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Supreme Court No. 84921-8

Snohomish County Superior Court No. 10-2-06342-9

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**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

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Mukilteo Citizens for Simple Government,

Appellant,

v.

City of Mukilteo, Christine Boughman, Snohomish County,  
Carolyn Weikel, Nicholas Sherwood, Alex Rion, Tim Eyman,

Respondents.

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**APPELLANT'S OPENING BRIEF** *(Corrected)*

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## I. ASSIGNMENT OF ERROR

The Superior Court erred in denying Mukilteo Citizens for Simple Government's ("Mukilteo Citizens") Motion for Declaratory and Injunctive Relief. CP 25-26.

## II. STATEMENT OF THE ISSUES

The power of the electorate to directly enact legislation by initiative is well established in Washington. That power is limited in only a handful of circumstances. One arises where the Washington State Legislature ("Legislature") vests authority on a subject specifically with the local legislative body. In those cases, the grant of power to the local legislative body is exclusive and precludes local initiatives and referenda on the subject. This matter presents just such a case. The following issues pertain to the assignment of error in Section I above and bear directly on the subject matter validity of proposed Mukilteo Initiative No. 2 (the "Initiative"):

1. Whether the Superior Court erred by concluding that it was premature to engage in pre-election review of the Initiative even though Washington courts have consistently held that pre-election review is

appropriate to determine, as requested here, whether a proposed measure exceeds the scope of the initiative power.

2. Whether the Superior Court's denial of Mukilteo Citizens' motion for declaratory and injunctive relief was in error because (a) the Legislature vested power to enact laws regarding automated traffic safety cameras solely with local legislative bodies (*e.g.*, the Mukilteo City Council) and, as a result, (b) the Initiative, which would repeal existing law and enact new law regarding automated traffic safety cameras, is thus invalid as beyond the scope of the initiative power.

### **III. STATEMENT OF THE CASE**

#### **A. Factual Background**

On May 17, 2010, the City of Mukilteo enacted Ordinance No. 1246 governing the use, and guidelines and standards for the use, of automated traffic safety cameras ("Safety Cameras"). CP 63-67. At the same time, the Mukilteo City Council authorized the Mayor of Mukilteo to enter into a contract on behalf of the City with an automated traffic safety camera provider. CP 72. The Mayor's authorization to enter into a contract was later rescinded until exploration of other alternatives was exhausted. CP 76-77. Ordinance No. 1246 became effective after passage and publication. CP 67.

Mukilteo is a non-charter code city that operates under RCW title 35A. See Mukilteo Municipal Code (“MMC”) 1.12.010. Mukilteo has adopted code city initiative and referendum power provided under RCW 35A.11.080 through 100. MMC 1.14.010. In June 2010, the petition for the Initiative was commenced. CP 105. The Initiative would have the effect of repealing Mukilteo Ordinance No. 1246. CP 82. It would also enact a new ordinance that would:

- (a) require an advisory vote before the City may enact an ordinance authorizing the future use of Safety Cameras;
- (b) after the ordinance in subsection (a) is enacted, require a supermajority vote of the Mukilteo City Council and a majority vote of the people before any Safety Camera may be installed or used; and
- (c) limit the fines that the City may assess for traffic violations detected through the use of Safety Cameras.

*Id.* As can be seen, the Initiative is more than advisory; it seeks to repeal a current ordinance and enact a new ordinance, and thereby dictate future legislative action on a subject reserved for the Mukilteo City Council.

On July 19, 2010, the Mukilteo City Council approved Resolution No. 2010-22 (the “Resolution”), which directs the Mukilteo City Clerk to provide the Snohomish County Auditor with a certified copy of the Resolution and requests that the Snohomish County Auditor place the Initiative on the City’s ballot on November 2, 2010. CP 84-86. The

Resolution includes two recitals, one of which notes: “WHEREAS, the City Council desires to hear from the qualified electorate on the issues addressed in the Initiative Petition, *regardless of whether the subject matter is subject to the initiative process.*” *Id.* (Emphasis added).

Mukilteo Citizens is an unincorporated association of Mukilteo residents. CP 100. Mukilteo Citizens takes the position that it is in the public interest to support the authority of the Mukilteo City Council to enact legislation as duly-elected representatives of Mukilteo citizens. *Id.* Mukilteo Citizens views the Initiative as an invalid exercise of the initiative power, and thus an unlawful means of passing legislation on a subject reserved for the Mukilteo City Council. *Id.* Accordingly, on July 19, 2010, Mukilteo Citizens filed a complaint in Superior Court seeking (1) a declaration that the Initiative is beyond the scope of the local initiative power and (2) an injunction preventing inclusion of the Initiative on the ballot. CP 103-108.

#### **B. Procedural Background**

Mukilteo Citizens named as defendants in its complaint the City, the Mukilteo City Clerk, Snohomish County, and the Snohomish County Auditor. CP 103-108. Initiative sponsors Nicholas Sherwood, Alex Rion, and Tim Eyman (“Intervenors”) were permitted to intervene by stipulation of the parties and court order. CP 49-59.

Before the Superior Court, Snohomish County took no position on the validity of the Initiative. CP 46-48. The City and Intervenors did not dispute that, pursuant to RCW 46.63.170, the power to enact legislation regarding Safety Cameras is not subject to initiative. CP 7-19, 37-42. Rather, the City and Intervenors characterized the Initiative as an “advisory vote.” CP 15-16, 39.

On August 6, 2010, the Superior Court heard argument from all parties and found that the matter was premature. CP 27. On this basis, the Superior Court denied Mukilteo Citizens’ motion for declaratory and injunctive relief. *Id.*; CP 25-26. The Superior Court did not make a specific finding as to whether the Initiative was within the scope of initiative power. CP 25-26. Mukilteo Citizens filed a timely notice of direct appeal to this Court and a Statement of Grounds for Direct Review seeking review under RAP 4.2(a)(4) because the matter involves “a fundamental and urgent issue of broad public import which requires prompt and ultimate determination.” CP 1-2.

Shortly after it filed its Statement of Grounds for Direct Review, Mukilteo Citizens also filed an emergency motion for accelerated review. As explained in that submission, the Initiative is currently scheduled for inclusion on the City’s November 2, 2010 ballot. *See* CP 84-86. To comply with statutory deadlines, Snohomish County must mail ballots for

voters living overseas at least 45 days before the election (no later than September 17, 2010). CP 44-45. To do so, Snohomish County must send the ballot to the printer by September 10. *Id.* The Snohomish County Auditor is legally bound to follow the City's direction absent direction from the Court otherwise. CP 47. Accordingly, Mukilteo Citizens asks that the Court accept direct review and issue a ruling no later than September 10.

#### IV. SUMMARY OF ARGUMENT

Mukilteo Citizens challenges the Initiative on grounds that it exceeds the scope of the initiative power. The Initiative seeks to repeal a current ordinance, and enact a new ordinance, regarding the City of Mukilteo's use of "Safety Cameras". But because the Legislature specifically vested authority to enact legislation regarding the use of Safety Cameras with local legislative bodies, local initiatives and referenda on the subject are precluded.

The Superior Court erred, at the outset, by ignoring 90 years of precedent in determining that pre-election review of the scope of the Initiative was premature. Indeed, this is precisely the type of case that this Court has consistently held is properly subject to pre-election review because it involves only a subject matter, and not a substantive, challenge to the Initiative's validity. Had the Superior Court followed this case law

and reached the merits of Mukilteo Citizens' argument, it would have struck down the Initiative as invalid. This Court should so rule.

The City's suggestion that the Initiative is simply a means of gathering input from voters, along the lines of an "advisory vote," fails as a matter of law. An initiative and an advisory vote are wholly separate measures. The first calls for direct legislation by the people; the second acts merely as an opinion poll. The Initiative at issue would repeal existing law and enact new law on a subject reserved for the local legislative body. As such, the Initiative is much more than advisory in nature. The City's attempt to evade application of state law by re-characterizing the Initiative as an advisory vote must be denied.

Because the Initiative is beyond the scope of the initiative power and thus invalid, the Superior Court's order denying declaratory and injunctive relief should be reversed, and the City and County should be enjoined from taking any action to place the Initiative on the ballot.

## V. ARGUMENT

### A. Standard Of Review

The issues before the Court are purely legal. This Court reviews issues of law *de novo*. *City of Port Angeles v. Our Water-Our Choice*, 145 Wn. App. 869, 874, 188 P.3d 533 (2008) (citing *In re Elec. Lightwave*,

*Inc.*, 123 Wn.2d 530, 536, 869 P.2d 1045 (1994)); *review granted*, 165 Wn.2d 1053 (2009).

**B. Contrary to the Superior Court's Ruling, Pre-Election Review Of A Subject Matter Challenge Is Appropriate.**

The Superior Court erred as a matter of law by concluding that pre-election review of the subject matter validity of the Initiative was premature. For over 90 years, this Court has consistently held that pre-election review of an initiative is appropriate to determine whether an initiative is beyond the scope of the initiative power. *See, e.g.*, *1000 Friends of Wash. v. McFarland*, 159 Wn.2d 165, 149 P.3d 616 (2006); *City of Sequim v. Malkasian*, 157 Wn.2d 251, 138 P.3d 943 (2006); *Coppernoll v. Reed*, 155 Wn.2d 290, 119 P.3d 318 (2005); *Snohomish Cnty. v. Anderson*, 123 Wn.2d 151, 868 P.2d 116 (1994); *Whatcom Cnty. v. Brisbane*, 125 Wn.2d 345, 884 P.2d 1326 (1994); *1000 Philadelphia II v. Gregoire*, 128 Wn.2d 707, 716-17, 911 P.2d 389, *cert. denied*, 519 U.S. 862 (1996); *State ex rel. Berry v. Superior Court*, 92 Wash. 16, 159 P. 92 (1916); *see also City of Port Angeles*, 145 Wn. App. 869; *City of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 93 P.3d 176 (2004).

Pre-election review is proper in this case because Mukilteo Citizens challenges only the subject matter, and not the substantive,

validity of the Initiative.<sup>1</sup> The only issue raised by Mukilteo Citizens is whether the Initiative exceeds the scope of the initiative power by seeking to directly legislate on a subject reserved for local legislative bodies. This is exactly the type of case for which pre-election review is appropriate. *Malkasian*, 157 Wn.2d at 260 (“It is well-settled that it is proper to bring such narrow challenges prior to an election.”). “Postelection events [will] not further sharpen the issues – the subject matter of the proposed measure is either proper for direct legislation or it is not.” *Id.* at 255 (citing *Coppernoll*, 155 Wn.2d at 299). As such, the Superior Court’s conclusion that it was premature to engage in a pre-election review of the scope of the Initiative was erroneous. Mukilteo Citizens’ arguments are not premature, and this Court can – and should – address those arguments on appeal.

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<sup>1</sup> There can be no reasonable dispute that Mukilteo Citizens has standing to sue the City and County. This case raises an issue of considerable public importance regarding the balance between the Legislature’s grant of authority to local legislative bodies and the initiative power of local electorates. *Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1*, 77 Wn.2d 94, 96, 459 P.2d 633 (1969) (“Where a controversy is of serious public importance and immediately affects substantial segments of the population and its outcome will have a direct bearing on the commerce, finance, labor, industry or agriculture generally, questions of standing to maintain an action should be given less rigid and more liberal answer.”).

**C. The Court Should Squarely Hold That The Initiative Exceeds The Scope Of The Initiative Power.**

**1. The Initiative Is Beyond The Scope Of The Initiative Power Because It Usurps Authority Granted To The Mukilteo City Council Under RCW 46.63.170.**

“An initiative is beyond the scope of the initiative power if the initiative involves powers granted by the legislature to the governing body of a city, rather than the city itself.” *Malkasian*, 157 Wn.2d at 261.<sup>2</sup> When the Legislature grants authority to the governing body of a city, that authority is not subject to repeal, amendment, or modification by the people through the initiative or referendum process. *Id.* at 265. In other words, “the voters of [a] county [or city] cannot alter a grant of authority to, or the imposition of responsibility onto, the local government by the state legislature.” *McFarland*, 159 Wn.2d at 173-74; *see also City of Port Angeles*, 145 Wn. App. at 882 (“[P]eople cannot deprive the City’s legislative authority of the power to do what the constitution and/or a state statute specifically permit it to do.”).

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<sup>2</sup> *See also McFarland*, 159 Wn.2d at 174 (“[W]hen the state legislature instructs a local governmental body to implement state policy, the power and duty is vested in the legislative (or executive entity), not the municipality as a ‘corporate’ entity.”); *Leonard v. City of Bothell*, 87 Wn.2d 847, 853, 557 P.2d 1306 (1976) (grant of power to local legislative body precluded referendum election); *State ex rel. Guthrie v. City of Richland*, 80 Wn.2d 382, 384, 494 P.2d 990 (1972) (where general law grants authority to governing body of city, exercise of that authority is not subject to repeal, amendment, or modification by initiative or referendum); *City of Port Angeles*, 145 Wn. App. 869 (initiative power does not extend to regulating public water systems because legislature granted city legislative bodies that power).

Based on this substantial body of law, “initiatives or referenda that attempt to graft limits onto a grant of power by the people of the State, or to modify obligations imposed on local legislative or executive authority by the people of the State, are invalid as in conflict with state law.” *McFarland*, 159 Wn.2d at 174 (citing *State ex rel. Haas v. Pomeroy*, 50 Wn.2d 23, 25, 308 P.2d 684 (1957), *overruled in part by Earle M. Jorgensen Co. v. City of Seattle*, 99 Wn.2d 861, 665 P.2d 1328 (1983)). Courts are thus empowered to exercise their inherent power to keep invalid measures from the ballot.

In this case, the Legislature specifically granted local legislative bodies with the exclusive power to legislate the use and operation of Safety Cameras. RCW 46.63.170 provides, in relevant part:

(1) The use of automated traffic safety cameras for issuance of notices of infraction is subject to the following requirements:

(a) The appropriate local legislative authority must first enact an ordinance allowing for their use to detect one or more of the following: Stoplight, railroad crossing, or school speed zone violations. At a minimum, the local ordinance must contain the restrictions described in this section and provisions for public notice and signage.

As reflected in the plain language of the statute, before a city or county may use Safety Cameras, the “appropriate *local legislative authority* must

first enact an ordinance allowing for their use . . . .” RCW 46.63.170(1)(a) (emphasis added). Likewise, RCW 46.63.170(1)(c) provides that “[d]uring the 2009-2011 fiscal biennium, automated traffic safety cameras may be used to detect speed violations for the purposes of section 201(2), chapter 470, Laws of 2009 if the *local legislative authority* first enacts an ordinance authorizing the use of cameras to detect speed violations.” (Emphasis added.) As such, for a city to use Safety Cameras, the city must first enact an ordinance consistent with the state statute.

Washington courts reviewing similar statutes that explicitly grant powers to a local “legislative authority” or “legislative body” have consistently held that such statutes unambiguously grant powers to the city council and mayor.<sup>3</sup> Indeed, this Court has stated that “[i]t is well-settled

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<sup>3</sup> See, e.g., *Malkasian*, 157 Wn.2d at 265-66 (finding that legislature unambiguously granted legislative body of city power over revenue bonds where statute stated that “legislative body” of city was authorized to create special fund by ordinance and holding that initiative requiring revenue bonds authorized under statute be subject to voter ratification was outside scope of initiative power); *Anderson*, 123 Wn.2d at 153-54 (finding that RCW 36.70A.210, which stated, among other things, “[t]he *legislative authority* ... shall adopt a county-wide planning policy” and “[i]f a *county* fails for any reason to convene a meeting” clearly and explicitly instructed county *legislative* body to take that action, thereby barring referendum on ordinance adopting procedures to develop countywide planning (emphasis added)); *Brisbane*, 125 Wn.2d 345 (holding that legislature granted local legislative body power to implement Growth Management Act, chapter 36.70A RCW, and thus local citizens may not exercise referendum or initiative power to limit, modify, or overturn local legislative body’s actions under act); *McFarland*, 159 Wn.2d at 177 (“[T]he legislature may use the phrase ‘legislative authority’ and ‘county’ interchangeably.”); *City of Port Angeles*, 145 Wn. App. at 880-81 (holding that trial court correctly determined that initiative power did not extend to regulating public water systems because legislature granted city legislative bodies power to operate water utilities).

that in the context of statutory interpretation, a grant of power to a city's governing body ('legislative authority' or 'legislative body') means exclusively the mayor and city council and not the electorate." *Malkasian*, 157 Wn.2d at 265. Thus, if the Initiative would enact law regarding the use of Safety Cameras, then it is invalid as a matter of law. And here, under the clear language of the statute, the Legislature unambiguously vested exclusive power with local legislative bodies (e.g., the Mukilteo City Council) to enact legislation regarding the use of Safety Cameras.

Applying these legal principles to the Initiative, it is clear that the Initiative is invalid because it would amend, restrict, and modify the Legislature's specific grant of power to local legislative bodies to enact legislation regarding the use of Safety Cameras. The language of the Initiative makes it clear that the effect of the Initiative would do just that.

- First, the Initiative calls for the enactment of a new chapter of the Mukilteo Municipal Code "by the people of the City of Mukilteo," not the Mukilteo City Council. CP 82. The new chapter of the municipal code to be enacted by direct legislation would involve the City's use, and certain guidelines for the use, of Safety Cameras. *Id.*
- Second, if the Initiative passes, it would enact a law requiring a future advisory vote regarding Safety Cameras. Specifically, the Initiative calls for the Mukilteo City Council to put "[a]ny ordinance that authorizes the use of automated ticketing machines enacted after January 1, 2010, . . . on the ballot as an advisory vote of the people at the next general election." *Id.*

- Third, the Initiative would impose a new voting requirement not contemplated under RCW 46.63.170, namely, that before any Safety Camera may be installed or used, the majority of the people and a supermajority of the Mukilteo City Council must first approve of the system. CP 82.
- Fourth, the Initiative would impose a limitation on the fines that may be assessed by the City of Mukilteo for infractions detected through the use of Safety Cameras. *Id.*
- Finally, the Initiative provides for repeal of an existing local ordinance governing the use, and standards for the use, of Safety Cameras. *Id.*

An initiative “cannot interfere with the exercise of a power delegated by state law to the governing body of the city.” *See, e.g., Priorities First v. City of Spokane*, 93 Wn. App. 406, 411, 968 P.2d 431 (1998) (affirming trial court order finding that initiative exceeded proper scope when it interfered with city council’s authority under RCW 35.41 to create fund to defray costs of municipally owned parking facility). The above-listed examples clearly show that the scope of the Initiative goes straight to the heart of that which is reserved for the Mukilteo City Council: enactment of legislation governing the use, and standards for the use, of Safety Cameras. Because the Initiative exceeds the scope of the initiative power, it should be declared invalid.

**2. Contrary To The City's And The Intervenors' Attempts To Circumvent State Law, The Initiative Cannot Appropriately Be Characterized As An "Advisory Vote."**

Before the Superior Court, the County took no position on the validity of the Initiative. Neither the City nor Intervenors disputed that subjects delegated to a local legislative body are outside the local initiative power. CP 7-19, 37-42. Nor did they dispute that pursuant to RCW 46.63.170, the Legislature granted local legislative bodies the exclusive power to enact legislation regarding the use of Safety Cameras. *Id.* Instead, the City and Intervenors argued, in effect, that even if the subject matter of the Initiative is outside the scope of the initiative process, the Mukilteo City Council may still include the Initiative on the ballot as a so-called "advisory" measure. CP 15-16, 39. This argument fails as a matter of law.

As a preliminary matter, this case does not involve an advisory vote. An initiative is a wholly separate measure than an advisory vote, as reflected by, for example, the use of separate language to identify an "initiative" versus an "advisory vote" on a local ballot. *See* RCW 29A.72.290 (providing that measures proposed for submission to voters by initiative petition are to be under heading "Proposed by Initiative Petition")

(RCW 29A.72.290(1)) and measures for an advisory vote are to be under heading "Advisory Vote of the People" (RCW 29A.72.290(6)).

Here, the City's Resolution requesting that the Snohomish County Auditor include the Initiative on the ballot reflects that the measure at issue is an initiative, not a vote that is merely advisory in nature. The Resolution provides for inclusion of the Initiative, as written and without modification, on the ballot. CP 84-86. It does not state that a vote is for advisory purposes only. *Id.* To the contrary, it includes the ballot title of "Initiative Measure" and, if passed, would immediately enact new law. *Id.* There is no language added by the City Council to the proposed measure to suggest to the public that their vote will simply be "advisory." In fact, the language of the measure and the proposed ballot title are exactly those included in the initiative petition. *Id.*

The City's inclusion of prefatory language in the Resolution expressing the City's "desire" to hear from voters "regardless of whether the subject matter is subject to the initiative process" does nothing to further the City's position. The fact is, regardless of the City Council's desire to hear from voters on the issue of Safety Cameras, the Legislature's express grant of authority to local legislative bodies precludes the City's inclusion of an invalid initiative on the ballot.

If the Initiative is placed on the ballot under the guise of seeking an “advisory vote,” it would eviscerate the limitations set forth in RCW 46.63.170 and usurp the role of elected officials. This Court’s opinion in *McFarland* is instructive. The Court there noted:

When the people of the State require action from a local legislature or executive body, those actions are not subject to a veto via a referendum. This follows from the blueprint, from the very structure of government established by our state constitution. It would violate the constitutional blueprint to allow a subdivision of the State to frustrate the mandates of the people of the State as a whole.

*McFarland*, 159 Wn.2d at 168 (citing *Henry v. Thorne*, 92 Wn.2d 878, 881, 602 P.2d 354 (1979); *Brisbane*, 125 Wn.2d 345). Here too, it would frustrate the Legislature’s clear grant of authority to local legislative bodies under RCW 46.63.170 if the City were allowed to avoid application of the law.

The Legislature has granted authority solely to local legislative authorities to act, and precluded local initiatives, in limited circumstances. In addition to the use of Safety Cameras, the Legislature granted local legislative bodies with power to act, and thus precluded initiatives and referenda, on matters such as regulation of public water systems (RCW Chapter 70.116), growth management and land use (RCW Chapter 36.70A), and revenue bonds (RCW Chapter 35.41). Under state law, the power to legislate regarding the use of Safety Cameras is for local

legislative bodies alone. This Court, therefore, should not permit the City, Intervenors, or anyone else to circumvent state law by recasting the Initiative as an “advisory vote.”

**D. The Court Should Declare The Initiative Invalid And Enjoin The City And Snohomish County From Placing The Initiative On The Ballot.**

As set forth above, pre-election relief is appropriate here and the Initiative is invalid as a matter of law. As such, this Court can – and should – declare the Initiative invalid and enjoin the City and Snohomish County from placing it on the ballot.

It is clear that the Court has the authority, indeed the responsibility, to declare the Initiative invalid. *See Malkasian*, 157 Wn.2d at 261 (“[I]f this court finds that the subject matter of the initiative was outside the scope of the relevant initiative power, this court can invalidate the initiative.”); *McFarland*, 159 Wn.2d at 173 (courts may exercise their inherent power to keep invalid initiatives from ballot). On top of that authority, both this Court and other appellate courts in this state have routinely affirmed or granted such relief where, as here, an initiative goes beyond the scope of initiative power. *See City of Port Angeles*, 145 Wn. App. at 883 (“Because the trial court ruled properly that the initiatives are invalid, we will not issue a decree pursuant to RCW 35.17.290 to place the initiatives on the ballot.”). In *Anderson*, for example, this Court entered

an order, pursuant to a request for accelerated review, "affirming the trial court's judgment that Snohomish County Ordinance 93-004 is not subject to referendum." 123 Wn.2d at 152-53. This Court should similarly enter an order here, finding that the Initiative is not subject to the initiative power.

## VI. CONCLUSION

The Initiative improperly attempts to usurp authority that the Legislature granted to local legislative bodies. For the foregoing reasons, the Superior Court's order denying declaratory and injunctive relief should be reversed, the Initiative should be declared invalid, and the City and County should be enjoined from placing the Initiative on the ballot or taking any other related actions.

Respectfully submitted this 16th day of August, 2010.

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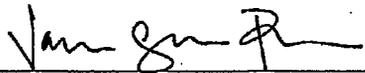
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Counsel for Nicholas Sherwood,  
Alex Rion, Tim Eyman  
**By Electronic Service  
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Counsel for Snohomish County and  
Carolyn Weikel  
**By Electronic Service  
and U.S. Mail**

Dated this 16th day of August at Seattle, Washington.

  
\_\_\_\_\_  
Vanessa Soriano Power

ORIGINAL

FILED AS  
ATTACHMENT TO EMAIL

Supreme Court No. 84921-8

Snohomish County Superior Court No. 10-2-06342-9

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**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

---

Mukilteo Citizens for Simple Government,

Appellant,

v.

City of Mukilteo, Christine Boughman, Snohemish County,  
Carolyn Weikel, Nicholas Sherwood, Alex Rion, Tim Eyman,

Respondents.

---

**APPENDIX**

---

Vanessa S. Power, WSBA #30777  
Leonard J. Feldman, WSBA #20961  
Gloria S. Hong, WSBA #36723  
STOEL RIVES LLP  
600 University Street, Suite 3600  
Seattle, WA 98101  
Tel: (206) 624-0900  
Attorneys for Appellant Mukilteo  
Citizens for Simple Government

BY RONALD J. CENTER  
10 AUG 17 AM 8:10  
STOEL RIVES LLP

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Motion for Declaratory Judgment and Injunctive Relief	18-29
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Stoel Rives LLP

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SUPERIOR COURT  
STATE OF WASHINGTON  
COUNTY OF SNOHOMISH

MUKILTEO CITIZENS FOR SIMPLE  
GOVERNMENT, an unincorporated association  
of Mukilteo residents,

Plaintiff,

v.

CITY OF MUKILTEO, a Washington municipal  
corporation; CHRISTINA BOUGHMAN, in her  
official capacity as City Clerk for the City of  
Mukilteo; SNOHOMISH COUNTY, a political  
subdivision of the State of Washington;  
CAROLYN WEIKEL, as her official capacity as  
Snohomish County Auditor,

Defendants.

NO. 10 2 06342 9

SUMMONS (20/60 Day)

CR 4 (b)

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TO THE DEFENDANT:

A lawsuit has been started against you in the above entitled court by MUKILTEO  
CITIZENS FOR SIMPLE GOVERNMENT, plaintiff. Plaintiff's claim is stated in the written  
complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your  
defense in writing, and by serving a copy upon the person signing this summons within 20 days  
after the service of this summons (or 60 days if served outside the State of Washington),

SUMMONS (20/60 Day)  
(SM) CR 4 (b) - 1

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STOEL RIVES LLP  
ATTORNEYS  
600 University Street, Suite 3600, Seattle, WA 98101  
Telephone (206) 624-0900

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excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what he asks for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment may be entered.

You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing this summons. Within 14 days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State of Washington.

Dated: July 19, 2010

Vanessa Soriano Power  
Vanessa Soriano Power  
Attorney for Plaintiff, WSBA #30777

STOEL RIVES LLP  
600 University Street, Suite 3600  
Seattle, WA 98101

(206) 624-0900  
Telephone Number

SUMMONS (20/60 Day)  
(SM) CR 4 (b) - 2

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Stoel Rives LLP

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR SNOHOMISH COUNTY

MUKILTEO CITIZENS FOR SIMPLE  
GOVERNMENT, an unincorporated  
association of Mukilteo residents,

Plaintiff,

v.

CITY OF MUKILTEO, a Washington  
municipal corporation; CHRISTINE  
BOUGHMAN, in her official capacity as  
City Clerk for the City of Mukilteo;  
SNOHOMISH COUNTY, a political  
subdivision of the State of Washington;  
CAROLYN WEIKEL, in her official  
capacity as Snohomish County Auditor,

Defendants.

No. **10-2 06342 9**  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

INTRODUCTION

Plaintiff brings this action for declaratory and injunctive relief under chapter 7.24 RCW and chapter 7.40 RCW. Plaintiff seeks a declaration that proposed Mukilteo Initiative No. 2 is beyond the scope of the initiative power. Plaintiff also seeks an order enjoining the City of Mukilteo and Snohomish County from processing and including proposed Mukilteo Initiative No. 2 on the November 2010 ballot.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF - 1

1 PARTIES

2 1. Plaintiff is an unincorporated association of residents of Mukilteo, Washington.  
3 Christine Preston, a resident and registered voter of Mukilteo, is the founding member.  
4 Plaintiff's members believe that it is in the public interest to support the authority of Mukilteo  
5 elected officials to act as the duly-elected representatives of Mukilteo citizens.

6 2. Defendant City of Mukilteo ("Mukilteo") is a non-charter code city organized and  
7 operating under the laws of the State of Washington, chapter 35A RCW, *et seq.*

8 3. Defendant Christine Boughman, in her official capacity, is the Mukilteo City  
9 Clerk.

10 4. Defendant Snohomish County is a political subdivision of the State of  
11 Washington.

12 5. Defendant Carolyn Wiekkel, in her official capacity, is the Snohomish County  
13 Auditor.

14 JURISDICTION AND VENUE

15 6. This Court has subject matter jurisdiction over this action pursuant to chapter 7.24  
16 RCW and chapter 7.40 RCW.

17 7. Venue is proper in Snohomish County, Washington pursuant to RCW 4.12.025.

18 FACTUAL BACKGROUND

19 8. Automated traffic safety cameras are used by numerous cities in Washington as  
20 public safety measures to enforce traffic safety laws, including speeding in school zones and  
21 stopping at red lights.

22 9. Pursuant to RCW 46.63.170, the legislature granted cities and counties the power  
23 to enact local ordinances providing for the use of automated traffic safety cameras. Under the  
24 statute, that power is specifically granted to the "appropriate local legislative authority."

25 10. RCW 46.63 *et seq.*, establishes the statutory framework for the disposition of  
26 certain traffic offenses, including infractions determined through the use of automated traffic

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF - 2

1 safety cameras. The Infraction Rules for Courts of Limited Jurisdiction establish the applicable  
2 rules for processing such traffic offenses.

3 11. On or about May 17, 2010, the Mukilteo City Council enacted Ordinance No.  
4 1246 authorizing the use, and guidelines and standards for the use, of automated traffic safety  
5 cameras. At the same time, the City Council authorized the Mayor to enter into a contract on  
6 behalf of Mukilteo with American Traffic Solutions, Inc. for installation of automated traffic  
7 safety cameras.

8 12. Shortly thereafter, several citizens of Mukilteo commenced an initiative petition  
9 for proposed Mukilteo Initiative No. 2. On information and belief, the initiative petition for  
10 proposed Mukilteo Initiative No. 2 was timely submitted to the Mukilteo City Clerk and included  
11 sufficient valid signatures of Mukilteo registered voters.

12 13. Proposed Mukilteo Initiative No. 2 (attached at *Exhibit A* to the Complaint) seeks  
13 enactment of a new chapter of the Mukilteo Municipal Code. The proposed initiative  
14 simultaneously seeks to repeal Ordinance No. 1246. The proposed initiative would have the  
15 effect of:

- 16 a. Requiring an advisory vote of the people before the Mukilteo City Council  
17 may enact an ordinance authorizing the use of automated traffic safety  
18 cameras;
- 19 b. Requiring a two-thirds supermajority vote of the City Council and a  
20 majority vote of the people before the City, or "for profit companies  
21 contracted by the City of Mukilteo" may install or use automated traffic  
22 safety cameras;
- 23 c. Limiting the fines that the City of Mukilteo may assess for traffic  
24 violations determined through the use of automated traffic safety cameras;  
25 and
- 26 d. Repealing Mukilteo Ordinance No. 1246 authorizing the use, and

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF - 3

1 guidelines and standards for the use, of automated traffic safety cameras in  
2 Mukilteo.

3 14. On June 21, 2010, the Mukilteo City Council rescinded its prior authorization for  
4 the Mayor to enter into a contract on behalf of Mukilteo with American Traffic Solutions, Inc.  
5 for installation of automated traffic safety cameras.

6 15. On July 7, 2010, the Mukilteo City Council approved a motion to "move forward  
7 with [proposed] Mukilteo Initiative No. 2 as presented to the County Auditor for a vote in  
8 November 2010."

9 16. The Mukilteo City Council agenda for a City Council meeting scheduled on July  
10 19, 2010, includes a motion to approve proposed Resolution 2010-22, calling for an election to  
11 be held in conjunction with the November 2010 general election, for submission of proposed  
12 Mukilteo Initiative No. 2 to a vote of the people. Proposed Resolution 2010-22 is attached at  
13 *Exhibit B* to the Complaint.

14 17. Proposed Resolution 2010-22 seeks to refer proposed Mukilteo Initiative No. 2 to  
15 the voters of the City of Mukilteo for their approval or rejection.

16 18. Among other things, Proposed Resolution 2010-22 calls for the Mukilteo City  
17 Clerk to furnish a certified copy of the resolution to the Snohomish County Auditor, and directs  
18 and authorizes the Mukilteo City Clerk to publish proposed Mukilteo Initiative No. 2 in the  
19 City's official newspaper before the November 2010 election.

20 19. Plaintiff seeks a declaration that proposed Mukilteo Initiative No. 2 is invalid  
21 because it is beyond the scope of the initiative power.

22 20. Plaintiff seeks injunctive relief to prevent inclusion of an invalid initiative,  
23 proposed Mukilteo Initiative No. 2, on the November 2010 ballot.

24 CLAIMS

25 21. Paragraphs 1 through 20 are incorporated by reference as if set forth fully herein.

26 22. A controversy exists between Plaintiff and Defendants regarding whether the

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF - 4

1 subject matter of proposed Mukilteo Initiative No. 2 is within the scope of the initiative power.

2 23. Pre-election review of an initiative is permitted where, as here, there is a dispute  
3 regarding whether the subject matter of the proposed initiative is beyond the scope of the  
4 initiative power.

5 24. Plaintiff seeks a declaration that proposed Mukilteo Initiative No. 2 is invalid  
6 because it is beyond the scope of the initiative power because state law specifically vests the  
7 local legislative authority with the power to enact ordinances governing the local government's  
8 use and operation of automated traffic safety camera systems. Proposed Mukilteo Initiative No.  
9 2 would improperly interfere with the exercise of a power delegated by state law to a local  
10 legislative authority.

11 25. Because proposed Mukilteo Initiative No. 2 is not a lawful exercise of the  
12 initiative power, Defendants, and all employees, agents, and others acting in concert with  
13 Defendants, should be enjoined from processing proposed Mukilteo Initiative No. 2 as an  
14 initiative to the voters of Mukilteo, and should be enjoined from including proposed Mukilteo  
15 Initiative No. 2 on the November 2010 ballot.

16 **RELIEF REQUESTED**

17 WHEREFORE Plaintiff seeks relief as follows:

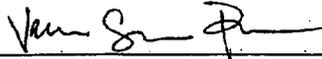
- 18 a. Declaring that proposed Mukilteo Initiative No. 2, in its entirety, is invalid  
19 because it is beyond the scope of the local initiative power, and therefore null and  
20 void as a City of Mukilteo proposed initiative;
- 21 b. Enjoining Defendants from including proposed Mukilteo Initiative No. 2 on the  
22 ballot; and
- 23 c. Granting such other relief as the Court deems just and equitable.
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COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF - 5

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DATED: July 19, 2010.

STOEL RIVES LLP



Vanessa Soriano Power, WSBA No. 30777  
Gloria S. Hong, WSBA No. 36723

Attorneys for Mukilteo Citizens for Simple  
Government

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF - 6

# EXHIBIT A

# LET THE PEOPLE DECIDE ON RED LIGHT CAMERAS IN MUKILTEO



- Repeals government-imposed automated ticketing machines
- Requires city government to get voter approval if they try again
- Removes profit-motive by limiting fines
- Protects democracy and due process

**Proposed Ballot Title:** Mukilteo Initiative No. 2, concerns automatic ticketing machines. This measure would prohibit Mukilteo from using camera surveillance to impose fines unless two-thirds of the Council and voters approve, limit fines, repeal Ordinance 1246 allowing the machines, and mandate an advisory vote.

Should this measure be enacted into law? Yes  No

**Proposed Ballot Summary:** This measure would prohibit the City of Mukilteo or for-profit companies contracted by Mukilteo to use automatic ticketing machines to impose fines from camera surveillance unless it's approved by a two-thirds vote of the City Council and a vote of the people at an election. This measure would also limit fines, repeal Ordinance No. 1246/Chapter 10.05 allowing automatic ticketing machines, and require an advisory vote of the people for machines authorized after January, 2010.

**BE IT ENACTED BY THE PEOPLE OF THE CITY OF MUKILTEO:**

Section 1, New Chapter 10.06. A new chapter 10.06 is hereby added to the Mukilteo Municipal Code to read as follows:  
 10.06.010 Automated Ticketing Machines: The City of Mukilteo and for-profit companies contracted by the City of Mukilteo may not install or use automated ticketing machines to impose fines from camera surveillance unless such a system is approved by a two-thirds vote of the City Council and a majority vote of the people at an election.

1. For the purposes of this chapter, "automated ticketing machines" means a device that uses a vehicle sensor installed to work in conjunction with an intercession traffic control system, or a speed measuring device, and a camera synchronized to automatically record one or more sensorized traffic control signal, or exceeds a speed limit as detected by a speed measuring device.

10.06.020 Fines: If two-thirds of the City Council and a majority of Mukilteo voters at an election approve a system of automated ticketing machines to impose fines from camera surveillance, the fine for infractions committed shall be a monetary penalty of no more than the least expensive park- ing ticket imposed by law enforcement in the city limits of Mukilteo.

Section 2, Chapter 10.05 (Ordinance No. 1246 allowing automated ticketing machines) is hereby repealed.

Section 3, Advisory Vote: Any ordinance that authorizes the use of automated ticketing machines enacted after January 1, 2010, must be put on the ballot as an advisory vote of the people at the next general election.

Section 4, Severability: If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**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.

Concise statement of the action or relief sought: We, the undersigned voters of Mukilteo, require that, unless passed by the City Council, this ordinance -- Mukilteo Initiative No. 2 -- be submitted to a vote of the registered voters of the city of Mukilteo, subject to the requirements of RCW 35.17.260.

Print Name (must be Mukilteo voter)	Signature	Address	Date	City
1. <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mukilteo
2. <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mukilteo
3. <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mukilteo
4. <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mukilteo
5. <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mukilteo
6. <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Mukilteo
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Return signed petitions to: BanCams.com, 11913 59th Ave W, Mukilteo, WA 98275, ph: 425-493-9127, www.BanCams.com/Mukilteo, BanCams@gmail.com.  
 Our goal is to collect the necessary number of voter signatures to qualify for the August 17, 2010 primary ballot in Mukilteo. Sponsored by BanCams.com, Campaign for Liberty, and VotersWantMoreChoices.com

# **EXHIBIT B**

City of Mukilteo  
RESOLUTION NO. 2010-22

A RESOLUTION OF THE CITY OF MUKILTEO, WASHINGTON, PURSUANT TO RCW 35.17.260 CALLING AN ELECTION TO BE HELD IN CONJUNCTION WITH THE NOVEMBER GENERAL ELECTION FOR SUBMISSION OF A PROPOSED INITIATIVE ORDINANCE TO A VOTE OF THE PEOPLE, AND INSTRUCTING THE CITY CLERK REGARDING PRESENTATION AND PUBLICATION.

---

WHEREAS, the City Council of the City of Mukilteo has been presented with an Initiative Petition requesting enactment of an ordinance to prohibit use of automated traffic safety cameras to detect stoplight infractions and school speed zone violations without a two-thirds vote of the City Council and a majority vote of the electorate, establishing a maximum fine for infractions, repealing chapter 10.05 of the Mukilteo Municipal Code relating to use of automated traffic safety cameras to detect stoplight infractions and school speed zone violations, and calling for an advisory vote of the people for any ordinance that authorizes the use of such systems; and

WHEREAS, the City Council desires to hear from the qualified electorate on the issues addressed in the Initiative Petition, regardless of whether the subject matter is subject to the initiative process; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF MUKILTEO, WASHINGTON,  
RESOLVES AS FOLLOWS:

Section 1. Call for Election. Pursuant to RCW 35.17.260, the Mukilteo City Council requests the Snohomish County Auditor to place upon the general election ballot in the City of Mukilteo, Snohomish County, on November 2, 2010, a proposition for the purpose of

submitting to the qualified electors of the City whether or not to enact an initiative ordinance, a copy of which is attached hereto as Exhibit A and incorporated herein.

Section 2. Ballot Proposition. The ballot title for the aforementioned proposition shall read as follows:

**Initiative Measure**

Mukilteo Initiative No. 2 concerns automatic ticketing machines. This measure would prohibit Mukilteo from using camera surveillance to impose fines unless two-thirds of the Council and voters approve, limit fines, repeal Ordinance 1246 allowing the machines, and mandate an advisory vote.

Should this measure be enacted into law?

Yes.....[ ]

No.....[ ]

Section 3. Duties of City Clerk. The City Clerk is hereby authorized and directed to furnish promptly to the Snohomish County Auditor a certified copy of this Resolution. The City Clerk is further directed and authorized to publish the proposed Initiative Ordinance in the official newspaper of the City not less than five (5) nor more than twenty (20) days prior to the November election date.

Section 4. Local Voters' Pamphlet. The City Attorney is directed to prepare and submit the explanatory statement for the ballot proposition as required by the administrative rules of the Snohomish County Auditor. The arguments for and against the ballot proposition shall be prepared by the committees appointed by the Council pursuant to RCW 29A.32.280.

RESOLVED by the City Council and APPROVED by the Mayor this \_\_\_\_ day of

\_\_\_\_\_, 2010.

APPROVED:

\_\_\_\_\_  
MAYOR JOE MARINE

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
CHRISTINA J. BOUGHMAN, CITY CLERK

FILED WITH THE CITY CLERK: 7-19-10  
PASSED BY THE CITY COUNCIL: 7-19-10  
RESOLUTION NO. 2010-022

CITY OF MUKILTEO  
INITIATIVE NO. 2

AUTOMATED TRAFFIC SAFETY CAMERAS

EXPLANATORY STATEMENT

Chapter 10.05 of the Mukilteo Municipal Code authorizes use of automated traffic safety cameras to detect stoplight violations and school speed zone violations. That chapter also sets forth standards and restrictions regarding use of the cameras, and sets a fine of \$112 for each violation.

If approved, this measure would repeal chapter 10.05 of the Mukilteo Municipal Code and require an advisory vote of the people at a general election prior to adoption of any ordinance that authorizes use of automated traffic safety cameras. In addition, the measure would prohibit the City and any contractor from installing or using automated traffic safety cameras unless the system is approved by a two-thirds vote of the City Council and a majority vote of the people at an election. The fine for infractions would be no more than the least expensive parking ticket imposed within the city limits of Mukilteo.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR SNOHOMISH COUNTY

MUKILTEO CITIZENS FOR SIMPLE  
GOVERNMENT, an unincorporated  
association of Mukilteo residents,

Plaintiff,

v.

CITY OF MUKILTEO, a Washington  
municipal corporation; CHRISTINE  
BOUGHMAN, in her official capacity as  
City Clerk for the City of Mukilteo;  
SNOHOMISH COUNTY, a political  
subdivision of the State of Washington;  
CAROLYN WEIKEL, in her official  
capacity as Snohomish County Auditor,

Defendants.

No. 10-2-06342-9

DECLARATION OF CHRISTINE  
PRESTON

I, Christine Preston, declare as follows:

1. I am the founding member of Mukilteo Citizens for Simple Government, the  
plaintiff in this case. I am competent to testify and make this declaration based on personal  
knowledge.

2. I am a resident of the City of Mukilteo, Washington and a registered voter.

DECLARATION OF CHRISTINE PRESTON - 1



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR SNOHOMISH COUNTY

MUKILTEO CITIZENS FOR SIMPLE  
GOVERNMENT, an unincorporated  
association of Mukilteo residents,

Plaintiff,

v.

CITY OF MUKILTEO, a Washington  
municipal corporation; CHRISTINE  
BOUGHMAN, in her official capacity as  
City Clerk for the City of Mukilteo;  
SNOHOMISH COUNTY, a political  
subdivision of the State of Washington;  
CAROLYN WEIKEL, in her official  
capacity as Snohomish County Auditor,

Defendants.

No. 10-2-06342-9

MOTION FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE RELIEF

HEARING: August 6, 2010 at 9:30 a.m.

I. INTRODUCTION

This case involves a pre-election challenge to proposed Mukilteo Initiative No. 2 on the grounds that the measure is beyond the scope of the initiative power. When the Washington Legislature specifically authorizes the legislative body of a city or county to act, that grant of power is exclusive to the legislative body and precludes an initiative on the issue. Here, under RCW 46.63.170, the Washington Legislature vested the power to enact legislation related to the use of automated traffic safety cameras with "local legislative authorities." As such, exercise of

MOTION FOR DECLARATORY JUDGMENT  
AND INJUNCTIVE RELIEF - 1

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STOEL RIVES LLP  
ATTORNEYS  
600 University Street, Suite 3600, Seattle, WA 98101  
Telephone (206) 624-0900

1 that power is not subject to repeal, amendment, or modification by the people through initiative  
2 or referendum.

3 Proposed Mukilteo Initiative No. 2 improperly attempts to usurp authority that the  
4 Washington Legislature granted to local legislative bodies including the Mukilteo City Council.  
5 The proposed initiative would impose additional requirements on the City's ability to act on the  
6 use of automated traffic safety cameras including, for example, a mandatory advisory vote of the  
7 people before the City Council may enact legislation, and yet another mandatory vote of the  
8 people, as well as a supermajority of the City Council, before Mukilteo may use automated  
9 traffic safety cameras. Accordingly, because the Legislature expressly enabled local legislative  
10 authorities (e.g., the Mukilteo City Council) with the power to enact ordinances governing the  
11 use of automated traffic safety cameras, and because proposed Mukilteo Initiative No. 2 seeks to  
12 improperly modify and restrict that authority, the proposed initiative exceeds the initiative power  
13 and should be declared invalid.

14 Time is of the essence in this matter. The parties have agreed to an expedited schedule.  
15 To avoid the cost of pre-election processing and placement of an invalid initiative on the ballot,  
16 Plaintiff Mukilteo Citizens for Simple Government asks that the Court rule on this matter as soon  
17 as possible.

## 18 II. STATEMENT OF FACTS

19 The matter before the Court is a pure legal issue. The following summary of facts  
20 provides the Court with context regarding the applicable state statutes and rules, the procedural  
21 history and status of proposed Mukilteo Initiative No. 2 ("Initiative No. 2"), and the scope of the  
22 proposed initiative.

### 23 A. The Washington Legislature Granted "Local Legislative Authorities" the Power to 24 Enact Ordinances Governing the Use and Operation of Automated Traffic Safety 25 Cameras.

26 RCW 46.63, *et seq.* establishes a statewide statutory framework for the disposition of

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1 certain traffic offenses, including infractions determined through the use of automated traffic  
2 safety cameras. The Infraction Rules for Courts of Limited Jurisdiction establish the applicable  
3 rules for local courts processing such traffic offenses. RCW 46.63.170 provides, in relevant part:

4 (1) The use of automated traffic safety cameras for issuance of  
5 notices of infraction is subject to the following requirements:

6 (a) The appropriate local legislative authority must first enact  
7 an ordinance allowing for their use to detect one or more of the  
8 following: Stoplight, railroad crossing, or school speed zone  
9 violations. At a minimum, the local ordinance must contain the  
10 restrictions described in this section and provisions for public  
11 notice and signage.

12 RCW 46.63.170(1)(a).

13 **B. Pursuant to RCW 46.63.170, Mukilteo Enacted an Ordinance Providing for the Use**  
14 **of Automated Traffic Safety Cameras.**

15 On May 17, 2010, the Mukilteo City Council enacted Ordinance No. 1246 governing the  
16 use, and guidelines and standards for the use, of automated traffic safety cameras. Declaration of  
17 Vanessa Power ("Power Decl.") ¶2, Exhibit 1 (Mukilteo Ordinance No. 1246). At the same  
18 time, the City Council authorized the Mayor of Mukilteo to enter into a contract on behalf of  
19 Mukilteo with an automated traffic safety camera provider. *Id.* ¶3, Exhibit 2 (Mukilteo City  
20 Council Minutes, May 17, 2010). The Mayor's authorization to enter into a contract was later  
21 rescinded until exploration of other alternatives was exhausted. *Id.* ¶4, Exhibit 3 (Mukilteo City  
22 Council Minutes, June 21, 2010). Ordinance 1246 became effective after passage and  
23 publication. *Id.*, Exhibit 1.

24 **C. Proposed Initiative No. 2 Would Repeal Ordinance No. 1246 and Enact New**  
25 **Legislation.**

26 Mukilteo is a non-charter code city that operates under RCW 35A, *et seq.* See Mukilteo  
Municipal Code ("MMC") 1.12.010. Mukilteo has adopted code city initiative and referendum  
power provided under RCW 35A.11.080 through 100. MMC 1.14.010. In or around June

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1 2010, an initiative petition for a local initiative, proposed Initiative No. 2, was commenced.  
2 Power Decl. ¶5, Exhibit 4 (Initiative Petition). On information and belief, the initiative petition  
3 was timely submitted to the Mukilteo City Clerk and included sufficient valid signatures of  
4 Mukilteo registered voters. Complaint ¶12.

5 Proposed Initiative No. 2 provides as follows:

6 **BE IT ENACTED BY THE PEOPLE OF THE CITY OF MUKILTEO:**

7 Section 1. New Chapter 10.06. A new chapter 10.06 is hereby added to the  
8 Mukilteo Municipal Code to read as follows:

9 10.06.010 Automated Ticketing Machines: the City of Mukilteo and for-profit  
10 companies contracted by the City of Mukilteo may not install or use automated  
11 ticketing machines to impose fines from camera surveillance unless such a system  
12 is approved by a two-thirds vote of the City Council and a majority vote of the  
13 people at an election.

14 1. For the purposes of this chapter, "automated ticketing machines" means a  
15 device that uses a vehicle sensor installed to work in conjunction with an  
16 intersection traffic control system, or a speed measuring device, and a camera  
17 synchronized to automatically record one or more sequenced photographs,  
18 microphotographs, or electronic images of the rear of a motor vehicle at the time  
19 the vehicle fails to stop when facing a steady red traffic control signal, or exceeds  
20 a speed limit as detected by a speed measuring device.

21 10.06.020 Fines: if two-thirds of the City Council and a majority of Mukilteo  
22 voters at an election approve a system of automated ticketing machines to impose  
23 fines from camera surveillance, the fine for infractions committed shall be a  
24 monetary penalty of no more than the least expensive parking ticket imposed by  
25 law enforcement in the city limits of Mukilteo.

26 Section 2. Chapter 10.05 (Ordinance No. 1246 allowing automated ticketing  
machines) is hereby repealed.

Section 3. Advisory Vote: Any ordinance that authorizes the use of automated  
ticketing machines enacted after January 1, 2010, must be put on the ballot as an  
advisory vote of the people at the next general election.

Section 4: [sic] Severability: If any provision of this act or its application to any  
person or circumstance is held invalid, the remainder of the act or the application  
of the provision to other persons or circumstances is not affected.

MOTION FOR DECLARATORY JUDGMENT  
AND INJUNCTIVE RELIEF - 4

1 See Power Decl., Exhibit 4.

2 **D. Mukilteo City Council Has Taken Action to Process Proposed Initiative No. 2 for**  
3 **Placement on the November 2, 2010 Ballot.**

4 On July 19, 2010, the Mukilteo City Council approved Resolution No. 2010-22 (the  
5 "Resolution"). Power Decl., Exhibit 5 (Resolution No. 2010-22). Among other things, the  
6 Resolution directs the Mukilteo City Clerk to provide the Snohomish County Auditor with a  
7 certified copy of the Resolution and requests that the Snohomish County Auditor place proposed  
8 Initiative No. 2 on the Mukilteo ballot on November 2, 2010. *Id.*

9 **E. Plaintiff Seeks Declaratory and Injunctive Relief to Prevent an Invalid Initiative**  
10 **from Inclusion on the Ballot.**

11 Mukilteo Citizens for Simple Government is an unincorporated association of Mukilteo  
12 residents who believe that it is in the public interest to support the authority of Mukilteo elected  
13 officials to act as the duly-elected representatives of Mukilteo citizens. See Declaration of  
14 Christine Preston ("Preston Decl.") ¶3. The association does not support an initiative on the  
15 issue of automated traffic safety cameras because the association believes that the law does not  
16 allow for an initiative on this issue and because it is inefficient and a waste of resources to put  
17 measures on the ballot that the state legislature has already decided the City Council should  
18 handle. *Id.* ¶¶4, 5.

19 **III. STATEMENT OF ISSUE**

20 Whether proposed Mukilteo Initiative No. 2 exceeds the scope of the initiative power.

21 **IV. EVIDENCE RELIED UPON**

22 Evidence relied upon in support of this motion is set forth in the Declaration of Vanessa  
23 Power, the Declaration of Christine Preston, and the records and files herein.

24 **V. ARGUMENT**

25 **A. Standard of Review.**

26 Plaintiff seeks declaratory and injunctive relief from the Court on a narrow, purely legal

MOTION FOR DECLARATORY JUDGMENT  
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1. issue. In effect, Plaintiff seeks summary disposition of its claims. As such, this motion is  
2 governed by the summary judgment standard under Rule 56.

3 **B. Pre-Election Review of a Subject Matter Challenge Is Appropriate.**

4 While Washington courts generally refrain from reviewing the validity of a proposed law  
5 before it has been enacted, this case falls squarely within a well-established exception. For over  
6 90 years, Washington courts have permitted subject matter pre-election review to determine  
7 whether an initiative or referendum is within the scope of the initiative or referendum power.  
8 *See City of Port Angeles v. Our Water-Our Choice*, 145 Wn. App. 869, 188 P.3d 533 (2008), *rev.*  
9 *granted*, 165 Wn.2d 1053 (2009); *Snohomish Cnty. v. Andersen*, 123 Wn.2d 151, 868 P.2d 116  
10 (1994); *City of Sequim v. Malkasian*, 157 Wn.2d 251, 138 P.3d 943 (2006); *Whatcom Cnty. v.*  
11 *Brisbane*, 125 Wn.2d 345, 884 P.2d 1326 (1994); *City of Seattle v. Yes for Seattle*, 122 Wn. App.  
12 382, 93 P.3d 176 (2004); *1000 Friends of Wash. v. McFarland*, 159 Wn.2d 165, 149 P.3d 616  
13 (2006); *Philadelphia II v. Gregoire*, 128 Wn.2d 707, 716-17, 911 P.2d 389, *cert. denied*, 519  
14 U.S. 862 (1996). Here, Plaintiff presents an appropriately narrow issue for the Court's review.

15 Pre-election subject matter challenges are proper because they do not raise concerns  
16 regarding justiciability because "postelection events do not further sharpen the issues—the subject  
17 matter of the proposed measure is either proper for direct legislation or it is not." *Malkasian*,  
18 157 Wn.2d at 255. Here, Plaintiff seeks only subject matter review of the proposed initiative.  
19 Plaintiff does not, in this instance, challenge the substantive validity of proposed Initiative No. 2  
20 under the Washington Constitution or otherwise. Instead, Plaintiff seeks only the narrow relief  
21 available to it at this time: a determination of whether proposed Initiative No. 2 is beyond the  
22 scope of the initiative power and thus not proper for direct legislation.

23 **C. Plaintiff Satisfies the Threshold Requirements for Justiciability.**

24 Plaintiff has met the threshold justiciability requirements under the Uniform Declaratory  
25 Judgment Act, Chapter 7.24 RCW, which call for: "(1) an actual, present and existing dispute, or  
26 the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or

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1 moot disagreement, (2) between parties having genuine and opposing interests, (3) which  
2 involves interests that must be direct and substantial, rather than potential, theoretical, abstract or  
3 academic, and (4) a judicial determination of which will be final and conclusive.” *To-Ro Trade*  
4 *Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001) (quoting *Diversified Indus. Dev.*  
5 *Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137 (1973)).

6 Mukilteo Citizens for Simple Government has an actual dispute with Mukilteo and  
7 Snohomish County regarding the subject matter validity of proposed Initiative No. 2. The parties  
8 have genuine and opposing interests. Plaintiff’s position is that the proposed initiative is outside  
9 the scope of the initiative power. See Preston Decl. ¶¶3-5. Plaintiff seeks to preclude inclusion  
10 of an invalid initiative on the November 2, 2010 ballot. Mukilteo and Snohomish County have  
11 taken the opposite position based on the incorrect assumption that proposed Initiative No. 2 is  
12 valid. Mukilteo recently approved Resolution No. 2010-22, which has the effect of processing  
13 proposed Initiative No. 2 for placement on the November 2, 2010 ballot. Pursuant to the  
14 Resolution, Mukilteo has asked the Snohomish County Auditor to take action by placing the  
15 proposed initiative on the ballot.

16 The parties’ interests are direct and substantial because the proposed initiative involves  
17 an unlawful attempt to modify and limit the exclusive authority granted to the Mukilteo City  
18 Council. Finally, a judicial determination providing declaratory relief will be conclusive.

19 **D. Proposed Initiative No. 2 Exceeds the Scope of the Initiative Power.**

20 **1. Matters Delegated to a Local Legislative Body Are Not Subject to Initiative.**

21 When the Legislature acts to grant power specifically to a local legislative body, that  
22 power is not subject to direct legislation by initiative or referendum. “An initiative is beyond the  
23 scope of the initiative power if the initiative involves powers granted by the legislature to the  
24 governing body of a city, rather than the city itself.” *City of Sequim*, 157 Wn.2d at 261; see also  
25 *1000 Friends of Wash.*, 159 Wn.2d at 174; *Leonard v. City of Bothell*, 87 Wn.2d 847, 853, 557  
26

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1 P.2d 1306 (1976) (grant of power to local legislative body precluded referendum election); *State*  
2 *ex rel. Guthrie v. City of Richland*, 80 Wn.2d 382, 384, 494 P.2d 990 (1972) (where general law  
3 grants authority to governing body of city, exercise of that authority not subject to repeal,  
4 amendment, or modification by initiative or referendum); *State ex rel. Bowen v. Kruegel*, 67  
5 Wn.2d 673, 678-79, 409 P.2d 458 (1965) (electorate of municipality had no power to demand  
6 referendum election on annexation ordinance because powers of annexation were expressly  
7 conferred by state to city's legislative body, and not to electorate or corporate entity of city);  
8 *Neils v. City of Seattle*, 185 Wash. 269, 276, 53 P.2d 848 (1936) (general law enacted by  
9 legislature superior to all inconsistent charter provisions; charter provision with effect of limiting  
10 or restricting legislative grant of power to legislative authority is invalid); *City of Port Angeles*,  
11 145 Wn. App. 869 (initiative power does not extend to regulating public water systems because  
12 legislature granted city legislative bodies power to operate water utilities). This is because a  
13 proposed initiative under these circumstances would "interfere with the exercise of a power  
14 delegated by state law to the governing body of the city." *Id.* at 882 (citing *Priorities First v.*  
15 *City of Spokane*, 93 Wn. App. 406, 411, 968 P.2d 431 (1998)). Indeed, "people cannot deprive  
16 the City's legislative authority of the power to do what the constitution and/or a state statute  
17 specifically permit it to do. . . . To allow the initiatives to proceed on the basis of police power,  
18 or some other general theory, would be to undermine the legislative grant of authority to the  
19 local legislative body. . . ." *Id.* at 882-83 (citing *King County v. Taxpayers of King County*, 133  
20 Wn.2d 584, 608, 949 P.2d 1260 (1997)).

21 **2. The Legislature Delegated Use and Operation of Automated Traffic Safety**  
22 **Cameras Exclusively to "Local Legislative Authorities."**

23 In this case, the Legislature clearly granted local legislative bodies the power to legislate,  
24 consistent with Washington law, the use and operation of automated traffic safety cameras as  
25 well as the amount of fines to be assessed for related offenses. The Legislature made its intent in  
26 enacting RCW 46.63 clear. RCW 46.63.010 provides that it is the "legislative intent in the

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1 adoption of this chapter in decriminalizing certain traffic offenses to promote the public safety  
2 and welfare on public highways and to facilitate the implementation of a uniform and  
3 expeditious system for the disposition of traffic infractions.” To implement that “uniform and  
4 expeditious system” across the state, the Legislature made a clear grant of power to local  
5 legislative bodies to govern the use and operation of automated traffic safety cameras consistent  
6 with state law.

7 RCW 46.63.170(1)(a) provides in part that before a city or county may use automated  
8 traffic safety cameras, the “appropriate *local legislative authority* must first enact an ordinance  
9 allowing for their use . . . ” (emphasis added). Likewise, RCW 46.63.170(1)(c) provides that  
10 “[d]uring the 2009-2011 fiscal biennium, automated traffic safety cameras may be used to detect  
11 speed violations for the purposes of section 201(2), chapter 470, Laws of 2009 if the *local*  
12 *legislative authority* first enacts an ordinance authorizing the use of cameras to detect speed  
13 violations” (emphasis added).

14 As set forth above, it is well-settled under Washington law that an initiative “cannot  
15 interfere with the exercise of power delegated by state law to the governing body of a city.”  
16 *Priorities First*, 93 Wn. App. at 411. Given the clear grant of power from the Legislature to  
17 local legislative bodies with respect to the use and operation of automated traffic safety cameras,  
18 the matter is not subject to initiative or referendum.

19 **3. Proposed Initiative No. 2 Is Beyond the Scope of the Initiative Power Because**  
20 **It Usurps Authority Granted to the Mukilteo City Council Under RCW**  
21 **46.63.170.**

22 In this case, Proposed Initiative No. 2 is an invalid initiative because it would usurp  
23 authority the Legislature clearly granted local legislative bodies with respect to the use and  
24 operation of automated traffic safety cameras. Proposed Initiative No. 2 goes beyond the scope  
25 of the initiative power because it would amend, restrict, and modify the specific grant of power  
26 in RCW 46.63.170 by, among other things:

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- 1           1. Requiring an advisory vote of the people before the Mukilteo City Council may  
2           enact an ordinance authorizing the use of automated traffic safety cameras;
- 3           2. Requiring a two-thirds supermajority vote of the City Council and a majority vote  
4           of the people before the City, or “for profit companies contracted by the City of  
5           Mukilteo” may install or use automated traffic safety cameras;
- 6           3. Limiting the fines that the City of Mukilteo may assess for traffic violations  
7           determined through the use of automated traffic safety cameras; and
- 8           4. Repealing a properly enacted local ordinance, Mukilteo Ordinance No. 1246,  
9           authorizing the use, and guidelines and standards for the use, of automated traffic  
10          safety cameras in Mukilteo.

11          Because proposed Initiative No. 2 exceeds the scope of the initiative power, it should be  
12          deemed invalid and should not be placed on the ballot. *See Yes for Seattle*, 122 Wn. App. at 388-  
13          91 (affirming trial court’s decision to strike initiative from ballot because initiative was outside  
14          scope of initiative power); *Philadelphia II*, 128 Wn.2d at 709 (holding initiative goes beyond  
15          scope of power reserved to people and should not appear on ballot); *City of Port Angeles*, 145  
16          Wn. App. at 872, 880-83 (initiative that exceeded local initiative power was invalid); *City of*  
17          *Sequim*, 157 Wn.2d at 138 (holding that initiative was outside scope of initiative power).

18          **E. Injunctive Relief Preventing Placement of Proposed Initiative No. 2 on the Ballot Is**  
19          **Warranted.**

20          As set forth above, pre-election relief is appropriate here. To avoid unnecessary process  
21          on the part of Mukilteo and Snohomish County, and to avoid waste of resources, prompt  
22          resolution of this legal issue is needed.

23          Injunctive relief is proper where the movant has a clear legal or equitable right, has a  
24          well-grounded fear of immediate invasion of that right, and will suffer actual and substantial  
25          injury as a result of the defendants’ acts. *Walmart, Inc. v. Progressive Campaigns, Inc.*, 139  
26          Wn.2d 623, 627, 989 P.2d 524 (1999). Injunctive relief is warranted here. As citizens of

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1 Mukilteo, Mukilteo Citizens for Simple Government has a clear and equitable right to have its  
2 elected legislative officials pass ordinances in accordance with RCW 46.63.170, without  
3 unlawful interference by the initiative petitioners. *See Yes for Seattle*, 122 Wn. App. at 388-91;  
4 *Philadelphia II*, 128 Wn.2d at 709; *City of Port Angeles*, 145 Wn. App. at 872; 880-83. It has a  
5 well-grounded fear of immediate invasion of that right because Mukilteo has recently approved  
6 Resolution No. 2010-22, which has the effect of processing proposed Initiative No. 2 for  
7 placement on the November 2, 2010 ballot. Last, Mukilteo Citizens for Simple Government  
8 would sustain actual and substantial injury if the invalid initiative is placed on the ballot.

9 Washington courts have routinely granted injunctive relief where an initiative went  
10 beyond the scope of initiative power without requiring separate proof of harm. *See, e.g., Ruano*  
11 *v. Spellman*, 81 Wn.2d 820, 505 P.2d 447 (1973) (affirming trial court's issuance of injunctive  
12 relief enjoining submission of invalid initiative); *Yes for Seattle*, 122 Wn. App. at 385, 391  
13 (affirming trial court's decision to strike initiative from ballot where initiative was found to be  
14 beyond initiative power); *see also Philadelphia II*, 128 Wn.2d at 709 (holding that although  
15 Attorney General had no right to refuse to prepare ballot title and summary for initiative, court  
16 would not require Attorney General to do so because initiative is beyond scope of Washington's  
17 initiative power and Attorney General would likely seek injunction if court remanded case).  
18 Therefore, if proposed Initiative No. 2 exceeds the scope of the initiative power, this Court  
19 should enjoin Defendants from including proposed Mukilteo Initiative No. 2 on the ballot.

## 20 VI. CONCLUSION

21 The Washington Legislature clearly provided power to local legislative authorities to  
22 enact ordinances allowing for the use of traffic safety cameras. The clear grant of authority to  
23 local legislative bodies precludes subjecting local laws related to the use of traffic safety cameras  
24 to initiative. Consistent with Washington law, Mukilteo Citizens for Simple Government  
25 requests that the Court enter a declaratory judgment that the subject matter of proposed Initiative  
26

MOTION FOR DECLARATORY JUDGMENT  
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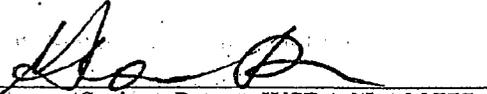
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1 No. 2 is not subject to initiative and enter an injunction precluding Defendants from placing  
2 proposed Initiative No. 2 on the ballot, or taking any other related actions.

3 DATED: July 23, 2010.

4 STOEL RIVES LLP

5   
6 Vanessa Soriano Power, WSBA No. 30777  
7 Gloria S. Hong, WSBA No. 36723

8 Attorneys for Mukilteo Citizens for Simple  
9 Government

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR SNOHOMISH COUNTY

MUKILTEO CITIZENS FOR SIMPLE  
GOVERNMENT; an unincorporated  
association of Mukilteo residents,

Plaintiff,

v.

CITY OF MUKILTEO, a Washington  
municipal corporation; CHRISTINE  
BOUGHMAN, in her official capacity as  
City Clerk for the City of Mukilteo;  
SNOHOMISH COUNTY, a political  
subdivision of the State of Washington;  
CAROLYN WEIKEL, in her official  
capacity as Snohomish County Auditor,

Defendants.

No. 10-2-06342-9

DECLARATION OF VANESSA POWER  
IN SUPPORT OF MOTION FOR  
DECLARATORY JUDGMENT AND  
INJUNCTIVE RELIEF

HEARING: Aug. 4, 2010 at 9:00 a.m.

I, Vanessa Soriano Power, declare as follows:

1. I am a member of the Washington State Bar Association, and I am an attorney at  
Stoel Rives LLP, representing the Plaintiff Mukilteo Citizens for Simple Government in this  
matter. I have personal knowledge of the facts set forth herein and I am competent to testify as  
to these facts.

DECLARATION OF VANESSA POWER - 1



# EXHIBIT 1

CITY OF MUKILTEO  
MUKILTEO, WASHINGTON

ORDINANCE NO. 1246

**AN ORDINANCE OF THE CITY OF MUKILTEO, WASHINGTON RELATING TO TRAFFIC SAFETY; CREATING A NEW CHAPTER 10.05 OF THE MUKILTEO MUNICIPAL CODE; AUTHORIZING USE OF AUTOMATED TRAFFIC SAFETY CAMERAS TO DETECT STOPLIGHT INFRACTIONS AND SCHOOL SPEED ZONE VIOLATIONS; ADOPTING THE STANDARDS AND RESTRICTIONS REGARDING USE OF TRAFFIC SAFETY CAMERAS; AND SETTING THE MONETARY PENALTY FOR SUCH INFRACTIONS.**

---

WHEREAS, RCW 46.63.170 authorizes local jurisdictions to use automated traffic safety cameras subject to certain restrictions; and

WHEREAS, the City Council of the City of Mukilteo, Washington, recognizes the value of implementing an automated traffic enforcement program in furtherance of its goals in creating a safe environment for its citizenry; and

WHEREAS, some of the worst traffic accidents, those involving right-angle collisions at high rates of speed, are the result of running red lights, and studies have shown that these accidents involve more serious injury and death than other kinds of accidents at signalized intersections; and

WHEREAS, the strategic placement of automated cameras at these intersections to record red light running violations has been shown to reduce the frequency of violations, corresponding injuries, and associated economic costs; and

WHEREAS, some of the most tragic traffic accidents, those involving school children, are the result of speeding in school zones; and

WHEREAS, the strategic placement of automated cameras in school zones to record speeding violations has been shown to reduce the frequency of violations, corresponding injuries, and associated economic costs; and

WHEREAS, the City has numerous arterial intersections and school zones that would benefit from the strategic placement of automated traffic safety cameras;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MUKILTEO, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**Section 1. New Chapter 10.05.** A new chapter 10.05 is hereby added to the Mukilteo Municipal Code to read as follows:

## Chapter 10.05

### Automated Traffic Enforcement

#### Sections:

**10.05.010 Authorized use of automated traffic safety cameras**

**10.05.020 Notice of infraction**

**10.05.030 Response to notice of infraction**

**10.05.040 Infractions processed**

**10.05.050 Fines**

**10.05.060 Non-exclusive enforcement**

**10.05.070 Authorization for use of electronic signatures**

#### **10.05.010 Authorized use of automated traffic safety cameras.**

A. Law enforcement officers of the City of Mukilteo and persons commissioned by the Mukilteo Police Department are authorized to use automated traffic cameras and related automated systems to detect the following: (1) stoplight violations and (2) school speed zone violations.

B. The use of automated traffic safety cameras is subject to the following restrictions:

1. The use of automated traffic safety cameras is restricted to two-arterial intersections and school speed zones only.

2. Automated traffic safety cameras may only take pictures of the vehicle and vehicle license plate and only while a violation is occurring. The picture must not reveal the face of the driver or of the passengers in the vehicle.

3. The City shall clearly mark all locations where automated traffic safety cameras are in use by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where traffic laws are enforced by an automated traffic safety camera.

4. Notwithstanding any other provision of law, all photographs, microphotographs, or electronic images prepared under this chapter are for the exclusive use of law enforcement in the discharge of duties under this chapter and, as provided in RCW 46.63.170(1)(f), are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this chapter. No photograph, microphotograph, or electronic image may be used for any purpose other than enforcement of violations under this chapter nor retained longer than necessary to enforce this chapter.

5. For the purposes of this chapter, "automated traffic safety camera" means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system, or a speed measuring device, and a camera

synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal, or exceeds a speed limit in a school speed zone as detected by a speed measuring device.

#### **10.05.020 Notice of infraction.**

A. Whenever any vehicle is photographed by an automated traffic safety camera, a notice of infraction shall be mailed to the registered owner of the vehicle within fourteen (14) days of the violation, or to the renter of a vehicle within fourteen (14) days of establishing the renter's name and address under this section. The law enforcement officer issuing the notice of infraction shall include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, or electronic images produced by an automated traffic safety camera, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, microphotographs, or electronic images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction.

B. The registered owner of a vehicle is responsible for such an infraction unless the registered owner overcomes the presumption in this section. If appropriate under the circumstances, a renter identified under subsection E of this section is responsible for such an infraction.

C. In a traffic infraction case involving an infraction detected through the use of an automated traffic safety camera system, proof that the particular vehicle described in the notice of traffic infraction was in violation of this section, together with proof that the person named in the notice of traffic infraction was at the time of the violation the registered owner of the vehicle, constitutes in evidence a prima facie presumption that the registered owner of the vehicle was the person in control of the vehicle at the point where, and for the time during which, the violation occurred.

D. This presumption may be overcome only if the registered owner states, under oath, in a written statement to the court or in testimony before the court that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person other than the registered owner.

E. If the registered owner of the vehicle is a rental car business, the law enforcement officer shall, before such a notice of infraction is issued, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within eighteen (18) days of receiving the written notice, provide to the peace officer by return mail:

1. A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

2. A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred; or
3. In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.

Timely mailing of this statement to the peace officer relieves a rental car business of any liability under this chapter for the notice of infraction.

#### **10.05.030 Response to notice of infraction and request for hearing.**

A person receiving a notice of infraction based on evidence detected by an automated traffic safety camera may respond to such notice by mail. Such person must still respond in accordance with state law, including but not limited to RCW 46.63.070. The person receiving the notice of infraction may request a hearing.

#### **10.05.040 Infractions processed.**

Infractions detected through the use of automated traffic safety cameras are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of automated traffic safety cameras under this chapter shall be processed in the same manner as parking infractions, including for the purposes of RCW 3.50.100, 3.62.040, 46.16.216, and 46.20.270(3).

#### **10.05.050 Fines.**

- A. The fine for infractions committed pursuant to the provisions of this chapter shall be a base monetary penalty of one hundred and twelve dollars (\$112.00).
- B. Fees and penalties for failure to respond shall follow the standard court schedule for infractions.

#### **10.05.060 Non-exclusive enforcement.**

Nothing in this Chapter prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1)(a), (b), or (c).

#### **10.05.070 Authorization for use of electronic signatures.**

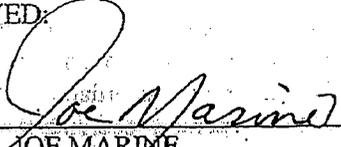
- A. It is contemplated that in the use of automated traffic safety cameras the infractions would be developed automatically through electronic programs tied to the traffic safety cameras. In order to minimize handling issues and to facilitate prompt transfer of charging documents, the City may use the electronic signature system authorized pursuant to chapter 19.34 RCW.
- B. In connection with the automated traffic safety camera program, the police chief or the chief's designee is authorized to utilize electronic signatures in accordance with the provisions of chapter 19.34 RCW.

**Section 2. Severability.** If any section, subsection, sentence, clause, phrase or word of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this Ordinance.

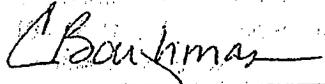
**Section 3. Effective Date.** This Ordinance shall be in full force and effect five (5) days after passage and publication as required by law.

**PASSED** by the City Council and **APPROVED** by the Mayor this 17th day of May, 2010.

APPROVED:

  
\_\_\_\_\_  
MAYOR, JOE MARINE

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
CITY CLERK, CHRISTINA J. BOUGHMAN

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

By:   
\_\_\_\_\_  
ANGELA S. BELBECK

FILED WITH THE CITY CLERK: 5-17-10  
PASSED BY THE CITY COUNCIL: 5-17-10  
PUBLISHED: 5-21-10  
EFFECTIVE DATE: 5-26-10  
ORDINANCE NO. 1246

# EXHIBIT 2

CITY OF MUKILTEO, WASHINGTON  
CITY COUNCIL MEETING MINUTES

May 17, 2010

City Council Chambers – 11930 Cyrus Way

APPROVED  
CITY OF MUKILTEO

6.7.10

- CALL TO ORDER** Mayor Marine called the meeting to order at 7:00 PM and led the flag salute.
- ATTENDANCE**
- Mayor/Councilmembers:  
Mayor Marine, Council President Lord, Council Vice President Emery and Councilmembers Grafer, Tinsley (arrived at 7:15 PM) and Vanderwielen. Absent: Councilmember Stoltz
- City Staff:  
City Administrator Hannan, City Attorney Belbeck, Assistant to City Administrator McArthur, Finance Director James, Police Commander Macklin, and Public Works Director Waters.
- AGENDA ORDER** No changes were requested.
- PROCLAMATION** Mayor Marine proclaimed May 17 - May 23, 2010 as National Public Works Week.
- Public Works Director Waters spoke about having a picnic in recognition of the Public Works crew at Lighthouse Park on May 20, 2010 from 11:30 AM – 1:00 PM.
- SPECIAL PRESENTATION** The Mukilteo Youth Advisory Committee presented information regarding the Committee's Mission Statement, Project Planning, and past and on-going projects.
- Mayor Marine presented each member of the Committee Members with certificates of appreciation and a Lighthouse chocolate bar.
- REPORTS FROM MAYOR AND CITY COUNCIL** None.
- CITIZEN COMMENTS** None.
- CONSENT AGENDA** Mayor Marine asked if there were any items Council wanted pulled for discussion. Councilmember Lord requested discussion about Item 1. The Mayor declared the Consent Agenda Item 2 approved.
1. Approval of Meeting Minutes of May 3 and May 10, 2010 (AB10-01)  
Motion: To approve the minutes of May 3, 2010 and the minutes of May 10, 2010 (check on motion maker regarding the Green Roof Discussion).  
Motion By: Lord  
Seconded By: Gregerson  
Action: PASSED with Councilmember Tinsley abstaining from the vote on the minutes of May 10, 2010.
- Note: Review of the recording of May 10, 2010 minutes show that the motion was made by Councilmember Lord and seconded by Councilmember Grafer. The May 10, 2010 minutes have been corrected.

**CONSENT AGENDA**  
.....continued

**2. Approval of Payment Vouchers Totaling \$1,391,705.59 (AB10-02)**

To approve the following payment vouchers:

Direct Deposit #12734-12840	218,566.18
Payroll Checks #35202-35210	17,426.05
Benefits/Deductions #35211-35236 & EFTs	<u>148,448.73</u>
<b>Payroll Total</b>	<b>\$384,440.96</b>
Claims Checks #58263-58361 & EFTs	<u>1,007,264.63</u>
<b>Claims Total</b>	<b>\$1,007,264.63</b>
<b>Total Expenditures</b>	<b>\$1,391,705.59</b>

**BUSINESS ITEMS**

**3. Youth Advisory Committee Appointments (AB10-41)**

Mayor Marine requested that the City Council confirm the appointments to the Youth Advisory Committee for 2010-2011 as presented.

Motion: To confirm the Mayor's appointments to the Youth Advisory Committee for 2010-2011 as follows:

- Hunter Coulombe, Kamiak High School, Grade 10
- Naomi Falk, Kamiak High School, Grade 11
- Sam Kim, Kamiak High School, Grade 10
- Yoo Eun Kim, Kamiak High School, Grade 10
- Jacob Landsberg, Kamiak High School, Grade 10
- Haley Hansen, Kamiak High School, Grade 11
- Raymond Darrah, Kamiak High School, Grade 9
- Brianna Hinds, Kamiak High School, Grade 10
- Sunyoung Park, Harbour Pointe Middle School, Grade 8
- Kirsten Collison, Kamiak High School, Grade 10
- Shrinivas Ramanath, Kamiak High School, Grade 10
- Brian Wang, Kamiak High School, Grade 11
- Juliana Jorgensen, Kamiak High School, Grade 9
- Sam Short, Kamiak High School, Grade 9
- Laurena Lau, Kamiak High School, Grade 11
- Ann Miller, Kamiak High School, Grade 11
- David Carter, Kamiak High School, Grade 10
- Kevin Baron, Kamiak High School, Grade 9

Motion By: Gregerson

Seconded By: Lord

Action: PASSED unanimously.

**4. EMS Levy Ordinance No. 1240 (AB10-19)**

City Administrator Hannan presented information regarding the expiring Emergency Medical Service Levy and provided options regarding allowable terms of a levy. Finance Director James presented the budget calculator and responded to Council questions. Council discussion followed.

Mayor Marine opened the meeting to Public Comment.

Charlie Panczewski, Mukilteo, spoke in favor of keeping the levy at the level it is and was opposed to the levy increasing property taxes.

Kirk Galatas, Mukilteo IAFF President, spoke in support of the levy.

Council discussion and questions of staff followed.

**BUSINESS ITEMS**  
.....continued

**Motion:** To adopt Ordinance 1240 requesting a Special Election to be held on August 17, 2010 for the purpose of authorizing a permanent property tax levy of 50 cents per thousand dollars for Emergency Medical Care and Emergency Medical Services.

**Motion By:** Gregerson  
**Seconded By:** Grafer  
**Action:** PASSED 5-1  
**Ayes:** Grafer, Gregerson, Lord, Tinsley, Vanderwielen  
**Nayes:** Emery

**Motion:** That the Mayor and the City Council Public Safety Committee should pursue discussion with the City of Lynnwood regarding long term fire service options such as expanding our existing partnership or consolidating services and discuss with any other potential partners the possibility of a future region fire authority.

**Motion By:** Gregerson  
**Seconded By:** Vanderwielen  
**Action:** PASSED 6-0  
**Ayes:** Emery, Grafer, Gregerson, Lord, Tinsley, Vanderwielen  
**Nayes:**

**5. Salary Advisory Committee Duties Amendment – Resolution 2010-10 (AB10-56)**

Salary Advisory Committee Chair, Jama Rand, advised that the Committee did not understand why a committee would be asked to conduct Public Hearings; and was requesting that this requirement be put aside. The Committee was also requesting that their recommendations be filed each year rather than each even-numbered year. Council discussion followed.

**Motion:** To approve Resolution 2010-10, amending Section 6 of Resolution No. 2008-32, regarding the duties of the Salary Advisory Committee.

**Motion By:** Vanderwielen  
**Seconded By:** Grafer  
**Action:** PASSED 5-1  
**Ayes:** Emery, Grafer, Gregerson, Lord, Vanderwielen  
**Nayes:** Tinsley

**6. Salary Advisory Committee Compensation Recommendations for Elected Officials (AB10-57)**

Salary Advisory Committee Chair Rand presented the Committee's recommendations. Mayor Marine encouraged Council not to adjust the Mayor's salary at this time. Council discussion followed.

**Motion:** To approve the Salary Advisory Committee's recommendation to increase the Council's annual salary to \$7,200.

**Motion By:** Lord  
**Seconded By:** Vanderwielen  
**Action:** FAILED 3-3  
**Ayes:** Grafer, Lord, Vanderwielen  
**Nayes:** Emery, Gregerson, Tinsley

**7. Business License Code Amendment – Ordinance 1239 and Resolution 2010-05 (AB10-26)**

Finance Director James presented the proposed changes to the Business License code and fees. Council discussion followed.

Mayor Marine opened the meeting for Public Comment.

Mayor Marine opened the meeting for Public Comment.

Charlie Pancerzewski, Mukilteo, spoke about licensing of independent contractors.

Motion: To adopt Ordinance 1239 amending business licenses and regulations, and approve Resolution 2010-05 revising the business license fees (with changes as noted by the Finance Director).

Motion By: Gregerson

Seconded By: Lord

Action: PASSED unanimously

**BUSINESS ITEMS**  
continued

**8. Red Light Camera Agreement and Ordinance 1246 (AB10-12)**

Police Commander Macklin presented noting that the red-light cameras could have a positive effect on traffic safety in several intersections and one school zone. Council discussion followed.

Mayor Marine opened the meeting for Public Comment.

Dan Hammer, Mukilteo, spoke about not being convinced there is a safety issue to warrant this action, but if so each intersection where these lights are placed should be clearly identified by signage.

Motion: To adopt Ordinance 1246 creating a new chapter 10.05 of the Mukilteo Municipal Code authorizing use, standards and restrictions of automated traffic safety cameras.

Motion By: Lord

Seconded By: Grafer

Action: PASSED 4-2

Ayes: Grafer, Lord, Tinsley, Vanderwielen

Nays: Emery, Gregerson

Motion: To authorize the Mayor to sign the Professional Services Agreement with American Traffic Solutions.

Motion By: Lord

Seconded By: Grafer

Action: PASSED 4-3

Vote: Ayes: Grafer, Lord; Vanderwielen - Mayor Marine broke the tie voting Yes

Nays: Emery, Gregerson, Tinsley

**CITIZEN**  
**COMMENTS**

Charlie Pancerzewski, Mukilteo, spoke about the costs associated with the EMS levy.

**COMMENTS FROM**  
**MAYOR AND CITY**  
**COUNCIL**

Councilmember Lord commented on the Spring Cleanup and sign code.

Councilmember Gregerson spoke about attending a conference in Washington D.C. and about meeting with Congressman Insley's chief of staff.

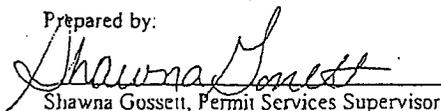
**ADJOURNMENT**

The meeting adjourned at 10:45 PM.

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These minutes are excerpts from the Council proceedings. An audio recording of the meeting was made.

Prepared by:

  
Shawna Gossett, Permit Services Supervisor

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# EXHIBIT 3

CITY OF MUKILTEO, WASHINGTON  
CITY COUNCIL MEETING MINUTES

June 21, 2010

City Council Chambers – 11930 Cyrus Way

APPROVED  
CITY OF MUKILTEO

7.7.10

- CALL TO ORDER** Mayor Marine called the meeting to order at 7:03 PM and led the flag salute.
- ATTENDANCE** Mayor/Councilmembers:  
Mayor Marine, Council President Lord, Council Vice President Emery, and Councilmembers Grafer, Gregerson, Stoltz and Vanderwielen. Councilmember Tinsley was absent.
- City Staff:  
City Administrator Hannan, City Clerk Boughman, City Attorney Belbeck, Finance Director James, Fire Chief Springer, Police Chief Murphy, Public Works Director Waters, Assistant Director of Community Development Love, Assistant City Engineer Niggemyer, IT Manager Varga and Senior Department Assistant Barnhart.
- AGENDA ORDER** Mayor Marine advised that the Business License Code Amendment (Item #6) was being pulled and would be brought back to a future meeting. He also moved Agenda items #11 (WSF Front Street Improvements) and #14 (Red Light Camera Discussion) to the first two issues under Business Items to accommodate audience participation.
- REPORTS FROM MAYOR AND CITY COUNCIL** Mayor Marine congratulated Public Works Director Waters on his appointment to the Washington State Public Works Board.
- Councilmember Stoltz commented on the "Waterfront Wednesdays" events, parking difficulties at Lighthouse Park and ferry traffic issues. He also asked about wiring for the Lighthouse Park bandshell. Assistant City Engineer Niggemyer explained how the power and electric wiring would be installed. Mayor Marine noted that portable lights would be available and stored in the back room of the bandshell.
- Councilmember Grafer commented on the tour of the new Community Center construction site she took prior to the Council meeting.
- CITIZEN COMMENTS** Ellen Koch, member of the Historical Society, thanked the City for the maintenance and repair work they did at the Mukilteo Lighthouse.
- Fawn Bowels, Staybridge Suites, extended an invitation to everyone to attend Staybridge's Grand Opening on June 30, 2010 at 2:00 PM.
- Tim Eyman, Mukilteo, commented on the initiative process.
- Charlie Pancerzewski, Mukilteo, commented on ferry traffic issues.
- CONSENT AGENDA** Mayor Marine asked if there were any items on the Consent Agenda that Council wanted pulled for discussion. Hearing no requests, the Mayor declared Consent Agenda Items 1 through 3 approved as presented.

**CONSENT AGENDA**  
continued

**1. Approval of Minutes of June 7, 2010 (AB10-01)**

To approve the Minutes of June 7, 2010.

**2. Approval of Payment Vouchers Totaling \$1,488,932.07 (AB10-02)**

To approve the following payment vouchers:

Direct Deposit #12941-13049	224,618.50
Payroll Checks #35273-35283	17,027.61
Benefits/Deductions #35284-35309 & EFTs	152,063.06
<b>Payroll Total</b>	<b>\$393,709.17</b>
Claim Checks #58481-58616 & EFTs	1,095,222.90
<b>Claims Total</b>	<b>\$1,095,222.90</b>
<b>Total Expenditures</b>	<b>\$1,488,932.07</b>

**3. Regional Drug Task Force Interlocal (AB10-82)**

To authorize the Mayor to sign the 2010/2011 Interlocal Agreement for the Snohomish Regional Drug Task Force.

**BUSINESS ITEMS**

**11. WSF Front Street Improvements (AB10-67)**

Assistant Director of Community Development Love provided an update on the Shoreline Permit Amendment request by Washington State Ferries (WSF) that was previously brought before Council in April 2010. At that time, Council requested that the actual conditions of the approval and a refinement of the WSF plan be brought back to them for final approval.

Nichole McIntosh, WSF, advised that the goals of the WSF proposed Front Street intersection improvement project were to reduce the conflicts between vehicles and pedestrians, maximum the efficiency to load and unload the ferry and to reduce traffic backups on SR 525.

Becky Spangle, WSF, gave a presentation on the design of the proposed improvements including the signal system and other upgrades. She also provided video simulations of traffic and pedestrian flows during the loading and unloading of the ferry. Ms. Spangle and Ms. McIntosh responded to questions from Council during the presentation.

Vicki Derks, Mukilteo business owner, supported the WSF improvements but was concerned that whole area along Front Street was not being observed as a roadway due to ferry traffic loading from the expanded holding lanes.

Charlie Panczerwski, Mukilteo, wanted to see a full utilization of the ferry holding expansion lanes.

**Main Motion:** To authorize the removal of Condition # 13 from the WSF Ferry Holding Lane Expansion Shoreline Permit and approve:

1. Findings of Fact and Conclusions as drafted on the WSF Administrative Shoreline Amendment Notice of Decision; and
2. Conditions of Approval as drafted on the WSF Administrative Shoreline Amendment Notice of Decision.

**Motion By:** Gregerson

**Seconded By:** Emery

**Action:** PASSED unanimously

**BUSINESS ITEMS**  
**continued**

Councilmember Stoltz recalled the Motion made by Councilmember Tinsley and passed by the Council at the April 4, 2010 meeting and felt that Council needed to comply with the conditions of that Motion.

Amendment to

Main Motion: To not remove Condition #13 until the conditions implied by the previous Motion [made by Councilmember Tinsley on April 4, 2010] have been complied with.

Motion By: Stoltz

Seconded By: Lord

Action: PASSED unanimously

Amendment to

Main Motion: To include a pedestrian button on the north link of the intersection as part of the plan.

Motion By: Vanderwielen

Seconded By: Stoltz

Action: PASSED unanimously

**12. Red Light Camera Discussion (AB10-12)**

City Administrator Hannan commented on events since the Council last took action on this issue and the initiative petition submitted by Tim Eyman that was determined by the County to be insufficient by 407 signatures. Because a question was raised regarding reconsideration of Council's former actions on this matter, Mr. Hannan reported that staff was bringing it before Council for additional discussion and direction.

City Attorney Belbeck explained that Council would need a new ordinance in order to repeal Ordinance 1246 that was adopted on May 17, 2010 and took effect 5 days after its publication. As to the prior authorization for the Mayor to sign American Traffic Solutions' contract for installation of the cameras, Council could waive its Rules of Procedure to allow a motion for reconsideration or Council could have a new motion to rescind the former action.

Discussion followed that included a request to have the Transportation Committee meet to review all the alternatives to address the pedestrian safety and traffic issues.

Tim Eyman, Mukilteo, commented on the meeting's Order of Business and the initiative.

Vicki Derks, Mukilteo business owner, stated that she found red light cameras offensive.

Michael Young, Mukilteo, spoke against red light cameras.

Patty Cooper, Mukilteo, asked that equal enforcement under the law be considered and that Council look at other alternatives for the Olympic View School area.

Mimi Gates, Mukilteo, spoke against red light cameras.

Jerry Shelling, Mukilteo, spoke against red light cameras.

Charlie Pancerzewski, Mukilteo, did not oppose the use of red light cameras, but was concerned about their degree of calibration.

**BUSINESS ITEMS**  
continued

Linda Wooding, Everett, felt that the cameras are intrusive and could have unintended consequences. She stated that she was concerned about pedestrian safety and mentioned that the crosswalk lights in the Harbour Pointe school zone are effective.

Victoria Callfas, Mukilteo, opposed the red light cameras and agreed that the Harbour Pointe Blvd flashing crosswalk lights are effective. She also suggested the city consider increasing its Police presence in the Olympic View school zone.

Larry Frostad, WSE, in response to Mr. Eyman's comments regarding the meeting's Order of Business, requested that the record show that he was attending the Council meeting on his day off.

Motion: To rescind the approval of the professional services agreement with American Traffic Solutions until other alternatives have been exhausted.

Motion By: Lord

Seconded By: Stoltz

Action: PASSED unanimously

**4. Naming of New Community Center and Specified Rooms Resolution 2010-14 (AB10-65)**

Recreation & Cultural Services Manager Berner reported on her research regarding the various spellings and word order for the multi-purpose room. According to her sources, Elliot Point, Elliott Point and Point Elliott have all been used.

Pat Kessler, Mukilteo, commented on research she conducted that found the correct spelling per the Wilkes Expedition is Elliott Point, although Point Elliott would historically be the preferable order.

Motion: To adopt Resolution 2010-14 to name the new community center and specified rooms at the new community center at 304 Lincoln Avenue with the change to the multi-purpose room name to "Point Elliott."

Motion By: Vanderwielen

Seconded By: Lord

Action: PASSED unanimously

**5. Agreement with SERS for Cable Fiber (AB10-84)**

Police Chief Murphy advised that the agreement authorizes SERS to negotiate with Blackrock Cable for fiber on behalf of six Snohomish County cities to begin the initial phase of a new countywide communications system. By signing up now, Mukilteo will receive three years of access at no charge.

IT Manager Varga provided a diagram of the communications delivery method to be implemented via the New World System software.

Motion: To authorize Mayor to sign the SERS contract for Black Rock Fiber connection to be paid by the City of Mukilteo by July 1, 2013 and to approve an operating transfer from the General Fund to the Technology Replacement Fund in equal installments of \$19,250 in 2011, 2012 and 2013.

Motion By: Gregerson

Seconded By: Vanderwielen

Action: PASSED unanimously

**BUSINESS ITEMS**  
continued

**6. Business License Code Amendment (AB10-26) – Item pulled; no action taken.**

**7. Procurement Policies and Procedures Amendment (AB10-70)**

Finance Director James distributed a corrected Resolution and summarized the purpose of the amendment.

**Motion:** To approve Resolution 2010-16, amending Procurement Policies & Procedures "Exemptions to Competitive Bidding Requirements" to include purchasing cooperatives that comply with Washington State and City of Mukilteo bidding requirements.

**Motion By:** Gregerson

**Seconded By:** Grafer

**Action:** PASSED unanimously

**8. New Rosehill Community Center Room Rental Policies (AB10-69)**

Recreation & Cultural Services Manager Berner reported on the process to develop the rental policies for the new community center and commented on the advanced reservations needed for rental of the multi-purpose room versus classrooms. She also commented on events that would require a caterer's license and the proposed hours of operation at the new facility.

**Motion:** To approve the New Rosehill Community Center Room Rental Policies, with a change to the multi-purpose room name to Point Elliott.

**Motion By:** Vanderwielen

**Seconded By:** Grafer

**Action:** PASSED unanimously

**9. Third Street 30-Minute Parking Zone (AB10-75)**

City Administrator Hannan reported that previous actions taken by Council gives them the flexibility to respond to business owners requesting short-term parking zones in front of their locations, such as the Rose Hill Chocolate Company which is located across from the Rosehill Community Center on 3rd Street.

Vicki Derks, business owner in Mukilteo, requested that Council also consider 30-minute parking on 4th Street for the coffee company.

**Motion:** To approve Resolution 2010-17, establishing a 30-minute parking zone on the north side of 3rd Street from Lincoln Avenue east of 75 feet and on the south side of 3rd Street from Lincoln Avenue east of 20 feet.

**Motion By:** Gregerson

**Seconded By:** Vanderwielen

**Action:** PASSED unanimously

Following a short discussion, staff was asked to look at adding 30-minute parking on 4th Street.

**10. Employee Wellness Program (AB10-83)**

Senior Department Assistant Barnhart reported that the Association of Washington Cities (AWC) offers a medical premium discount for cities that have a formal Wellness Program and receive an AWC WellCity award. The city could apply for the premium discount in 2012 if it receives the award in 2011 for its 2010 activities.

**BUSINESS ITEMS**  
continued

**Motion:** To approve Resolution 2010-18, establishing an Employee Wellness Program.

**Motion By:** Lord

**Seconded By:** Emery

**Action:** PASSED unanimously

**12. Pedestrian Underpass Design Task Order (AB10-51)**

Due to the late hour, Public Works Director Waters did not provide a summary of his staff report, but he and City Administrator Hannan responded to questions from Council. Discussion followed.

**Motion:** To authorize the Mayor to sign a contract with Pertect Engineering, to design an SR 525 bridge stairs/walkway underpass for \$28,470 including a \$5,000 contingency and authorize the funds to come from REETA.

**Motion By:** Lord

**Seconded By:** Gregerson

**Action:** PASSED 5-1

**Vote: Ayes:** Emery, Grafer, Gregerson, Lord, Stoltz

**Nays:** Vanderwielen

**13. Annexation Budget Appropriation (AB10-55)**

City Administrator Hannan explained that the appropriation was needed to update the legal description in order to include additional properties in the new annexation proposal. Discussion followed.

**Main Motion:** To approve an appropriation of \$5,000 from the General Fund for expenses in preparation to gain approval from the City Council for filing a Notice of Intent to Annex the South Mukilteo Area boundaries as updated.

**Motion By:** Gregerson

**Seconded By:** Lord

**Action:** PASSED unanimously

**Amendment to:**

**Main Motion:** To have the Citizen Advisory vote prior to spending additional funds on annexation.

**Motion By:** Stoltz

**Seconded By:** Emery

**Action:** FAILED 2-4

**Vote: Ayes:** Emery, Stoltz

**Nays:** Grafer, Gregerson, Lord, Vanderwielen

**CITIZEN  
COMMENTS**

James Brice, Mukilteo, commented on his concerns about pedestrian safety at all of the area schools.

Vicki Derks, Mukilteo business owner, commented on pedestrian safety at Olympic View School and her support for the SR 525 pedestrian underpass.

Linda Wooding, Everett supported the pedestrian underpass and requested that lights be installed in the Lighthouse Park bandshell.

**MAYOR AND  
COUNCILMEMBERS  
COMMENTS**            None.

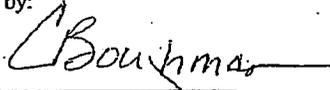
**STAFF  
COMMENTS**            None.

**ADJOURNMENT**            There being no further business, Mayor Marine adjourned the meeting at 11:20 PM.

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These minutes are excerpts from the Council proceedings. An audio recording of the meeting was made.

Prepared by:



Christina J. Boughman, City Clerk

# EXHIBIT 4

# LET THE PEOPLE DECIDE ON RED LIGHT CAMERAS IN MUKILTEO



- Repeals government-imposed automated ticketing machines
- Requires city government to get voter approval if they try again
- Removes profit-motive by limiting fines
- Protects democracy and due process

**Proposed Ballot Title:** Mukilteo Initiative No. 2 concerns automatic ticketing machines. This measure would prohibit Mukilteo from using camera surveillance to impose fines unless two-thirds of the Council and voters approve, limit fines, repeal Ordinance 1248 allowing the machines, and mandate an advisory vote.

Should this measure be enacted into law? Yes  No

**Proposed Ballot Summary:** This measure would prohibit the City of Mukilteo or for-profit companies contracted by Mukilteo to use automatic ticketing machines to impose fines from camera surveillance unless it's approved by a two-thirds vote of the City Council and a vote of the people at an election. This measure would also limit fines, repeal Ordinance No. 1248/Chapter 10.05 allowing automatic ticketing machines, and require an advisory vote of the people for machines authorized after January, 2010.

**BE IT ENACTED BY THE PEOPLE OF THE CITY OF MUKILTEO:**

Section 1, New Chapter 10.05: A new chapter 10.05 is hereby added to the Mukilteo Municipal Code to read as follows:  
 10.05.010 Automated Ticketing Machines: the City of Mukilteo and for-profit companies contracted by the City of Mukilteo may not install or use automated ticketing machines to impose fines from camera surveillance unless such a system is approved by a two-thirds vote of the City Council and a majority vote of the people at an election.

1. For the purposes of this chapter, "automated ticketing machines" means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system, or a speed measuring device, and a camera synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal, or exceeds a speed limit as detected by a speed measuring device.

10.05.020 Fines: if two-thirds of the City Council and a majority of Mukilteo voters at an election approve a system of automated ticketing machines to impose fines from camera surveillance, the fine for infractions committed shall be a monetary penalty of no more than the least expensive parking ticket imposed by law enforcement in the city limits of Mukilteo.

Section 2, Chapter 10.05 (Ordinance No. 1248 allowing automated ticketing machines) is hereby repealed.

Section 3, Advisory Vote: Any ordinance that authorizes the use of automated ticketing machines enacted after January 1, 2010, must be put on the ballot as an advisory vote of the people at the next general election.

Section 4: Severability: If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of this provision to other persons or circumstances is not affected.

**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.

Concise statement of the action or relief sought: We, the undersigned voters of Mukilteo, require that, unless passed by the City Council, this ordinance -- Mukilteo Initiative No. 2 -- be submitted to a vote of the registered voters of the city of Mukilteo, subject to the requirements of RCW 35.17.260.

Print Name (must be Mukilteo voter)	Signature	Address	Date	City
1. . . . .				Mukilteo
2. . . . .				Mukilteo
3. . . . .				Mukilteo
4. . . . .				Mukilteo
5. . . . .				Mukilteo
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8. . . . .				Mukilteo
9. . . . .				Mukilteo
10. . . . .				Mukilteo

Return signed petitions to: BanCams.com, 11913 59th Ave W, Mukilteo, WA 98275, ph: 425-493-9127, www.BanCams.com/Mukilteo, BanCams@gmail.com. Our goal is to collect the necessary number of voter signatures to qualify for the August 11, 2010 primary ballot in Mukilteo. Sponsored by BanCams.com, Campaign for Liberty, and VotersWantMoreChoices.com

# EXHIBIT 5

**City of Mukilteo, Washington**  
**RESOLUTION NO. 2010-22**

A RESOLUTION OF THE CITY OF MUKILTEO, WASHINGTON, PURSUANT TO RCW 35.17.260 CALLING AN ELECTION TO BE HELD IN CONJUNCTION WITH THE NOVEMBER GENERAL ELECTION FOR SUBMISSION OF A PROPOSED INITIATIVE ORDINANCE TO A VOTE OF THE PEOPLE, AND INSTRUCTING THE CITY CLERK REGARDING PRESENTATION AND PUBLICATION.

---

WHEREAS, the City Council of the City of Mukilteo has been presented with an Initiative Petition requesting enactment of an ordinance to prohibit use of automated traffic safety cameras to detect stoplight infractions and school speed zone violations without a two-thirds vote of the City Council and a majority vote of the electorate, establishing a maximum fine for infractions, repealing chapter 10.05 of the Mukilteo Municipal Code relating to use of automated traffic safety cameras to detect stoplight infractions and school speed zone violations, and calling for an advisory vote of the people for any ordinance that authorizes the use of such systems; and

WHEREAS, the City Council desires to hear from the qualified electorate on the issues addressed in the Initiative Petition, regardless of whether the subject matter is subject to the initiative process; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF MUKILTEO, WASHINGTON, RESOLVES AS FOLLOWS:

Section 1. Call for Election. Pursuant to RCW 35.17.260, the Mukilteo City Council requests the Snohomish County Auditor to place upon the general election ballot in the City of Mukilteo, Snohomish County, on November 2, 2010, a proposition for the purpose of

submitting to the qualified electors of the City whether or not to enact an initiative ordinance, a copy of which is attached hereto as Exhibit A and incorporated herein.

Section 2. Ballot Proposition. The ballot title for the aforementioned proposition shall read as follows:

**Initiative Measure**

Mukilteo Initiative No. 2 concerns automatic ticketing machines. This measure would prohibit Mukilteo from using camera surveillance to impose fines unless two-thirds of the Council and a majority of the voters approve, limit fines, repeal Ordinance 1246 allowing the machines, and mandate an advisory vote.

Should this measure be enacted into law?

Yes.....[ ]

No.....[ ]

Section 3. Duties of City Clerk. The City Clerk is hereby authorized and directed to furnish promptly to the Snohomish County Auditor a certified copy of this Resolution. The City Clerk is further directed and authorized to publish the proposed Initiative Ordinance in the official newspaper of the City not less than five (5) nor more than twenty (20) days prior to the November election date.

Section 4. Local Voters' Pamphlet. The City Attorney is directed to prepare and submit the explanatory statement for the ballot proposition as required by the administrative rules of the Snohomish County Auditor. The arguments for and against the ballot proposition shall be prepared by the committees appointed by the Council pursuant to RCW 29A.32.280.

RESOLVED by the City Council and APPROVED by the Mayor this 19th day of  
July, 2010.

APPROVED:

  
\_\_\_\_\_  
MAYOR JOE MARINE

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
CHRISTINA J. BOUGHMAN, CITY CLERK

{ASB802671.DOC;1\00014.900000}

FILED WITH THE CITY CLERK: 7-19-10  
PASSED BY THE CITY COUNCIL: 7-19-10  
RESOLUTION NO. 2010-22

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GOHYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR SNOHOMISH COUNTY

MUKILTEO CITIZENS FOR SIMPLE )  
GOVERNMENT, an unincorporated association )  
of Mukilteo residents, )

Plaintiff, )

vs. )

CITY OF MUKILTEO, a Washington municipal )  
corporation; CHRISTINE BOUGHMAN, in her )  
official capacity as City Clerk for the city of )  
Mukilteo; SNOHOMISH COUNTY, a political )  
subdivision of the State of Washington, )  
CAROLYN WEIKEL, in her official capacity as )  
Snohomish County Auditor, )

Defendants. )

No. 10-2-06342-9

**STIPULATION AND ORDER  
AUTHORIZING INTERVENTION  
OF NICHOLAS SHERWOOD,  
ALEX RION AND TIM EYMAN**

This lawsuit seeks to prohibit Mukilteo Initiative No. 2 from being placed on the  
November, 2010 ballot. Nicholas Sherwood, Alex Rion and Tim Eyman are the original  
sponsors and proponents of Initiative No. 2. The parties through their respective counsel  
stipulate that Nicholas Sherwood, Alex Rion and Tim Eyman may intervene in this matter as

STIPULATION AND ORDER AUTHORIZING  
INTERVENTION OF NICHOLAS SHERWOOD,  
ALEX RION AND TIM EYMAN - 1

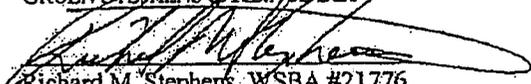
GROEN STEPHENS & KLINGE LLP  
11100 NE 8th Street, Suite 750  
Bellevue, WA 98004  
(425) 453-6206

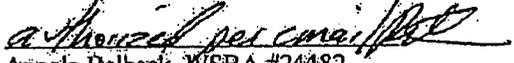
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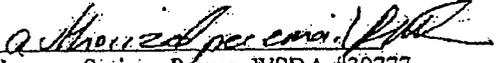
1 Intervenor-Defendants and file the proposed Answer of Intervenor-Defendants attached  
2 hereto.

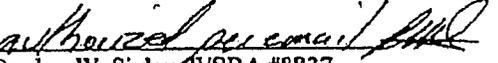
3 Messrs. Sherwood, Rion and Eyman will not seek to reschedule the currently pending  
4 motion set for August 6, 2010. Additionally, they do not oppose the pending request for pre-  
5 assignment of a judge.

6 DATED this \_\_\_\_ day of July, 2010.

7 GROEN STEPHENS & KLINGE LLP  
8 By:   
9 Richard M. Stephens, WSBA #21776  
10 On behalf of Nicholas Sherwood, Alex Rion  
11 and Tim Eyman

11 OGDEN MURPHY WALLACE  
12 By:   
13 Angela Belbeck, WSBA #24482  
14 on behalf of City of Mukilteo and  
15 Christine Boughman

15 STOEL RIVES LLP  
16 By:   
17 Vanessa Soriano Power, WSBA #30777  
18 Gloria S. Hong, WSBA #36723  
19 on behalf of Mukilteo Citizens for Simple  
20 Government

20 SNOHOMISH COUNTY PROSECTUING  
21 ATTORNEY  
22 By:   
23 Gordon W. Sivley, WSBA #8837  
on behalf of Snohomish County and  
Carolyn Weikel

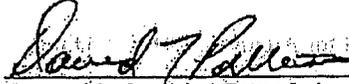
STIPULATION AND ORDER AUTHORIZING  
INTERVENTION OF NICHOLAS SHERWOOD,  
ALEX RION AND TIM EYMAN - 2

GROEN STEPHENS & KLINGE LLP  
11100 NE 8th Street, Suite 750  
Bellevue, WA 98004  
(425) 453-6206

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IT IS SO ORDERED.

DATED this \_\_\_ day of July, 2010.

  
Honorable Superior Court Judge ~~Commissioner~~

STIPULATION AND ORDER AUTHORIZING  
INTERVENTION OF NICHOLAS SHERWOOD,  
ALEX RION AND TIM EYMAN - 3

GROEN STEPHENS & KLINGE LLP  
11100 NE 8th Street, Suite 750  
Bellevue, WA 98004  
(425) 453-6206

# **EXHIBIT A**

1 Intervenor-Defendants and file the proposed Answer of Intervenor-Defendants attached  
2 hereto.

3 Messrs. Sherwood, Rion and Eyman will not seek to reschedule the currently pending  
4 motion set for August 6, 2010. Additionally, they do not oppose the pending request for pre-  
5 assignment of a judge.

6 DATED this \_\_\_\_ day of July, 2010.

7 GROEN STEPHENS & KLINGE LLP

8 By:

Richard M. Stephens, WSBA #21776  
On behalf of Nicholas Sherwood, Alex Rion  
and Tim Eyman

11 OGDEN MURPHY WALLACE

12 By:

Angela Belbeck, WSBA #24482  
on behalf of City of Mukilteo and  
Christine Boughman

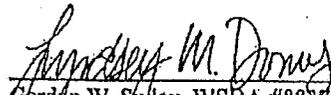
15 STOEL RIVES LLP

16 By:

Vanessa Soriano Power, WSBA #30777  
Gloria S. Hong, WSBA #36723  
on behalf of Mukilteo Citizens for Simple  
Government

20 SNOHOMISH COUNTY PROSECTUING  
ATTORNEY

21 By:

 WSBA #39453  
Gordon W. Styley, WSBA #8837  
on behalf of Snohomish County and  
Carolyn Weikel

23 STIPULATION AND ORDER AUTHORIZING  
INTERVENTION OF NICHOLAS SHERWOOD,  
ALEX RION AND TIM EYMAN - 2

GROEN STEPHENS & KLINGE LLP  
11100 NE 8th Street, Suite 750  
Bellevue, WA 98004  
(425) 453-6206

1 Intervenor-Defendants and file the proposed Answer of Intervenor-Defendants attached  
2 hereto.

3 Messrs. Sherwood, Rion and Eyman will not seek to reschedule the currently pending  
4 motion set for August 6, 2010. Additionally, they do not oppose the pending request for pre-  
5 assignment of a judge.

6 DATED this \_\_\_\_ day of July, 2010.

7 GROEN STEPHENS & KLINGE LLP

8 By:

Richard M. Stephens, WSBA #21776  
On behalf of Nicholas Sherwood, Alex Rion  
and Tim Eyman

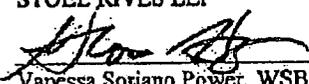
11 OGDEN MURPHY WALLACE

12 By:

Angela Belbeck, WSBA #24482  
on behalf of City of Mukilteo and  
Christine Boughman

15 STOEL RIVES LLP

16 By:

  
Vanessa Soriano Power, WSBA #30777  
Gloria S. Hong, WSBA #36723  
on behalf of Mukilteo Citizens for Simple  
Government

19 SNOHOMISH COUNTY PROSECTUING  
20 ATTORNEY

21 By:

Gordon W. Sivley, WSBA #8837  
on behalf of Snohomish County and  
Carolyn Weikel

22 STIPULATION AND ORDER AUTHORIZING  
23 INTERVENTION OF NICHOLAS SHERWOOD,  
ALEX RION AND TIM EYMAN - 2

GROEN STEPHENS & KLINGE LLP  
11100 NE 8th Street, Suite 750  
Bellevue, WA 98004  
(425) 453-6206

EXHIBIT B

**Richard M. Stephens**

---

**From:** Angela S. Belbeck [abelbeck@ornwlaw.com]

**Sent:** Tuesday, July 27, 2010 2:39 PM

**To:** Richard M. Stephens

**Subject:** RE: Mukilteo Initiative No. 2 lawsuit

Hi Dick. Please accept this e-mail as approval to sign the stipulation forwarded this morning (at 9:07) on my behalf, and thank you for agreeing to the hearing/briefing schedule so we can get this heard as soon as possible.

Best regards,  
Angela

---

**From:** Richard M. Stephens [mailto:stephens@gsklegal.pro]

**Sent:** Tuesday, July 27, 2010 2:34 PM

**To:** Angela S. Belbeck

**Subject:** Mukilteo Initiative No. 2 lawsuit

Can I sign on your behalf the latest stipulation to allow my clients to intervene?

Thanks.

Dick

No virus found in this incoming message.

Checked by AVG - [www.avg.com](http://www.avg.com)

Version: 9.0.851 / Virus Database: 271.1.1/3030 - Release Date: 07/26/10 23:09:00

7/29/2010

**FILED**

Steel River LLP

AUG 10 2010

DOCKETED

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

MUKILTEO CITIZENS FOR SIMPLE  
GOVERNMENT, an unincorporated  
association of Mukilteo residents,

Plaintiff,

vs.

CITY OF MUKILTEO, a Washington municipal  
corporation; CHRISTINA BOUGHMAN, in her  
official capacity as City Clerk for the City of  
Mukilteo; SNOHOMISH COUNTY, a political  
subdivision of the State of Washington;  
CAROLYN WEIKEL, as her official capacity as  
Snohomish County Auditor,

Defendants.

NO. 10-2-06342-9

RESPONSE OF DEFENDANTS  
SNOHOMISH COUNTY AND  
CAROLYN WEIKEL TO MOTION  
FOR DECLARATORY AND  
INJUNCTIVE RELIEF

Defendants Snohomish County and Carolyn Weikel, the Snohomish County Auditor, respond to the Motion for Declaratory and Injunctive Relief filed herein by Plaintiff Mukilteo Citizens for Simple Government as follows:

**I. DEFENDANTS TAKE NO POSITION  
ON THE VALIDITY OF MUKILTEO INITIATIVE NO. 2**

Plaintiff Mukilteo Citizens for Simple Government ("Citizens") asserts, at page 7 of its motion, that Snohomish County has taken a position in opposition to that advocated by Citizens; that Mukilteo Initiative No. 2 is valid. This is not the case. As indicated in the Declaration of Carolyn Weikel filed herein, Snohomish

1 County and its election officials have not taken and will not take any position on the  
2 substantive issue Citizens presents to the Court. Snohomish County's only  
3 involvement with the initiative is to conduct an election on a ballot measure when  
4 requested to do so by the City. In conducting such elections, the County Auditor  
5 has no authority to pass on the substantive validity of the city's ballot proposition.  
6 Save Our State Park v. Hordyk, 71 Wn. App. 84, 92, 856 P.2d 734 (1993).

7  
8 **II. AN EXPEDITIOUS DECISION IN THIS MATTER  
IS CRITICAL TO CONDUCTING THE GENERAL ELECTION**

9 While the Snohomish County Defendants do not address the substantive  
10 issue before the Court, they do want to emphasize to the Court the need for a  
11 prompt determination in this matter. In Resolution 2010-22, the Mukilteo City  
12 Council has directed Defendant Carolyn Weikel, the Snohomish County Auditor, to  
13 place Initiative No. 2 on the November 2, 2010 general election ballot. Baring  
14 direction from the Court otherwise, Auditor Weikel is legally bound to follow the  
15 direction from the Court otherwise, Auditor Weikel is legally bound to follow the  
16 City's direction.

17 Snohomish County conducts its elections by mail as provided by chapter  
18 29A.48 RCW. Because of statutory imposed deadlines on when ballots must be  
19 mailed out to voters, the Auditor must prepare and print ballots well in advance of  
20 the November 2<sup>nd</sup> general election. Importantly, under requirements of the federal  
21 Military and Overseas Voter Empowerment Act, ballots for voters serving in the  
22 U.S. armed forces in active service and ballots for voters living overseas must be  
23 mailed out at least 45 days before the election. 42 U.S.C.A. § 1973ff-1. This  
24 means the ballots must be mailed by not later than September 17, 2010.  
25  
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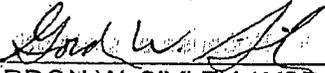
1 Declaration of Carolyn Weikel. Before the ballots can be mailed, they must be  
2 printed. Likewise, before the ballots can be printed, they must be designed and  
3 formatted by the Auditor and sent to the printer. All these steps in the ballot  
4 preparation process take time. The Auditor is currently beginning the ballot  
5 preparation process and the ballot design data must be sent to the printer by  
6 September 10, 2010. Declaration of Carolyn Weikel. Thus, it is imperative that a  
7 decision be made whether Mukilteo Initiative No. 2 should be included on the ballot  
8 before September 10, 2010.  
9

10 **I. REQUEST FOR RELIEF**

11 The Snohomish County Defendants urge the Court to expeditiously consider  
12 the substantive issues presented in this case and enter a timely decision so that  
13 Auditor Weikel can carry out her duties regarding preparation and mailing of ballots  
14 in compliance with the deadlines imposed by law.  
15

16 Respectfully submitted this 30th day of July, 2010.

17 MARK K, ROE  
18 Snohomish County Prosecuting Attorney

19 By:   
20 GORDON W. SIVLEY, WSBA #08837  
21 Deputy Prosecuting Defendants  
22 Carolyn Weikel and Snohomish County  
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**FILED**

Steel Rives LLP

AUG 16 2010

JUL 30 2010

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

MUKILTEO CITIZENS FOR SIMPLE  
GOVERNMENT, an unincorporated  
association of Mukilteo residents,

NO. 10-2-06342-9

DECLARATION OF CAROLYN  
WEIKEL

Plaintiff,

vs.

CITY OF MUKILTEO, a Washington municipal  
corporation; CHRISTINA BOUGHMAN, in her  
official capacity as City Clerk for the City of  
Mukilteo; SNOHOMISH COUNTY, a political  
subdivision of the State of Washington;  
CAROLYN WEIKEL, as her official capacity as  
Snohomish County Auditor,

Defendants.

I, Carolyn Weikel, declare as follows:

1. I am the elected auditor of Snohomish County. I am over eighteen years of  
age and competent to testify. I have personal knowledge of the facts stated below.

2. As county auditor, I am the *ex officio* supervisor of all primaries and  
elections, general or special conducted in Snohomish County. My duties include  
preparing ballots for use in the November 2, 2010, general election.

3. From exhibits attached to the Declaration of Vanessa Power filed herein, it  
is apparent that the Mukilteo City Council passed Resolution 2010-22 which calls for

DECLARATION OF CAROLYN WEIKEL-1



Snohomish County  
Prosecuting Attorney - Civil Division  
Robert J. Drewel Bldg., 7<sup>th</sup> Floor, M/S 504  
3000 Rockefeller Ave  
Everett, Washington 98201-4066  
(425)388-6330 Fax: (425)388-6333

1 the Snohomish County Auditor to place a ballot proposition on the November 2, 2010  
2 general election ballot whether or not to enact an initiative ordinance; Mukilteo  
3 Initiative No. 2.

4 4. I have not taken and do not take any position on the validity of Mukilteo  
5 Initiative No. 2. As Snohomish County Auditor, I have ministerial duties under state  
6 law in the conduct of city elections on such propositions as Mukilteo Initiative No. 2  
7 but it is not within my responsibility or authority to determine or opine upon the validity  
8 of such city ballot propositions.

9  
10 5. While I have not formally received Mukilteo Resolution 2010-22 as of the  
11 date of this declaration, I expect to receive the formal request to conduct the election  
12 from the city on or before August 10, 2010 since that is the statutory cut-off date for  
13 submission of ballot measures for the November 2, 2010 general election. My office  
14 will then need to undertake a number of tasks in order to place the measure on the  
15 general election ballot.

16  
17 6. In my experience it is necessary to print general election ballots promptly  
18 after the certification of the results of the primary in order to assure that ballots will be  
19 available to voters within the times specified by law.

20  
21 7. My office is currently beginning preparations for the printing of ballots for  
22 the November 2, 2010 general election. We plan to send data to our printer no later  
23 than close of business on Friday, September 10, 2010. The printer may start printing  
24 ballots as early as the weekend of September 11 - 12.

25  
26 DECLARATION OF CAROLYN WEIKEL - 2

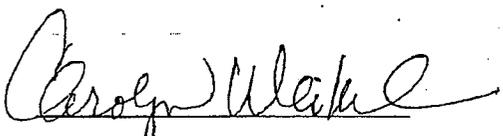
Snohomish County  
Prosecuting Attorney - Civil Division  
Robert J. Drewel Bldg., 7<sup>th</sup> Floor, M/S 504  
3000 Rockefeller Ave  
Everett, Washington 98201-4060  
(425)388-6330 Fax: (425)388-6333

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8. A delay in printing or reprinting all ballots at a later date would jeopardize our ability to provide ballots to voters on a timely and accurate basis. I draw this conclusion because federal law requires that we mail out ballots to overseas and service voters at least 45 days before the election. In order to have them mailed by the September 17th deadline, we must have possession of the printed ballots by approximately September 15<sup>th</sup>.

9. In addition, this year Snohomish County will publish a local voter's pamphlet for the general election. We plan to provide materials to our printer for the pamphlet on September 10<sup>th</sup>,

10. I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct and of my own knowledge, and that I executed this declaration at Everett in the County of Snohomish, this 26<sup>th</sup> day of July, 2010.

  
Carolyn Weikel

RECEIVED

AUG 03 2010

STOEL RIVES LLP

The Honorable Michael T. Downes  
(Civil Motions Calendar)

Hearing Date: August 6, 2010 at 9:30 a.m.

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR SNOHOMISH COUNTY**

MUKILTEO CITIZENS FOR SIMPLE  
GOVERNMENT, an unincorporated association of  
Mukilteo residents,,

Plaintiffs,

v.

CITY OF MUKILTEO, a Washington municipal  
corporation; CHRISTINA BOUGHMAN, in her  
official capacity as City Clerk for the City of  
Mukilteo; SNOHOMISH COUNTY, a political  
subdivision of the State of Washington;  
CAROLYN WEIKEL, as her official capacity as  
Snohomish County Auditor,

Defendants.

NO. 10-2-06342-9

CITY OF MUKILTEO AND CHRISTINA  
BOUGHMAN'S RESPONSE IN  
OPPOSITION TO PLAINTIFF'S MOTION  
FOR DECLARATORY JUDGMENT AND  
INJUNCTIVE RELIEF

**I. RELIEF REQUESTED**

The Mukilteo City Council desires to hear from its electorate. Plaintiff's request for an order prohibiting the City of Mukilteo from submitting Initiative No. 2 to the County Auditor for inclusion on the November 2, 2010, ballot must be denied because whether or not an initiative *must* be placed on the ballot is different than whether an initiative *may* be placed on the ballot at the discretion of the City Council.

**II. STATEMENT OF FACTS**

A full restatement of the facts is not necessary here but the following are provided for

(ASB806668.DOC;100014.050133\)

CITY/BOUGHMAN RESPONSE TO MOTION FOR  
DECL. JUDGMENT AND INJUNCTIVE RELIEF - 1

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1 convenience:

- 2 • May 17, 2010 - Mukilteo City Council adopts Ordinance No. 1246 providing for Automated Traffic Enforcement.
- 3 • July 19, 2010 - Mukilteo City Council approves Resolution No. 2010-22, calling for an election submitting to the voters the subject initiative.

4  
5 **III. STATEMENT OF ISSUES**

6 Whether the Court should deny Plaintiff's Motion for Declaratory Judgment and  
7 Injunctive Relief because whether or not the subject of the initiative is subject to the initiative  
8 process is irrelevant here because the City Council, while under no mandatory duty to place the  
9 proposed initiative on the ballot, may, in its discretion, place the proposed initiative on the ballot.

10 **IV. EVIDENCE RELIED UPON**

11 This response is based on the records and pleadings filed with the court.

12 **V. ARGUMENT IN RESPONSE**

13 **A. Plaintiff has not satisfied the threshold requirements for justiciability.**

14 An action for declaratory judgment must contain three elements to be a justiciable  
15 controversy: (1) an actual, present and existing dispute, or the mature seeds of one, as  
16 distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2)  
17 between parties having genuine and opposing interests, (3) which involves interests that must be  
18 direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial  
19 determination of which will be final and conclusive. *To-Go Trade Shows v. Collins*, 144 Wn.2d  
20 403, 411, 27 P.3d 1149 (2001) (quoting *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811,  
21 815, 514 P.2d 137 (1973)). Plaintiff alleges it has an actual dispute with the City and County  
22 regarding the subject matter validity of proposed Initiative No. 2, and that the parties have  
23 genuine and opposing interests. More specifically, Plaintiff alleges that the City has incorrectly  
24 assumed that proposed Initiative No. 2 is valid. Pl. Mot., page 7, lines 10-12. In fact, the City  
25 Council indicated its desire to hear from the voters "regardless of whether the subject matter is  
26 subject to the initiative process;" See Power Decl., Exhibit 5, Resolution No. 2010-22, p. 1.

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CITY/BOUGHMAN RESPONSE TO MOTION FOR  
DECL. JUDGMENT AND INJUNCTIVE RELIEF - 2

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1 Nonetheless, if the subject matter of proposed Initiative No. 2 is outside the scope of the  
2 initiative process, the City Council, may, *at its discretion*, submit issues to voters.

3 **B. The City has broad authority allowing the City to submit the issue to the**  
4 **voters.**

5 Municipal corporations derive their authority, powers and duties from the state  
6 legislature. *Meadowdale Neighborhood Committee v. City of Edmonds*, 27 Wn.App. 261 (1980).  
7 As a code city existing under the authority of chapter 35A.11 RCW, the City of Mukilteo's  
8 general grant of municipal power, conferred under chapter 35A.11 RCW, is:

9 intended to confer the greatest power of local self-government  
10 consistent with the Constitution of this state and shall be construed  
11 liberally in favor of such cities.

12 RCW 35A.11.050. The state legislature granted the legislative body of each code city "all  
13 powers possible for a city or town to have under the Constitution of this state, and not  
14 specifically denied to code cities by law." RCW 35A.11.020. Under chapter 1.14 of the  
15 Mukilteo Municipal Code, the City of Mukilteo adopted the provisions for initiative and  
16 referendum "for the qualified electors of the city" as provided in RCW 35A.11.080 through  
17 35A.11.100. See Appendix A. The powers adopted actually belong to the electorate. Here, case  
18 law cited by Plaintiff shows the courts have denied the electorate the ability to demand an  
19 initiative or referendum relating to subject areas where the legislature vested legislative authority  
20 in the legislative body of entity. In other words, the right of the electorate has been denied, not  
21 the right of the Mukilteo City Council. As such, under the City's broad powers, with or without  
22 the liberal construction that is required under RCW 35A.11.050, the City Council of the City of  
23 Mukilteo may still forward the subject initiative to the voters for their approval or rejection.

24 **C. Injunctive Relief is inappropriate because the City Council may voluntarily**  
25 **submit the issue to voters.**

26 Washington courts utilize three criteria for evaluating a request for injunctive relief:

It is a well-established rule in this jurisdiction that one who seeks  
relief by permanent injunction must show (1) that he has a clear  
legal or equitable right, (2) that he has a well-grounded fear of

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immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him.

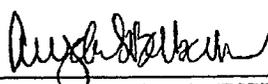
*Tyler Pipe Indus. Inc. v. Dept. of Revenue*, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982) (quoting with approval from *Port of Seattle v. International Longshoremen's and Warehousemen's Union*, 52 Wn.2d 317, 324 P.2d 1099 (1958)). Plaintiff cannot meet its burden of proving the elements for injunctive relief because it has no right to prevent the City Council from exercising the City Council's right to forward an issue to the electorate. The right to place Initiative No. 2 on the ballot belongs to the City Council.

**VI. CONCLUSION**

For all the reasons set forth above, Plaintiff's Motion for Declaratory Judgment and Injunctive Relief should be denied. Plaintiff believes "it is inefficient and a waste of resources to put measures on the ballot that the state legislature has already decided the City Council should handle." Pl. Mot., p. 5, lines 13-17. In adopting Ordinance No. 1246, the City Council did "handle" it, although the number of signatures on the petition for the subject initiative indicated the citizens' desire to be heard. The only controversy here is that Plaintiff desires to deny voters the chance to be heard. Plaintiff's failure to show a clear legal or equitable right to prevent the City Council from sending Initiative No. 2 to the voters demands that the election on Initiative No. 2 be allowed to move forward on the November 2, 2010 ballot.

DATED this 2<sup>nd</sup> day of August, 2010.

OGDEN MURPHY WALLACE, P.L.L.C.

By   
Angela S. Belbeck, WSBA #24482  
Attorneys for Defendants City of Mukilteo and  
Christina Boughman

# APPENDIX A

**Chapter 1.14  
INITIATIVE AND REFERENDUM**

Sections:

1.14.010 Powers of initiative and referendum adopted.

**1.14.010 Powers of initiative and referendum adopted.**

The city adopts the powers of initiative and referendum for the qualified electors of the city as provided pursuant to RCW 35A.11.080 through 35A.11.100. Said sections of the Revised Code of Washington are incorporated in full by this reference as they now exist or may be amended from time to time hereafter. Such powers are to be exercised as provided in the above-referenced sections of the Revised Code of Washington. (Ord. 754 § 1, 1993)

**This page of the Mukilteo Municipal Code is current through Ordinance 1238, passed December 17, 2009.**

Disclaimer: The City Clerk's Office has the official version of the Mukilteo Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

Code Publishing Company  
City Website:  
<http://www.ci.mukilteo.wa.us>  
Telephone number: (425) 263-8005

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Steel Rives LLP  
AUG 10 2010  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR SNOHOMISH COUNTY

MUKILTEO CITIZENS FOR SIMPLE  
GOVERNMENT, an unincorporated  
association of Mukilteo residents,

Plaintiff,

v.

CITY OF MUKILTEO, a Washington  
municipal corporation; CHRISTINE  
BOUGHMAN, in her official capacity as  
City Clerk for the City of Mukilteo;  
SNOHOMISH COUNTY, a political  
subdivision of the State of Washington;  
CAROLYN WEIKEL, in her official  
capacity as Snohomish County Auditor,

Defendants,

NICHOLAS SHERWOOD, ALEX RION  
and TIM EYMAN,

Intervenor-Defendants.

No. 10-2-06342-9

REPLY IN SUPPORT OF MOTION FOR  
DECLARATORY JUDGMENT AND  
INJUNCTIVE RELIEF

HEARING: August 6, 2010 at 9:30 a.m.

REPLY IN SUPPORT OF MOTION FOR  
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

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1           The City and Intervenors mischaracterize the issue before the Court.<sup>1</sup> The issue is not  
2 whether the City may seek an advisory vote on traffic safety cameras. No advisory vote has been  
3 proposed, only an initiative that calls for direct legislation by the electorate. In fact, the only  
4 issue is whether the proposed initiative exceeds the scope of the initiative power. To answer that  
5 question, the Court need not analyze a city's substantive right to hold an advisory vote. The  
6 Court must simply confirm whether the Legislature vested the power to enact legislation related  
7 to the use of traffic safety cameras with local legislative bodies. It is undisputed that the  
8 Legislature did just that. The test for subject matter validity of a proposed initiative does not  
9 change because in this instance the City also desires voter input. The measure is either subject to  
10 the initiative power or it is not. Because RCW 46.63.170 specifically authorizes local legislative  
11 bodies to act, the grant of power is exclusive to the City Council and precludes the proposed  
12 initiative.

13           As set forth in detail below, Plaintiff clearly has standing and presents a justiciable  
14 controversy subject to pre-election review. Pre-election review is appropriate in narrow  
15 circumstances, such as the one presented here, that involves a subject matter challenge to the  
16 proposed measure. The Legislature's express grant of authority to precludes subjecting local  
17 laws related to the use of traffic safety cameras to initiative. As such, proposed Initiative No. 2  
18 is invalid because it is beyond the scope of the initiative power.

19 **A. This Action Presents a Justiciable Controversy Subject to Pre-Election Review.**

20           Intervenors incorrectly assert that this case is not justiciable because the proposed  
21 initiative "may never be approved by the voters and, even if approved by the voters, the City  
22 Council may choose to ignore the results of the election." Intervenors' Response, p. 2.  
23 Intervenors miss the point and cite to cases involving substantive pre-election challenges, not

24 \_\_\_\_\_  
25 <sup>1</sup> The County takes no position on the subject matter validity of the proposed initiative,  
26 but is a necessary party for relief requested by Plaintiff. This reply jointly responds to arguments  
raised by the City and Intervenors.

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1 subject matter challenges. In referencing Washington courts' general rule disfavoring pre-  
2 election review, Intervenor's ignore the applicable exception that has been recognized for over 90  
3 years. Where, as here, Plaintiff brings only a challenge to the subject matter of the proposed  
4 initiative, "[i]t is well-settled that it is proper to bring such narrow challenges prior to an  
5 election." *Sequim v. Malkasian*, 157 Wn.2d 251, 260, 138 P.3d 943 (2006) citing *Coppernoll v.*  
6 *Reed*, 155 Wn.2d 290, 99, 119 P.3d 318 (2005) (subject matter challenges prior to an election are  
7 proper because they "do not raise concerns regarding justiciability because postelection events  
8 will not further sharpen the issue, *i.e.*, the subject of the proposed measure is either proper for  
9 direct legislation or it is not").

10 In a related vein, the City contends that Plaintiff has not satisfied justiciability  
11 requirements because there is not an actual, present, and existing dispute, or the mature seeds of  
12 one, where the City seeks to hear from its voters – regardless of the validity of the proposed  
13 initiative. But even accepting the City's position that it desires to hear from voters, there still  
14 exists an actual dispute as to whether it is lawful (*i.e.*, within the initiative power) to include the  
15 proposed initiative on the November ballot. "The UDJA is to be *liberally construed* and is  
16 designed to clarify uncertainty with respect to rights, status, and other legal relations." *Nelson v.*  
17 *Appleway Chevrolet, Inc.*, 129 Wn.App. 927, 935, 121 P.3d 95 (2005) (citing *DiNino v. State*,  
18 102 Wn.2d 327, 330, 684 P.2d 1297 (1984)) (emphasis added). Given the divergent positions on  
19 the subject matter validity of the proposed initiative, this matter presents a justiciable controversy  
20 that is properly before this Court's for pre-election review.

21 **B. Plaintiff Has Standing to Challenge the Proposed Initiative.**

22 Plaintiff has asserted a direct and personal interest in this issue. Plaintiff is a citizen  
23 group acting on the governing principle that the local legislative body is duly elected to act as  
24 representatives, and may not delegate that duty in cases such as this where the power to enact  
25 legislation is vested solely in the local legislative body. As set forth in more detail below,  
26

REPLY IN SUPPORT OF MOTION FOR  
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF - 3

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1 inclusion of an invalid initiative on the ballot would amount not only to inefficiency and waste of  
2 resources, but an abrogation of state law. As such, Plaintiff has a direct and personal interest in  
3 the issue and a right to challenge an invalid initiative. Indeed, courts have permitted such  
4 challenges by citizens. *See, e.g., 1000 Friends of Washington v. McFarland*, 159 Wn.2d 165,  
5 149 P.3d 616 (2006) (declaratory judgment brought by citizen group challenging validity of  
6 referenda); *Ruano v. Spellman*, 81 Wn.2d 820, 505 P.2d 447 (1973) (adjudicating case brought  
7 by citizen seeking injunctive relief against county to enjoin spending funds on stadium project  
8 until there was a vote on a proposed initiative).<sup>2</sup>

9 In addition, Washington courts relax the UDJA requirement that a person have a direct  
10 personal interest where the action raises questions of considerable public interest and  
11 importance. *See, e.g., State ex rel. Distilled Spirits Institute, Inc. v. Kinnear*, 80 Wn.2d 175, 178,  
12 492 P.2d 1012 (1972) (holding that appellate courts may decide a question of public interest that  
13 has been adequately briefed and argued if doing so would benefit the public and government  
14 officers); *Wash. Natural Gas Co. v. Public Util. Dist.*, 77 Wn.2d 94, 96, 459 P.2d 633 (1969)  
15 (“Where a controversy is of serious public importance and immediately affects substantial  
16 segments of the population and its outcome will have a direct bearing on the commerce, finance,  
17 labor, industry or agriculture generally, questions of standing to maintain an action should be  
18 given less rigid and more liberal answer.”); *Huntamer v. Coe*, 40 Wn.2d 767, 246 P.2d 489  
19 (1952) (holding that trial court correctly assumed jurisdiction to adjudicate declaratory judgment

20  
21 <sup>2</sup> Cases cited by Intervenor are inapposite. *See Vovos v. Grant*, 87 Wn.2d 697, 555 P.2d  
22 1343 (1976) (addressing whether person has standing to challenge court order); *In re Marriage*  
23 *of T*, 68 Wn. App. 329, 842 P.2d 1010 (1993) (same); *Primark Inc. v. Burien Gardens*  
24 *Associates*, 63 Wn. App. 900, 823 P.2d 1116 (1992) (addressing whether purchaser of property  
25 abutting land had standing to seek to determination that property had become county road);  
26 *Ocean Spray Cranberries, Inc. v. Doyle*, 81 Wn.2d 146, 500 P.2d 79 (1972) (addressing whether  
abutting property owner had standing to seek declaratory and injunctive relief against lessor for  
unlawful transfer of lease and against lessor and purchaser for unlawful conveyance of land); *To-  
Ro Trade Shows v. Grant Collins*, 144 Wn.2d 403, 27 P.3d 1149 (2001) (addressing whether  
trade show promoter had standing to seek declaration that state’s enforcement of licensing law  
was lawful under the Commerce Clause and the First and Fourteenth Amendments).

REPLY IN SUPPORT OF MOTION FOR  
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF - 4

1 action regarding the constitutionality of the statute because the case involved “some questions of  
2 considerable public interest and importance.”). There is undoubtedly strong public interest in  
3 judicial determination of the validity of the proposed initiative.<sup>3</sup>

4 **C. The City and Intervenors Mischaracterize the Proposed Initiative as an “Advisory**  
5 **Vote” to Effect an End Run Around State Law.**

6 The City and Intervenors do not dispute that matters delegated to a local legislative body  
7 are not subject to initiative. Nor do they dispute that pursuant to RCW 46.63.170, the  
8 Legislature granted local legislative bodies (e.g., Mukilteo City Council) the exclusive power to  
9 enact legislation regarding the use of traffic safety cameras. Instead, the City argues that even if  
10 the subject matter of proposed Initiative No. 2 is outside the scope of the initiative process, the  
11 City Council may still include the initiative on the ballot as an “advisory” measure. But the  
12 initiative is not “advisory” in nature, and allowing such action would circumvent state law.  
13 Intervenors similarly claim that this case is not a challenge to the power of voters to directly  
14 legislative via initiative, but instead a challenge to the power of the City to seek citizen input. In  
15 the alternative, Intervenors contend that the proposed initiative may be characterized as  
16 “conditional legislation.” Each of the characterizations is misleading because they fail to  
17 account for the scope of the proposed initiative, and all fail as a matter of law.

18 Mukilteo adopted the provisions for initiative and referendum as provided in RCW  
19 35A.11.080 through 100, which references commission city power under RCW 35.17.240-360.  
20 Mukilteo Municipal Code 1.14. Under state law, incorporated by reference in Mukilteo’s city  
21 code, any person may propose a city ordinance by initiative petition, and, if the petition meets  
22 procedural requirements, the city clerk must certify the petition to the city council, which must  
23 pass the proposed ordinance or put it to the voters. RCW 35.17.260-280. The Resolution putting  
24 the proposed initiative to the voters was a part of that process, and does not change the nature of

25 <sup>3</sup> Intervenors also argue that Plaintiff has not met taxpayer standing requirements but  
26 Plaintiff has not asserted taxpayer standing.

REPLY IN SUPPORT OF MOTION FOR  
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1 the measure which, on its face, is invalid as beyond the initiative power.

2 The City attempts to circumvent state law precluding direct legislation on the use of  
3 traffic safety cameras by calling the initiative itself an “advisory vote.” If passed, however, the  
4 proposed initiative would not simply be “advisory” but would have the effect of enacting new  
5 law on a matter reserved for the City Council, including a law mandating an advisory vote. The  
6 initiative would *enact a new ordinance* that: (1) first repeals the existing ordinance authorizing  
7 Mukilteo’s use of traffic safety cameras; (2) then *requires an advisory vote* before the City may  
8 enact an ordinance authorizing the use of traffic safety cameras; (3) requires a supermajority of  
9 the Council and a majority of the voters to agree before the City or its vendor(s) may install or  
10 use traffic safety cameras; and (4) if cameras are authorized, limits the fine amount that may be  
11 imposed. *See* Power Decl. Exs. 4 and 5. The proposed initiative is thus legislative, not advisory,  
12 in nature.

13 The City’s inclusion of prefatory language in the Resolution expressing the City’s desire  
14 to hear from voters “regardless of whether the subject matter is subject to the initiative process”  
15 does nothing to alter the scope of the measure (which exceeds the initiative power) or somehow  
16 validate a public vote on an invalid measure. The Resolution calls for inclusion of proposed  
17 Initiative No. 2, as written, on the ballot. It does not state that a vote is for advisory purposes  
18 only. *See* Power Decl., Ex. 5. To the contrary, the Resolution directs ministerial action by the  
19 City Clerk and County Auditor to include the measure on the ballot, as proposed in the initiative  
20 petition. *Id.* There is no language added by the City Council to the proposed measure to suggest  
21 to the public that their vote will not enact new law, but will simply be “advisory.” In fact, the  
22 language of the measure and the proposed ballot title are exactly those included in the initiative  
23 petition. *Id.* (Sections 1 and 2).

24 Further, the City claims that it is the right of the electorate, not the City Council, that is  
25 limited by RCW 46.63.170. That is correct, but does not mean that the City Council may evade  
26 application of state law by mischaracterizing an initiative that will enact new law as an advisory

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1 vote. While a code city has broad authority to legislate on any subject touching upon the  
2 interests of the city, they may not enact legislation inconsistent with the general laws of the state.  
3 *See General Telephone Co. of Northwest, Inc. v. City of Bothell*, 105 Wn.2d 579, 716 P.2d 879  
4 (1986); *State v. Seattle*, 94 Wn.2d 162, 615 P.2d 461 (1980); *Southwick, Inc. v. Lacey*, 58 Wn.  
5 App. 886, 795 P.2d 712 (1990). Taking the City's argument to its logical conclusion, the City  
6 suggests that any city or county may ignore the Legislature's express mandate that certain  
7 legislation is to be made by the local legislative body, not the electorate, by calling an initiative  
8 to the people simply "advisory" in nature. If that were the case, there would be a gaping hole in  
9 the structure and sovereignty of state and local government. "When the people of the State  
10 require action from a local legislature or executive body, those actions are not subject to a veto  
11 via a referendum. This follows from the blueprint, from the very structure of government  
12 established by our state constitution. It would violate the constitutional blueprint to allow a  
13 subdivision of the State to frustrate the mandates of the people of the State as a whole." 1000  
14 *Friends of Washington v. McFarland*, 159 Wn.2d 165, 167, 149 P.3d 616, citing *Henry v.*  
15 *Thorne*, 92 Wn.2d 878, 602 P.2d 354 (1979); *Whatcom County v. Brisbane*, 125 Wn.2d 345, 884  
16 P.2d 1326 (1994) (internal citations omitted).

17 The Legislature granted authority solely to local legislative authorities to act in limited  
18 circumstances, and for good reason. In addition to the use of traffic safety cameras, the  
19 Legislature precluded initiatives and referenda on matters such as regulation of public water  
20 systems (RCW 70.116), growth management and land use (RCW 36.70A), and revenue bonds  
21 (RCW 35.41). With respect to traffic safety cameras, the legislative intent is clear: by enacting  
22 an implementing ordinance pursuant to RCW 46.63.170, the local legislative authority is bound  
23 to comply with very specific state law requirements governing the use of camera systems. Under  
24 state law, the power to legislate on this issue is for the City Council alone.

25 According to Intervenor, this action represents a challenge to a city's right to seek an  
26 advisory vote, not the power of voters to directly legislate by initiative. That is not the case. As

REPLY IN SUPPORT OF MOTION FOR  
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF - 7

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1 set forth above, the initiative is not “advisory” in nature but constitutes direct legislation by the  
2 people. Nor does this action address whether Mukilteo has a substantive right to seek insight  
3 from voters in the form of a referendum or advisory vote because neither a referendum, nor an  
4 advisory vote, is before this Court.

5 Intervenor also contend that even if the City treats the proposed initiative as enacting an  
6 ordinance if the measure is approved, it would be “conditional legislation.” Intervenor’s  
7 characterization is inaccurate. *Brower v. Washington*, 137 Wn.2d 44, 969 P.2d 42 (1998), cited  
8 by Intervenor, involved a referendum that, by its terms, was conditioned on the happening of a  
9 future event. First, the proposed measure here is an initiative, not a referendum. An initiative is  
10 an ordinance proposed by voters to directly enact legislation. In contrast, a referendum involves  
11 an existing ordinance, enacted by the local legislative body, that is submitted to voters for their  
12 approval or rejection. *See* RCW 35A.29.170. Second, action at issue is the City’s decision to  
13 include the proposed initiative on the ballot. That action is not conditional. Nor is the proposed  
14 initiative conditioned on enactment on a future event. The proposed initiative is not an advisory  
15 vote in and of itself, but provides for an advisory vote if enacted – without conditioning any  
16 future action by the City on the outcome of that vote. *Diversified Inv. Partnership v. Dep’t of*  
17 *Social and Health Services*, 113 Wn.2d 19, 775 P.2d 947 (1989) likewise involved a specific  
18 contingency within the legislation.

19 **E. Declaratory Relief May Obviate the Need for Injunctive Relief.**

20 Because proposed Initiative No. 2 exceeds the scope of the initiative power, it should be  
21 deemed invalid and should not be placed on the ballot. A declaratory judgment may well  
22 provide all relief requested by Plaintiff (*see Philadelphia II v. Gregoire*, 128 Wn.2d 707, 709,  
23 911 P.2d 389, *cert. denied*, 519 U.S. 862 (1996) (holding initiative goes beyond scope of power  
24 reserved to people and should not appear on ballot)), but injunctive relief is similarly warranted.

25 RCW 7.40.070 provides that upon granting an injunction, such terms and conditions  
26 “may be imposed upon the party obtaining it as may be deemed equitable.” This is a pre-election

REPLY IN SUPPORT OF MOTION FOR  
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF - 8

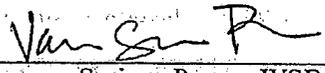
1 challenge to the proposed initiative on the grounds that the measure is beyond the scope of the  
2 initiative power. Should the Court determine that the proposed initiative is invalid and direct the  
3 City and County not to include the measure on the ballot, there will be no basis for imposing  
4 terms on Plaintiff.

5 Proposed Mukilteo Initiative No. 2 improperly attempts to usurp authority that the  
6 Legislature granted to the City Council. The City Council may not delegate that authority by  
7 putting the proposed initiative on the ballot because it is a power expressly reserved for the local  
8 legislative body. To do so would circumvent state law. Because the Legislature enabled only  
9 local legislative authorities with the power to enact ordinances governing the use of automated  
10 traffic safety cameras, because the statute is clear on its face, and because proposed Mukilteo  
11 Initiative No. 2 seeks to improperly modify and restrict that authority, the proposed initiative  
12 exceeds the initiative power and should be declared invalid.

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DATED: August 5, 2010.

STOEL RIVES LLP



Vanessa Soriano Power, WSBA No. 30777  
Gloria S. Hong, WSBA No. 36723

Attorneys for Mukilteo Citizens for Simple  
Government

REPLY IN SUPPORT OF MOTION FOR  
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF - 9

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STOEL RIVES LLP  
ATTORNEYS  
600 University Street, Suite 3600, Seattle, WA 98101  
Telephone (206) 624-0900

FILED



CL14245591

SUPERIOR COURT OF  
WASHINGTON  
FOR SNOHOMISH COUNTY

10 AUG -6 PM 12:15

S. J. KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH

MUKILTEO CITIZENS FOR SIMPLE  
GOVERNMENT

(PLAINTIFF)

VS.

CITY OF MUKILTEO ET AL

(DEFENDANT)

CAUSE NO.: 10-2-06342-9

JUDGE: MICHAEL T. DOWNES

REPORTER: NOT REPORTED

CLERK: A. DESSERT/P. GORDON

DATE: 8/6/10 9:30 AM

THIS MATTER CAME ON FOR: MOTION FOR DECLARATORY JUDGMENT & INJUNCTIVE RELIEF

CONTINUED DATE/TIME/CALENDAR AND CONTINUANCE CODE:

HEARING DATE SET/TIME/CALENDAR CODE:

ACTION:

HEARING STRICKEN/CODE:

PLAINTIFF APPEARED: THROUGH COUNSEL COUNSEL: VANESSA S. POWER

DEFENDANT CITY OF MUKILTEO APPEARED: THROUGH COUNSEL COUNSEL: ANGELA S. BELBECK

DEFENDANT SNOHOMISH COUNTY APPEARED: THROUGH COUNSEL COUNSEL: GORDON W. SIVLEY

OTHER PARTIES PRESENT: ATTORNEY RICHARD STEPHENS APPEARING FOR INTERVENOR  
DEFENDANTS

OTHER PARTIES PRESENT: INTERVENOR DEFENDANT TIM EYMAN

DOCUMENTS FILED:

ORDERS ENTERED: ORDER DENYING PLAINTIFF'S MOTION FOR DECLARATORY JUDGMENT &  
INJUNCTIVE RELIEF; TO BE FILED BY COUNSEL.

PROCEEDINGS/COURT'S FINDINGS:

PLAINTIFF'S MOTION FOR DECLARATORY JUDGMENT & INJUNCTIVE RELIEF:  
DENIED. THE COURT FINDS THE MATTER IS PREMATURE.

Stoel Rives LLP

AUG 10 2010

**FILED**

AUG 06 2010

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH.

**DOCKETED**

The Honorable Michael T. Downes  
(Civil Motions Calendar)  
Hearing Date: August 6, 2010 at 9:30 a.m.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR SNOHOMISH COUNTY**

MUKILTEO CITIZENS FOR SIMPLE  
GOVERNMENT, an unincorporated association  
of Mukilteo residents,

Plaintiffs,

v.

CITY OF MUKILTEO, a Washington municipal  
corporation; CHRISTINE BOUGHMAN, in her  
official capacity as City Clerk for the City of  
Mukilteo; SNOHOMISH COUNTY, a political  
subdivision of the State of Washington;  
CAROLYN WEIKEL, as her official capacity as  
Snohomish County Auditor,

Defendants,

NICHOLAS SHERWOOD, ALEX RION and  
TIM EYMAN,

Intervenor-Defendants.

NO. 10-2-06342-9

**ORDER DENYING PLAINTIFF'S MOTION  
FOR DECLARATORY JUDGMENT AND  
INJUNCTIVE RELIEF**

THIS MATTER having come on regularly before the undersigned judge of the above-entitled court upon Plaintiff's Motion for Declaratory Judgment and Injunctive Relief, and the Court having reviewed Plaintiff's Motion; the Declaration of Vanessa S. Power in support thereof; the Declaration of Christine Preston; the City of Mukilteo and Christina Boughman's Response in Opposition; Snohomish County and Carolyn Weikel's Response; Declaration of Carolyn Weikel; Intervenor-Defendants' Opposition; and Plaintiff's Reply in Support of Motion;

(ASB#09719.DOC;100014.050133)

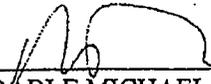
ORDER DENYING PLAINTIFF'S MOTION FOR  
DECL. JUDGMENT AND INJUNCTIVE RELIEF - 1

OGDEN MURPHY WALLACE, P.L.L.C.  
1601 Fifth Avenue, Suite 2100  
Seattle, Washington 98101-1686  
Tel: 206.447.7000/Fax: 206.447.0215

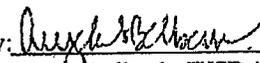
1 and the records on file herein; and the Court having heard the representations and arguments of  
2 counsel and being fully advised in the premises; now, therefore, it is hereby

3 **ORDERED, ADJUDGED AND DECREED** that Plaintiff's motion for declaratory  
4 judgment and injunctive relief is denied.

5 DONE IN OPEN COURT this 6 day of August, 2010.

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8 \_\_\_\_\_  
9 THE HONORABLE MICHAEL T. DOWNES

10 Presented by:  
11 OGDEN MURPHY WALLACE, P.L.L.C.

12 By:   
13 Angela S. Belbeck, WSBA #24482  
14 Attorneys for City of Mukilteo and  
15 Christina Boughman

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR SNOHOMISH COUNTY

MUKILTEO CITIZENS FOR SIMPLE )  
GOVERNMENT, an unincorporated association )  
of Mukilteo residents, )  
  
Plaintiff, )  
  
vs. )  
  
CITY OF MUKILTEO, a Washington municipal )  
corporation; CHRISTINE BOUGHMAN, in her )  
official capacity as City Clerk for the city of )  
Mukilteo; SNOHOMISH COUNTY, a political )  
subdivision of the State of Washington, )  
CAROLYN WEIKEL, in her official capacity as )  
Snohomish County Auditor, )  
  
Defendants. )

No. 10-2-06342-9

**ANSWER OF INTERVENORS,  
NICHOLAS SHERWOOD, ALEX  
RION AND TIM EYMAN**

Intervenors Nicholas Sherwood, Alex Rion and Tim Eyman answer the complaint in  
this matter as follows:

The Introductory paragraph of the complaint does not allege facts and therefore, no  
answer is necessary.

ANSWER OF INTERVENORS, NICHOLAS  
SHERWOOD, ALEX RION AND TIM EYMAN - 1

GROEN STEPHENS & KLINGE LLP  
11100 NE 8th Street, Suite 750  
Bellevue, WA 98004  
(425) 453-6206

1           1.     Intervenors lack information to know the truth of the allegations of paragraph  
2 no. 1 and therefore deny the same.

3           2.     Intervenors admit the allegations.

4           3.     Intervenors admit the allegations.

5           4.     Intervenors admit the allegations.

6           5.     Intervenors admit the allegations.

7           6.     Intervenors admit the allegations.

8           7.     Intervenors admit the allegations.

9           8.     Intervenors lack information to know the truth of the allegations of paragraph  
10 no. 8 and therefore deny the same.

11          9.     Intervenors admit the allegations.

12          10.    Paragraph No. 10 is a statement of law for which no admission or denial is  
13 necessary.

14          11.    Intervenors admit the allegations.

15          12.    Intervenors admit the allegations.

16          13.    Intervenors admit the allegations.

17          14.    Intervenors admit the allegations.

18          15.    Intervenors admit the allegations.

19          16.    Intervenors admit the allegations.

20          17.    Intervenors admit the allegations.

21          18.    Interevenors admit the allegations.

22          19.    Intervenors lack information to know the truth about what the Plaintiff seeks  
23 and therefore denies the same. All other allegations are denied.

ANSWER OF INTERVENORS, NICHOLAS  
SHERWOOD, ALEX RION AND TIM EYMAN - 2

GROEN STEPHENS & KLINGE LLP  
11100 NE 8th Street, Suite 750  
Bellevue, WA 98004  
(425) 453-6206



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**DECLARATION OF SERVICE**

I, Linda Hall, declare:

I am not a party in this action. I reside in the State of Washington and am employed by Groen Stephens & Klinge LLP in Bellevue, Washington.

On August 6, 2010, I caused a true copy of the foregoing Answer of Intervenor, Nicholas Sherwood, Alex Rion and Tim Eyman to be served on the following persons via the following means:

Vanessa Soriano Power  
Gloria S. Hong  
Stoel Rives LLP  
600 University St., Ste. 3600  
Seattle, WA 98101  
[vspower@stoel.com](mailto:vspower@stoel.com)

- Hand Delivery via Legal Messenger
- First Class U.S. Mail
- Federal Express Overnight
- Electronic Mail
- Other \_\_\_\_\_

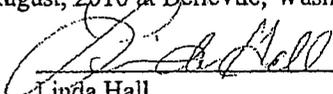
Angela S. Belbeck  
OGDEN MURPHY WALLACE  
1601 5th Ave Ste 2100  
Seattle, WA 98101-1686  
(206) 447-7000  
[abelbeck@omwlaw.com](mailto:abelbeck@omwlaw.com)

- Hand Delivery via Legal Messenger
- First Class U.S. Mail
- Federal Express Overnight
- Electronic Mail
- Other \_\_\_\_\_

Gordon W. Sivley  
Senior Civil Deputy Prosecuting Attorney  
Snohomish County Prosecutor's Office  
Robert J. Drewel Bldg., 7<sup>th</sup> Floor, M/S 504  
3000 Rockefeller Ave.  
Everett, WA 98201-4046  
[gsivley@snoco.org](mailto:gsivley@snoco.org)

- Hand Delivery via Legal Messenger
- First Class U.S. Mail
- Federal Express Overnight
- Electronic Mail
- Other \_\_\_\_\_

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 6<sup>th</sup> day of August, 2010 at Bellevue, Washington.

  
\_\_\_\_\_  
Linda Hall

ANSWER OF INTERVENORS, NICHOLAS  
SHERWOOD, ALEX RION AND TIM EYMAN - 4

GROEN STEPHENS & KLINGE LLP  
11100 NE 8th Street, Suite 750  
Bellevue, WA 98004  
(425) 453-6206

RECEIVED

AUG 03 2010

The Honorable Michael T. Downes  
(Civil Motions Calendar)  
Hearing Date: Aug. 6, 2010, at 9:30 a.m.

Stoel Rives LLP

AUG 10 2010

DECLARATORY

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR SNOHOMISH COUNTY

MUKILTEO CITIZENS FOR SIMPLE )  
GOVERNMENT, an unincorporated association )  
of Mukilteo residents, )

Plaintiff, )

vs. )

CITY OF MUKILTEO, a Washington municipal )  
corporation; CHRISTINE BOUGHMAN, in her )  
official capacity as City Clerk for the city of )  
Mukilteo; SNOHOMISH COUNTY, a political )  
subdivision of the State of Washington, )  
CAROLYN WEIKEL, in her official capacity as )  
Snohomish County Auditor, )

Defendants, )

NICHOLAS SHERWOOD, ALEX RION and )  
TIM EYMAN, )

Intervenor-Defendants. )

No. 10-2-06342-9.

**INTERVENOR-DEFENDANTS'  
OPPOSITION TO MOTION FOR  
DECLARATORY JUDGMENT**

COPY

INTERVENOR-DEFENDANTS' OPPOSITION TO  
MOTION FOR DECLARATORY JUDGMENT

GROEN STEPHENS & KLINGE LLP  
11100 NE 8th Street, Suite 750  
Bellevue, WA 98004  
(425) 453-6206

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INTRODUCTION

Intervenor-Defendants, Nicholas Sherwood, Alex Rion and Tim Eyman file this opposition to Plaintiff's Motion for Declaratory and Injunctive Relief. Plaintiff's motion seeks to invalidate city-sponsored Resolution 2010-22, referred to the ballot by a unanimous vote of the Mukilteo City Council, spurred by a citizens initiative, Mukilteo Initiative No. 2, and to prohibit the matter from being placed on the November ballot. Intervenor-Defendants are the original sponsors of Initiative No. 2.

The Plaintiff's suit itself is not an uncommon political tactic.

A lawsuit to strike an initiative or referendum from a ballot is one of the deadliest weapons in the arsenal of the measure's political opponents. With increasing frequency, opponents of ballot proposals are finding the weapon irresistible and are suing to stop elections... [I]t is generally improper for courts to adjudicate pre-election challenges to a measure's substantive validity.

James D. Gordon III & David B. Magleby, *Pre-Election Judicial Review of Initiatives and Referendums*, 64 Notre Dame L. Rev. 298, 298 (1989).

At its most fundamental level, Plaintiff's suit is a political tactic to detract Intervenor from their campaign and to encourage Intervenor to expend funds for purposes other than informing the public of Initiative No. 2's virtues. Intervenor argue that (1) this suit is not justiciable because Plaintiff lacks standing, (2) injunctive relief is inappropriate, (3) the challenge is to the power of the duly elected representatives of the City to seek input from voters and not the power of voters to force the voters into a legislation-making role, and (4) the relief sought by Plaintiff frustrates free speech rights and right to petition government.

I.

**THIS ACTION IS NOT JUSTICIABLE AND  
PLAINTIFF LACKS STANDING**

Plaintiff's Complaint expressly seeks declaratory relief under Chapter 7.24 RCW, the Uniform Declaratory Judgments Act ("UDJA"), and injunctive relief under Chapter 7.42 RCW. However, "[t]o proceed under the UDJA, a person must present a justiciable controversy and establish standing." *Nelson v. Appleway Chevrolet, Inc.*, 129 Wn. App. 927, 938, 121 P.3d 95 (2005). In the context of the UDJA, "the requirement of standing tends to overlap justiciability requirements." *To-Go Trade Shows v. Collins*, 144 Wn.2d 403, 411 n.5, 27 P.3d 1149 (2001).

Under the UDJA, a justiciable controversy is one that is:

- (1) an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement.
- (2) between parties having genuine and opposing interests,
- (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and
- (4) a judicial determination of which will be final and conclusive

*Id.* at 411. An analysis of the justiciability and standing doctrines reveals that Plaintiff has not, and simply cannot, meet these legal requirements. Such an analysis also reveals why Courts have historically declined to engage in pre-election review of initiatives.

The present case does not present a justiciable controversy because Initiative No. 2 may never be approved by the voters and, even if approved by the voters, the City Council may choose to ignore the results of the election. It is evident that this suit is the epitome of a "possible, dormant, hypothetical, speculative, or moot disagreement," and that any "harm"

1 suffered by Plaintiff is merely “potential, theoretical, abstract or academic” at best. *To-Ro*,  
2 144 Wn.2d at 411. Clearly, this case does not present a justiciable controversy.

3           However, in addition to a lack of justiciability, Plaintiff lacks standing. Similar to  
4 justiciability, standing requires a distinct and personal interest in an issue which is not  
5 contingent or a mere expectancy, and more than an abstract interest in having others, such as  
6 the City and County official named as defendants herein, comply with Plaintiffs’ view of the  
7 law. *See Vovos v. Grant*, 87 Wn.2d 697, 699, 555 P.2d 1343 (1976); *Primark, Inc. v. Burién*  
8 *Gardens*, 63 Wn. App. 900, 823 P.2d 1116 (1992). Plaintiff here has failed to allege concrete  
9 harm to it, much less concrete harm caused by Resolution 2010-22 which merely places  
10 Initiative No. 2 on the ballot. Plaintiff cannot demonstrate standing.

11           In deciding whether a plaintiff has standing, courts have looked at whether the  
12 plaintiff has a special or peculiar interest which has been aggrieved any differently in kind or  
13 degree than what is experienced by the general public. *See Ocean Spray Cranberries, Inc. v.*  
14 *Doyle*, 81 Wn.2d 146, 154, 500 P.2d 79 (1972); *State ex rel. Gebhardt v. Superior Court*, 15  
15 Wn.2d 673, 680, 131 P.2d 943 (1942).

16           At most, Plaintiff establishes that it and/or its members have certain **beliefs** and  
17 **positions** about how the City Council should go about making legislative decisions regarding  
18 traffic control cameras. For instance, the Declaration of Christine Preston states:

19                     [t]he association’s **members believe** that it is in the public  
20 interest to support the authority of Mukilteo elected officials to act as the  
duly-elected representatives of Mukilteo citizens.

21                     .. it is [**Plaintiff’s**] **position** that the Mukilteo City Council has  
exclusive authority to decide whether or not Mukilteo should use automated  
traffic safety cameras. ...

22                     It is inefficient and a **waste of resources** to put measures on the ballot that the  
state legislature has already decided the City Council should handle.  
23

1 Declaration of Christine Preston, at 2, ¶¶ 3, 4, 5 (emphasis added).

2 The organization's beliefs and positions are simply not a special or peculiar interest  
3 which is different in kind or degree than that shared by the general public. Rather, it is merely  
4 an abstract interest in having the City comply with its view of the law in regard to citizen  
5 input on proposed legislation.

6 In regard to the "waste of resources" assertions, it is not clear that the Plaintiff is  
7 talking about County or City resources or its own. Neither is sufficient to confer standing. In  
8 order to have standing to assert injuries to the County's or City's finances, Plaintiff must  
9 qualify as under the "taxpayer standing" rubric. All of the "taxpayer standing" requirements  
10 are simply not met in this case.

11 The recognition of taxpayer standing has been given freely in the  
12 interest of providing a judicial forum for citizens to contest the legality of  
13 official acts of their government. Under this circumstance a taxpayer must  
14 first request action by the Attorney General and that request must be  
15 refused before action is begun by the taxpayer.

16 "The mere fact that a taxpayer disagrees with a discretionary decision  
17 of the city provides no basis for a suit challenging that decision... In order to  
18 maintain an action, the taxpayer must show ... a unique right or interest that  
19 is being violated, in a manner special and different from the rights of other  
20 taxpayers." The taxpayer must show that the action complained of interferes  
21 with the taxpayer's legal rights or privileges. If not, the taxpayer has no  
22 standing to challenge the action

23 *Greater Harbor 2000 v. City of Seattle*, 132 Wn.2d 267, 281-82 (1997) (emphasis added)

(footnotes omitted). "The interest must be more, however, than simply the abstract interest of  
the general public in having others comply with the law." *In re Marriage of T.*, 68 Wn.App.  
329, 335, 842 P.2d 1010 (1993), *quoted in Biermann v. City of Spokane*, 90 Wn.App. 816,  
960 P.2d 434 (1998). Plaintiff has submitted nothing to indicate it has requested action by the

1 Attorney General or that the request has been denied. Hence, the first two criteria for  
2 establishing taxpayer standing are simply not met.

3 Additionally, a person asserting taxpayer standing must prove that the plaintiff pays  
4 the particular taxes which are subject to being used wrongfully. *Dick Enterprises, Inc. v.*  
5 *Metropolitan King County*, 83 Wn. App. 566, 572, 922 P.2d 184 (1996). Plaintiff has not  
6 proven that it or its members pay the taxes which it contends would be “wasted” if Resolution  
7 2010-22 were allowed to place the matter on the November election.

8 Nor has Plaintiff shown that the City Council’s decision in Resolution 2010-22 to  
9 place Initiative No. 2 on the ballot has violated some “unique right or interest” that it (or its  
10 members) possess which is “special and different” from the public at large.<sup>1</sup> Plaintiff simply  
11 does not like the City Council’s decision to allow a public vote and such preferences do not  
12 constitute a unique right or interest. Even if its complaints about the City’s Resolution No.  
13 2010-22 were valid, its issue with the resolution involve no unique rights.

14 Plaintiff’s interest in invalidating Resolution 2010-22 and prohibiting a public vote on  
15 Initiative No. 2 is completely abstract. Although many people may wish that particular  
16 matters were not on the ballot, the “injury” in having an opportunity to vote on Initiative No.  
17  
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19 <sup>1</sup> Plaintiff is essentially seeking a judgment on its declaratory relief and injunction claims  
20 without complying with the timing rules for summary judgment in CR 56. Nevertheless,  
21 because of the urgency in deciding whether pre-election review is appropriate in this case,  
22 Intervenors have not objected to the August 6, 2010 hearing date. In these circumstances, it is  
23 even more important that Plaintiff produce everything it needs to obtain a judgment when it  
files its motion, rather than fix its deficiencies in a last minute reply. Such sand-bagging is  
not tolerated in the summary judgment context. *White v. Kent Medical Center, Inc., P.S.*, 61  
Wn. App. 163, 168-69 (1991) (CR 56 contemplates that the moving party will include its  
evidence with its original motion). Plaintiff should not be allowed to offer evidence with its  
reply to fix the deficiencies of its original motion.

1 2 is imperceptible and one that is not "special or peculiar" to Plaintiff or its members. Rather,  
2 disagreements regarding public policy are the natural product of our free society.

3 Although not clear from its briefing, Plaintiff may be claiming an interest in avoiding  
4 the expenditure of funds to influence voters regarding the measure. Yet, nothing requires it to  
5 do so. While such an interest may be unique to Plaintiff, it is not an interest which the Court  
6 should recognize as legally sufficient to confer standing. If the mere choice to oppose a  
7 proposed measure was sufficient to confer standing, the standing requirement itself would be  
8 rendered a nullity. Lobbyists would become litigators and legislative processes would likely  
9 come to a halt if anyone opposed to a potential law could simply sue on the basis that they do  
10 not want to go to the trouble to oppose it. The Court should deny Plaintiff the relief it seeks  
11 because it lacks standing and the dispute at this stage is not justiciable.

## 12 II

### 13 INJUNCTIVE RELIEF IS NOT WARRANTED

14 Additionally, to obtain an injunction—extraordinary relief—Plaintiff must prove that  
15 if the election were to go forward, it "would create great injury to the plaintiff." RCW  
16 7.49.020. Plaintiff provides no evidence that it or its members are harmed in having a public  
17 vote so the representatives serving on the City Council can learn what their constituents  
18 believe about a particular topic. The absence of harm is a further reason to deny relief.

19 Finally, to obtain injunctive relief, RCW 7.40.080 requires the posting of a bond.

20 No injunction or restraining order shall be granted until the party  
21 asking it shall enter into a bond, in such a sum as shall be fixed  
22 by the court ... to the adverse party affected thereby to pay all  
23 damages and costs which may accrue by reason of the injunction.

1 RCW 7.40.080. While bonds are mandatory, although the amount is discretionary with the  
2 Court, Plaintiff has proposed no bond in its motion to obtain an injunction. The Plaintiff's  
3 extraordinary request should be denied.

4 II.

5 THIS CASE IS NOT ABOUT THE POWER OF THE INITIATIVE,  
6 BUT THE POWER OF THE CITY COUNCIL TO SOLICIT INPUT  
7 FROM ITS CITIZENS

7 Pre-election review of matters slated for the ballot is highly disfavored. This disfavor  
8 is for obvious and well-established reasons:

9 The fundamental reason is that "the right of initiative is nearly as old as our  
10 constitution itself, deeply ingrained in our state's history, and widely revered  
11 as a powerful check and balance on the other branches of government."  
12 [*Coppernoll v. Reed*, 155 Wash.2d 290, 297, 119 P.3d 318 (2005).] Given the  
13 preeminence of the initiative right, preelection challenges to the substantive  
14 validity of initiatives are particularly disallowed. *Id.* at 297, 119 P.3d 318.  
15 Such review, if engaged in, would involve the court in rendering advisory  
16 opinions, would violate ripeness requirements, would undermine the policy of  
17 avoiding unnecessary constitutional questions, and would constitute  
18 unwarranted judicial meddling with the legislative process. *Id.* at 298, 119  
19 P.3d 318. Thus, preelection substantive challenges are not justiciable. *Id.* at  
20 300-01, 119 P.3d 318. Further, substantive preelection review could unduly  
21 infringe on the citizens' right to freely express their views to their elected  
22 representatives. *Id.* at 298, 119 P.3d 318.

23 *Futurewise v. Reed*, 161 Wn.2d 407, 410-11, 166 P.3d 708 (2007).

[T]he right of initiative is nearly as old as our constitution itself, deeply  
ingrained in our state's history, and widely revered as a powerful check and  
balance on the other branches of government. Accordingly, this potent  
vestige of our progressive era past must be vigilantly protected by our courts.

*Coppernoll*, 155 Wn.2d at 296-97, 119 P.3d 318 (2005) (citing *In re Estate of Thompson*, 103  
Wn.2d 292, 294-95, 692 P.2d 807 (1984)).

Hence, the general rule is that courts do not rule on the validity of an initiative before  
its adoption. *Maleng v. King County Corrections Guild*, 150 Wn.2d 325, 300, 76 P.3d 727

1 (2003). "This reluctance stems from our desire not to interfere in the electoral process or give  
2 advisory opinions." *Id.* at 330. The presumption is that the power of initiative is allowed and  
3 the burden is on the challenger to the initiative to show otherwise. *Id.* at 334.

4 This case has even more potential ripeness problems than cases where the voters are  
5 seeking to force a vote on an initiative. Not only might the voters reject the measure at the  
6 polls, here there is no certainty as to how the City Council would respond to the results of the  
7 November vote.

8 Plaintiff notes that the exception to pre-election challenges are when an initiative is  
9 challenged as being beyond the scope of the initiative power. *See* Motion for Declaratory  
10 Judgment and Injunctive Relief, at 6. However, in all of those cases voters were seeking to  
11 force an election on a subject which was beyond the scope of the initiative power.

12 This case is unique in that Plaintiff's challenge is not to the power of the voters to  
13 force an initiative on city government, but rather a challenge to the power of the City to seek  
14 the input of its citizens by placing a matter before them on the ballot. All of the cases which  
15 Plaintiff cites for authority for a court to review an initiative prior to the election are ones in  
16 which the governmental entity chose not to place a matter on the ballot or sued for court  
17 authority to enable it to refrain from placing a matter on the ballot.

18 In contrast, the City Council chose to seek a public vote. Resolution 2010-22 states  
19 that the City received an initiative petition.

20 The City Council desires to hear from the qualified electorate on  
21 the issues addressed in the Initiative Petition, **regardless of**  
22 **whether the subject of the Initiative is subject to the**  
23 **initiative process.**

1 Decl. of. V. Power, Ex. 5, at 1 (emphasis added). The vote which Plaintiff seeks to enjoin is  
2 not about the initiative power, but the ability of the City to hear from the electorate.

3 Here, a unanimous vote of the Mukilteo City Council essentially declared that it did  
4 not matter whether the subject matter was properly the subject of an initiative; it chose to seek  
5 a public vote regardless. Initiative No. 2 is on the ballot, not because sufficient signatures  
6 were submitted on a petition, but because the City Council chose to pass Resolution 2010-22.  
7 Plaintiff's challenge is not to the exercise of the voters' initiative power, but to the City's  
8 power to seek input from its citizenry. Plaintiff has cited no authority that prohibits a city or  
9 any government entity from seeking the advice of its citizens through the election process.

10 The use of advisory votes to solicit voter input is nothing new. *See State ex rel.*  
11 *Peninsula Neighborhood Ass'n v. Washington State Dept. of Transp.*, 142 Wn.2d 328, 12 P.3d  
12 134 (2000) (legislature authorized an advisory vote); *see also* RCW 43.135.041 (requiring  
13 advisory votes for tax increases); RCW 47.46.030(3) (advisory votes for traffic proposals).

14 Even if the City were not using Initiative No. 2 in an advisory function and the City  
15 Council were to treat Initiative No. 2 as enacting an ordinance if the measure is approved, it  
16 would simply be an example of conditional legislation. Legislative bodies have the authority  
17 both to refer a measure to the people and to condition the effectiveness of an enactment upon  
18 the happening of a future event, in this case a positive vote of the people. *Brower v. State*,  
19 137 Wn.2d 44, 969 P.2d 42 (1998). When the City Council did so in this case, it was  
20 exercising its own legislative power. *Diversified Inv. Partnership v. Department of Social*  
21 *and Health Services*, 113 Wn.2d 19, 775 P.2d 947 (1989).

22 When a law is made to take effect upon the happening of such an event, the  
23 legislature in effect declare the law inexpedient if the event should not  
happen, but expedient if it should happen. They appeal to no other [persons]

1 to judge for them in relation to its present or future expediency. They  
2 exercise that power themselves, and then perform the duty which the  
3 Constitution imposes upon them.”

4 *Cooley*, Constitutional Limitations 169 (7th ed. 1903) (quoting *Barto v. Himrod*, 8 N.Y.  
5 483, 490 (1853)).

6 While the legislature gave the City of Mukilteo the authority to decide whether to  
7 include automatic ticketing machines (red light and speed cameras), it did not dictate how that  
8 legislative decision must be made. It did not dictate the number or manner of public hearings  
9 or debate on the issue. To the point here, the legislature did not instruct cities to refrain from  
10 soliciting the input of their citizens on the question generally, and not to prohibit an election  
11 specifically.

#### 11 IV.

#### 12 **PLAINTIFF'S COMPLAINT SEEKS TO STIFLE DEBATE AND ASKS 13 FOR A REMEDY PROHIBITED BY THE FIRST AMENDMENT**

14 Plaintiff seeks the extraordinary remedy of prohibiting a city-wide election on an issue  
15 the City has decided should be put to the voters. Such a remedy has significant free speech  
16 and right to petition government implications, founded in the First Amendment to the United  
17 States Constitution and Article I, Sections 4, 5, and 19 of the Washington Constitution.

18 The United States Supreme Court has made clear that the process involved in  
19 proposing legislation by means of initiative involves core political speech. *See Meyer v.*  
20 *Grant*, 486 U.S. 414 (1988) (overturning state's prohibition on using paid petition  
21 circulators); *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999)  
22 (overturning various registration requirements for petition circulation). Also, the U.S.  
23 Supreme Court has noted that the core value of the Free Speech Clause of the First

1 Amendment is the public interest in having free and unhindered debate on matters of public  
2 importance. See *Pickering v. Board of Education*, 391 U.S. 563 (1968).

3 The Washington State Supreme Court echoed these same concerns in *Coppernoll v.*  
4 *Reed*, 155 Wn.2d.290 (preelection review of an initiative can infringe upon the constitutional  
5 rights of the people). In *Coppernoll*, opponents of a proposed initiative on tort reform  
6 petitioned the Washington State Supreme Court to reverse a trial court order dismissing their  
7 action to enjoin the Secretary of State from placing three sections of the initiative on the ballot  
8 arguing that those sections were unconstitutional. *Id.* at 3. The Supreme Court held that the  
9 proposed initiative did not exceed the scope of the legislative power and ordered the Secretary  
10 of State to place the initiative on the general election ballot. *Id.* at 9. In reaching this  
11 conclusion, the Court recognized its historical practice of refraining from inquiring into the  
12 validity of a proposed initiative before it is enacted. *Id.* at 4. The Court also recognized that  
13 First Amendment rights were implicated in preelection review.

14 Because ballot measures are often used to express popular will and to send a  
15 message to elected representatives (regardless of potential subsequent  
16 invalidation of the measure), substantive preelection review may also unduly  
infringe on free speech values.

17 *Id.* at 5 (emphasis added). In making this argument, the Court noted that after the trial court  
18 invalidated Initiative 695 (requiring \$30 vehicle license tabs) at issue in *Amalgamated Transit*  
19 *Union*, 142 Wn.2d 183, 11 P.3d 762 (2000), the Legislature quickly responded by passing an  
20 almost identical measure that was subsequently signed by the Governor. *Id.* at 4. The point  
21 of the example is that by exercising the right to initiative, the people exercised their First  
22 Amendment right to petition the government. The people were permitted to since courts do  
23 not review the legality of an initiative before the election because of First Amendment rights.

1 Plaintiff's claims fail to recognize that the campaign and vote itself for this measure is  
2 a valid expression of political speech, and that such expression is still fulfilled even if it is  
3 rejected by the voters, accepted by the voters but ignored by the City Council, or enacted and  
4 subsequently invalidated by judicial decree. Clearly, the relief Plaintiff seeks is foreclosed by  
5 the historical protection of the right of people to vote in the initiative process.

6 Plaintiff seeks to block the voters from discussing or considering the policies, provisions,  
7 and principles embodied in this measure, even if the measure, or some part of it, is subsequently  
8 found invalid. Initiative campaigns are not just about passing laws, they are about informing and  
9 involving the people in a discussion over public policy. This is especially true because the City's  
10 Resolution 2010-22 seeks the input of its constituents through an election regardless of whether  
11 the ordinance can be adopted by initiative.

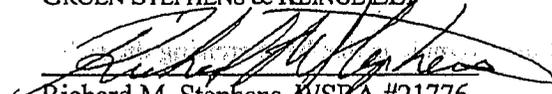
12 Public votes on issues, even when a majority of voters reject them, serve the people and  
13 our system of government in many positive ways. Just as the Legislature considers bills that  
14 may or may not be signed into law by the Governor, so too, the people must be free to discuss  
15 and debate initiatives and their policies even if they never become law.

#### 16 CONCLUSION

17 Intervenor-Defendants urge the Court to deny Plaintiff's request for declaratory and  
18 injunctive relief.

19 DATED this 2<sup>nd</sup> day of August, 2010.

20 GROEN STEPHENS & KLINGE LLP

21 By: 

22 Richard M. Stephens, WSBA #21776

23 On behalf of Intervenor-Defendants

Nicholas Sherwood, Alex Rion, and

Tim Eyman

Steel Rives LLP

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR SNOHOMISH COUNTY

MUKILTEO CITIZENS FOR SIMPLE  
GOVERNMENT, an unincorporated  
association of Mukilteo residents,

Plaintiff,

v.

CITY OF MUKILTEO, a Washington  
municipal corporation; CHRISTINE  
BOUGHMAN, in her official capacity as  
City Clerk for the City of Mukilteo;  
SNOHOMISH COUNTY, a political  
subdivision of the State of Washington;  
CAROLYN WEIKEL, in her official  
capacity as Snohomish County Auditor,

Defendants,

NICHOLAS SHERWOOD, ALEX RION  
and TIM EYMAN,

Intervenor-Defendants.

No. 10-2-06342-9

NOTICE OF DIRECT APPEAL TO  
WASHINGTON SUPREME COURT

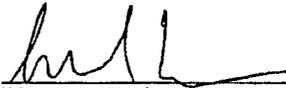
Plaintiff Mukilteo Citizens for Simple Government seeks direct review by the  
Washington Supreme Court of the Order Denying Motion for Declaratory Judgment and  
Injunctive Relief, entered on August 6, 2010. A copy of the Order is attached to this Notice.

NOTICE OF DIRECT APPEAL TO WASHINGTON SUPREME COURT - 1

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Respectfully submitted this 9th day of August 2010.

STOEL RIVES LLP



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Mukilteo Citizens for Simple Government

NOTICE OF DIRECT APPEAL TO WASHINGTON SUPREME COURT - 2