PROJECT	2015–2020 EXPENDITURES	FUNDING SOURCES
Central Park Phase II—Foss Master Plan	\$900,000	Metro Parks Tacoma, other funding to be determined
Chinese Reconciliation Park Phase III	382,000	City fund 1195 (open space), City fund 3211 (capital projects), grant funding
Chinese Reconciliation Park Phase IV	4,105,247	City fund 1195 (open space), other funding to be determined
Fireman's Park + Totem Pole Stabilization	57,683	City fund 0010 (general fund), City fund 1060 (public art), City fund 1195 (open space), City fund 3211 (capital projects),
Les Davis Pier—Dive Park, Tire Removal	100,000	City fund 0010 (general fund)
Open Space Access + Active Use Improvements	60,000	City fund 1195 (open space)
Site 1 Park Phase 2	50,000	Private contribution, grant funding
Stadium Way—Schuster Promenade Connector	600,000	Grant funding
Tollefson Plaza Improvements	30,000	City fund 3211 (capital projects)
Waterway Park	3,000,000	Private contribution, grant funding
TOTAL	\$9,284,930	

Source: Tacoma 2015 Capital Facilities Program



Wright Park conservatory

Metro Parks Tacoma has over 70 capital projects planned for the time period of 2015 to 2025, according to their current Capital Improvement Plan. Planned projects include improvements to existing facilities and construction of new facilities. Projects with estimated costs over \$10,000,000 are shown in Table 22. The total estimated cost of all projects (including those estimated to cost under \$10,000,000) is \$483,550,691. Anticipated funding sources include a 2014 bond, state funding, federal grant funding, Metro Parks Tacoma Foundation support, partnerships, donations, funding from the City of Tacoma and other sources.

TABLE 22. 2015–2020 Metro Parks Tacoma Capital Projects + Funding Sources

PROJECTS WITH ESTIMATED COSTS OVER \$10,000,000	ESTIMATED COST	FUNDING SOURCES
Eastside Community Center	\$30,000,000	Bond, state funding, MPT foundation funding, partnerships
Land Acquisition + Development Program	15,000,000	Bond, state funding, MPT foundation funding, City funding, other
New Maintenance Facilities	12,000,000	Bond, MPT general operating fund
North + West Community Center	18,620,000	Other
Point Defiance Marina	11,500,000	Bond, other
Point Defiance Park	121,695,000	Bond, state funding, federal grants, partnerships, donations, City funding, other
Point Defiance Zoo + Aquarium	85,400,000	Bond, MPT foundation funding
South End Recreation + Adventure (SERA) Campus	49,393,240	Bond, state funding, federal grants, MPT foundation support, partnerships, other
TOTAL	\$343,608,240	

Source: Tacoma 2015 Capital Facilities Program

Telecommunications

Telecommunications utilities in the City are provided by private companies and by TPU’s Click! service. The majority of Tacoma is served by private telecommunication providers. Their infrastructure is located throughout the City and includes lines, poles, cables, antenna, towers and system hubs. The City has a franchise agreement with private cable provider Comcast. Century Link is another private cable provider that serves the City; it is not required to have a franchise agreement under State Law due to the length of time the company has been in operation. The City also has franchise agreements with private telephone providers including Integra, Sprint, Level 3, Zayo, TW Telecom and LS Networks. The City is currently renegotiating its franchise agreement with ATT. The number of franchise agreements promotes competition among providers.

TPU’s Click! network is a state-of-the-art, carrier-grade hybrid fiber coaxial telecommunications network. It is used by TPU’s power utility

for transporting data from substations, remote terminal units and other intelligence gathering devices to a central Energy Control Center for load monitoring and management. The network also supports one of the largest two-way smart meter pilot projects in the country. While designed to support power services, TPU also uses Click! to offer telecommunication services to the public including cable television, high-speed data transport and Internet access. The system presently extends along public rights-of-way throughout the cities of Tacoma, University Place, Fircrest, Fife and portions of Lakewood and unincorporated Pierce County.

Transportation

The City of Tacoma's 2015 Capital Facilities Program and Draft Transportation Master Program provide an inventory of existing facilities, forecast of future needs, proposed projects and financing for proposed projects. A summary of this information is provided below.

Transportation facilities in Tacoma include those for pedestrians, bicyclists, transit-users, cars, and freight. These facilities are provided by the City, the State, the Port of Tacoma, private companies, and transit agencies.

Tacoma's regional setting has a strong influence on travel patterns and future capital improvement needs. The City is bounded by Puget Sound and Commencement Bay (a deep water harbor of international significance), as well as the communities of Ruston, Fife, Federal Way, Fircrest, Lakewood, University Place, and unincorporated Pierce County. Tacoma sits just north of a major military installation, the Joint Base Lewis McChord (JBLM), and is home to the Port of Tacoma. The City is bisected by two major state facilities (I-5 and SR 16) and includes other highways of regional importance (I-705 and SR 509). The City also hosts a segment of the SR 167 gap, which is among the State's top priorities for completing the highway system. Tacoma is served by Pierce Transit, Sound Transit, Intercity Transit, and numerous regional recreational trails, and other state services such as the Tahlequah Ferry and Amtrak. Given the City's location, transportation conditions in the City are strongly influenced by forces beyond the City's control, including pass-through JBLM employees, freight vehicles from the Port, and travelers commuting between Pierce County communities and employment centers to the north.



The Bridge of Glass is a key pedestrian connector between the Foss Waterway and Pacific Avenue



Freight traffic from the Port of Tacoma



I-5 and the Tacoma Dome

The City anticipates the need for significant investments in transportation facility improvements over the next 25 years given planned growth within the City and the larger region. The Draft Transportation Master Program includes a travel demand forecast and a new system completeness level of service standard to ensure that the City's transportation system is built at a rate equal or ahead of the pace of development. Appendix B of the Draft Transportation Plan includes a project list to guide the City's transportation investment priorities over the next 25 years. The types of projects on the list include multimodal conflict studies; pedestrian, bicycle and trail projects; transit projects; auto projects; rail projects; and neighborhood-level improvements.



LINK light rail in the Theater District

Capital projects planned by the City for the next six years are listed in the 2015 Capital Facilities Program and are divided into four project types. Table 23 shows the total cost and funding sources for these project types.

TABLE 23. 2015–2020 City Transportation Capital Projects + Funding Sources by Project Type

PROJECT TYPE	2015–2020 EXPENDITURES	FUNDING SOURCES
Municipal Parking Facilities	\$19,175,923	City fund 4140 (parking garages), debt financing
Municipal Railway	19,070,789	City fund 4500 (Tacoma Rail), debt financing, state grants, federal grants, Puget Sound Regional Council funding, private contribution, additional funding TBD
Non-Motorized Transportation and Streetscape	52,187,760	City fund 0010 (general fund), City fund 1060 (gas tax), City fund 1140 (gas tax/path and trail reserve), City fund 1195 (open space), City fund 3211 (capital projects), debt financing, REET contribution, state grants, federal grants, utility participation, private contribution, additional funding TBD
Road System and Amenities	285,359,073	City fund 0010 (general fund), City fund 1060 (gas tax/heavy haul), City fund 3211 (capital projects), City fund 4500 (Tacoma Rail), debt financing, REET contribution, state grants, federal grants, utility participation, Pierce Transit contribution, Port of Tacoma contribution, Puyallup Tribe contribution, private contribution, additional funding TBD
TOTAL	\$375,792,948	

Source: Tacoma 2015 Capital Facilities Program

The **TIER 1 TRANSPORTATION PROJECT LIST** is comprised of long-range transportation projects that have been evaluated as highest priority based on TMP evaluation criteria, consistency with TMP goals, and reasonable expectations for funding over the planning horizon.

The top priority transportation projects in the Draft Transportation Master Program’s long-range list are summarized in Table 24. Although specific funding sources have yet to be identified, the list was created based on reasonable expectations for future funding over the planning period.

TABLE 24. Tier 1 City Transportation Capital Projects

PROJECT TYPE CATEGORY	COST ESTIMATE (\$)	
	Low	High
New Roadway Connections and Complete Streets Improvements	165,369,469	231,340,593
Modal Conflict Studies	1,950,000	3,700,000
Bicycle/Pedestrian Projects	97,159,750	191,708,030
Neighborhood Action Strategy	134,720	545,710
Transit	41,700,000	64,050,000
	\$306,313,939	\$491,344,332

* Indicates funding through partnering agencies, such as Sound Transit or WSDOT

Source: City of Tacoma Draft Transportation Master Plan, 2015

PUBLIC FACILITIES + SERVICES PROVIDED BY OTHER ENTITIES

Natural Gas

Natural gas service is provided to Tacoma residents and businesses by Puget Sound Energy (PSE). PSE is a private utility providing natural gas and electric service to homes and businesses in the Puget Sound region of Western Washington and portions of Eastern Washington, covering 8 counties and approximately 6,000 square miles. As of March 2015, PSE provides natural gas service to approximately 38,920 customers within the City of Tacoma. PSE’s operations and rates are governed by the Washington Utilities and Transportation Commission (WUTC). PSE natural gas utility operations and standards are further regulated by the U.S. Department of Transportation (DOT), including the Pipeline and Hazardous Materials Administration (PHMSA).

To provide the City of Tacoma and adjacent communities with natural gas, PSE builds, operates, and maintains an extensive system consisting of transmission and distribution natural gas mains, odorizing stations, pressure regulation stations, heaters, corrosion protection systems, above ground appurtenances and metering systems. Transmission and distribution mains are located along public right of way throughout the City.

PSE updates and files an Integrated Resource Plan (IRP) with the WUTC every two years. The IRP identifies methods to provide dependable and cost effective natural gas service that address the needs of retail natural gas customers. Currently, PSE's supply/capacity is approximately 970 MDth/Day at peak. PSE purchases 100 percent of its natural-gas supplies. About half the natural gas is obtained from producers and marketers in British Columbia and Alberta, and the rest comes from Rocky Mountain States. All the gas PSE acquires is transported into PSE's service area through large interstate pipelines owned and operated by Williams Northwest Pipeline. PSE buys and stores significant amounts of natural gas during the summer months, when wholesale gas prices and customer demand are low, and stores it in large underground facilities and withdraws it in winter when customer usage is highest; ensuring a reliable supply of gas is available.

To meet the regional and City of Tacoma's natural gas demand, PSE's delivery system is modified every year to address new or existing customer growth, load changes that require system reinforcement, rights-of-way improvements, and pipeline integrity issues. The system responds differently year to year and PSE is constantly adding or modifying infrastructure to meet gas volume and pressures demands. Major construction activity that is anticipated in the City of Tacoma in the next 20 years includes the following: four miles of 16" high pressure gas main to serve a new liquid natural gas facility located in the Port of Tacoma and to provide system reliability to the southern service area; a new liquefied natural gas plant; potential mitigation due to Interstate-5 High Occupancy Vehicle Lane settlement; and providing new service to the Point Ruston development. PSE also plans for ongoing work to maintain the integrity of its natural gas system.

Schools

Tacoma Public Schools (TPS) is the third largest district in Washington State serving more than 28,000 children in kindergarten through grade 12. The



*Mixed-use development
in Point Ruston*

*Geiger Elementary
School courtyard*



McCarver Elementary School



*Athletic field at Stadium
High School*

district has 35 elementary schools, nine middle schools, five comprehensive high schools, and 14 alternative learning sites. These schools are located throughout neighborhoods in Tacoma and Fircrest. TPS has more than 5,000 employees and is one of the largest employers in Tacoma.

In 2013 voters approved a \$500 million bond issue that will replace or modernize 14 schools and make nearly 200 facility improvements to many other schools in the district. There are five schools that are not planned for improvements due to recent construction or high quality condition. The 14 schools planned for replacement or modernization have an average age of 74 years. They are shown in Table 25. Improvements to Washington Elementary School were completed in 2014. According to the District's construction schedule, improvements to the remaining 13 schools are planned to take place between 2015 and 2020.

The school district is in the process of developing a new 30 year master plan. The plan is targeted for completion in winter 2015/16. The City will incorporate new information from this plan into the Capital Facilities Element as part of its annual Comprehensive Plan amendment process.

TABLE 25. Location of Schools Planned for Replacement

LOCATION	SCHOOL
Eastside Neighborhood of Tacoma	Boze Elementary School Mary Lyon Elementary School
South End Neighborhood of Tacoma	Birney Elementary School Stewart Middle School
South Tacoma Neighborhood of Tacoma	Arlington Elementary School
Central Neighborhood of Tacoma	McCarver Elementary School
West End Neighborhood of Tacoma	Hunt Middle School Downing Elementary School Science and Math Institute (SAMI) Wilson High School
North Tacoma Neighborhood of Tacoma	Grant Elementary School Washington Elementary School
Northeast Neighborhood	Browns Point Elementary School
City of Fircrest	Wainwright Elementary School

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

PORT OF TACOMA, a Washington State
Municipal Corporation, ECONOMIC
DEVELOPMENT BOARD FOR
TACOMA-PIERCE COUNTY, a
Washington State Non-profit Corporation,
and the TACOMA-PIERCE COUNTY
CHAMBER, a Washington State Non-
profit corporation,

Plaintiffs,

v.

SAVE TACOMA WATER, a Washington
political committee, DONNA WALTERS,
sponsor and Treasurer of SAVE
TACOMA WATER, JON AND JANE
DOES 1-5, (Individual sponsors and
officers of SAVE TACOMA WATER),
CITY OF TACOMA, a Washington State
Municipal Corporation; and PIERCE
COUNTY, a political subdivision by and
through JULIE ANDERSON, IN HER
CAPACITY AS PIERCE COUNTY
AUDITOR,

Defendants.

No. 16-2-08477-5

DECLARATION OF KYMBERLY
K. EVANSON IN SUPPORT OF
CITY OF TACOMA'S MOTION
FOR PRELIMINARY AND
PERMANENT INJUNCTION

DECLARATION OF KYMBERLY K. EVANSON IN
SUPPORT OF CITY'S MOTION FOR PRELIMINARY
AND PERMANENT INJUNCTION - 1

10017 00013 ff13b607wn

PACIFICA LAW GROUP LLP
1191 SECOND AVENUE
SUITE 2000
SEATTLE, WASHINGTON 98101-3404
TELEPHONE: (206) 245-1700
FACSIMILE: (206) 245-1750

1 CITY OF TACOMA,
2

3 Cross-Claimant/
4 Third-Party Plaintiff,

5 v.

6 SAVE TACOMA WATER, a Washington
7 political committee, DONNA WALTERS,
8 Co-Chair and Treasurer of SAVE
9 TACOMA WATER; JON AND JANE
10 DOES 1-5, (Individual sponsors and
11 officers of SAVE TACOMA WATER);
12 and PIERCE COUNTY, a political
13 subdivision by and through JULIE
14 ANDERSON, IN HER CAPACITY AS
15 PIERCE COUNTY AUDITOR,

16 Cross-Defendants,

17 v.

18 SHERRY BOCKWINKEL, Co-Chair of
19 SAVE TACOMA WATER,

20 Third-Party Defendant.
21

22 I, Kymberly K. Evanson, declare as follows:

23 1. I am a partner at Pacifica Law Group LLP, licensed to practice in the state of
24 Washington and counsel of record for Plaintiff City of Tacoma in the above-captioned matter. I
25 am over the age of 18, am competent to testify, and offer this declaration based on my personal
26 knowledge.

27 2. Attached hereto as **Exhibit A** is a true and correct copy of proposed Citizens
Charter Amendment Initiative No. 5.

3. Attached hereto as **Exhibit B** is a true and correct copy of proposed Citizens
Initiative No. 6.

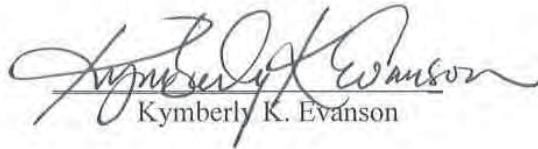
DECLARATION OF KYMBERLY K. EVANSON IN
SUPPORT OF CITY'S MOTION FOR PRELIMINARY
AND PERMANENT INJUNCTION - 2

10017 00013 ff13b607wn

PACIFICA LAW GROUP LLP
1191 SECOND AVENUE
SUITE 2000
SEATTLE, WASHINGTON 98101-3404
TELEPHONE: (206) 245-1700
FACSIMILE: (206) 245-1750

1 I declare under penalty of perjury under the laws of the State of Washington that the
2 foregoing is true and correct.

3
4 Executed this 17th day of June, 2016, at Seattle, Washington.

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Kymberly K. Evanson

DECLARATION OF KYMBERLY K. EVANSON IN
SUPPORT OF CITY'S MOTION FOR PRELIMINARY
AND PERMANENT INJUNCTION - 3

10017 00013 ff13b607wn

PACIFICA LAW GROUP LLP
1191 SECOND AVENUE
SUITE 2000
SEATTLE, WASHINGTON 98101-3404
TELEPHONE: (206) 245-1700
FACSIMILE: (206) 245-1750

EXHIBIT A

STOP THE METHANOL REFINERY **Yes!** on **5** AMENDMENT

Residents of Tacoma, University Place, Ruston, Fife, Milton, Kent, Covington, Bonney Lake, Lakewood, Steilacoom, Federal Way, the Muckleshoot and Puyallup Reservations and portions of Des Moines and Auburn are dependent on fresh water from Tacoma Public Utility, as well as the proposed methanol refinery. The proposed methanol refinery originally estimated needing to use 14 to 22 million gallons of fresh water every day (that number keeps changing), equal to what 185,000 to 291,000 residents use daily (Tacoma 2015 Population: 198,397).

CHARTER AMENDMENT PETITION FOR SUBMISSION TO THE PEOPLE

To The City Council of Tacoma and Doris Sorum, City Clerk:

We, the undersigned registered and legal voters of the City of Tacoma, State of Washington, respectfully propose an Amendment to the City Charter that would require new industries in Tacoma that are large fresh water users needing one (1) million gallons or more of fresh water per day to pay for a vote of the people and if approved their application for water service could be granted if all other application requirements are met. This Charter Amendment shall be entitled:

The People's Right to Water Protection Amendment.

A full, true and correct copy of the proposed charter amendment is included herein and we petition that the City Council submit it to the qualified electors of the City of Tacoma for approval or rejection at the next municipal election to be held in 2017. Each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the City of Tacoma as written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

PAID FOR BY
SAVE TACOMA WATER
 OUR WATER — OUR RESOURCES
 OUR VOICES — OUR VOTE
 P.O. Box 8841
 Tacoma, WA 98419
 (253) 209-7988
 www.SaveTacomaWater.org
 SaveTacomaWater@gmail.com

WARNING

Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

TOP 10 LARGE FRESH WATER USERS

The proposed methanol refinery is actually a job loser as the data shows. Currently, 2,190 workers are employed locally by large fresh water businesses and this proves that far more jobs than 260 could be supported with the same amount of fresh water.

Company	Millions of Gallons of Water Usage Per Day	Employees	Gallons of Water Usage Per Day per Employee
WestRock (Simpson)	15.52	400	38,800
US Oil & Refining Co	0.62	160	3,875
Graymont Western US Inc	0.38	35	10,857
Port of Tacoma	0.30	250	1,200
G. P. Gypsum	0.15	175	857
The Geo Group	0.08	300	267
General Metals of Tacoma	0.06	110	545
Darling International Inc	0.05	35	1,429
Manke Lumber Co Inc	0.05	375	133
McFarland Cascade Pole & Lumber	0.03	350	86
Proposed Methanol Refinery	14	260	53,846
Tacoma Residents	14.63	198,397	74
Top 10	17.24	2,190	7,872
Top 2-10	1.72	1,790	961

* From NW Innovation Works web site November, 2015

PLEASE USE INK • PLEASE DO NOT CUT — INVALIDATES SIGNATURES

PLEASE USE INK • PLEASE DO NOT CUT — INVALIDATES SIGNATURES

ONLY REGISTERED CITY OF TACOMA VOTERS MAY SIGN THIS PETITION

DATE SIGNED	PLEASE SIGN YOUR NAME AS YOU ARE REGISTERED TO VOTE	FOR IDENTIFICATION PURPOSES	STREET AND NUMBER	CITY & COUNTY	I WANT TO HELP ✓ OPTIONAL INFORMATION FOR VOLUNTEERS
	PETITIONER'S SIGNATURE	PRINT NAME HERE	RESIDENCE ADDRESS		TELEPHONE / EMAIL
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5,559 SIGNATURES REQUIRED • OUR GOAL IS 9,000 OR MORE

Most volunteers turn in 3 to 10 signatures, we need you to do that as fast as you can. We have 180 days to collect the necessary number of signatures from registered Tacoma voters to place this Charter Amendment to the People on the next municipal ballot in 2017.

VOLUNTEERS: Please read through each line with a signature on it. If it is readable and includes the address, count it as good and put the total of good signatures in the top half of the box at right. Thank you!



Tacoma Charter Amendment 5

I will volunteer!

- Please send me more petitions QTY _____
- I have enclosed a SASE, please rush my petition(s) to me!
- I will donate \$5 \$10 \$25 \$50 \$100 \$500 Other \$ _____
- Make checks payable to: **Save Tacoma Water** NOT TAX DEDUCTIBLE
- Collecting signatures at Farmer's Markets, running events and grocery stores
- Office work Data entry Register voters
- Yard sign Raising money
- I endorse this campaign, you may use my name/business name publicly

SIGNATURE DATE

Endorsement from my group or business _____

Keep me informed, add me to your email list _____

For more information call Donna Walters at (253) 209-7988
or email the campaign at SaveTacomaWater@gmail.com or visit our web site
www.SaveTacomaWater.org

YES 

Fold petition and place in envelope and mail petition in as soon as you have the signatures you intend to collect - we hope the sheet is full with 20 signatures! Please do this before June 15, 2016, to help us reach our signature goal of 9,000. *Thank you!* Volunteers, please fill out before mailing:

Name _____

Address _____

City _____ State _____ Zip _____

Contact number (_____) _____

Email _____

Save Tacoma Water
OUR WATER. OUR RESOURCES. OUR VOICES. OUR VOTE.
P.O. Box 8841
Tacoma WA 98419
ATTN Donna Walters, Treasurer

COMPLETE TEXT OF CHARTER AMENDMENT 5 - 2016

The People's Right to Water Protection Amendment

WHEREAS, the Residents of Tacoma do not want to return to our polluted past; and

WHEREAS, since 1980, Tacoma has spent an immense amount of money, time and effort cleaning up the Superfund Sites left behind by the Asarco copper smelter, Occidental Chemical, Kaiser Aluminum and others; and

WHEREAS, City residents use almost half of the water produced by City-owned Tacoma Public Utilities; and

WHEREAS, the City of Tacoma is projecting, and preparing for, an increase in population of 127,000 more residents by 2040; and

WHEREAS, a 2009 state survey of public utilities shows that the Pierce County Large Water Users Sector is 13.7% while in King County the Large Water Users Sector is only 1.9%; and

WHEREAS, the City of Tacoma is responsible to the city's residents and small businesses first and must use all caution when issuing water utility services to any potential water user that wants to use more than one million gallons of water per day; and

WHEREAS, the Tacoma Public Utility gets water from the Green River Watershed and the concerns for the environmental impacts of large water users are valid as more increasing demands for water for people and community development must take into account droughts that will become more frequent in the Pacific Northwest as the result of climate change; and

WHEREAS, the people want policies and contractual requirements to make industry secondary to the human needs of the citizens and households, schools, hospitals, and homes for the aged, for fresh potable water should take priority except in the case of emergency fire fighting needs or any other natural disaster that cannot be reasonably forecasted; and

WHEREAS, the sustained availability of affordable and potable water for the residents and businesses of Tacoma must be paramount over considerations such as potential tax revenues or investor profits; and

WHEREAS, industrial users that would require excessive amounts of water to operate will have potential long-term negative impacts on the local and regional environment and future community development in the City of Tacoma; and

WHEREAS, residents and businesses of Tacoma have been asked in the recent past and may be required in the future to conserve water; and

WHEREAS, large water users pay discounted rates while residents as ratepayers carry an extra financial burden for the conservation, maintenance, protection and development of potable water sources; and

WHEREAS, industries that use large amounts of water daily

would place human, economic, environmental and homeland securities at risk; and

WHEREAS, the Citizens of Tacoma have recently shown a huge desire to be involved when our affordable fresh water is at risk; and

WHEREAS, the Citizens of Tacoma want to encourage clean and renewable energy industries operating in the City of Tacoma; and

WHEREAS, the Citizens of Tacoma find that a proposed methanol refinery does not meet the requirements of a clean, renewable and sustainable energy production facility; and

WHEREAS, the City of Tacoma Charter provides for Initiative and Referendum rights which provides the city's citizens the right to place this Charter amendment before the voters; and

WHEREAS, the people of the City of Tacoma possess an inherent and inalienable right to govern our own community as secured by the Declaration of Independence's affirmation of the right of people to alter or abolish their government if it renders self-government impossible, and this inherent right is reaffirmed in the Tacoma City Charter, the Washington State Constitution, and the United States Constitution;

Therefore be it ordained by the voters in the City of Tacoma that:

(1) The people of Tacoma adopt the following amendments to the Tacoma City Charter, Article IV (Public Utilities):

Section 4.24 – The People's Right to Water Protection

(A) People's Vote on Large Water Use Applications.
The people of the City of Tacoma find that there is a compelling need to carefully consider the consequences of providing water utility service to an applicant that intends to use large amounts of fresh water. Before providing water utility service to any applicant for 1336 CCF (one million gallons), or more, of water daily from the City, the City shall place the applicant's request for water utility service before the voters on the next available General Election Ballot, in a manner substantially conforming to the rules for Section 2.22 of this Charter. The applicant shall pay for the costs of the vote of the people. Only if a majority of the voters approve the water utility service application and all other application requirements are met may the City provide the service. The vote by the people is binding, and not advisory. Any water users currently authorized to use 1336 CCF or more of water daily are grandfathered in, however, their water utility service is not transferable.

(B) Sustainable Water Protection is an Inviolable Right that Government Cannot Infringe.

The people of the City of Tacoma protect their right to water through their inherent and inalienable right of local community self-government, and in recognition that clean fresh water is essential to life, liberty, and happiness, and the City of Tacoma has a foundational duty to maintain a sustainable provision of water for the people. The People's Right to Water Protection

vote provides a democratic safeguard, on top of the City's existing application process, to ensure that large new water users do not threaten the sustainability of the people's water supply. To prevent subsequent denial of the People's Right to Water Protection by state law preemption, all laws adopted by the legislature of the State of Washington, and rules adopted by any state agency, shall be the law of City of Tacoma only to the extent that they do not violate the rights or mandates of this Article

(C) Water Protection supersedes Corporate Interests.

As the People's Right to Water Protection is foundational to the people's health, safety, and welfare, and must be held inviolate, no government actor, including the courts, will recognize as valid any permit, license, privilege, charter, or other authorization, that would violate the rights or mandate of this Article, issued for any corporation, by any state, federal, or international entity. In addition, corporations that violate, or seek to violate the rights and mandates of this Article shall not be deemed "persons" to the extent that such treatment would interfere with the rights or mandates enumerated by this Article, nor shall corporations possess any other legal rights, powers, privileges, immunities, or duties that would interfere with the rights or mandates enumerated by this Article. "Rights, powers, privileges, immunities, and duties" shall include the power to assert international, federal, or state preemptive laws in an attempt to overturn this Article, and the power to assert that the people of the City of Tacoma lacked the authority to adopt this Article.

(D) Enforcement.

The City or any resident of the City may enforce this section through an action brought in any court possessing jurisdiction over activities occurring within the City of Tacoma, including, but not limited to, seeking an injunction to stop prohibited practices. In such an action, the City of Tacoma or the resident of the City of Tacoma shall be entitled to recover damages and all costs of litigation, including, without limitation, expert, and attorney's fees.

(2) In enacting this Charter Amendment through our Initiative Power, the people of Tacoma declare our intent that:

(A) The provisions of this Charter Amendment are severable, and the petitioners intend that all valid provisions of the initiative be placed on the ballot and enacted into law even if some provisions are found invalid.

(B) The provisions of this Charter Amendment be liberally construed to achieve the defined intent of the voters.

(C) We support each of the provisions of this section independently, and our support for this section would not be diminished if one or more of its provisions were to be held invalid, or if any of them were adopted by the City Council and the others sent to the voters for approval.

(D) This section shall take effect 15 (fifteen) days after election certification. The City shall not accept any applications for water utility service for 1336 CCF or more between the election and effective date.

—END—

ENDORSED BY PARTIAL LIST

John Weymer, Tacoma Weekly Publisher
Jerry Gibbs, Pierce County
Building Referendum sponsor

Want to be added to this list?

Call Donna (253) 209-7988

LOCATIONS TO PICK UP PETITION SHEETS OR SIGN PETITION

Partial list
visit www.SaveTacomaWater.org
for the most current list

Lincoln Hardware
3726 S G St • Tacoma
Purified Water To Go
5401 Sixth Ave K807 • Tacoma
7701 S Hosmer • Tacoma
2800 Milton Way Suite 21 • Milton
Tacoma Lamp Repair & Sales
1524 Tacoma Ave S • Tacoma

EXHIBIT B

STOP the methanol refinery

RECEIVED **Yes! 6**
 MAR 11 2016
 CITY CLERK'S OFFICE INITIATIVE

Residents of Tacoma, University Place, Ruston, Fife, Milton, Kent, Covington, Bonney Lake, Lakewood, Steilacoom, Federal Way, the Muckleshoot and Puyallup Reservations and portions of Des Moines and Auburn are dependent on fresh water from Tacoma Public Utility. The proposed methanol refinery would use the same water source. The proposed methanol refinery is estimated to use 14 to 22 million gallons of water every day (this number keeps changing) equal to what 185,000 to 291,000 residents use daily (Tacoma 2015 Population: 198,397).

**City of Tacoma
 Citizens' Initiative No. 6
 Ballot Title**

CONCISE STATEMENT OF ORDINANCE

This initiative adds a new section to Title 12 of the Tacoma Municipal code that would require new industries in Tacoma that are large fresh water users needing one (1) million gallons of fresh water a day to pay for a vote of the people and if approved their application for water service could be granted if all other application requirements are met.

INITIATIVE PETITION FOR SUBMISSION TO THE PEOPLE

To The City Council of Tacoma and Doris Strum, City Clerk

We, the undersigned registered and legal voters of Tacoma, Washington, respectfully propose and ask for the enactment of an ordinance of the measure known as Tacoma Initiative 6 entitled:

This Initiative shall be known as

"The People's Right to Water Protection Ordinance"

Should this measure be enacted into law?
 Yes [] No []

a full, true and correct copy of which is printed on the reverse side of this petition, for submission of Initiative No. 6 to the legal voters of the City of Tacoma at the General Election to be held on the 8th day of November, 2016; and each of us for himself or herself says: I have personally signed this petition; I am a legal voter of the State of Washington, in the City of Tacoma as written after my name, my residence address is correctly stated, and I have knowingly signed this petition only once.

PAID FOR BY
SAVE TACOMA WATER
 OUR WATER OUR RESOURCES OUR VOICES
 OUR VOICE
 P.O. Box 8841
 Tacoma, WA 98419
 (253) 209-7988
 www.SaveTacomaWater.org

WARNING
 Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

PLEASE USE INK • PLEASE DO NOT CUT—INVALIDATES SIGNATURES

PLEASE USE INK • PLEASE DO NOT CUT—INVALIDATES SIGNATURES

TACOMA VOTERS PLEASE SIGN BELOW TO PLACE INITIATIVE 6 ON THE 2016 NOVEMBER BALLOT

HEALTHY ECONOMY SUPPORTS SUSTAINABLE GROWTH	FOR IDENTIFICATION PURPOSES	STREET AND NUMBER	CITY & COUNTY	DATE	OPTIONAL SIGNATURES WELCOME PLEASE FILL IN THIS FIELD TELEPHONE / EMAIL
SIGNATURE	PRINT NAME HERE	RESIDENCE ADDRESS			
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SIGNATURE GOAL: 4,700 (3,150 REQUIRED FROM REGISTERED TACOMA VOTERS BY JUNE 15, 2016)
 Most volunteers turn in 3 to 10 signatures, we need you to do that as fast as you can. We have just eight weeks to collect the necessary number of signatures from registered Tacoma voters to place this Initiative to the People on the 2016 November ballot.

VOLUNTEERS: Please read through each line with a registered voter. If it is a duplicate and includes the address, count it as good. And put the total of good signatures at the top of the box. Thank you!

Tacoma Initiative 6

I will volunteer!

- Please send me more petitions QTY _____
 - I have enclosed a SASE, please rush my petition(s) to me!
 - I will donate \$5 \$10 \$25 \$50 \$100 \$500 Other \$ _____
- Make checks payable to: **Save Tacoma Water** NOT TAX-DEDUCTIBLE
- Collecting signatures at Farmer's Markets, running events and grocery stores
 - Office work Data entry Register voters
 - Yard sign Raising money
 - I endorse this campaign, you may use my name/business name publicly

SIGNATURE DATE

Endorsement from my group or business _____
 Keep me informed, add me to your email list _____

For more information call Donna Walters at (253) 209-7988
or email the campaign at SaveTacomaWater@gmail.com or visit our web site
www.SaveTacomaWater.org



Fold petition and place in envelope and mail petition in as soon as you have the signatures you intend to collect - we hope the sheet is full with 20 signatures! Please do this ASAP but before the deadline: **June 15, 2016**. We need 3,160 valid signatures from City of Tacoma voters - our goal is 4,700 signatures to be sure we have enough.

Volunteers, please fill out below before mailing (*Thank you!*).

Name _____

Address _____

City _____ State _____ Zip _____

Contact number (_____) _____

Email _____

Save Tacoma Water
OUR WATER. OUR RESOURCES. OUR VOICES. OUR VOTE.
P.O. Box 8841
Tacoma WA 98419
ATTN Donna Walters, Treasurer

COMPLETE TEXT OF TACOMA INITIATIVE 6 - 2016

The People's Right to Water Protection Ordinance

WHEREAS, the Residents of Tacoma do not want to return to our polluted past; and

WHEREAS, since 1980, Tacoma has spent an immense amount of money, time and effort cleaning up the Superfund Sites left behind by the Asarco copper smelter, Occidental Chemical, Kaiser Aluminum and others; and

WHEREAS, City residents use almost half of the water produced by City-owned Tacoma Public Utilities; and

WHEREAS, the City of Tacoma is projecting, and preparing for, an increase in population of 127,000 more residents by 2040; and

WHEREAS, a 2009 state survey of public utilities shows that the Pierce County Large Water Users Sector is 13.7% while in King County the Large Water Users Sector is only 1.9%; and

WHEREAS, the City of Tacoma is responsible to the city's residents and small businesses first and must use all caution when issuing water utility services to any potential water user that wants to use more than one million gallons of water per day; and

WHEREAS, the Tacoma Public Utility gets water from the Green River Watershed and the concerns for the environmental impacts of large water users are valid as more increasing demands for water for people and community development must take into account droughts that will become more frequent in the Pacific Northwest as the result of climate change; and

WHEREAS, the people want policies and contractual requirements to make industry secondary to the human needs of the citizens and households, schools, hospitals, and homes for the aged, for fresh potable water should take priority except in the case of emergency fire fighting needs or any other natural disaster that cannot be reasonably forecasted; and

WHEREAS, the sustained availability of affordable and potable water for the residents and businesses of Tacoma must be paramount over considerations such as potential tax revenues or investor profits; and

WHEREAS, industrial users that would require excessive amounts of water to operate will have potential long-term negative impacts on the local and regional environment and future community development in the City of Tacoma; and

WHEREAS, residents and businesses of Tacoma have been asked in the recent past and may be required in the future to conserve water; and

WHEREAS, large water users pay discounted rates while residents as ratepayers carry an extra financial burden for the conservation, maintenance, protection and development of potable water sources; and

WHEREAS, industries that use large amounts of water

daily would place human, economic, environmental and homeland securities at risk; and

WHEREAS, the Citizens of Tacoma have recently shown a huge desire to be involved when our affordable fresh water is at risk; and

WHEREAS, the Citizens of Tacoma want to encourage clean and renewable energy industries operating in the City of Tacoma; and

WHEREAS, the Citizens of Tacoma find that a proposed methanol refinery does not meet the requirements of a clean, renewable and sustainable energy production facility; and

WHEREAS, the City of Tacoma Charter provides for Initiative and Referendum rights which provides the city's citizens the right to place this ordinance before the voters; and

WHEREAS, the people of the City of Tacoma possess an inherent and inalienable right to govern our own community as secured by the Declaration of Independence's affirmation of the right of people to alter or abolish their government if it renders self-government impossible, and this inherent right is reaffirmed in the Tacoma City Charter, the Washington State Constitution, and the United States Constitution;

Therefore be it ordained by the voters in the City of Tacoma:

That a new Ordinance is adopted and a new section of Tacoma Municipal Code Title 12 is hereby adopted, which deals with issuing water utility service to any applicant for one million gallons, or more, of water daily from the City of Tacoma, and is to be known as "The People's Right to Water Protection Ordinance";

A. People's Vote on Large Water Use Applications. The people of the City of Tacoma find that there is a compelling need to carefully consider the consequences of providing water utility service to an applicant that intends to use large amounts of fresh water. Before providing water utility service to any applicant for 1336 CCF (one million gallons), or more, of water daily from the City, the City shall place the applicant's request for water utility service before the voters on the next available General Election Ballot. The applicant shall pay for the costs of the vote of the people. Only if a majority of the voters approve the water utility service application and all other application requirements are met may the City provide the service. The vote by the people is binding, and not advisory. Any water users currently authorized to use 1336 CCF or more of water daily are grandfathered in, however, their water utility service is not transferable.

B. Limitations on Government Infringement of the People's Inviolable Right of Sustainable Water Protection. The people of the City of Tacoma protect their right to water through their inherent and inalienable right of local community self-government, and in recognition

that clean fresh water is essential to life, liberty, and happiness, and the City of Tacoma has a foundational duty to maintain a sustainable provision of water for the people. The People's Right to Water Protection vote provides a democratic safeguard, on top of the City's existing application process, to ensure that large new water users do not threaten the sustainability of the people's water supply. To prevent subsequent denial of the People's Right to Water Protection by state law preemption, all laws adopted by the legislature of the State of Washington, and rules adopted by any state agency, shall be the law of City of Tacoma only to the extent that they do not violate the rights or mandates of this Ordinance.

C. Water Protection supersedes Corporate Interests. As the People's Right to Water Protection is foundational to the people's health, safety, and welfare, and must be held inviolate, no government actor, including the courts, will recognize as valid any permit, license, privilege, charter, or other authorization, that would violate the rights or mandate of this Ordinance, issued for any corporation, by any state, federal, or international entity. In addition, corporations that violate, or seek to violate the rights and mandates of this Ordinance shall not be deemed "persons" to the extent that such treatment would interfere with the rights or mandates enumerated by this Ordinance, nor shall corporations possess any other legal rights, powers, privileges, immunities, or duties that would interfere with the rights or mandates enumerated by this Ordinance. "Rights, powers, privileges, immunities, and duties" shall include the power to assert international, federal, or state preemptive laws in an attempt to overturn this Ordinance, and the power to assert that the people of the City of Tacoma lacked the authority to adopt this Ordinance.

D. Enforcement. The City or any resident of the City may enforce this Ordinance through an action brought in any court possessing jurisdiction over activities occurring within the City of Tacoma, including, but not limited to, seeking an injunction to stop prohibited practices. In such an action, the City of Tacoma or the resident of the City of Tacoma shall be entitled to recover damages and all costs of litigation, including, without limitation, expert, and attorney's fees.

E. Severability and Construction. The provisions of this Ordinance shall be liberally construed to achieve the defined intent of the voters. The provisions of this Ordinance are severable, and the petitioners intend that all valid provisions of the initiative be placed on the ballot and enacted into law even if some provisions are found invalid. We - the people of Tacoma - support each of the provisions of this Ordinance independently, and our support for this Ordinance would not be diminished if one or more of its provisions were to be held invalid, or if any of them were adopted by the City Council and the others sent to the voters for approval.

F. Effect. This Ordinance shall take effect fifteen (15) days after either adoption or election certification. The City shall not accept any applications for water utility service for 1336 CCF or more between the adoption or election and the effective date of this Ordinance. -END-

ENDORSED BY PARTIAL LIST

Puyallup Tribe of Indians
Senator Jeannie Darnelle, 27TH District Democrat
Jim Merritt, former candidate for mayor of Tacoma
John Weymer, Tacoma Weekly Publisher
Jerry Gibbs, Pierce County
Building Referendum sponsor

Want to be added to this list?

Call Donna (253) 209-7988

LOCATIONS TO PICK UP PETITION SHEETS OR SIGN PETITION

Partial list
visit www.SaveTacomaWater.org
for the most current list

Lincoln Hardware
3726 S G St • Tacoma
Purified Water To Go
5401 Sixth Ave K807 • Tacoma
7701 S Hosmer • Tacoma
2800 Milton Way Suite 21 • Milton
Tacoma Lamp Repair & Sales
1524 Tacoma Ave S • Tacoma

RECEIVED

MAR 11 2016

CITY CLERK'S OFFICE

Save Tacoma Water

OUR WATER. OUR RESOURCES. OUR VOICES. OUR VOTE.

P.O. Box 8841

Tacoma WA 98419

ATTN Donna Walters, Treasurer

(253) 209-7988 • SaveTacomaWater@gmail.com • www.SaveTacomaWater.org

COMPLETE TEXT OF TACOMA INITIATIVE 6 - 2016

The People's Right to Water Protection Ordinance

WHEREAS, the Residents of Tacoma do not want to return to our polluted past; and

WHEREAS, since 1980, Tacoma has spent an immense amount of money, time and effort cleaning up the Superfund Sites left behind by the Asarco copper smelter, Occidental Chemical, Kaiser Aluminum and others; and

WHEREAS, City residents use almost half of the water produced by City-owned Tacoma Public Utilities; and

WHEREAS, the City of Tacoma is projecting, and preparing for, an increase in population of 127,000 more residents by 2040; and

WHEREAS, a 2009 state survey of public utilities shows that the Pierce County Large Water Users Sector is 13.7% while in King County the Large Water Users Sector is only 1.9%; and

WHEREAS, the City of Tacoma is responsible to the city's residents and small businesses first and must use all caution when issuing water utility services to any potential water user that wants to use more than one million gallons of water per day; and

WHEREAS, the Tacoma Public Utility gets water from the Green River Watershed and the concerns for the environmental impacts of large water users are valid as more increasing demands for water for people and community development must take into account droughts that will become more frequent in the Pacific Northwest as the result of climate change; and

WHEREAS, the people want policies and contractual requirements to make industry secondary to the human needs of the citizens and households, schools, hospitals, and homes for the aged, for fresh potable water should take priority except in the case of emergency fire fighting needs or any other natural disaster that cannot be reasonably forecasted; and

WHEREAS, the sustained availability of affordable and potable water for the residents and businesses of Tacoma must be paramount over considerations such as potential tax revenues or investor profits; and

WHEREAS, industrial users that would require excessive amounts of water to operate will have potential long-term negative impacts on the local and regional environment and future community development in the City of Tacoma; and

WHEREAS, residents and businesses of Tacoma have been asked in the recent past and may be required in the future to conserve water; and

WHEREAS, large water users pay discounted rates while residents as ratepayers carry an extra financial burden for the conservation, maintenance, protection and development of potable water sources; and

WHEREAS, industries that use large amounts of water daily would place human, economic, environmental and homeland securities at risk; and

WHEREAS, the Citizens of Tacoma have recently shown a huge desire to be involved when our affordable fresh water is at risk; and

WHEREAS, the Citizens of Tacoma want to encourage clean and renewable energy industries operating in the City of Tacoma; and

WHEREAS, the Citizens of Tacoma find that a proposed methanol refinery does not meet the requirements of a clean, renewable and sustainable energy production facility; and

WHEREAS, the City of Tacoma Charter provides for Initiative and Referendum rights which provides the city's citizens the right to place this ordinance before the voters; and

WHEREAS, the people of the City of Tacoma possess an inherent and inalienable right to govern our own community as secured by the Declaration of Independence's affirmation of the right of people to alter or abolish their government if it renders self-government impossible, and this inherent right is reaffirmed in the Tacoma City Charter, the Washington State Constitution, and the United States Constitution;

Therefore be it ordained by the voters in the City of Tacoma:

That a new Ordinance is adopted and a new section of Tacoma Municipal Code Title 12 is hereby adopted, which deals with issuing water utility service to any applicant for one million gallons, or more, of water daily from the City of Tacoma, and is to be known as "The People's Right to Water Protection Ordinance":

A. People's Vote on Large Water Use Applications. The people of the City of Tacoma find that there is a compelling need to carefully consider the consequences of providing water utility service to an applicant that intends to use large amounts of fresh water. Before providing water utility service to any applicant for 1336 CCF (one million gallons), or more, of water daily from the City, the City shall place the applicant's request for water utility service before the voters on the next available General

Election Ballot. The applicant shall pay for the costs of the vote of the people. Only if a majority of the voters approve the water utility service application and all other application requirements are met may the City provide the service. The vote by the people is binding, and not advisory. Any water users currently authorized to use 1336 CCF or more of water daily are grandfathered in, however, their water utility service is not transferable.

B. Limitations on Government Infringement of the People's Inviolable Right of Sustainable Water Protection. The people of the City of Tacoma protect their right to water through their inherent and inalienable right of local community self-government, and in recognition that clean fresh water is essential to life, liberty, and happiness, and the City of Tacoma has a foundational duty to maintain a sustainable provision of water for the people. The People's Right to Water Protection vote provides a democratic safeguard, on top of the City's existing application process, to ensure that large new water users do not threaten the sustainability of the people's water supply. To prevent subsequent denial of the People's Right to Water Protection by state law preemption, all laws adopted by the legislature of the State of Washington, and rules adopted by any state agency, shall be the law of City of Tacoma only to the extent that they do not violate the rights or mandates of this Ordinance.

C. Water Protection supersedes Corporate Interests. As the People's Right to Water Protection is foundational to the people's health, safety, and welfare, and must be held inviolate, no government actor, including the courts, will recognize as valid any permit, license, privilege, charter, or other authorization, that would violate the rights or mandate of this Ordinance, issued for any corporation, by any state, federal, or international entity. In addition, corporations that violate, or seek to violate the rights and mandates of this Ordinance shall not be deemed "persons" to the extent that such treatment would interfere with the rights or mandates enumerated by this Ordinance, nor shall corporations possess any other legal rights, powers, privileges, immunities, or duties that would interfere with the rights or mandates enumerated by this Ordinance. "Rights, powers, privileges, immunities, and duties" shall include the power to assert international, federal, or state preemptive laws in an attempt to overturn this Ordinance, and the power to assert that the people of the City of Tacoma lacked the authority to adopt this Ordinance.

D. Enforcement. The City or any resident of the City may enforce this Ordinance through an action brought in any court possessing jurisdiction over activities occurring within the City of Tacoma, including, but not limited to, seeking an injunction to stop prohibited practices. In such an action, the City of Tacoma or the resident of the City of Tacoma shall be entitled to recover damages and all costs of litigation, including, without limitation, expert, and attorney's fees.

E. Severability and Construction. The provisions of this Ordinance shall be liberally construed to achieve the defined intent of the voters. The provisions of this Ordinance are severable, and the petitioners intend that all valid provisions of the initiative be placed on the ballot and enacted into law even if some provisions are found invalid. We – the people of Tacoma – support each of the provisions of this Ordinance independently, and our support for this Ordinance would not be diminished if one or more of its provisions were to be held invalid, or if any of them were adopted by the City Council and the others sent to the voters for approval.

F. Effect. This Ordinance shall take effect fifteen (15) days after either adoption or election certification. The City shall not accept any applications for water utility service for 1336 CCF or more between the adoption or election and the effective date of this Ordinance.

-END-

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HONORABLE JACK NEVIN

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

PORT OF TACOMA, a Washington State
Municipal Corporation, ECONOMIC
DEVELOPMENT BOARD FOR
TACOMA-PIERCE COUNTY, a
Washington State Non-profit Corporation,
and the TACOMA-PIERCE COUNTY
CHAMBER, a Washington State Non-
profit corporation,

Plaintiffs,

v.

SAVE TACOMA WATER, a Washington
political committee, DONNA WALTERS,
sponsor and Treasurer of SAVE
TACOMA WATER, JON AND JANE
DOES 1-5, (Individual sponsors and
officers of SAVE TACOMA WATER),
CITY OF TACOMA, a Washington State
Municipal Corporation; and PIERCE
COUNTY, a political subdivision by and
through JULIE ANDERSON, IN HER
CAPACITY AS PIERCE COUNTY
AUDITOR,

Defendants.

No. 16-2-08477-5

SECOND DECLARATION OF
KYMBERLY K. EVANSON

SECOND DECLARATION OF KYMBERLY K.
EVANSON - 1

10017 00013 ff241k0799

PACIFICA LAW GROUP LLP
1191 SECOND AVENUE
SUITE 2000
SEATTLE, WASHINGTON 98101-3404
TELEPHONE: (206) 245-1700
FACSIMILE: (206) 245-1750

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<p>CITY OF TACOMA,</p> <p style="text-align: center;">Cross-Claimant/ Third-Party Plaintiff,</p> <p style="text-align: center;">v.</p> <p>SAVE TACOMA WATER, a Washington political committee, DONNA WALTERS, Co-Chair and Treasurer of SAVE TACOMA WATER; JON AND JANE DOES 1-5, (Individual sponsors and officers of SAVE TACOMA WATER); and PIERCE COUNTY, a political subdivision by and through JULIE ANDERSON, IN HER CAPACITY AS PIERCE COUNTY AUDITOR,</p> <p style="text-align: center;">Cross-Defendants,</p> <p style="text-align: center;">v.</p> <p>SHERRY BOCKWINKEL, Co-Chair of SAVE TACOMA WATER,</p> <p style="text-align: center;">Third-Party Defendant.</p>
--

I, Kymberly K. Evanson, declare as follows:

1. I am a partner at Pacifica Law Group LLP, licensed to practice in the state of Washington and counsel of record for Plaintiff City of Tacoma in the above-captioned matter. I am over the age of 18, am competent to testify, and offer this declaration based on my personal knowledge.

2. Attached hereto as **Exhibit A** is a true and correct copy of a June 22, 2016 letter from Pierce County Elections Supervisor Damon Townsend to City of Tacoma Clerk Doris Sorum regarding City of Tacoma Citizens Initiative No. 6.

SECOND DECLARATION OF KYMBERLY K. EVANSON - 2

10017 00013 ff241k0799

PACIFICA LAW GROUP LLP
1191 SECOND AVENUE
SUITE 2000
SEATTLE, WASHINGTON 98101-3404
TELEPHONE: (206) 245-1700
FACSIMILE: (206) 245-1750

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3. Attached hereto as **Exhibit B** is a true and correct copy of a June 22, 2016 press release by Save Tacoma Water taken from Save Tacoma Water’s website, <https://savetacomawater.org/2016/06/22/the-water-protection-ordinance-has-validated-for-the-ballot/>, accessed June 24, 2016.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 29th day of June, 2016, at Seattle, Washington.

s/ *Kymerly K. Evanson*
Kymerly K. Evanson

EXHIBIT A



Pierce County

PierceCountyAuditor.org
pcauditor@co.pierce.wa.us

Auditor's Office

Julie Anderson
Pierce County Auditor

Cindy Hartman
Deputy Auditor

Georgia Cookson
Assistant to the Auditor

Mary Schmidtke
Fiscal Manager

Michael Rooney
Elections Manager

Damon Townsend
Elections Supervisor

Casey Kaul
Recording/Licensing
Supervisor

Brian Boman
Animal Control
Supervisor

June 22, 2016

Doris Sorum
City of Tacoma Clerk
747 S. Market St, Room 220
Tacoma, WA 98402

RE: Save Tacoma Water Initiative Measure No. 6 Petition

Dear Ms. Sorum:

We have completed checking petition pages submitted to our office on June 16, 2016. This office accepted for filing 391 petition pages, each entitled "City of Tacoma Citizens' Initiative No. 6".

The verification of signatures began on June 20, 2016 starting at 9:00 am, and concluded June 21, 2016 at 5:00 pm.

It was determined that the petition contained 3320 valid signatures. The validation requirement for this petition was 3160 valid signatures.

To place this item on the ballot, it is the responsibility of the city to call for the election and to take all necessary actions. The deadline to place an issue on the November 8, 2016 ballot is August 2, 2016.

Please feel free to contact me at 253-798-2146 if you have questions.

Sincerely,

Damon Townsend
Pierce County Elections Supervisor

Auditor's Office
2401 S 35th St, Rm 200
Tacoma, WA 98409

Administration
P 253.798.3189
F 253.798.3182

Recording
P 253.798.7440
F 253.798.3180

Licensing
P 253.798.3649
F 253.798.3701

Animal Control
P 253.798.7387
F 253.798.7004

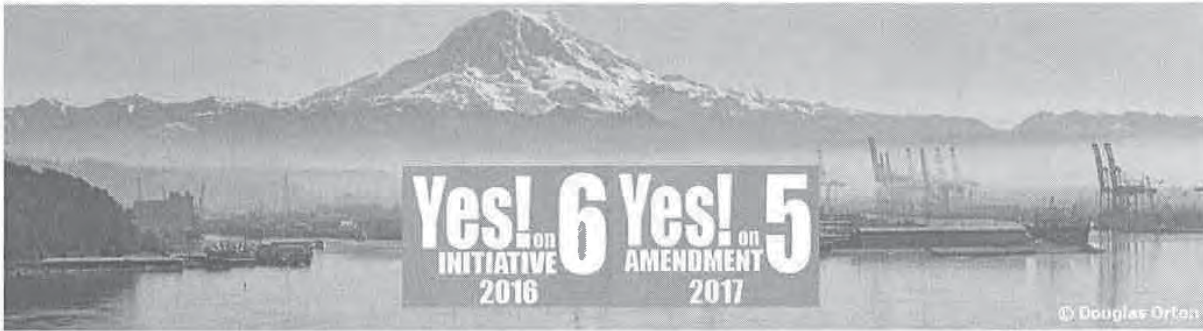
Election Center
2501 S 35th St, Ste C
Tacoma, WA 98409
P 253.798.8683
F 253.798.2761
P 800.446.4979

EXHIBIT B

Save Tacoma Water



Our Water. Our Resources. Our Voices. Our Vote.



The Water Protection Ordinance has validated for the ballot



Signer Details | Circulator Info |

Petition Reference	
Signer_ID:	
Petition:	SAVE TACOMA WATER
	INITIATIVE MEASURE NO. 6
Section:	319
Line Num:	
Sign Date:	__/__/__
Sig Num:	
Session:	187
System:	3160 / 3160 (100%)

Signer's Name and Address

Affidavit Number: _____

Name First: _____

Name Middle: _____

Name Last: _____

Name Suffix: _____

Address: _____

DimNet

4,963 Total Signatures
3,320 Signatures Valid
1,643 Signatures Challenged

Follow "Save Tacoma Water"

Get every new post delivered to your Inbox.

Build a website with WordPress.com

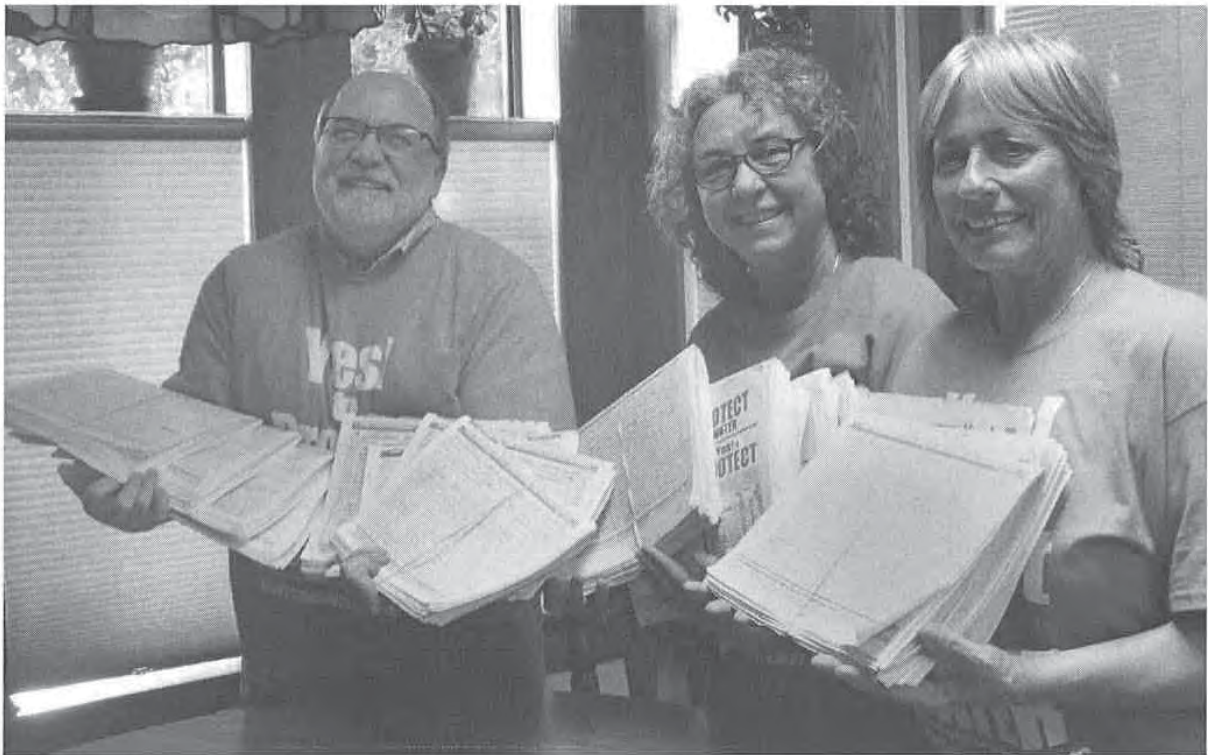
OK

BREAKING NEWS: Initiative 6 has PASSED the validation requirement threshold.


Save Tacoma Water turned in 391 petition sheets on June 15. On Monday the Pierce County Auditor's office began work verifying the signatures. The job was completed in just two days with 57 pages not even needing to be counted. The official report shows 4,963 signatures were checked and 3,320 were valid, surpassing the requirement of 3,160. During the past week, 502 more signatures have been collected by STW volunteers, just in case, but will not need to be turned in for verification.

STW volunteers collected a total of 6,459 signatures in just 70 days. The voters have spoken loud and clear. Water Warriors Rock!


Initiative 6 has qualified for the ballot. A huge THANK YOU to the people of Tacoma and our dedicated volunteers!




Michael, Sherry and Donna holding 16,000+ signatures on the Water Protection Initiatives.

 Plan, compare, and book your perfect trip

Save 10%*



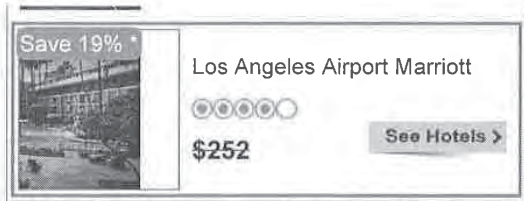
The Westin Los Angeles Airport



\$204

[See Hotels >](#)

The Water Protection Ordinance has validated for the ballot – Save Tacoma Water



Save 19%
Los Angeles Airport Marriott
\$252
See Hotels >

Share this:

Twitter Facebook 23 Google

Like

Be the first to like this

Posted on **June 22, 2016** by **Save Tacoma Water**

Previous
CITY SUES CITIZENS FOR COLLECTING SIGNATURES

LEAVE A REPLY

Enter your comment here...

SECURE PAYPAL DONATIONS

[Donate](#)


FACEBOOK

The Water Protection Ordinance has validated for the ballot – Save Tacoma Water



Like Page Liked 1

News Feed

 **Save Tacoma Water** updated their cover photo. 1 hr



TWITTER #SAVETACOMAWATER



STAY CONNECTED

Join Our Email List

ENDORSEMENTS

To be added to this list, please email:
donna@SaveTacomaWater.org

Tacoma Charter Amendment 5 and Initiative 6

Puyallup Tribe of Indians

New Neighborhood Council

Senator Jeannie Darneille, 27th District Democrat

Jim Merritt, former candidate for mayor of Tacoma

John Weymer, Tacoma Weekly Publisher

Jerry Gibbs, Pierce County Building Referendum sponsor

Timothy Farrell, Former Pierce County Councilmember

Brian Ebersole, former Mayor of Tacoma

Jim Merritt, former candidate for Mayor of Tacoma

John Weymer, Tacoma Weekly Publisher

Kim Golding, former Tacoma School District Board Member

Kristopher Brannon, the "Sonics Guy"

SIGNATURE DRIVE FOR CHARTER AMENDMENT 5 & INITIATIVE 6

We need 9,000 signatures for Charter Amendment 5 and 4,700 signatures for Initiative 6 by June 15th, 2016. Please sign the petitions, and help gather signatures if you can.

RECENT POSTS

- **The Water Protection Ordinance has validated for the ballot**
- **City sues citizens for collecting signatures**
- **News Release:**
- **Water Warriors preparing for Memorial Day Petitioning**
- **Billie Blattler – Dedicated Volunteer in for the Long Run**
- **Linda Fortune Volunteers because it is a “no brainer”**
- **Judt Shrode – It is a True Pleasure to Volunteer**
- **Sally Radford – Why I Choose to Volunteer**
- **Weekly Meetings Changed to Mondays**
- **Petitions have new look**
- **Why I Volunteer – Debby Herbert**
- **Super Volunteer Dan Decker**
- **Tacoma Weekly ad**
- **Remember The Drought From Last Year?**
- **Water Protection Petitions Reasonable**

ARCHIVES

- **June 2016**
- **May 2016**
- **April 2016**
- **March 2016**
- **February 2016**
- **January 2016**

CONTACT

Save Tacoma Water
P.O. Box 8841
Tacoma, WA 98419

The Water Protection Ordinance has validated for the ballot – Save Tacoma Water

253-209-7988

donna@savetacomawater.org

Join Our Email List

Blog at WordPress.com.  **The Colinear Theme.**

The Honorable Jack Nevin
Hearing: Friday, July 22, 2016, 9 am

**STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT**

PORT OF TACOMA, et al.,

No. 16-2-08477-5

Plaintiffs,

v.

SAVE TACOMA WATER, et al.,

**Motion to Dismiss for Lack of
Jurisdiction over the Subject Matter**

Defendants.

1

2

Defendants Save Tacoma Water, Donna Walters, and Sherry Bockwinkel, through

3

counsel and pursuant to CR 12, move to dismiss because the Court lacks subject matter

4

jurisdiction. The courts have no authority to consider the content of proposed legislation before

5

it is enacted into law.

6

Procedural History

7

On June 6, 2016, Plaintiffs Port, Chamber, and EDB filed a complaint for declaratory

8

and injunctive relief, asking this Court to assess two initiatives – which the people of Tacoma

9

were still collecting signatures for – to determine whether the content of the initiatives would be

1 valid law. Two days later, the City of Tacoma joined the Plaintiffs. Both the Plaintiffs and City
2 have amended their complaints to remove requests for costs and fees.

3 **Argument**

4 This “pre-election challenge” cause of action is derived entirely from Court precedent.¹ It
5 has no basis anywhere in any Constitution, Charter, statute, or ordinance; nowhere have the
6 people or their elected representatives authorized the courts to police their lawmaking process.
7 Instead, this power to peer into the content of proposed legislation is a power the Courts have
8 given to themselves. It is an illegitimate usurpation of the legislative power of the people, and
9 violates their fundamental political rights. Therefore, the Court should rule it has no authority to
10 rule on this subject matter, and dismiss the case.

11 **I. The Federal Constitution prohibits pre-enactment review of an initiative's content.**

12 The protections guaranteed in the Fourteenth Amendment “governs any action of a state,
13 whether through its legislature, *through its courts*, or through its executive or administrative
14 officers.” *Mooney v. Holohan*, 294 U.S. 103, 113 (1935) (emphasis added) (citations omitted).
15 Here, the Court's orders are state actions that cannot violate the people's political rights. *See*
16 *Shelley v. Kraemer*, 334 U.S. 1, 16-18 (1948).

17 The United States Supreme Court has held that “the circulation of a petition involves the
18 type of interactive communication concerning political change that is appropriately described as
19 ‘core political speech.’” *Meyer v. Grant*, 486 U.S. 414, 421-22 (1988) (footnote omitted). The
20 *Meyer* Court rejected arguments that “the State has the authority to impose limitations on the

1 Last year the state Supreme Court stated that Washington courts have not “answer[ed] the
question of whether subject matter, substantive, or procedural preelection review of an
initiative implicates the First Amendment to the United States Constitution or article I,
section 5 of our constitution.” *Huff v. Wyman*, 184 Wn.2d 643, 655, 361 P.3d 727 (2015).

1 scope of the state-created [*sic*²] right to legislate by initiative,” holding instead that in the area of
2 citizen initiative lawmaking “the importance of First Amendment protections is 'at its zenith'”
3 and the state's burden to justify restrictions on that process is “well-nigh insurmountable.” *Id.* at
4 424-25.

5 It is irrelevant that the people may have other means to express themselves. “The First
6 Amendment protects [the people's] right not only to advocate their cause but also to select what
7 they believe to be the most effective means for doing so.” *Id.* at 424. The state infringes on the
8 people's core political rights when it “limits the size of the audience they can reach” or “limit[s]
9 their ability to make the matter the focus of [jurisdiction-wide] discussion.” *Id.* at 423. “[T]he
10 principle stated in *Meyer* is that a state that adopts an initiative procedure violates the federal
11 Constitution if it unduly restricts the First Amendment rights of its citizens who support the
12 initiative.” *Taxpayers United for Assessment Cuts v. Austin*, 994 F.2d 291, 295 (6th Cir. 1993).
13 Clearly, an order that rules on the validity of proposed legislation and strikes that measure from
14 the ballot will limit discussion of the proposed policy.

15 The courts can have a legitimate role in the initiative process, such as enforcing
16 “nondiscriminatory, *content-neutral* limitations on the [people's] ability to initiate legislation,”
17 like the signature threshold for ballot placement. *Id.* at 297 (emphasis added). But here, the
18 Plaintiffs and City make no claims that the initiatives have not properly qualified for the ballot.

2 Here the *Meyer* Court was referring to the initiative as a state, rather than federal, lawmaking power, thus “state-created.” But it needs to be clarified that the right to legislate by initiative is a reserved inherent political power of the people; it is not created by the state. *See* Const. Art. I, § 1 (“All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.”); *see also* Const. Art. II, § 1 (“The legislative authority of the state of Washington shall be vested in the legislature . . . , but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature”).

1 Rather, the Plaintiffs and City rely entirely on the *content* of the initiatives in asking this Court
2 to infringe upon the people's political rights. The signature threshold is the mechanism the
3 people have chosen for determining which proposed initiatives will appear on the ballot. But the
4 Washington Courts have given themselves the power to dissect the content of the proposed
5 initiative and veto the proposal. In other words, the courts are assuming the power to restrict
6 “core political speech” precisely *because of* the proposed initiative's content.

7 There is no compelling interest that could justify this infringement on the people's First
8 Amendment rights.³ The best argument the Plaintiffs and City can put forward is that the court is
9 protecting the integrity of the initiative process by striking initiatives from the ballot that are
10 “beyond the scope of the initiative power.” This argument only works if the First Amendment
11 only protects “valid” speech, or only protects proposed laws that seamlessly fit with current law.
12 But the First Amendment guarantees far more than that: “The very purpose of the First
13 Amendment is to foreclose public authority from assuming a guardianship of the public mind.”
14 *State ex rel. Pub. Disclosure Comm'n v. I19 Vote No! Comm.*, 135 Wn.2d 618, 625, 957 P.2d 691
15 (1998) (quoting *Meyer*, 486 U.S. 419) (quotation omitted).

16 The First Amendment is about protecting the *debate*, and does not allow for sanitizing it
17 down to “valid” proposals through a judicial validation process. *See, e.g., id.* at 626 (“The State
18 cannot substitute its judgment as to how best to speak for that of speakers and listeners; free and
19 robust debate cannot thrive if directed by the government.” (quotation and citation omitted));
20 *United States v. Schwimmer*, 279 U.S. 644, 654-655 (1929) (J. Holmes, dissenting) (“[I]f there is
21 any principle of the Constitution that more imperatively calls for attachment than any other it is

3 While the argument above is focused on *Meyer*, which itself focused on political speech, the First Amendment rights of assembly and petition are also implicated here. U.S. Const., 1st Amend. (“Congress shall make no law . . . abridging . . . the right of the people peaceably to assemble, and to petition the government for a redress of grievances.”).

1 the principle of free thought – not free thought for those who agree with us but freedom for the
2 thought that we hate.”), *overruled by Girouard v. United States*, 328 U.S. 61, 63-64 (1946)
3 (“The fallacies underlying [*Schwimmer's* majority opinion] were, we think, demonstrated in the
4 dissents of Mr. Justice Holmes . . .”).

5 Even if the Plaintiffs and City do come up with a compelling interest, that interest must
6 also be narrowly-tailored. Striking the initiative from the ballot is the most extreme remedy
7 possible, as it abolishes the political significance of the people's constitutionally-protected
8 debate. Further, judicial review of proposed legislation is inherently unnecessary. The same
9 limitations that apply to the court interfering with lawmaking by representatives should apply to
10 lawmaking by the people.

11 The Court has no authority to police the content of proposals that the people put forward
12 through duly-qualified initiatives. Petitioners' and the City's claims must be dismissed.

13 **II. The Washington Constitution prohibits pre-enactment review of an initiative's**
14 **content.**

15 Several provisions in the Washington Constitution's Declaration of Rights affirm that the
16 courts have no place in reviewing the content of proposed legislation. Article I, Section 1,
17 affirms the principles in the Declaration of Independence⁴ in stating that “All political power is
18 inherent in the people, and governments derive their just powers from the consent of the
19 governed, and are established to protect and maintain individual rights.” Like the federal Ninth
20 Amendment, Section 30 reserves unenumerated rights “retained by the people.” And in Section
21 32 the people reminded their government that “A frequent recurrence to fundamental principles
22 is essential to the security of individual right and the perpetuity of free government.”

4 As required by the Washington Enabling Act, ch. 180, 25 Stat. 676 (1889) (“The [state] constitutions shall . . . not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence.”).

1 The courts would never even consider such an action to censure the lawmaking process
2 of the state legislature, or a local government council. Yet somehow, citizen initiatives have
3 become second-class lawmaking, compared to the lawmaking of the people's representatives.
4 The people, as principals, must have at least as much authority as their representatives. The
5 courts' interference with the people's lawmaking process is just as illegitimate as the courts'
6 interference with their agents' lawmaking process.

7 Paralleling the First Amendment's political rights protections, Washington Constitution,
8 article I, section 4 provides that “The right of petition and of the people peaceably to assemble
9 for the common good shall never be abridged.” This section “appears to tend toward political,
10 not judicial, rights.” Robert F. Utter & Hugh D. Spitzer, *The Washington State Constitution: A*
11 *Reference Guide* 19 (2002). Section 5 provides that “Every person may freely speak, write and
12 publish on all subjects, being responsible for the abuse of that right.”

13 Political expression can only be restricted if the strict scrutiny requirements are met.
14 *Collier v. City of Tacoma*, 121 Wn.2d 737, 854 P.2d 1046 (1993). Putting an initiative on the
15 ballot – even a potentially-flawed initiative⁵ – is an important act of political expression. Even if
16 the law fails judicial review in a post-enactment challenge, the people's vote sends an important
17 message to elected officials.

18 Take as an example Tim Eyman's notorious vehicle tax initiative that passed by 56%, but
19 was then struck down as unconstitutional due to, among other things, a faulty ballot title.
20 *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 191-93, 11 P.3d 762 (2000).
21 After the trial court had voided the law, but before the Supreme Court issued its opinion, the

5 By challenging the legitimacy of the courts jurisdiction, Defendants do not concede that the proposed initiatives at issue in this case are “invalid” or “flawed.”

1 legislature “paid[] homage to the ‘will of the people’”⁶ and passed a bill that put the (now void)
2 initiative-proposed tax cut into statute. 2000 Wash. Sess. Laws 950-51, ch. 136.

3 In other words – regardless of whether we like the outcome – that initiative served the
4 central purpose of political expression: it influenced policy. That statute would probably not be
5 law today, as RCW 84.36.595, had the initiative been struck from the ballot.

6 The fact that there are other ways to influence policy, or express political views, does not
7 justify the courts entertaining pre-election challenges based on the initiative's content. In striking
8 down a Tacoma ordinance restricting political yard signs, the Washington Supreme Court noted
9 that the ordinance was “particularly problematic because it inevitably favors certain groups of
10 candidates over others. The incumbent, for example, has already acquired name familiarity and
11 therefore benefits greatly from Tacoma's restriction on political signs. The underfunded
12 challenger, on the other hand, who relies on the inexpensive yard sign to get his message before
13 the public is at a disadvantage.” *Collier*, 121 Wn.2d at 752, 854 P.2d 1046. This observation
14 applies to political expression through the initiative process as well.

15 Here, for example, Save Tacoma Water gathered nearly 17,000 signatures in 100 days
16 with all volunteers and a budget of less than \$5000. (Bockwinkel Decl. ¶¶ 14-15.) With that
17 minimal budget, they would have marginal political influence without the initiative process.
18 Their political expression, and that of the people of Tacoma generally, continues because the
19 initiatives will appear on the ballot. If the court strikes the initiative from the ballot, the court
20 will have eliminated the purpose of that political debate, and necessarily infringed on the
21 people's constitutionally-protected political expression. Sure, the people can still talk about
22 something that is not on the ballot, but what is the point – it would be like rallying for a political

6 www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2000/04/03/initiative-695-haunts-state-government-in-washington.

1 candidate who has dropped out of the race.

2 The Washington Constitution, like the United States Constitution, prohibits judicial
3 content-based review of an initiative before it becomes law. The Court lacks authority to review
4 these initiatives and must dismiss the Plaintiffs' and City's claims.

5 **III. Foundational justiciability principles prohibit pre-enactment review of an initiative's**
6 **content.**

7 The Court should abide by the established justiciability rules and recognize that it has no
8 authority to interfere with proposed legislation. “With the ultimate question of the validity of
9 this proposed legislation we have no present concern. Courts will not determine such questions
10 as to contemplated legislation which may, perchance, never be enacted.” *State ex rel. Griffiths v.*
11 *Super. Ct. in and for Thurston Cnty.*, 92 Wn. 44, 47, 159 P. 101 (1916). This remains the general
12 rule. *Brown v. Owen*, 165 Wn.2d 706, 720, 206 P.3d 310 (2009) (citation omitted) (“The right of
13 a legislative body to exercise its legislative powers will not be invaded by the judicial branch of
14 government.”). This rule applies even for *local* decisions by the people. *Minish v. Hanson*, 64
15 Wn.2d 113, 115, 390 P.2d 704 (1964) (holding that “it is the rule in this state that the courts will
16 not enjoin proposed legislative action,” where the legislative action in question was a
17 proposition to be voted on by the people of a water district on whether to dissolve the district).

18 Unfortunately, Washington courts have also entertained a line of cases that purport that
19 the courts can do pre-election assessment of initiatives for “subject matter,” even though they
20 cannot be reviewed for their “substance.” *Coppernoll v. Reed*, 155 Wn.2d 290, 297, 119 P.3d
21 318 (2005). That “subject matter” versus “substance” distinction – which had justified the
22 pre-election challenge due to its limited scope – has now imploded as the Washington Supreme
23 Court appears to have decided that all possible legal issues are available in an action to strike an

1 initiative from the ballot. *Spokane Entrepreneurial Ctr. v. Spokane Moves to Amend the*
2 *Constitution*, 185 Wn.2d 97, 369 P.3d 140 (2016). The exception has swallowed the rule, and
3 pre-election litigation – as the present case illustrates – is nothing short of full constitutional
4 review.⁷

5 “The foremost reason for restraint by the judiciary, particularly in controversies with
6 significant political overtones, is the separation of powers inherent in our political structure.”

7 Philip A. Talmadge, *Understanding the Limits of Power: Judicial Restraint in General*
8 *Jurisdiction Court Systems*, 22 SEATTLE U.L. REV. 695, 697 (1999). “Justiciability constraints
9 constitute the essence of judicial restraint” *Id.* at 707.

10 Justiciability issues are particularly important when private interests ask the courts to
11 interfere with the public legislative process. Justice Charles Johnson noted:

12 [The] effort to enact a legislative proposal has consistently been recognized by this
13 court as a political legislative action in which courts have not interfered, nor should
14 they. Because of the multitude of possible outcomes, the essence of the political
15 legislative process involves many competing political choices into which courts
16 should not intrude to act as referee.

17 *League of Educ. Voters v. State*, 176 Wn.2d 808, 831, 295 P.3d 743 (2013) (C. Johnson, J.,
18 dissenting).⁸

19 **Conclusion**

20 The Court has no authority to review the content of a proposed law before it is enacted.
21 Doing so violates the people's core political rights, and fails to uphold the foundational

7 Except that the Plaintiffs and City get to choose their hypothetical facts, rather than rely on an actual case or controversy.

8 The Court's political question doctrine is also at play in pre-election initiative challenges. *See id.* at 833-34 (citing, among other cases, *State ex rel. Donohue v. Coe*, 49 Wn.2d 410, 417, 302 P.2d 202 (1956) (determination of questions arising incidental to the submission of an initiative measure to the voters is a political and not a judicial question, except when there may be express statutory or written constitutional law making the question judicial)). As noted, the pre-election cause of action is not “express statutory or written constitutional law.”

1 government principles of separation of power and judicial restraint. For these reasons, the Court
2 must dismiss the Plaintiffs' and City's claims due to lack of subject matter jurisdiction.

3

4

5 Respectfully submitted June 29, 2016.

6

7



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1 **CERTIFICATE OF SERVICE**

2 I certify that on this day I sent a copy of the foregoing document, the Declaration of
3 Sherry Bockwinkel, Note for Motion Docket, and an accompanying proposed order, by email to:

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JUDGE Nevin
HEARING DATE: Friday, July 1, 2016
TIME: 10:00 a.m.

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

PORT OF TACOMA, a Washington State
Municipal Corporation, ECONOMIC
DEVELOPMENT BOARD FOR TACOMA-
PIERCE COUNTY, a Washington State
Nonprofit Corporation,

Plaintiffs,

vs.

SAVE TACOMA WATER, a Washington
political committee, DONNA WALTERS,
sponsor and Treasurer of SAVE TACOMA
WATER, JON AND JANE DOES 1-5,
(Individual sponsors and officers of SAVE
TACOMA WATER), CITY OF TACOMA, a
Washington State Municipal Corporation,
and PIERCE COUNTY, a political subdivision
by and through JULIE ANDERSON, IN HER
CAPACITY AS PIERCE COUNTY AUDITOR

Defendants.

No. 16-2-08477-5
and City of Tacoma

[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
DECLARATORY JUDGMENT &
PERMANENT INJUNCTIVE
RELIEF *& Dismissing*

STW's motion to Dismiss

ORDER GRANTING PLAINTIFFS' MOTIONS FOR
DECLARATORY JUDGMENT & PERMANENT
INJUNCTIVE RELIEF 1 of 7
160629.pldg, Port EDB Chamber PR'SD ORDER, PERMANENT Injunction &
DEC JUD

GOODSTEIN LAW GROUP PLLC
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1 CITY OF TACOMA,
2 Third-Party Plaintiff,
3 vs.
4 SAVE TACOMA WATER, an Washington
5 political action committee, DONNA
6 WALTERS, Co-Chair and Treasurer SAVE
7 TACOMA WATER; SHERRY BOCKWINKLE,
8 Co-Chair and Campaign Manager of SAVE
9 TACOMA WATER; JOHN AND JANE DOES
1-5, (Individual sponsors and officers of SAVE
TACOMA WATER); and Julie Anderson, in
her official capacity as Pierce County Auditor
Third-Party Defendants.

10 THIS MATTER came before the Court upon the Plaintiffs' ^{City's} Motion for
11 Preliminary and Permanent Injunction and for Declaratory Judgment, noted for
12 consideration on July 1, 2016. The Court has considered the arguments of Counsel and
13 has reviewed the following pleadings:

- 14 1. CITY MOTION FOR PRELIMINARY INJUNCTION
- 15 2. DECLARATION OF KYMBERLY K EVANSON
- 16 3. DECLARATION OF PETER HUFFMAN
- 17 4. DECLARATION OF ROBERT MACK
- 18 5. DECLARATION OF TC BROADNAX
- 19 6. PORT & EDB MOTION FOR PRELIMINARY, PERMANENT AND
DECLARATORY JUDGMENT
- 20 7. DECLARATION OF JOHN WOLFE
- 21 8. DECLARATION OF COUNSEL CAROLYN LAKE
- 22 9. DECLARATION OF SUSAN SUESS
- 23 10. PIERCE COUNTY'S ANSWER AND AFFIRMATIVE DEFENSES

24 ORDER GRANTING PLAINTIFFS' MOTIONS FOR
25 DECLARATORY JUDGMENT & PERMANENT
INJUNCTIVE RELIEF 2 of 7
160629.pldg.Port EDB Chamber PR'SD ORDER. PERMANENT Injunction &
DEC JUD

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- 1 11. CHAMBER MOTION FOR PRELIMINARY AND PERMANENT INJUNCTION
2 AND DECLARATORY JUDGMENT
3 12. DECLARATION OF TOM PIERSON
4 13. CITY RESPONSE TO MOTIONS FOR PRELIMINARY AND PERMANENT
5 INJUNCTION AND DECLARATORY JUDGMENT
6 14. AFFIDAVIT/DECLARATION OF COUNSEL
7 15. STW RESPONSE TO PRELIMINARY INJUNCTION MOTION
8 16. DECLARATION OF LINDSEY SCHROMEN-WAWRIN
9 17. DECLARATION OF SHERRY BOCKWINKEL
10 18. CHAMBER REPLY IN SUPPORT OF PRELIMINARY, PERMANENT AND
11 DECLARATORY JUDGMENT
12 19. PORT REPLY IN SUPPORT OF PRELIMINARY, PERMANENT AND
13 DECLARATORY JUDGMENT

14 20. STW's MOTION TO DISMISS

15 The Court finds as follows:

- 16 1. A justiciable controversy exists. There is an actual, present, and existing dispute
17 between parties with genuine and opposing interests that are direct and
18 substantial. Post-election events will not further sharpen the issue whether
19 Tacoma Code Initiative 6 and Tacoma Charter Initiative 5 (the "STW
20 Initiatives) are beyond the scope of the local initiative power.
21 2. Plaintiffs have standing. Plaintiffs fall within the zone of interests the STW
22 Initiatives seek to regulate and have demonstrated sufficient injury in fact.
23 Further, this case involves significant and continuing issues of public
24 importance that merit judicial resolution.
25 3. The STW Initiatives exceed the local initiative power and are invalid.

ORDER GRANTING PLAINTIFFS' MOTIONS FOR
DECLARATORY JUDGMENT & PERMANENT
INJUNCTIVE RELIEF 3 of 7
160629.pldg.Port EDB Chamber PR'SD ORDER. PERMANENT Injunction &
DEC JUD

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1 a. The requirement for a binding vote of Tacoma residents before providing
2 water utility service to an applicant that intends to use 1336 CCF (one
3 million gallons) of water daily from the City of Tacoma (“Water
4 Provision”) is a land use and development provision and exceeds the
5 local initiative power because it is administrative in nature and involves
6 powers delegated under RCW Title 35 to the legislative bodies of
7 municipalities. STW Initiatives’ Water Provisions also is administrative
8 because they seek to change or hinder Tacoma’s pre-existing water utility
9 management and operations.

10 b. The Water Provisions exceed the local initiative power because they
11 conflict with state law, and are administrative in nature. The Water
12 Provisions seek to interfere with water utility service requirements that
13 are subject to Washington’s state water rights and service laws, and the
14 Growth Management Act. STW Initiatives’ Water Provisions would add
15 requirements to these pre-existing regulations, and would interfere with
16 pre-existing regulations. The Water Provisions therefore conflict with
17 state law and are outside the scope of the local initiative power. The
18 Water Provisions are also administrative because they seek to change or
19 hinder pre-existing water regulations. The Water Provisions are also
20 outside the scope of the local initiative power because they attempt to
21 impose rights on Tacoma residents regarding water usage outside the
22 boundaries of Tacoma City limits, and they attempt to create new

1 constitutional rights. The City of Tacoma lacks jurisdiction to enact such
2 legislation, ^{↑ people of the} through the initiative.

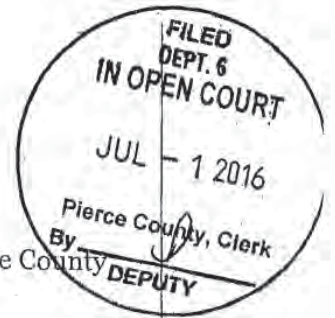
- 3 c. STW Initiatives' provisions which seek to invalidate any conflicting
4 Washington and state agency laws and rules exceed the local initiative
5 power because they conflict with state law and seek to elevate city
6 code/charter above state law which is beyond the City of Tacoma's
7 jurisdiction to enact.
- 8 d. The STW Initiatives' corporate rights provisions exceed the local
9 initiative power because they attempt to change the rights of
10 corporations under federal and state law. The provisions therefore
11 conflict with federal and state law, and are outside the scope of the local
12 initiative power. The local initiative power does not include the ability to
13 limit U.S. Supreme Court precedent, including *Citizens United v. Federal*
14 *Election Commission*, 558 U.S. 310 (2010). The local initiative power
15 does not include the ability to override the "personhood" rights to
16 corporations under federal and state law, including under the First and
17 Fifth Amendments of the United States Constitution and Wash. State
18 Const. art. XII, § 5. The STW Initiatives exceed the local initiative power
19 because they attempts to strip corporations of their First and Fifth
20 Amendment rights, which would conflict with U.S. Supreme Court
21 precedent.
- 22 e. The STW Initiatives provisions that seek to limit a court's authority to

1 interpret the law or to determine whether a "permit, license, privilege or
2 charter" is valid are outside the scope of the local initiative power
3 because they conflict with federal and state law and seek to elevate city
4 code/charter above state law which is beyond the City of Tacoma's
5 jurisdiction to enact.

- 6 4. The STW Initiatives are not severable. All substantive provisions of both
7 Initiatives are invalid. Once the Initiatives' substantive provisions A-C are held
8 invalid, the enforcement, severability, and effect sections are moot.
- 9 5. Plaintiffs have ^{+City} established clear, legal or equitable rights to prevent invalid
10 Initiatives, which exceed the scope of local initiative power, from appearing on
11 the official ballot for the November 2016 election or any ballot thereafter;
- 12 6. Plaintiffs have ^{+City} established a well-grounded fear of immediate invasion of those
13 rights because the Pierce County Auditor, at the direction of the City, will place
14 the STW's Tacoma Code Initiative 6 on the official ballot in September 2016
15 absent contrary direction from this Court; and
- 16 7. Plaintiffs have ^{+City} established that placing invalid initiatives on the ballot will
17 result in actual or substantial injury to Plaintiffs.

18 **Now, therefore, it is hereby ORDERED:**

- 19 1. Plaintiffs' ^{+City} Motion for Declaratory Judgment is GRANTED.
- 20 2. The Court DECLARES that the STW Initiatives are invalid as outside the scope
21 of the local initiative power.
- 22 3. The Court further DECLARES that neither STW Initiative shall appear on the



- 1 November 2016 election or any ballot thereafter, and directs the Pierce County
- 2 Auditor not to include them on that or any ballot.
- 3 4. Plaintiffs' ^{City} Motions for Preliminary and Permanent Injunction is GRANTED.
- 4 5. The motion to consolidate the hearings on the motions for preliminary and
- 5 permanent injunctive relief and the merits is GRANTED.
- 6 6. This Order shall serve as the Court's final Order and Judgement adjudicating
- 7 the merits of this action.
- 8 7. The Pierce County Auditor is hereby enjoined from including the STW
- 9 Initiatives on the ballot for the November 2016 election or any other election
- 10 ballot.

11 *B. Court has subject matter jurisdiction & STW's Motion to Dismiss is denied.*
 DATED this 1 day of ^{July} ~~June~~, 2016.

12 Jack Nevin
 Jack Nevin, Superior Court Judge

13 Presented By:

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 16 By /s/Seth Goodstein
 Carolyn A. Lake, WSBA #13980
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 Attorneys for Plaintiff Port of Tacoma

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23 ORDER GRANTING PLAINTIFFS' MOTIONS FOR
 24 DECLARATORY JUDGMENT & PERMANENT
 INJUNCTIVE RELIEF 7 of 7
 25 160629.pldg.Port EDB Chamber PR'SD ORDER. PERMANENT Injunction &
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1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF PIERCE
3

4 PORT OF TACOMA, et al.,)
5 Plaintiffs,)
6 Vs.) NO. 16-2-08477-5
7 SAVE TACOMA WATER, et al.,) COA. 49263-6-II
8 Defendants.)
9

10 VERBATIM REPORT OF PROCEEDINGS
11 July 1, 2016
12 (MOTION HEARINGS)
13

14 A P P E A R A N C E S

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1 I know who represents whom, but we will clarify that for
2 the record. The second thing is I'm going to invite you
3 to situate yourself, to the extent possible, I was going
4 to invite you to be comfortable, but that may be a
5 no-go. But counsel are free to situate themselves in
6 the courtroom where they're most comfortable to present
7 their position. Obviously, I need to hear you and all
8 that. We can approach this next point in a few minutes.

9 I understand that we have a number of different
10 moving parties who have joined together. I'm sort of
11 hoping that we don't have to reinvent the wheel with
12 every single attorney. I was hoping as well that there
13 were perhaps some attorneys were going to take the lead
14 in representing the group. And then to the extent that
15 there was an attorney who represented an entity that had
16 a particular issue, that they could join in, but only as
17 to that particular issue.

18 So I'm going to begin first with the moving party,
19 and so I'll start with the petitioners. And I'm just
20 going to start to my far right, sir, introduce yourself,
21 Mr. Whalen, that's you.

22 MR. WHALEN: Jason Whalen on behalf of the
23 Economic Development Board of Tacoma, Pierce County.

24 THE COURT: Very well. Ma'am?

25 MS. WASHBURN: Sarah Washburn from Pacifica

1 Law Group on behalf of the City of Tacoma.

2 THE COURT: Ma'am?

3 MS. LAKE: Carolyn Lake representing Port of
4 Tacoma.

5 THE COURT: Ma'am?

6 MS. EVANSON: Kymberly Evanson, Pacifica Law
7 Group on behalf of the City of Tacoma.

8 THE COURT: Sir?

9 MR. MARTIN: Warren Martin, Gordon, Thomas,
10 Honeywell, on behalf of the Tacoma Pierce County
11 Chamber.

12 THE COURT: Sir?

13 Mr. SCHROMEN-WAWRIN: Lindsey Schromen-Wawrin
14 with the Community Environmental Legal Defense Fund.

15 THE COURT: All right. Now, I've been
16 practicing pronouncing your last name for the last three
17 days so I want you to help me with this.

18 MR. SCHROMEN-WAWRIN: Schromen-Wawrin.

19 THE COURT: Schromen and --

20 MR. SCHROMEN-WAWRIN: Wawrin, W-a-w-r-i-n --

21 THE COURT: Thank you.

22 MR. SCHROMEN-WAWRIN: For Save Tacoma Water,
23 Sherry Bockwinkel and Donna Walters.

24 THE COURT: Good morning. And Mr. Misner,
25 good morning.

1 MR. MISNER: Yes, good morning, your Honor,
2 I'm with him, co-counsel.

3 THE COURT: Mr. Misner, had you also appeared
4 in this?

5 MR. MISNER: I have, yes.

6 THE COURT: I was actually a bit unclear on
7 that yesterday, so, okay, very good. Without seeing
8 you, you're over there, I missed you.

9 MR. PRATHER: Your Honor, David Prather,
10 Deputy Prosecutor for Pierce County.

11 THE COURT: Sir?

12 MR. MARTINEZ: Good morning, your Honor,
13 Spencer Martinez, just in for Stacy Tucker observing.

14 THE COURT: Very good. Why don't we move
15 forward with our hearing and I'll invite the petitioners
16 to proceed.

17 MS. EVANSON: Thank you, your Honor. Kymberly
18 Evanson on behalf of the City of Tacoma. With me is
19 Sarah Washburn, also on behalf of the City.

20 Your Honor, the City recognizes that the proponents
21 of the initiatives before the Court have strong feelings
22 and opinions about the issues presented in these
23 measures. And the City respects the proponents'
24 participation in the initiative process. But however
25 laudable their goals are, the only issue before the

1 Court today is whether the initiatives are outside the
2 scope of the local initiative power, and the answer is
3 that they are.

4 These initiatives go way beyond the City's scope of
5 its legislative authority. They legislate an area such
6 as water regulation that are controlled by state law,
7 not city ordinance. They purport to alter development
8 regulations, though the state has specifically delegated
9 through the Growth Management Act a process that gives
10 that power to City Council, not the electorate. They
11 expressly purport to preempt state, federal, and
12 international law which the City has no right to do.
13 They further purport to deny corporations' rights which
14 are protected by the federal and state constitution.
15 And they purport to limit this Court's jurisdiction to
16 hear disputes which is solely a matter of state
17 constitution and state statute. Because the initiatives
18 are outside the scope of the local initiative power and
19 because the City has both met the standard for
20 declaratory judgment and its request for injunction, the
21 City's motion and that of the other moving parties
22 should be granted.

23 I'd like to provide the Court a brief background on
24 Tacoma Water service. The City of Tacoma has owned its
25 own municipal water service and has for 100 years.

1 Under the Tacoma Charter, Tacoma Water is a division of
2 Tacoma Public Utility, which under the Charter has full
3 power to operate water and utility service. Tacoma
4 Water is a retail water provider to residents and
5 businesses in Tacoma and throughout Pierce County, but
6 it's also a wholesale water purveyor and provides water
7 to 14 other water utilities in King and Pierce Counties.
8 Tacoma holds permits from the Department of Ecology
9 authorizing and regulating the use of surface and ground
10 waters, and the City's water rights on the Green River
11 is in good standing. The rate scheme in the Tacoma
12 Municipal Code is ultimately subject to state law
13 governing water providers under Chapter 43 and Chapter
14 80 of the RCW.

15 Now, the local initiative power, unlike the state
16 power, is not constitutionally based, it is a creature
17 of statute. The scope is, therefore, more limited than
18 the state constitutional power to pass statewide
19 initiatives. And like the state power of initiatives,
20 it's limited by the federal constitutional power. But
21 unlike the state power, it extends only so far as the
22 state legislature has authorized. Moreover, the Tacoma
23 City Charter limits the people's right to initiatives to
24 subjects that are expressly permitted by state law.
25 Here, Initiatives 5 and 6 are beyond the scope of that

1 power delegated by the legislature. They conflict with
2 state statutes and conflict with the state and federal
3 constitutions.

4 Briefly, what the initiatives would purport to do
5 is to add a provision to the Tacoma City Charter and the
6 Tacoma Municipal Code which creates a people's
7 inalienable right to water. The crux of these
8 initiatives is the provision in part A that requires a
9 public vote for any large water user application over a
10 million gallons a day. But the initiatives also contain
11 sweeping provisions in parts B and C that expressly
12 preempt state, federal, and international law. For
13 example, part B states that no laws passed by the state
14 legislature will apply to the City of Tacoma to the
15 extent that they conflict with the initiatives.

16 Likewise, part C purports to remove the jurisdiction of
17 this Court and other Courts to hear disputes arising
18 under the initiatives, and further purports to remove
19 corporate constitutional rights to assert certain legal
20 defenses. These provisions under well established law
21 are well beyond the scope of the local Municipal power.

22 The numerous cases in our brief support
23 invalidating these initiatives in full; the Court need
24 look no further than the Supreme Court's very recent
25 decision in *Spokane. Spokane Entrepreneurial Center v.*

1 *Spokane Moves to Amend the Constitution* was decided
2 February of this year.

3 THE COURT: I've read the case, by the way.

4 MS. EVANSON: Okay. And so the Court is aware
5 that case involved very, very similar initiatives to the
6 initiatives that are proposed here. The initiatives,
7 like the *Spokane* case, purported to regulate water and
8 also were struck down and invalidated in full because
9 they conflict with state law and federal law. As a
10 threshold matter, the *Spokane* case held that
11 pre-election review in situations like this is
12 appropriate when the challengers seek to determine the
13 scope of the initiative. And, here, the initiatives
14 present only legal questions before the Court. They
15 don't present any facts that need development. The
16 *Malkasian* case and the *Port Angeles* case expressly held
17 that whether -- a question of whether a local initiative
18 is beyond the local initiative power, that's a question
19 of law. Contrary to the proponents' briefing, the
20 *Spokane* court and all the other cases it cites don't
21 include any heightened standing or heightened pleading
22 or proving requirement to determine that question of law
23 of whether the initiative is outside the scope of the
24 initiative power.

25 Since the Court is aware of the *Spokane* case, I

1 will only briefly address the ways in which the
2 initiatives following that case should be invalidated
3 for the same reasons. Here, Initiatives 5 and 6
4 conflict with state law in many respects. First, the
5 public vote provision adds a new requirement to the
6 provision of water service which is expressly governed
7 by RCW 43.20.260. That statute imposes a duty upon
8 municipal water suppliers like Tacoma Water to provide
9 water so long as sufficient capacity exists as
10 determined by the Department of Health. There's no
11 public vote requirement in that statute.

12 The provisions in Chapter 80, similarly, prohibit
13 rate discrimination or undue burden or favors to any
14 particular class of user. Those also conflict. The
15 sponsors concede in their briefing that their intention
16 is to conflict with the state water law, and that alone
17 makes them invalid. The public vote provision also
18 conflicts with the Growth Management Act which requires
19 the City to pass comprehensive plans for development,
20 and those plans commit the City to providing water
21 concurrent with development. And that's detailed in the
22 Huffman declaration submitted with our motion.

23 The preemption provisions in parts B and C also
24 conflict with state law and are thus outside of the
25 scope. It is black letter law that a City's legislative

1 power, whether exercised by the City Council or by the
2 people via an initiative, is subordinate to state and
3 federal law. The initiatives expressly purport to
4 preempt state law by holding that the laws of the State
5 of Washington passed by the legislature don't apply to
6 Tacoma. So these parts, likewise -- these parts of the
7 initiative, likewise, purport to remove corporate rights
8 which are guaranteed by the Washington and U.S.
9 Constitutions. They violate the separation of powers,
10 the Supremacy Clause, and also the statutory
11 jurisdiction of the Superior Court under RCW 208.
12 Because of these multiple conflicts with state and
13 federal law, the initiatives are outside the scope and
14 invalid in full.

15 The initiatives are also invalid because they are
16 administrative in nature. As in the *Spokane* case, and
17 in other cases cited in our briefing, the test for
18 whether an initiative is administrative, and, therefore,
19 invalid, is whether it carries that existing policy or
20 whether it enacts a new law. Making new law is
21 legislative in nature and can be subject to the
22 initiative. But carrying out existing policy is an
23 administrative act, an act of the City that is not
24 subject to initiatives. Here, the City already has a
25 detailed, comprehensive water code in its Municipal Code

1 that is ultimately subject to the provisions of state
2 law. So as in *Spokane*, the initiatives are outside the
3 scope for that additional reason.

4 Finally, the initiatives are invalid because they
5 attempt to usurp power that is granted expressly to the
6 City Council under the Growth Management Act. The *1,000*
7 *Friends of Washington* case, the *Yes for Seattle* case,
8 these cases hold water regulation by initiative is not
9 allowable under the Growth Management Act.

10 Finally, declaratory and injunctive relief is
11 appropriate here under the *Spokane* case, the *Port*
12 *Angeles* case, the *Whalen* case, the other authorities
13 cited in our brief; the City has standing to challenge
14 pre-election, an initiative as outside the scope. The
15 sponsors do not dispute that the requirements of the
16 Declaratory Judgment Act are met here. The City is
17 unquestionably within the zone of interest these
18 initiatives seem to regulate, and will suffer injury in
19 fact if they're placed on the ballot.

20 An injunction is also appropriate. Because the
21 initiatives are invalid, the City has a clear, legal
22 right to exclude them from the ballot. The sponsors, by
23 supporting the initiative, seek to invade that right.
24 The City will face actual and substantial harm both by
25 holding an invalid election if the initiative passed and

1 if the initiative passed. As a result, the City
2 respectfully requests expedited consideration of this
3 matter.

4 Despite the sponsor's claims, there are no factual
5 issues in dispute. The only issues are issues of law,
6 which, for that reason, consolidation under CR 65(a)(2)
7 is appropriate. The Auditor has requested that the City
8 Council inform the Auditor by August 2nd of its
9 intention of whether to pass on the initiative to the
10 ballot or not. In order to meet the August 2nd
11 deadline, the City Council must consider the initiative
12 at its July 26 meeting.

13 In conclusion, there are ample ways in which those
14 who share the sponsor's views can engage in the public
15 policy process governing water usage in Tacoma. But for
16 the reasons articulated today and in our briefing, and
17 in the numerous cases cited therein, Initiatives 5 and 6
18 are not the way to do it. The initiatives exceed the
19 scope of the local initiative power and are invalid in
20 full. The City respectfully requests that its motion be
21 granted.

22 THE COURT: Thank you.

23 Anyone else from petitioners at this point?

24 MS. LAKE: Yes, your Honor.

25 THE COURT: Here's what I'll do, sir, I'll go

1 through all the petitioners, and then if your argument
2 is different from say, for example, City to Port to
3 Commerce and so on, you can just go ahead in your
4 response and do it that way if that's okay.

5 All right, please, Ms. Lake.

6 MS. LAKE: Thank you, your Honor. Briefly,
7 the Port joins in all the arguments made by the City and
8 the well-reasoned statements made. We want to address
9 the standing issue, even though respondents, Save Tacoma
10 Water, did not request declaratory judgment or standing.

11 THE COURT: Let me ask you just one question.
12 In the context of at least preliminary injunction, which
13 is one of the questions before the Court, is it
14 necessary for the Court to make a ruling on standing
15 before it addresses the issue of the preliminary
16 injunction?

17 MS. LAKE: Well, we're hoping that the Court
18 will address all factors, including a permanent
19 injunction today. And so the record is clear, we would
20 like to address how the Court has standing.

21 THE COURT: Very well.

22 MS. LAKE: Thank you, your Honor. As our
23 briefing points out, the Port has a statutory mission to
24 promote economic development. Its primary mission is
25 to, as a landlord court, is to lease land to tenants.

1 Many of those have, and will in the future, include
2 industrial, manufacturing, technology users who use
3 large amounts of water who will be directly affected
4 should the petition go through. The Port has done a
5 great job in its economic development issue. We pointed
6 out there is 29,000 jobs as a result of Port activity.
7 They create over \$195 million in tax revenues that
8 support roads, school, fire, and police.

9 The EDB also and Chamber have a similar economic
10 mission, a chartered mission. Each of their individual
11 members have standing as a result of just being voters
12 within the City. And the initiatives with its defects
13 and its water by ballot measure impedes the Port's
14 mission as well as the Chamber and Economic Development
15 Board to recruit and retain economic development, not
16 just the larger users, but it spills down to the smaller
17 businesses who depend on those larger businesses
18 indirectly. So the water by ballot injects uncertainty
19 into an already very complicated development process.

20 And one point that bears mention is the attack on
21 corporate rights. This initiative would seem to remove
22 the ability of corporations to defend themselves in
23 court. And many of the individual members of EDB and
24 Chamber are corporations, as well as the EBD and Chamber
25 itself. All of the petitioners benefit from removing

1 the uncertainty that the litigation, resulting
2 litigation, of these initiatives would bring.

3 We're also qualified for standing under the Public
4 Importance Doctrine. These initiatives are the classic
5 case of pre-election -- citing pre-election local
6 initiatives are a classic case where the public
7 importance denotes standing. It is exactly the kind of
8 continuing and significant matter of public importance
9 that merits judicial resolution. We're joining in the
10 City's request that these matters be addressed
11 expediently and be combined with the hearing on the
12 merits.

13 Last, I want to address the severance issue.
14 Although they didn't address it in their response, we
15 wanted to quell any notion that any portion of the
16 initiative can remain once the invalid portions are
17 removed. Each one of the initiative provisions, and
18 there's four or five as the City pointed out, each one
19 of those are defective for all the reasons; they exceed
20 the authority of the City to enact, they delve into
21 matters that are delegated expressly to the legislative
22 body of the City and not to the City corporates, and
23 they conflict with state law. When you remove those
24 invalid provisions, nothing is left to enact. So we're
25 asking that the Court finds that it cannot be severed

1 and they should be enjoined from being placed on the
2 ballot.

3 THE COURT: Anyone else representing
4 petitioners?

5 MR. WHALEN: Your Honor, Jason Whalen on
6 behalf of the Economic Development Board of Tacoma,
7 Pierce County. As invited by the judge, brevity is
8 probably the better part of valor. The EDB joins in the
9 articulation, briefing, and argument brought forth by
10 the City and Port when we believe for the many, many
11 reasons articulated that the initiatives don't pass
12 legal muster despite the emotion and great effort
13 involved in all of the folks who want to make our
14 community great, including the business community. We
15 remain a country and nation of laws and these just don't
16 pass muster.

17 THE COURT: Mr. Martin.

18 MR. MARTIN: I, too, will be brief. From the
19 Chamber's perspective, we believe this is fundamentally
20 a question of law largely governed by *Spokane*. I, did,
21 however, want to address your question about standing.

22 THE COURT: Right, and let me go ahead and
23 drop the other shoe because we have a Motion to Dismiss
24 that's also on the table, but it wasn't timely filed.
25 Now, it's currently set for the 22nd. And it occurred

1 to me that as complicated as some of the substance can
2 be -- and I've been actually working on this since my
3 assistant delivered it to me some weeks ago -- it is
4 actually the procedural steps to follow that I want to
5 make sure are absolutely correct, which is one of the
6 reasons I asked that question of Ms. Lake. Because we
7 have a declaratory judgment action presumably brought
8 under Title 7, I think it is, the Declaratory Judgment
9 Act, which I have some experience with, albeit in an
10 entirely different context. We also have the motion to
11 dismiss which is currently set for the 22nd, and so it's
12 on the table, it is there, and it deserves hearing. And
13 then, of course, we have permanent injunction and we
14 have preliminary injunction. So I'm sort of looking at
15 this in what counsel, all counsel, advocate as the most
16 precise procedural approach to take given that backdrop.
17 And I invite you, Mr. Martin as well as other counsel,
18 to weigh in on that very question.

19 MR. MARTIN: That's exactly where I was
20 headed. So this is the way it seems to me; in terms of
21 dealing with the Motion for Preliminary Injunction
22 because the question of likelihood of success on the
23 merits, one of the merits questions, would then be
24 standing. And the likelihood of success on the merits
25 of standing would itself be sufficient to support a

1 Motion and Order for Preliminary Injunction even if the
2 Court so inclined to reserve the question of the merits
3 and/or the permanent injunction for the Motion to
4 Dismiss for Lack of Subject Matter Jurisdiction. So I
5 think that's the first answer.

6 THE COURT: Thank you.

7 MR. MARTIN: The second answer I think is I do
8 believe that it is proper under Rule 65(a)(2) to
9 consolidate this case with the hearing on the merits.
10 And if we do that, then we would, obviously, begin
11 deciding the standing on the merits at this point in
12 time. And I would also suggest that, procedurally,
13 that's the correct thing to do given our timelines here,
14 and given what I would think is a likelihood that this
15 may end up in the Court of Appeals, that we would like
16 to do that sooner rather than later so that we know what
17 we're doing about an election this fall.

18 THE COURT: Let me tell you, also, what I have
19 done. I have a medical malpractice case that begins on
20 the 13th. And what I've done is I've actually -- and my
21 assistant, hopefully, will back me up on this, I think I
22 did this -- I blocked off two days, the 18th and the
23 19th, for final hearing on this, at which time we can
24 take that Motion to Dismiss from the 22nd and we can
25 devote the entire 18th and 19th to the Motion to Dismiss

1 as well as the permanent injunction, a portion of this,
2 if applicable, because of the fact that we still have
3 that Motion to Dismiss hanging fire out there. And
4 that's just kind of the -- and I understand that you
5 folks, of course, have lived with this for a while, and
6 in one respect, I'm on the outside looking in here. So
7 that was sort of my best guess of how to approach this
8 procedurally, but I'm not wedded to any particular
9 approach.

10 Ma'am, did you want to weigh in on that?

11 MS. EVANSON: Yes, your Honor. So the City
12 would posit a few things. First, we agree that standing
13 is an issue you determine as a component of determining
14 the merits. But, also, it's the Court's obligation to
15 ensure itself of its own subject matter jurisdiction at
16 any point in the proceedings. So subject matter
17 jurisdiction would also be a component of the merits.
18 And in an injunction proceeding like this that is
19 dealing only with legal issues, an untimely Motion to
20 Dismiss for Subject Matter Jurisdiction should not be
21 entertained weeks after the injunction hearing.

22 So I would posit that if the Defendants wanted to
23 raise subject matter jurisdiction, they should have
24 raised it in response to the Motion for Injunction. The
25 movants have set forth numerous reasons, valid reasons,

1 why an early and prompt decision is important. But,
2 principally, because these are all issues of law,
3 including standing, I don't know what would be left to
4 decide at a two-day hearing later on down the road.

5 MS. LAKE: The Port joins in that reasoning as
6 well. Today's motion is dispositive, and we ask that if
7 the Court declares that the initiatives are invalid,
8 that is dispositive. It's not as though Save Tacoma
9 Water won't have a chance to raise that issue later
10 should they appeal, but they did not address that issue
11 in a manner they got it to the Court and should not be
12 allowed to -- our issue should not be delayed based upon
13 their failure to raise the issue timely. I would also
14 say there's no question the Court has subject matter
15 jurisdiction over this issue.

16 THE COURT: Well, I'm just trying to allow for
17 fewer legal issues as opposed to more legal issues.

18 MS. EVANSON: I appreciate that, your Honor,
19 and I share that goal.

20 THE COURT: What do you think, Mr. Martin?

21 MR. MARTIN: What do I think?

22 THE COURT: Yes.

23 MR. MARTIN: I think that the procedurally
24 correct thing to do is, first, to deal with the Motion
25 for Preliminary Injunction. And that, as I mentioned,

1 requires a question of whether or not there's likelihood
2 of success. And since the *Spokane* case says there's no
3 heightened standard, so organizations like my client,
4 EDB, have standing, clearly that's likely to have
5 success on the merits.

6 I think in terms of the secondary procedural issue,
7 candidly, I think that's a discretionary decision for
8 the Court. I think that the Court should exercise it's
9 discretion to decide all of this today because it's all
10 legal questions and it's not going to be any different,
11 the case and the materials are not going to be any
12 different, whether we decide this two weeks from today
13 or now. And I think that given the nature of these
14 issues and trying to get them resolved timely, the
15 correct discretionary thing to do is to decide that
16 today, but, candidly, I agree that's a discretion
17 decision for the Court.

18 THE COURT: Very well. Anything else you want
19 me to know?

20 MR. MARTIN: That's it.

21 THE COURT: Mr. Whalen.

22 MR. WHALEN: I think it's been said, judge,
23 you certainly have all the tools today to make the
24 decision. I believe the standing issue and all the
25 prerequisite elements for the relief requested are

1 clearly before the Court today on undisputed facts with
2 matters of law, and it is germane and ripe for
3 determination today.

4 THE COURT: All right, thank you. Have I
5 heard from all the petitioners? You can appreciate why
6 I want to confirm that.

7 All right, sir, I'll hear from you now.

8 MR. LINDSEY SCHROMEN-WAWRIN: Your Honor,
9 Lindsey Schromen-Wawrin for the defendant Save Tacoma
10 Water.

11 THE COURT: Thank you, welcome to our court by
12 the way.

13 MR. LINDSEY SCHROMEN-WAWRIN: Thank you. So
14 if the Court is going to entertain consolidating, which
15 I don't think is the appropriate thing for this case, I
16 would like to reserve the additional argument on the
17 Motion to Dismiss for Lack of Subject Matter
18 Jurisdiction, and also the additional issues that we
19 would raise in the Declaratory Judgment Motion at the
20 appropriate time.

21 THE COURT: I hear your opponent saying that
22 the notice requirement, notwithstanding, that they're
23 more than willing to hear the matter on the subject
24 matter jurisdiction motion today irrespective of the
25 timeliness. Are you willing to proceed on that as well?

1 MR. SCHROMEN-WAWRIN: I think there is some
2 issues there that it would be better if we brief it and
3 hear it out because there are important issues. The
4 Washington Supreme Court said in *Huff v. Wyman* that it
5 hasn't explored the First Amendment and Washington's
6 equivalent, as well as some jurisdictional issues, with
7 regard to pre-election challenges. So it is something
8 that I would rather that we have time to explore it in
9 proper briefing.

10 So, your Honor, in terms of timeliness, the
11 Wednesday of this week, the 29th, when the Motion to
12 Dismiss was filed was the 20th day from when Defendants
13 were served. So that was, in my opinion, the
14 appropriate day for filing a responsive pleading, and
15 Defendants filed a Motion to Dismiss in lieu of a
16 responsive pleading. In terms of timing for this entire
17 case, yesterday --

18 THE COURT: But wouldn't that then support the
19 proposition that I could hear the Motion to Dismiss
20 today for lack of jurisdiction?

21 MR. SCHROMEN-WAWRIN: Your Honor, I think you
22 certainly could. And if you do, I would like to bring
23 forward the argument on that. Otherwise, I plan on
24 arguing simply the preliminary injunction.

25 THE COURT: So long as you acknowledge that,

1 procedurally, the Motion to Dismiss can be before the
2 Court today, and so long as your opponents are agreeing
3 to that, then I see no reason why we should not advance
4 and include that as well.

5 MR. SCHROMEN-WAWRIN: All right, your Honor.
6 There's another argument that I would like to make if
7 we're going to get into the declaratory judgment as
8 well. But I will hold those until we get to that stage.

9 In terms of timing for this entire case, we
10 confirmed with the County Auditor that the ballot
11 printing date is September 12th. And in these actions,
12 typically, that is the day that is the drop-dead date
13 for a decision from the Court in regard to whether the
14 initiative goes on to the ballot or is struck from the
15 ballot. So the timing of August 2nd is not a relevant
16 date for when the Court needs to make a decision here.
17 And I think the reason to not consolidate and not move
18 forward in a prompt manner in making this hearing, both
19 at the beginning and the end of the case, is because we
20 have simply begun in that respect and there are other
21 defenses we would like to fully brief.

22 So in terms of the preliminary injunction merging
23 with the permanent injunction, the Plaintiffs have
24 brought this urgency on themselves. They have known
25 since March that this initiative was pending before the

1 people and moving toward qualification, and they waited
2 until June when they could say that there was an urgency
3 and a need to make a decision in July so that they could
4 argue both the permanent and preliminary -- the
5 preliminary and permanent injunctions in the same
6 hearing. Also, your Honor, we did not see the permanent
7 injunctions come in with the complaint. Those were
8 filed later and timed for this hearing to occur right
9 after the responsive pleading.

10 So in regards to the preliminary injunction, it's
11 an extraordinary remedy and it should not issue in a
12 doubtful case. The Court has three criteria it must
13 find to issue a preliminary injunction: First is that
14 there's imminent harm, and, here, your Honor, there is
15 no imminent harm. The Court has plenty of time to
16 consider the case fully and issue its decision at the
17 end of the case, not at the beginning.

18 Second, there must be irreparable harm. With the
19 irreparable harm, that cannot be monetary harm. The
20 Plaintiff's and the City's main argument is that they
21 have monetary harm by putting the initiative to the
22 ballot. That, of course, is not irreparable. They also
23 argue that they are defending the integrity of the
24 people's initiative process, which is the political
25 opponent of this initiative defending the integrity of

1 the people's initiative process. And the problem with
2 that, though, is it cuts both ways. Nearly 17,000
3 people signed this initiative saying they want to see
4 them on the ballots. If the Court enjoins the
5 initiative from going on the ballot, that also causes an
6 irreparable harm. We would never imagine doing this to
7 the City Council considering a law in due course. We do
8 it with the people and that is a difference in how the
9 Court views the people's initiative power versus the
10 powers of their elected official.

11 Your Honor, in regard to standing, I was counsel
12 for the respondents up to the case in *Spokane*. And we
13 had a surprise ruling from the third -- Court of Appeals
14 Division 3 where they ruled on standing. And they said
15 that the private party challengers as well as the County
16 -- this is a City initiative so the County was along
17 with the business interest there, but they had no
18 standing because of the jurisdictional and
19 jurisprudential issues with this kind of action.

20 The appeal then went up to the State Supreme Court
21 based upon the standing issues and that is the issues
22 that were briefed to the State Supreme Court.
23 Obviously, the State Supreme Court decided to go further
24 and issue a ruling that not only overturned Division 2,
25 but also went back to the heart of the initiative and

1 wiped it out completely. So with that, that's part of
2 the reason why we didn't raise standing here is because
3 that decision seems to say standing isn't a question
4 anymore in pre-election challenges, although the Court
5 has said, as the Court has noted, that the issues around
6 political speech are still alive in this arena.

7 So the final element of preliminary injunction is
8 that clear, legal, irreparable right. The Plaintiff's
9 and the City have failed to show imminent harm and they
10 failed to show irreparable harm. That is sufficient to
11 deny the preliminary injunction. But, also, they failed
12 to have a clear, legal, irreparable right. And, here,
13 they're arguing that Defendants are asking for a higher
14 standard in the preliminary injunction, which is not the
15 case at all -- I'm sorry, in the pre-election challenge
16 that we are here at today, and that's not the case at
17 all.

18 What we're asking for is the same standard that the
19 Court would use if this initiative were already law; the
20 same standards of judicial review and the same standards
21 of statutory construction. And those standards are a
22 proof beyond a reasonable doubt burden, all inferences
23 and assumptions made in favor of the validity of the
24 law, and the Court doesn't entertain hypothetical sets
25 of facts that would make the law invalid. Rather, it is

1 the job of the Court to look for any possible set of
2 facts that would make the initiative -- that would
3 validate the initiative.

4 So we're not fishing for scenarios where the
5 initiative would be invalid, which is basically the
6 pleadings and the motions from the City and Plaintiff's,
7 but, rather, we're looking is there a possible context
8 where these initiatives could be valid. And that's the
9 standard that we would apply after these initiatives
10 become law, and that's the standard we should apply in a
11 pre-election challenge if we're entertaining a
12 pre-election challenge. If we don't apply that same
13 standard, if we put a weaker standard in to the
14 pre-election challenge or provide no standard at all and
15 let the Court fish for its preferred remedy, then we're
16 inviting political opponents of the initiatives into the
17 courtroom ahead of the election, asking a single judge
18 to veto the initiative that the people have asked to be
19 put on the ballot. So we don't want a lower standard
20 here than we would face if this initiative becomes law
21 because that's only going to encourage these kinds of
22 actions, which the Court has said should be
23 extraordinary remedies, not the due course for the
24 people's law-making process.

25 Your Honor, that's what I want to say about the

1 preliminary injunction. The challengers, the City and
2 the Plaintiff, failed to meet all three of the necessary
3 elements for issuing a preliminary injunction, so it
4 should be denied. I would also address the motion to
5 dismiss if the Court would like that at this point.

6 THE COURT: Yes, please.

7 MR. SCHROMEN-WAWRIN: So in the Motion to
8 Dismiss, Save Tacoma Water raises three main issues for
9 why the Court lacks subject matter jurisdiction over an
10 initiative before it becomes law. In some ways, this is
11 an argument that we saw Justice Owens make in oral
12 argument in the *Spokane* case. She turned to the
13 appellants there and said, why would we go across the
14 street to the state legislature and tell them that they
15 can or can't consider a law. We wouldn't do that. Yet
16 we do that here for the initiative power, and,
17 particularly, for the local initiative power.

18 So the three issues we raise in the Motion to
19 Dismiss are the First Amendment and the protections that
20 the people have for the political rights of speech,
21 assembly, and to readdress the government for
22 grievances. So the First Amendment doesn't protect only
23 valid speech. The First Amendment doesn't protect
24 people from considering ideas that might be harmful or
25 might be invalid or might find are flawed. It is not

1 the role of the Court to police the people's use of
2 their political speech.

3 The U.S. Supreme Court has said definitively that
4 signature gathering for an initiative is core political
5 speech, and it's well-nigh impossible standard for the
6 state to infringe upon that protection. And the
7 reasoning in that case from the U.S. Supreme Court, I
8 would say, also extends to the initiative process
9 generally. That for the Courts to entertain this action
10 has a chilling effect on the people's political
11 expression. There will be a continuing debate in Tacoma
12 about the water use of Tacoma, whether there's a water
13 crisis, whether there's not a water crisis, and what
14 possible remedies the people should choose for which
15 course they want the future of this city to go in. If
16 this Court issues an injunction, the Court cuts off that
17 speech and cuts off that debate.

18 Further, in order to go into this proceeding, in
19 order to do declaratory judgment in this act, the Court
20 has to look to the content of the initiative. So this
21 isn't just a proceeding to assess whether the people
22 collected enough ballot signatures, something that's
23 content neutral, but, rather, this entire proceeding is
24 based upon the content of the initiative. So it's a
25 content specific restriction on the people's speech.

1 For that reason the First Amendment should prevent the
2 Court's from entertaining pre-election challenges
3 against the people's use of the initiative power.

4 We also argue it based on Washington's
5 Constitution, parts of Washington's Article I, the
6 declaration of rights, which specifically said that all
7 political powers inherent in the people. And that
8 inherent political power is not just the people at the
9 state level, but also at the local level through Home
10 Rule Charters which are local constitutions. So the
11 people of Tacoma as early as the people of Washington
12 State had enacted their own constitutions. And then in
13 the early 20th Century, with the rise of the progressive
14 movement, the people of Tacoma enacted the initiative
15 power in 1909 ahead of the people of Washington State
16 enacting the initiative power statewide. So the
17 Washington Supreme Court just said in *Coppernoll v. Reed*
18 that the initiative power is this early part of our
19 history and needs to be protected because it is almost
20 as ancient as our Constitution.

21 THE COURT: How do you reconcile that with the
22 holding of the Court in the *Spokane Entrepreneurial*
23 *Center* case?

24 MR. SCHROMEN-WAWRIN: It's difficult to
25 reconcile. What the Court did was it looked at a 1927

1 statute and said this statute that the Washington
2 legislature enacted in 1927 authorized the initiative.
3 That statute said that local governments may have the
4 initiative and referendum process. So my question is,
5 well, what happened in 1909 and 1927, because the people
6 of Tacoma said, we have a political power to do the
7 initiative, we reserve that right for ourselves, and
8 then 18 years later the state legislature says, yeah,
9 you have that power.

10 So my best explanation for it -- and this is the
11 sort of thing I would like more time to research,
12 frankly -- is that it was a response by the state
13 legislature to the threat of Dillon's Rule. So going
14 back, before home rule, we have Dillon's Rule, which is
15 the idea that the state controls municipal governments
16 and that they're children of the state and the state can
17 do whatever it wants to local government, including
18 destroy them. I would say the Michigan Emergency
19 Manager Law is a good example of Dillon's Rule today,
20 and the crisis in Flint, Michigan could be seen as a
21 direct manifestation of Dillon's Rule. So people
22 generally rebelled against Dillon's rule and said we
23 want something else, we want to recognize that local
24 governments are governments, too, and we can create
25 constitutions for our local governments. Those are the

1 home rule charters which Washington State was one of the
2 first states to put home rule charters into place, and
3 that's in our State Constitution that local governments
4 can enact state charters in order to provide for their
5 own government. In other words, not be children of the
6 state as Dillon's Rule had prescribed, but, rather, have
7 the authority to create law as robust as the state
8 unless it comes in direct conflict with the state.

9 So we have this 1927 statute, but, yet, we have
10 1909, the people of Tacoma exercising their initiative
11 power. I would imagine, although I have yet to research
12 this, that the state legislature was trying to say that
13 regardless of where that authority comes from, the
14 people have the power to do the initiative process. And
15 it is not necessarily that that state law is a source of
16 the authority, but, rather, that was affirming the
17 authority that the people had locally.

18 So in Washington State, we have all political power
19 inherent in the people. We also recognize that our free
20 speech protections are stronger than the protections
21 under the First Amendment in certain respects. And in
22 political speech in Washington, there is a strict
23 scrutiny requirement that must be met. Here, we're
24 talking about whether there is a compelling interest.
25 The only interest that I can think of that the

1 challengers, the Plaintiffs and the City, would bring as
2 a compelling interest is this protection of the
3 integrity of the initiative process. And so the
4 question there is, really, is that a compelling interest
5 and does that justify this action by the Court. Even if
6 that is a compelling interest, then the Court remedy
7 must be narrowly tailored. And, here, striking the
8 initiative from the ballot is the most extreme remedy as
9 possible because it completely silences the people's
10 political debate over what kind of policies they want to
11 see.

12 Your Honor, in the briefing, I told a story about
13 an initiative which I personally don't support at all,
14 but I think it is a telling story for what the
15 initiative power is for. It's a political tool for the
16 people to influence policy, whether directly or through
17 the influence that they have by showing their opinions
18 to their elected officials. So in 1999, people in
19 Washington passed the initiative prohibiting vehicle
20 property taxes. The state, the trial court struck that
21 down as invalid. There was some ballot title issues
22 with it after it had been enacted, but the state
23 legislature passed it anyway. They said, we're going to
24 listen to the will of the people and they passed it into
25 law. So the vehicle property tax issue we have now is

1 not because of the people directly, but because of the
2 state legislature. So the fundamental purpose of
3 political speech is to influence policy, and that is
4 what the initiative process can do whether the
5 initiative is valid or not. Striking it from the ballot
6 silences that speech and cuts that off.

7 The third issue we raise in the Motion to Dismiss
8 was about the jurisprudence of the Court, the importance
9 of separation of powers. Judicial restraint is most
10 important when it concerns the powers of other branches
11 of government. And, here, we're talking about the
12 people of Tacoma exercising their inherent law making
13 power, their legislative power to make law. The Court
14 should exercise its restraint and not step into that law
15 making process, not violate the separation of powers
16 that should be inherit in our system, but, rather, wait
17 until the initiative becomes law, and wait until there's
18 a valid challenge, keep the controversy where we have
19 the facts to bring forward and decide, just like we
20 would if this was a proposal, if this was a law that
21 came through the City Council, whether that law is valid
22 or not. There is a time and a place for judicial review
23 and it is not when the people are in the middle of their
24 law making process. Those are the issue we raised in
25 the Motion to Dismiss for Lack of Subject Matter, and I

1 appreciate the Court taking them into consideration.

2 THE COURT: Thank you very much. I'm assuming
3 that you're taking the laboring oar on your side's
4 advocacy as opposed to Mr. Misner?

5 MR. MISNER: That's correct, your Honor.

6 MR. SCHROMEN-WAWRIN: Yes.

7 THE COURT: Mr. Prather, I'm thinking that
8 you're here not so much as an advocate, but as
9 representing someone who, obviously, has a vested
10 interest in what the Court decides.

11 MR. PRATHER: That's correct, your Honor.
12 While the County is neutral, so to speak, on the
13 underlying substantive issues, I will say, procedurally,
14 we think all of the elements are before the Court today
15 to make a decision on these issues. And I would rather
16 have you do that today than later because there's a lot
17 of things that the Auditor would have to do between now
18 and the time that the ballots go to the printer in terms
19 of verifying signatures and preparing ballots and those
20 types of things.

21 THE COURT: I can absolutely appreciate why
22 that's your position. And I should tell counsel,
23 parenthetically, after a five-week felony trial, we
24 actually have a jury that's deliberation. So you'll see
25 my assistant from time to time leave, and we certainly

1 don't mean to inhibit anyone, but there's a button over
2 there and when the light goes on, she has to attend to
3 the jury.

4 I would like to go back to the moving party here
5 and I would like to take it in the same order. And,
6 ma'am, if you would also please include any responses to
7 that Motion to Dismiss part of this, which I am now,
8 with counsels' acquiescence, deciding to address as well
9 today. And, also, more precisely, counsel made
10 reference to the beyond the reasonable doubt standard,
11 if you could just touch on that as well, I would truly
12 appreciate it.

13 MS. EVANSON: Sure, I'd be happy to do that,
14 your Honor. As a threshold response to the Motion to
15 Dismiss, none of the arguments raised in that motion
16 actually speak to this Court's jurisdiction. So Save
17 Tacoma Water has raised issues why they believe that
18 this Court should depart from numerous Supreme Court
19 cases and Court of Appeals cases and not entertain
20 pre-election review, that's not a jurisdictional issue.
21 There's no question that the Court has jurisdiction
22 under the Declaratory Judgment Act, we are all here,
23 we're properly here, and the issues are properly before
24 the Court. So the question of whether pre-election
25 review is advisable or is a good thing, that's what that

1 motion is about, but that doesn't speak to jurisdiction.

2 Starting with the issue raised in *Huff* about free
3 speech. I was the attorney on *Huff* and I disagree with
4 that characterization. The issue that was in *Huff* is
5 the speech issue that was raised which was not decided.
6 *Huff* involved a pre-election challenge to a statewide
7 initiative. All the cases cited by STW on this issue
8 are statewide cases. As I pointed out, the power, the
9 initiative power on the state level, that comes straight
10 from the Constitution. So Courts are reluctant to look
11 at pre-election challenges. They do it, but they are
12 more reluctant to do so. When they do it, they look at
13 the same issues that are before the Court here, but with
14 a more restrained focus. They look at is the initiative
15 outside the scope of the initiative power.

16 The *Philadelphia II* case is a great example, which
17 actually is somewhat similar to the initiative here.
18 The *Philadelphia II* case involved provisions that were
19 totally outside the initiative power. They wanted to
20 have a world meeting and preempt state and federal law
21 and make federal initiative processes things that just
22 can't be done by the initiative power. So in that case,
23 the Court said, you know, we don't need to look at these
24 things pre-election, but this is not going to the
25 ballot.

1 Now, the *Coppernoll* case that STW cites was also a
2 statewide initiative. So, again, we're looking at a
3 much more limited power before the -- a limited power in
4 the local initiative process, and the statewide cases
5 don't apply. In the many cases that we have cited,
6 *Whalen*, *Spokane*, definitely, the Court says, with a
7 local initiative we have to look and see if it is within
8 the local community's power to enact this proposed law.
9 And that's because the local initiative power is a
10 creature of statute, it is not a Constitutional power.
11 And as counsel pointed out, the power of Tacoma citizens
12 to initiatives is in the Tacoma Charter. And the City
13 of Tacoma is -- we have a charter, we appreciate home
14 rule, and we, in this case, would like to enforce our
15 charter, which says that the limits on the initiative
16 power are subject to topics allowed under state law.
17 These topics are not allowed under state law.

18 STW has asked the Court to apply the same standard
19 as post-election review. If we were in a post-election
20 world, he could, it's true, there would be a presumption
21 that the statute is Constitutional. But in a
22 post-election world, we could also raise numerous other
23 substantive challenges to the initiative that aren't
24 before the Court today. Our challenge here is limited
25 to the scope; is this initiative within the scope. If

1 we were post-election, it would also be invalid because
2 it has multiple subjects, also because it conflicts with
3 state law, there could be other problems that were
4 raised.

5 But the point is with respect to your Honor's
6 question, there is no case that holds an initiative that
7 has not been enacted is subject to this beyond a
8 reasonable doubt standard. They don't cite a case for
9 that, I've never seen a case holding that. And that
10 makes sense, you could put anything in an initiative and
11 then say a Court is required to find beyond a reasonable
12 doubt that it is Constitutional. That doesn't make
13 sense. So the limits that are placed on the local
14 initiatives are different and support pre-election
15 review here.

16 STW talked about the right to influence policies.
17 They are certainly welcome to influence policies. There
18 are many opportunities to participate in the public
19 process and the City welcomes that. But that doesn't
20 mean that you can put an unconstitutional and unlawful
21 initiative on the ballot for people to vote. As far as
22 the question asked about free speech in *Spokane*, counsel
23 for the Port is going to speak to that, but I would note
24 that Owens, Justice Owens, wrote the *Spokane* opinion.
25 So Owens' opinion about the potential free speech

1 implications of a local initiative is not, really, here
2 nor there.

3 So just to summarize it, and I'll answer any
4 questions that the Court has, to summarize, this issue
5 is properly before the Court. The Court unquestionably
6 has jurisdiction, as did all the other Courts in these
7 cases we cited in our brief, and the relief should be
8 granted.

9 THE COURT: Ms. Lake.

10 MS. LAKE: Thank you, your Honor. We
11 anticipated in our briefing that Save Tacoma Water would
12 reach out to the First Amendment protection because
13 that's a frequent refrain. But that issue has already
14 been decided. There is no First Amendment right to
15 place an initiative on the ballot, and we cite *Angle v.*
16 *Miller*, a 9th Circuit case. And what the case talks
17 about is that the initiative sponsors, they exercised
18 their rights to petition the government by collecting
19 the signatures, and no one has prevented them from
20 collecting the signatures. But the purpose of the
21 ballot is to elect candidates and to enact law and it is
22 not for political expression.

23 The U.S. Supreme Court has ruled on this issue in
24 *Washington Grange v. Washington Republican Party*, a
25 2008 case that's cited on page 42 of our brief, and

1 Washington law is exactly the same. In the *City of*
2 *Longview v. Wallin*, the initiative sponsor argued
3 exactly the same thing that they had a First Amendment
4 right to have their initiative appear on the ballot.
5 And they, like *Save Tacoma Water*, also in the *Coppernoll*
6 case, argued pre-election challenge violated free
7 speech. The Courts reject that argument explaining that
8 local initiative powers, as the City argued, is derived
9 from the statute and not the Constitution, so, quote,
10 local powers of initiative do not receive the same
11 vigilant protections as do Constitutional powers. And
12 the Court in *Wallin* went on to say that the petition
13 sponsors were permitted to circulate the petition for
14 signatures and submit it to the County Auditor, exactly
15 as was done here, but the right to have an initiative,
16 whether or not it was defective or not, simply doesn't
17 exist, and that's our position here today, too, your
18 Honor. First of all, there's no First Amendment right
19 to put the initiative on the ballot, and including
20 invalid initiatives on the ballot does not vindicate or
21 protect any rights, it undermines the integrity of the
22 system.

23 Next, your Honor, the *City of Port Angeles v. Our*
24 *Water-Our Choice*, also addressed the issue of the local
25 initiatives, and the difference between state

1 initiatives, which are embedded in Amendment 7 to the
2 Washington Constitution, versus local initiatives. And
3 they made it clear that Amendment 7 does not apply to
4 municipal government under which our Constitution are
5 not fully sovereign. I know that was what was argued by
6 Save Tacoma Water today, but they want their own City
7 Constitution just like the state does, but the law is
8 clear on that; they are a municipal corporation. In the
9 *City of Port Angeles v. Our Water-Our Choice*, the Court
10 said, a municipal corporation is the body politic
11 established by law as an agency to assist the state and
12 County government, but it remains subordinate to it.

13 I next wanted to suggest that we wish that Save
14 Tacoma Water would embrace the Constitution, especially
15 the Supremacy Clause in the Constitution where local law
16 cannot supersede or supplant a superior law.

17 Last, with respect to private rights, your Honor,
18 in their initiatives, they're asking for private rights
19 and fundamental rights of Tacoma residents, that Tacoma
20 voters should have the right to do such things. But
21 your Honor heard how the City of Tacoma is a regional
22 water supplier. So while they're fighting very
23 vigilantly to protect the rights of Tacoma residents,
24 they're also in the same breath denying the rights of
25 all those folks and entities that use water outside the

1 City limits. Essentially, it gives the City of Tacoma
2 residents veto powers over water service outside the
3 City boundary where those folks don't have the power to
4 vote at all.

5 Briefly, on the issue of judicial restraints, the
6 City is exactly right, they're not arguing law here,
7 they're arguing policy. It is crystal clear that under
8 the Uniform Declaratory Judgment Act, 7.24,010, this
9 Court expressly has the power to determine rights and
10 statuses and other legal relations. And your Honor
11 should exercise exactly that today and find that these
12 initiatives do exceed the scope in all three ways,
13 conflicting with state law, exceeding the power of City
14 government, and delving into City administrative
15 matters. It is important that this be heard
16 pre-election, nothing changes if it should be placed on
17 the ballot.

18 THE COURT: Thank you. Mr. Whalen, anything
19 to add to that?

20 MR. WHALEN: Really, nothing further, your
21 Honor, except I believe the outline for the Court's
22 decision was established by the Supreme Court case in
23 *Spokane*, and I just point out that it was an en banc
24 decision, nine to zip, with Justice Owens as the
25 authoring justice. So it's on all squares and gives the

1 Court plenty of authority to render the relief requested
2 by the Plaintiffs.

3 THE COURT: Mr. Martin.

4 MR. MARTIN: I want to take an opportunity to
5 answer the question you asked counsel about how you
6 reconcile the First Amendment argument with the *Spokane*
7 decision, because I think Justice Owens actually
8 answered the question very directly. In the opinion she
9 says that: As a preliminary issue, it's important to
10 distinguish statewide and local initiatives. The right
11 of the people to file a statewide initiative is laid out
12 in the Constitution. Because it is a Constitutional
13 right, the Washington Courts interpret the rules
14 providing statewide initiatives to facilitate this
15 right, citing the *Coppernoll* case.

16 THE COURT: She draws the distinction between
17 the state and local.

18 MR. MARTIN: State and local, correct, and
19 goes on in the next paragraph about the right to file a
20 local, with that in bold -- actually, in italics -- and
21 concludes with the Court's authority to review the local
22 initiative. So I think the answer to your question,
23 quite clearly, is laid out in the *Spokane* opinion.

24 THE COURT: Anything else, sir?

25 MR. MARTIN: No, thank you, your Honor.

1 THE COURT: And since you are at least a
2 moving party insofar as the issue of jurisdiction, I'll
3 allow you the last opportunity.

4 MR. SCHROMEN-WAWRIN: Thank you, your Honor.

5 THE COURT: As a practical matter, I'm just
6 going to allow you the last opportunity, period, you
7 don't have to limit it to jurisdiction. Go ahead.

8 MR. SCHROMEN-WAWRIN: So regarding different
9 standards of statutory construction for state law versus
10 local law and initiatives versus ordinances or statutes
11 or laws passed by the elected officials, we put in
12 extensive footnotes citing that all of that is the same
13 statutory construction standard. The Courts use to
14 justify a limited view of the pre-election challenge by
15 drawing a distinction between subject matter and
16 substance of the initiative. *Coppernoll* lays this out.
17 I know *Coppernoll* is a state initiative case, but it
18 says distinctly, we have the power to look at subject
19 matter pre-election, but we can't look at substance.
20 What our State Supreme Court has now done is merged that
21 distinction and said, really, when we're looking at a
22 local initiative, we can look at anything we want. And
23 the claims by the Plaintiffs and the City here
24 illustrate that, that they have presented every argument
25 they would probably present after this became law and

1 they have done it now. They're not drawing the
2 distinction between subject matter and substance because
3 there is no distinction anymore. And that's part of the
4 reason why the Court has exceeded its authority in the
5 pre-election realm and lacks subject matter jurisdiction
6 to adjudicate this case fully, which is what's happening
7 here in this proceeding.

8 So counsel for the City said that the Petitioners
9 have plenty of other ways to decide how to influence
10 policy. Respectfully, it is not the role of the Courts
11 or the City or the government, generally, to tell the
12 people how to exercise their political speech. It's the
13 people's choice how they do that.

14 In regard to the question of claiming that the
15 ballot is protected, First Amendment speech, First
16 Amendment, we can often get fairly technical. I'm not
17 saying that ballot access is protected political speech
18 in contradiction of those cases cited. Rather, I'm
19 saying that the Court cannot do content-based
20 discrimination of the political speech of the people.
21 And, here, in order to reach the substance of the
22 issues, the Court must look at the content of the
23 petition, and that's the violation of the First
24 Amendment. It's not that the ballot is a protected
25 forum or anything like that, it is that this proceeding

1 is illegitimate.

2 Finally, the question of full sovereignty, those
3 cases referring to the *City of Port Angeles* case, as a
4 Port Angeles City resident, Port Angeles is not a home
5 rule city, it is completely a creature of state statute.
6 Tacoma, on the other hand, has said not only are we a
7 municipal corporation, but we are also a Constitutional
8 government, we have a Charter, we have a Constitution.
9 And so Tacoma is in a different place where the people
10 of Tacoma are looking at recognizing rights, in this
11 case, the right to protect their water, through their
12 local Constitution.

13 We know in relation between the federal
14 constitution and the state constitution that the state
15 constitution can create more protective rights for
16 people than the federal constitution provides. So the
17 Fourth Amendment does not preempt Article I, Section 7
18 of the Washington Constitution. The First Amendment
19 does not preempt Article I, Section 5 of the Washington
20 Constitution. We have the federal constitution forming
21 the floor with state constitution able to go above that
22 floor and provide more protections for people.

23 So the question here is can a local constitution go
24 further and provide greater protections for people in
25 places where the city constitution or the federal

1 constitution are lacking. We're not saying that Tacoma
2 is fully sovereign, instead, Tacoma is part of an
3 integrated tier federal structure of law which we
4 celebrate that diversity and that horizontal and
5 vertical complexity in our legal system.

6 In regard to the Supremacy Clause, I think that's
7 it there, we're not talking about people of Tacoma
8 coming up with a regulation that is in conflict with
9 state law. Rather, the people of Tacoma are recognizing
10 a right to protect their water that is outside that
11 preemption realm. When we're looking at rights
12 protections, and the federal and state constitutional
13 framework provides this framework for us that we're not
14 looking in the framework of preemption. Preemption
15 simply doesn't apply. It's the most protective right,
16 it's the broadest right that protects the people.

17 Finally, in regard to the Declaratory Judgment Act,
18 the Court's have said that the Declaratory Judgment Act
19 authorizes these kinds of actions. Nowhere in the
20 Declaratory Judgment Act do you find that authorization.
21 I guess the question I would pose is how does the
22 Declaratory Judgment Act authorize this kind of
23 restraint of the people's law making while not also
24 authorizing the same kind of restraint of the elected
25 officials' law making. Because the Declaratory Judgment

1 Act allows the Court to look into the people's law
2 making, for the same reason it should allow the Court to
3 look into the legislature's law making or the City
4 Council's law making. That idea is abhorrent, the
5 separation of powers, and should not be entertained.
6 And for the same reason, the Court lacks subject matter
7 jurisdiction here in this proceeding to interfere with
8 the People's law making process.

9 Thank you, your Honor.

10 THE COURT: Thank you.

11 MR. SCHROMEN-WAWRIN: Sorry, and one more
12 thing, if needed, we would like to address severability.

13 THE COURT: Well, this would be a good
14 opportunity to tell me everything you want me to know.

15 MR. SCHROMEN-WAWRIN: All right. So with
16 regard to severability, we did cite a couple cases that
17 lay out the rule for the Courts in the preliminary
18 injunction response, namely, that the Court has no
19 authority under established law today to strike ballot
20 initiatives from the ballot. So if there are provisions
21 of the initiative that are valid, those go to the people
22 for a vote. If there are invalid initiatives that can
23 be severed dramatically, functionally, then those can be
24 struck. And we can easily dice this initiative in order
25 to provide the core function, which is that vote of the

1 people on the initiative, or on major water users, where
2 it determines the future of Tacoma in a context where
3 Tacoma does not have an adequate supply of water.

4 Thank you, your Honor.

5 THE COURT: I want to thank you all very much
6 for your presentation. I want to make a couple of
7 preliminary comments here.

8 First, I have read all of the pleadings, including
9 the Motion to Dismiss under CR 12 and the authorities
10 that have been supported therein. Second, I want to
11 acknowledge that I understand and that I respect the
12 legitimate community concerns underlying the positions
13 of each side of this matter today. However, at the end
14 of today, my task is to follow the law as best as I am
15 able.

16 I am guided in part today by the *Spokane*
17 *Entrepreneurial* case. I believe the Court does have
18 subject matter jurisdiction. I do believe that this
19 falls, and can fall, within properly the Declaratory
20 Judgment Act. In regards to the First Amendment
21 argument, I think my analysis and conclusions I draw are
22 very consistent with the analysis of the counsel for the
23 City of Tacoma as well as counsel for the Chamber of
24 Commerce. Accordingly, CR 12 Motion to Dismiss is
25 denied.

1 Furthermore, I believe, and, therefore, conclude,
2 that each and every petitioner in this cause has
3 standing in this matter. And I believe it's necessary
4 for me to decide that at the outset. I further believe
5 that the CR 65 consolidation is appropriate in this
6 matter, and my analysis is consistent with the analysis
7 of all of the references in the different briefing of
8 petitioners on that point, as well as the oral
9 presentation for the counsel for the City of Tacoma. As
10 to the issue of severance, my analysis is consistent
11 with that of counsel for the Port, and I don't believe
12 that severance would be appropriate in this matter, nor
13 do I believe it severable.

14 I do find in this matter, and I'm going to do this
15 in the following organizational way, I'm going to give
16 you my conclusion up front and then I'm going to tell
17 you the rationale for my conclusion, at least as best as
18 I am able to do. I am granting the motion for a
19 permanent injunction. I believe that the Plaintiffs
20 have shown a clear, legal and equitable right. I
21 believe that they have founded a well-grounded fear of
22 immediate invasion of that right, and I think that the
23 acts complained of either are resulting in or will
24 result in actual or substantial injury to them.

25 I concur with the briefing of counsel for the Port

1 who made reference to the fact that the nature and
2 extent of potential injury here transcends just
3 economical injury, and I agree with that analysis. I
4 believe that no adequate remedies exist at law and I
5 believe that the equities in this case tip in favor of
6 the Plaintiffs. I am factoring in -- well, I'm passed
7 the preliminary injunction criteria about likelihood of
8 prevalence, so I'll pass on that. And so that is the
9 conclusion that I have.

10 Now, more specifically, my rationale for purposes
11 of the record, I do believe that the pre-election review
12 is appropriate for local initiatives that do exceed the
13 scope of local initiative power, and that is part of my
14 conclusion in this matter and I'm agreeing with that
15 proposition. I think, more specifically, that the --
16 and I will refer to Save Tacoma Water as STW -- I
17 believe that the STW initiatives do exceed the scope of
18 local initiative power. I believe that it exceeds the
19 authority of the City itself. I believe that there are
20 conflicts with state water law. I find that they
21 conflict with provisions of the Growth Management Act.
22 I believe that they have the potential, and actually do
23 in some respects, conflict with state election law. I
24 think they, in limiting judicial review and superseding
25 state law, I think they exceed the local initiative

1 power as well. Arguably, they violate as well the
2 Supremacy Clause. I think their address of
3 administrative matters is improper insofar as we're
4 talking about initiative power. And I think that they
5 impermissibly address powers granted by the legislature
6 to, among others, the Tacoma City Council. Therefore, I
7 do declare the STW initiative to be invalid and I grant
8 a permanent injunction, and I enjoin placement of the
9 initiatives on the ballot.

10 MS. LAKE: I have a proposed order.

11 THE COURT: I'll sign an order. Perhaps
12 counsel want to take a look at it as to approve it to
13 form. Whatever you folks wish to do in that respect,
14 you're free to do that. I'll just stand right here in
15 place while you do that.

16 MS. LAKE: Thank you. We did provide a copy
17 to the parties.

18 Your Honor, we have a proposed order. There are a
19 few points that counsel for the proponent want
20 clarification on, whether your order extends to that or
21 not, may I hand this up?

22 THE COURT: You may.

23 Okay, I'm just going to take a second and read
24 this.

25 Okay is this approved by your client, Mr. Whalen?

1 MR. WHALEN: Yes, it is, your Honor.

2 THE COURT: Mr. Martin?

3 MR. MARTIN: Yes.

4 THE COURT: Ma'am?

5 MS. EVANSON: Yes, your Honor.

6 THE COURT: Since it's on your letterhead,
7 I'll take a shot you're okay with it.

8 MS. LAKE: I'm okay.

9 THE COURT: All right, what exceptions did you
10 want to make?

11 MR. SCHROMEN-WAWRIN: So we wanted to clarify
12 with the Court that the intent was there or to strike a
13 few sections. On page three, paragraph two, the Court
14 found that Plaintiffs and the City have standing, but
15 didn't clarify if that was public interest standing or
16 individual standing or both.

17 MS. LAKE: Your Honor, we suggest that we
18 briefed both and that both are appropriate.

19 THE COURT: I agree.

20 MR. SCHROMEN-WAWRIN: And then page four, the
21 last sentence, the water provisions are also outside the
22 scope of the local initiative power because they attempt
23 to impose rights on Tacoma residents regarding water
24 usage outside the boundaries of Tacoma City limits, and
25 they attempt to create new constitutional rights. I

1 didn't specifically hear that, so I want to clarify.

2 THE COURT: I agree with that proposition.

3 MR. SCHROMEN-WAWRIN: Then page five, we would
4 propose striking all of paragraph D. I don't know where
5 the Court falls on its ruling there.

6 THE COURT: I agree with this, and I have read
7 *Citizens United*. I'm not sure that that was like the
8 foundation of my analysis, but I agree with this, and I
9 think this should be part of the Court's order.

10 MR. SCHROMEN-WAWRIN: We can go back to
11 *Trustees of Dartmouth College v. Liberator*.

12 THE COURT: Let's not do that. Any other
13 exceptions?

14 MR. SCHROMEN-WAWRIN: No, that was it. Thank
15 you, your Honor.

16 THE COURT: All right. Well, I want to thank
17 everyone very much. I am signing this order as it's
18 been presented.

19 I appreciate the presentation, advocacy and the
20 briefing. When I first received the file, I didn't
21 think I was actually going to enjoy this, but truth to
22 tell, I did. That's secondary to everybody involved.

23 MS. LAKE: I need to add the City to that
24 order.

25 THE COURT: Please.

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Thank you for your advocacy, Mr. Prather.

MR. PRATHER: Thank you, your Honor, glad I
could help.

THE COURT: Thank you all very much.

(Conclusion of Proceeding)

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PACIFICA LAW GROUP

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