



## WASHINGTON STATE PUBLIC DISCLOSURE COMMISSION COMPLAINT FORM

(See instructions on the last page.)

### Description of Complaint

#### 1. RESPONDENT:

Identify who you are filing a complaint against and provide all contact information you have for them. Give names and titles, if any, for individuals, and the full name of any organization. Please note that the PDC does not enforce federal campaign finance laws or local ordinances.

Example #1: Joe Public, Mayor of My Town,

123 Main Street, Your Town, State, Phone: 555-123-4567, Email: unknown

Example #2: The Political Action Group (instead of P.A.G.), 123 Main Street, Your Town, State,

Phone: 555-123-4567, Email: [pag@pag.org](mailto:pag@pag.org), Website: [www.PAGwashington.org](http://www.PAGwashington.org)

Daniel Grausz  
Mercer Island City Councilmember  
9611 SE 36th Street  
Mercer Island, WA 98040  
Phone: (206) 275-7994  
E-mail address: [dan.grausz@mercergov.org](mailto:dan.grausz@mercergov.org)

#### 2. ALLEGED VIOLATIONS:

Explain how and when you believe the people/entities you are filing a complaint against violated RCW 42.17/RCW 42.17A or Title 390 WAC. Be as detailed as possible about dates, times, places and acts. If you can, cite which specific laws or rules you believe were violated. Attach additional pages if needed. (Note that the RCW 42.17 citation applies to conduct before 2012 and the RCW 42.17A citation applies to conduct on or after January 1, 2012.)

### **EXECUTIVE SUMMARY**

A credible<sup>1</sup> investigation by the Public Disclosure Commission ("PDC") will reveal that, without limitation: (i) Councilmember Grausz violated RCW 42.17A.555, (ii) Councilmember Grausz's violation of RCW 42.17A.555 was intentional and willful, and (iii) Councilmember Grausz's violation of RCW 42.17A.555 was material and irreparably harmed an initiative filed by the Concerned Citizens for Mercer Island Parks ("CCMIP").

**Indeed, Councilmember Grausz's violation of RCW 42.17A.555 "poisoned the well" of Mercer Island voters who are eligible to vote on the initiative filed by CCMIP.**

<sup>1</sup> See footnote 8, *infra*, and accompanying text.

Because Councilmember Grausz's violation of RCW 42.17A.555 was intentional, willful, material and caused irreparable harm, the PDC, at a minimum and pursuant to RCW 42.17A.755(4): (i) should issue an order that requires Councilmember Grausz to "cease and desist" from any activities that constitute a violation of RCW 42.17A.555, and (ii) should assess a penalty against Councilmember Grausz in such amount that will deter Councilmember Grausz from violating RCW 42.17A.555 in the future.

## **COMPLAINT**

### **1) Protect Our Parks Initiative.**

On February 23, 2016, CCMIP filed an initiative to protect parks and open spaces on Mercer Island ("Protect Our Parks Initiative") with the City Clerk of Mercer Island.<sup>2</sup> A copy of the Protect Our Parks Initiative is attached as **Exhibit A** and is incorporated by reference.

Ali Spietz ("Ms. Spietz"), the City Clerk for Mercer Island can verify these facts. Ms. Spietz's contact information is provided in paragraph 4 below.

### **2) Councilmember Grausz's "Mass Communication."**

On March 1, 2016, Councilmember Grausz used a "mass communication"<sup>3</sup> e-mail to disseminate his "March 2016 City Update -- Super Tuesday" ("Opposition To The Protect Our Parks Initiative") to thousands of Mercer Island residents. A copy of Councilmember Grausz's Opposition To The Protect Our Parks Initiative is attached as **Exhibit B** and is incorporated by reference.

Mike Kaser ("Mr. Kaser"), the Information Services Director for the City of Mercer Island, can verify these facts. Mr. Kaser's contact information is provided in paragraph 4 below.

### **3) A PDC Investigation Is Warranted – Councilmember Grausz's Violation Of RCW 42.17A.555.**

Councilmember Grausz used a Mercer Island domain name/e-mail account to disseminate his Opposition To The Protect Our Parks Initiative to thousands of Mercer Island residents. The Mercer Island domain name/e-mail account used by Councilmember Grausz is: [Dan.Grausz@mercergov.org](mailto:Dan.Grausz@mercergov.org) ("Mercer Island Domain Name/E-Mail Account"). See **Exhibit B**.

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<sup>2</sup> After being filed on February 23, 2016, the Protect Our Parks Initiative became a "Ballot proposition" as a matter of law. See, e.g., RCW 42.17A.005(4).

<sup>3</sup> The term "mass communication" is defined in WAC 390-05-290(1)(e) and WAC 390-05-290(2).

In addition to the Mercer Island Domain Name/E-Mail Account, and assuming Councilmember Grausz did not engage in any “e-mail spoofing,”<sup>4</sup> Councilmember Grausz had to use the Mercer Island computer network (“Mercer Island Computer Network”) to disseminate his Opposition To The Protect Our Parks Initiative to thousands of Mercer Island Residents.

In addition to the Mercer Island Domain Name/E-Mail Account and the Mercer Island Computer Network, and assuming Councilmember Grausz did not engage in any “e-mail spoofing,” Councilmember Grausz had to use the Mercer Island server computers (“Mercer Island Server Computers”) to disseminate his Opposition To The Protect Our Parks Initiative to thousands of Mercer Island Residents.

In addition to the Mercer Island Domain Name/E-Mail Account, the Mercer Island Computer Network and the Mercer Island Server Computers, Councilmember Grausz likely used a Mercer Island desktop computer or a Mercer Island laptop computer (collectively “Mercer Island Client Computers”) to disseminate his Opposition To The Protect Our Parks Initiative to thousands of Mercer Island Residents.

In addition to the Mercer Island Domain Name/E-Mail Account, the Mercer Island Computer Network, the Mercer Island Server Computers and the Mercer Island Client Computers, Councilmember Grausz likely used data and information stored on or retrieved from the Mercer Island Computer Network, the Mercer Island Server Computers and/or the Mercer Island Client Computers (“Mercer Island Proprietary Information”) to disseminate his Opposition To The Protect Our Parks Initiative to thousands of Mercer Island Residents.

To the extent Councilmember Grausz may have used the Mercer Island Domain Name/E-Mail Account on a personal computer to disseminate his Opposition To The Protect Our Parks Initiative to thousands of Mercer Island Residents, the Mercer Island Proprietary Information and associated “metadata”<sup>5</sup> forwarded to or residing on those personal computers are Mercer Island

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<sup>4</sup> E-mail spoofing is the creation of e-mail messages with a forged sender address. *Karvaly v. Ebay, Inc.*, 245 F.R.D. 71 (E.D.N.Y. 2007) provides in part as follows:

“‘Spoofing’ means the practice of disguising [an] e-mail to make the e-mail appear to come from an address from which it actually did not originate. Spoofing involves **placing in the 'From' [line] an e-mail address other than the actual sender's address, without the consent or authorization of the user of the e-mail address whose address is spoofed.**” (bold added).

<sup>5</sup> *O’Neill v. City Of Shoreline*, 170 Wn.2d 138, 145 (2010) provides in part as follows:

“Examples of e-mail metadata include, among about 1,200 or more properties, such information as the dates that mail was sent, received, replied to or forwarded, blind carbon copy ... information, and **sender address book information.**” (bold added) (internal quotation marks omitted).

public facilities. See generally *Nissen v. Pierce County*, 183 Wn.2d 863 (2015); *O'Neill v. City Of Shoreline*, 170 Wn.2d 138, 148 (2010).

It is beyond question that: (i) the [Dan.Grausz@mercergov.org](mailto:Dan.Grausz@mercergov.org) Mercer Island Domain Name/E-Mail Account, (ii) the Mercer Island Computer Network, (iii) the Mercer Island Server Computers, (iv) the Mercer Island Client Computers, (v) the Mercer Island Proprietary Information, and (vi) the Mercer Island Proprietary Information and associated metadata forwarded to or residing on personal computers are "facilities of a public ... agency" for purposes of RCW 42.17A.555 (collectively the "Mercer Island Public Facilities").

Because Councilmember Grausz used the [Dan.Grausz@mercergov.org](mailto:Dan.Grausz@mercergov.org) Mercer Island Domain Name/E-Mail Account and other Mercer Island Public Facilities to disseminate his Opposition To The Protect Our Parks Initiative, both: (i) the number and the e-mail addresses of the Mercer Island residents to whom Councilmember Grausz's Opposition To The Protect Our Parks Initiative was disseminated, and (ii) data revealing the extent to which Councilmember Grausz used Mercer Island Public Facilities to disseminate his Opposition To The Protect Our Parks Initiative reside on the Mercer Island Computer Network, the Mercer Island Server Computers, and the Mercer Island Client Computers.

Although the critical evidence and information identified above reside on the Mercer Island Computer Network, the Mercer Island Server Computers, and the Mercer Island Client Computers, the PDC can easily obtain this critical evidence and information from Mr. Kaser, the Information Services Director for the City of Mercer Island,<sup>6</sup> who, without limitation:

- (i) Can provide the PDC with the total number of Mercer Island residents to whom Councilmember Grausz's Opposition To The Protect Our Parks Initiative was disseminated;
- (ii) Can provide the PDC with a list of the e-mail addresses of the Mercer Island residents to whom Councilmember Grausz's Opposition To The Protect Our Parks Initiative was disseminated;
- (iii) Can determine and advise the PDC of the extent to which the Mercer Island Proprietary Information was used by Councilmember Grausz to prepare and disseminate his Opposition To The Protect Our Parks Initiative;
- (iv) Can determine and advise the PDC of the extent to which the Mercer Island Computer Network was used by Councilmember Grausz to prepare and disseminate his Opposition To The Protect Our Parks Initiative;
- (v) Can determine and advise the PDC of the extent to which the Mercer Island Server Computers were used by Councilmember Grausz to prepare and disseminate his Opposition To The Protect Our Parks Initiative;
- (vi) Can determine and advise the PDC of the extent to which the Mercer Island Client Computers were used by Councilmember Grausz to prepare and disseminate his Opposition To The Protect Our Parks Initiative.

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<sup>6</sup> Mr. Kaser's assistants are: Mr. Alfredo Moreno, the Systems Administrator for the City of Mercer Island and Peggy Lo Chan the Systems Analyst for the City of Mercer Island. Mr. Moreno's and Ms. Lo Chan's contact information is provided in paragraph 4 below.

- (vii) Should be able to determine and advise the PDC of the extent to which personal computers were used by Councilmember Grausz to prepare and disseminate his Opposition To The Protect Our Parks Initiative.
- (viii) Should be able to determine and advise the PDC of the extent to which any "e-mail spoofing"<sup>7</sup> was used by Councilmember Grausz to prepare and disseminate his Opposition To The Protect Our Parks Initiative.<sup>8</sup>

It is beyond question that Councilmember Grausz's Opposition To The Protect Our Parks Initiative actually and by implication, inference and insinuation opposes the Protect Our Parks Initiative, including without limitation: (i) inaccurately labeling all CCMIP members, the sponsors of the Protect Our Parks Initiative, as "MICA<sup>9</sup> opponents," (ii) inaccurately representing the existence of a "threat of legal challenges from MICA opponents [*i.e.*, CCMIP members]," (iii) inaccurately speculating that "MICA opponents filed an initiative with the City Clerk that, while not mentioning MICA by name, is written in a manner that I assume they believe will stop the project if approved by voters." See **Exhibit B**, at p. 2.

The undersigned is aware of any CCMIP member who opposes MICA by itself. The undersigned also is not aware of any CCMIP member who made a "threat of legal challenges." Moreover, a review of the Protect Our Parks Initiative quickly reveals, among other things, that: (i) the Protect Our Parks Initiative addresses all parks and open spaces on Mercer Island, and (ii) contains no provisions that alone would "stop the [MICA] project." See **Exhibit A**.

It is beyond question that Councilmember Grausz's use of the Mercer Island Public Facilities to disseminate his Opposition To The Protect Our Parks Initiative to thousands of Mercer Island residents violated RCW 42.17A.555.

#### **4) A PDC Investigation Is Warranted – Councilmember Grausz's Violation Of RCW 42.17A.555 Was Intentional And Willful.**

Councilmember Grausz was well aware and had actual knowledge that the use of the "facilities of a public ... agency" to promote or oppose the Protect Our Parks Initiative violates RCW 42.7A.555. Indeed, on March 9, 2016, despite his use of the Mercer Island Public Facilities to disseminate his Opposition To The Protect Our Parks Initiative to thousands of Mercer Island residents, Councilmember Grausz confronted and warned a Mercer Island resident, Elma Borbe ("Ms. Borbe"), that talking about the Protect Our Parks Initiative at a City Council meeting constituted a use of public facilities. During that March 9, 2016, confrontation, Ms. Borbe felt belittled, bullied, humiliated and intimidated by Councilmember Grausz.

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<sup>7</sup> See footnote 4, *supra*.

<sup>8</sup> It is vital to a creditable investigation that the PDC interview Mr. Kaser since most of the critical evidence resides on the Mercer Island Computer Network, the Mercer Island Server Computers and the Mercer Island Client Computers.

<sup>9</sup> "MICA" is an acronym for the Mercer Island Center For The Arts.

Ms. Borbe can verify these facts. Ms. Borbe's contact information is provided in paragraph 4 below. See *a/so* attached **Exhibit C** which is incorporated by reference.

Given Councilmember Grausz's actual knowledge that the use of the "facilities of a public ... agency" to promote or oppose the Protect Our Parks Initiative violates RCW 42.7A.555, it is beyond question that Councilmember Grausz's use of the Mercer Island Public Facilities to disseminate his Opposition To The Protect Our Parks to thousands of Mercer Island residents in violation RCW 42.17A.555 was intentional and willful.

**5) A PDC Investigation Is Warranted – Councilmember Grausz's Violation Of RCW 42.17A.555 Was Material And Caused Irreparable Harm.**

In addition to being intentional and willful, Councilmember Grausz's violation of RCW 42.17A.555 is material and irreparably harms the Protect Our Parks Initiative.

Indeed, Councilmember Grausz used the Mercer Island Public Facilities to disseminate his Opposition To The Protect Our Parks Initiative to thousands of Mercer Island residents.<sup>10</sup> ***Councilmember Grausz's use of the Mercer Island Public Facilities to disseminate his Opposition To The Protect Our Parks Initiative to thousands of Mercer Island residents "poisoned the well" of Mercer Island voters who are eligible to vote on the Protect Our Parks Initiative.***<sup>11</sup>

Ms. Borbe can verify the materiality of and the irreparable harm caused by Councilmember Grausz's use of the Mercer Island Public Facilities to disseminate his Opposition To The Protect Our Parks Initiative to thousands of Mercer Island residents.

Jackie Dunbar ("Ms. Dunbar") can also verify the materiality of and the irreparable harm caused by Councilmember Grausz's use of the Mercer Island Public Facilities to disseminate his Opposition To The Protect Our Parks Initiative to thousands of Mercer Island residents. Ms. Dunbar's contact information is provided in paragraph 4 below.

Lorelei Robinson ("Ms. Robinson") can also verify the materiality of and the irreparable harm caused by Councilmember Grausz's use of the Mercer Island Public Facilities to disseminate his Opposition To The Protect Our Parks Initiative to thousands of Mercer Island residents. Ms. Robinson's contact information is provided in paragraph 4 below.

Sharon Smith ("Ms. Smith") can also verify the materiality of and the irreparable harm caused by Councilmember Grausz's use of the Mercer Island Public Facilities to disseminate his

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<sup>10</sup> Mr. Kaser can provide the PDC with the total number of Mercer Island residents to whom Councilmember Grausz's Opposition To The Protect Our Parks Initiative was disseminated. See footnote 8, *supra*, and accompanying text.

<sup>11</sup> *Id.*

Opposition To The Protect Our Parks Initiative to thousands of Mercer Island residents. Ms. Smith's contact information is provided in paragraph 4 below.

Numerous additional witnesses can also verify the materiality of and the irreparable harm caused by Councilmember Grausz's use of the Mercer Island Public Facilities to disseminate his Opposition To The Protect Our Parks Initiative to thousands of Mercer Island residents. Please contact the undersigned for the contact information of the additional witnesses.

**6) A PDC Enforcement Action Is Warranted – A Cease And Desist Order Should Be Issued And A Penalty Should Be Imposed.**

Because Councilmember Grausz's violation of RCW 42.17A.555 was intentional, willful, material and caused irreparable harm, the PDC, at a minimum and pursuant to RCW 42.17A.755(4): (i) should issue an order that requires Councilmember Grausz to "cease and desist" from any activities that constitute a violation of RCW 42.17A.555, and (ii) should assess a penalty against Councilmember Grausz in such amount that will deter Councilmember Grausz from violating RCW 42.17A.555 in the future.

*THE REST OF THIS PAGE INTENTIONALLY IS BLANK –  
EVIDENCE, WITNESSES, CERTIFICATION, ATTACHMENT AND INSTRUCTIONS  
FOLLOW*

## **Evidence and Witnesses**

### **3. EVIDENCE:**

**List the documents or other evidence you have that support your complaint, if any, and attach copies to this form. If you do not have copies, provide any information you have about where you believe the documents or evidence can be found and how to obtain it. Attach additional pages if needed.**

*Example: Emails between Joe public and Candidate X, attached OR*

*Joe Public has emails from Candidate X which describe an illegal campaign donation, and Joe Public's phone number is 555-123-4567.*

#### **Exhibit A:**

Initiative filed with the Mercer Island City Clerk on February 23, 2016.

#### **Exhibit B:**

Councilmember Grausz's March 1, 2016, e-mail that Councilmember Grausz disseminated to thousands of Mercer Island residents by utilizing Mercer Island Public Facilities.

#### **Exhibit C:**

Concerned Citizens for Mercer Island Parks' March 11, 2016, e-mail.

#### **Additional Documents Or Evidence:**

If the PDC desires additional documents or other evidence in support of this Complaint, please contact the undersigned.

### **4. WITNESSES:**

**List the names and contact information, if known, of any witnesses or other persons who have knowledge of facts that support your complaint. Attach additional pages if needed.**

*Example: Jane Public was present when Candidate X spoke to me about the illegal contribution. Jane Public's address is 123 Main Street, Your Town, USA 12345, and her phone number is 555-123-4567.*

#### **Witness No. 1:**

Elma Borbe  
2438 71st Ave. SE  
Mercer Island, WA 98040  
Phone: (206) 948-0739  
E-mail address: [eborbe@comcast.net](mailto:eborbe@comcast.net)

#### **Witness No. 2:**

Jackie Dunbar  
7116 82<sup>nd</sup> Ave. SE  
Mercer Island, WA 98040  
Phone: (206) 236-0752  
E-mail address: [jadunbar@comcast.net](mailto:jadunbar@comcast.net)



**Witness No. 3:**

Mike Kaser, Information Services Director for the City of Mercer Island.  
9611 SE 36th Street  
Mercer Island, WA 98040  
Phone: (206) 275-7772  
E-mail address: [mike.kaser@mercergov.org](mailto:mike.kaser@mercergov.org)

**Witness No. 4:**

Peggy Lo Chan, System Analyst for the City of Mercer Island.  
9611 SE 36th Street  
Mercer Island, WA 98040  
Phone: (206) 275-7773  
E-mail address: [peggy.loochan@mercergov.org](mailto:peggy.loochan@mercergov.org)

**Witness No. 5:**

Alfredo Moreno, Systems Administrator for the City of Mercer Island.  
9611 SE 36th Street  
Mercer Island, WA 98040  
Phone: (206) 275-7775  
E-mail address: [alfredo.moreno@mercergov.org](mailto:alfredo.moreno@mercergov.org)

**Witness No. 6:**

Lorelei Robinson  
6026 East Mercer Way  
Mercer Island, WA 98040  
Phone: (206) 232-7980  
E-mail address: [mrs.robinson@comcast.net](mailto:mrs.robinson@comcast.net)

**Witness No. 7:**

Sharon Smith  
8820 SE 61<sup>st</sup> Street  
Mercer Island, WA 98040  
Phone: (206) 232-7543  
E-mail address: [sharonsmithwa@gmail.com](mailto:sharonsmithwa@gmail.com)

**Witness No. 8:**

Ali Spietz, City Clerk for the City of Mercer Island.  
9611 SE 36th Street  
Mercer Island, WA 98040  
Phone: (206) 275-7793  
E-mail address: [ali.spietz@mercergov.org](mailto:ali.spietz@mercergov.org)

**Additional Witnesses:**

If the PDC desires additional witnesses in support of this Complaint, please contact the undersigned.

## Certification

**In signing this complaint:**

- I have provided all information, documents and other evidence of which I am aware;
- If I become aware of additional information, documents or evidence related to my complaint, I will promptly provide it to the PDC; and,
- I am providing the PDC current information on how to contact me, and will promptly update that information if it changes.
- Unless otherwise noted, I agree that PDC may use email instead of U.S. mail for all written correspondence about this complaint.

**E-mail address:** carv@yahoo.com

**Your name (print or type):** Carvel Zwingle

**Street address:** 6250 East Mercer Way

**City, state and zip code:** Mercer Island, Washington 98040

**Telephone number (including area code):** (917) 415-8888 (mobile)

**Oath**

**Required for all complaints filed with the Public Disclosure Commission:**

I certify (or declare) under penalty of perjury under the laws of the State of Washington that information provided with this complaint is true and correct to the best of my knowledge and belief.\*

**Your signature** \_\_\_\_\_ 

**Date signed** 29 Apr. 1 2016

**Place signed (city and county)**

Mercer Island King  
City County

## Attachments

Check here if you are attaching copies of documentary evidence or extra pages explaining your complaint.

\*RCW 9A.72.040 says that "(1) A person is guilty of false swearing if he makes a false statement which he knows to be false, under an oath required or authorized by law. (2) False swearing is a misdemeanor."

**Washington State Public Disclosure Commission**  
**Instructions for Filing a Formal Complaint**

➤ **When to use the formal complaint form:**

While this form is not required, its use is recommended when you want to file formal allegations of a violation of the Public Disclosure Commission (PDC) statutes or rules. You can find the PDC statutes and rules on the PDC website at [www.pdc.wa.gov](http://www.pdc.wa.gov).

If you have information or concerns about a possible violation but do not wish to file a complaint, please contact the PDC office directly.

➤ **How to submit your complaint form to the PDC:**

- Complete all sections. If you do not have some information, please write “unknown” instead of leaving a blank space.
- Attach copies of any evidence you have - we’ll contact you if we need originals.
- Sign the oath.
- Mail, fax, or email your complaint and all attachments to the PDC.

➤ **If you have more questions:**

If you have more questions about filing a complaint, see the “Frequently Asked Questions about Filing a Complaint” guide available on the PDC’s website at [www.pdc.wa.gov](http://www.pdc.wa.gov) under “Enforcement and Compliance.” You may also contact the PDC directly.

**PDC Contact Information**

**MAILING ADDRESS:** Washington State Public Disclosure Commission  
711 Capitol Way, Room 206  
PO Box 40908  
Olympia, WA 98504-0908

**EMAIL ADDRESS:** [pdc@pdc.wa.gov](mailto:pdc@pdc.wa.gov)

**PHONE:** 1-877-601-2828 (toll free)

**FAX:** (360) 753-1112

**HOURS:** Monday-Friday, 8:00 a.m. – 5:00 p.m., closed on state holidays.

# EXHIBIT A

# PROTECT OUR PARKS SAFEGUARD MERCER ISLAND'S LEGACY OF PARKLAND SECURE OUR CHILDREN'S HERITAGE

Please return signed petitions to or contact us at:  
Concerned Citizens for Mercer Island Parks (CCMIP)  
Protect Our Parks Initiative  
P.O. Box 1337, Mercer Island, WA 98040

Tel.: (206) 948-4039, e-mail: protectmiparks@gmail.com, website: protectmiparks.org

INITIATIVE PETITION FOR SUBMISSION TO THE MERCER ISLAND CITY COUNCIL. To the City Council of the City of Mercer Island. We, the undersigned registered voters of the City of Mercer Island, State of Washington, propose and ask for enactment as an ordinance of the attached measure known as Protect Our Parks Initiative and further request that, unless passed by the City Council, the proposed ordinance be submitted to a vote of the people.

**INITIATIVE STATEMENT.** Initiative Measure No. \_\_\_ would limit changes in use of existing City of Mercer Island parkland and open space. This initiative would require that City parkland and open space may be sold, leased, transferred or changed to non-parkland use only after the City Council holds a public hearing and enacts an ordinance finding the change in use necessary. This initiative also requires replacement of affected parkland and open space with land of equal or better value in the same vicinity to achieve "no net loss" of such property. The initiative would designate the properties that comprise the City's current park and open space system, specify non-parkland uses and provide judicial review of Council action authorizing changes of use. Should this measure be enacted into law? Yes . . . .  No ....

A full, true and correct copy of which is included herein, and we petition the Council to enact said measure as an ordinance, and, if not enacted within 30 days from the time of receipt thereof by the City Council, then to be submitted to the qualified electors of the City of Mercer Island for approval or rejection at the next regular election; and each of us for himself or herself says: I have personally signed this petition; I am a registered voter of the City of Mercer Island, State of Washington, and my residence is correctly stated.

INTENT. This measure calls for all lands held now or in the future by the City of Mercer Island for park and recreation purposes, whether designated as park or open space, to be preserved for such use in the future unless certain conditions are met. The parkland shall not be sold, leased, transferred, or changed from parkland use to another use unless all of the conditions below are met:

- The City Council holds a public hearing regarding the necessity of the transaction; and
- The City Council enacts an ordinance finding that the transaction is necessary because there is no reasonable and practical alternative; and
- The City receives land of equivalent or better size, value, location and usefulness in the same vicinity, serving the same park purposes, in exchange.

**WARNING:** Any person who signs this petition with any other than their true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he/she is not a legal voter, or signs a petition when he/she is otherwise not qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor. Each signature shall be executed in ink or indelible pencil and shall be followed by the printed name of the signer, the date of the signing and the address of the signer as follows: Petitioner's Signature, Printed Name, Residence Address and Date (City Municipal Code 2.24.100).

**Only registered Mercer Island voters can sign this initiative.**

No.	Petitioner's Signature	Printed Name	Residence Address	Date Signed
1.				
2.				
3.				
4.				
5.				

**Before you drop off or mail your petition, please print and sign your name here. Please drop off or mail this initiative by May 30, 2016. THANK YOU!**  
PRINT (FIRST NAME) (LAST NAME) I, \_\_\_\_\_, swear or affirm under penalty of law that I circulated this sheet of the foregoing petition, and that, to the best of my knowledge, each signature herein is a genuine signature of the person whose name it purports to be and that the statements herein is true as I believe. There are \_\_\_\_\_ (number of signatures) on this petition. Signature \_\_\_\_\_  
Date: \_\_\_\_\_

**CITY OF MERCER ISLAND  
ORDINANCE**

**AN ORDINANCE OF THE CITY OF MERCER ISLAND, WASHINGTON AMENDING MERCER ISLAND CITY CODE TITLE 19 – UNIFIED LAND DEVELOPMENT CODE ADDING A NEW CHAPTER 19.20 TITLED “PARKLAND (PARKS & OPEN SPACE) PROTECTION” TO REQUIRE PRESERVATION OF ALL PARKLAND HELD BY THE CITY OF MERCER ISLAND STIPULATING THAT SUCH LANDS MAY ONLY BE SOLD, LEASED, TRANSFERRED OR CHANGED FROM PARK USE TO NON-PARK USE AFTER A PUBLIC HEARING AND THE ENACTMENT OF AN ORDINANCE FINDING THAT SUCH ACTION IS NECESSARY, AND PROVIDING REPLACEMENT PARKLAND WITH A SIMULTANEOUS EXCHANGE OF LAND OF EQUAL OR BETTER VALUE, AND IN THE SAME VICINITY.**

**WHEREAS**, as Mercer Island population increases, there is increasing pressure to convert our precious parkland to non-park uses; and **WHEREAS**, the Washington State Legislature protected city parkland purchased with state funds with a “no net loss” policy requiring that such parkland cannot be converted to a non-parkland use unless equivalent land is received in exchange with equivalent or better value; and **WHEREAS**, some Mercer Island parks are protected by a “no net loss” policy that requires replacement of equivalent parkland if existing parkland is converted to another use; and **WHEREAS**, in 1967, the Washington State Legislature protected county parks with a “no net loss” policy by enacting RCW 36.89.050 finding that parks and open space may be transferred to cities subject to the condition that they cannot be converted to a non-parkland use unless equivalent lands are provided in exchange; and **WHEREAS**, in 1967, King County protected county parkland with a “no net loss” policy by enacting Resolution No. 34571 requiring that parkland purchased with Forward Thrust Bond funds cannot “be converted to a different use unless other equivalent lands...shall be received in exchange thereof;” and **WHEREAS**, in 1997, the Seattle City Council enacted Ordinance 118477 adopting a citizen-generated Initiative 42 providing that parkland can only be changed from a parkland use after a public hearing, after adoption of an ordinance finding the conversion is necessary, and only if the city receives equivalent replacement parkland; and **WHEREAS**, in 2013, the Mercer Island City Council recognized the policy of “no net loss” of natural resources by adopting a Shoreline Master Program requiring “no net loss” of shoreline ecological function; and **WHEREAS**, the citizens of Mercer Island desire to extend the policy of “no net loss” to protect all our parkland, safeguard Mercer Island’s legacy of parkland, and secure our children’s heritage; and **WHEREAS**, the City established an Open Space Conservancy Trust in 1992 to preserve and maintain, protect and preserve open space on Mercer Island; and **WHEREAS**, the City of Mercer Island City Code (MICC) contains Title 19, the Unified Land Development Code (ULDC) adopted on November 15, 1999 as Ordinance No. 99C-13; and **WHEREAS**, ULDC is being amended to add a new Chapter 19.20 “Parkland (Parks & Open Space) Protection”; and **WHEREAS**, citizens of Mercer Island have initiated an ordinance to provide for “no net loss” of parkland consistent with city code MICC 2.24 and state statutes RCW 35A.11; and **WHEREAS**, that ordinance having received a sufficient number of signatures was passed as provided by MICC 2.24 and RCW 35A.11

**NOW THEREFORE, THE QUALIFIED ELECTORS OF THE CITY OF MERCER ISLAND, WASHINGTON DO ORDAIN AS FOLLOWS:**

**Section 1: Adoption of Parkland Protection. A new Chapter 19.20 “Parkland (Parks & Open Space) Protection” is added to the Mercer Island City Code, Title 19, Unified Land Development Code, hereby adopted as follows:**

**NEW SECTION 19.20.010 – Purpose.** The purpose of this chapter is to protect parkland and nothing in this chapter shall be construed as decreasing parkland protection that already exists or that shall be adopted in the future. These regulations are adopted for the following specific purposes, which shall be considered in the administration of this chapter: A. To promote the public health, safety, and general welfare of the citizens of Mercer Island. B. To preserve and enhance the Island’s physical and aesthetic character by preventing the indiscriminate loss of parks and open space. C. To establish the principle of “no net loss” for the City’s parks and open space. D. To implement the City’s Comprehensive Plan, Parks and Open Space Policies Goal 11 to “continue to maintain the Island’s unique quality of life through open space preservation, parks and trail development and well-designed public facilities.” E. To implement the City’s Comprehensive Plan commitment to citizen participation.

**NEW SECTION 19.20.020 – Applicability.** All parkland held now and in the future by the City of Mercer Island shall be preserved for such use, and no such parkland shall be sold, leased, transferred, or changed from parkland use to another usage unless the City Council shall first hold a public hearing regarding the necessity of such a change of use, enact an ordinance finding that the change of use is necessary because there is no reasonable and practical alternative, and on or before the change of use receive in exchange land of equivalent or better size, value, location, and usefulness in the vicinity serving the same parkland purposes. For converted parkland, no applications shall be accepted for any building permits or any other land development permits or approvals, nor shall any building permits or any other land development permits or approvals be issued until replacement parkland is conveyed to the City.

**NEW SECTION 19.20.030 – Designated Parkland.** The following are the common names for the minimum number of properties that make up Mercer Island parkland with boundaries generally delineated by Mercer Island’s Parks and Recreation Plan 2014-2019, Appendix 1: (a) Bicentennial Park, (b) Clarke Beach, (c) Clise Park, (d) Ellis Pond, (e) First Hill Park, (f) Groveland Park, (g) Hollerbach Park, (h) Homestead Field, (i) Island Crest Park, (j) Deane’s Children’s Park, (k) Park on the Lid, (l) Luther Burbank Park, (m) Mercerdale Park, (n) Mercerdale Hillside, (o) Pioneer Park, (p) Roanoke Park, (q) Rotary Park, (r) Secret Park, (s) Skateboard Park, (t) Slater Park, (u) South Mercer Playfields, (v) Wildwood Park, (w) 53<sup>rd</sup> Street open space, (x) the West Hill or Kite Hill portion of the Community Center, (y) the Engstrom Open Space, (z) all currently undesignated parks and open space, and (aa) all developed and undeveloped street ends that abut Lake Washington. Parkland acquired by the City in the future is also subject to this Chapter.

**NEW SECTION 19.20.040 – Non-parkland Uses.** The following uses are not parkland uses: (a) community center, (b) performing arts center, (c) recycling center, (d) swimming pools, (e) housing, (f) city administrative offices, (g) parking garages, (h) transportation facilities, and (i) buildings larger than one thousand square feet. The following are allowed in parklands (a) restrooms, (b) docks, (c) permanent play equipment, (d) playfields, (e) artificial turf, (f) forested areas, (g) and underground utilities.

**NEW SECTION 19.20.050 – Judicial Review.** A. Within 30 days of the effective date of an ordinance or other City action changing the use of parkland to non-parkland purposes, any person may seek review in King County Superior Court. “Other City action” includes any action changing the use of parkland to non-parkland purposes without following the requirements by this Chapter, including but not limited to accepting applications for permits or approvals or issuing permits or approvals. Judicial review of City actions under Chapter 19.20 shall be de novo. The Superior Court shall invalidate the proposed parkland change of use if it is not necessary or if the proposed replacement land is not equivalent or better than the converted parkland. The burden of proof shall be on the City to show that the change of use is necessary and that the exchanged land is equivalent or better than the converted parkland. Courts shall take into account the policy of this chapter that parkland should be preserved and that if parkland is converted to non-parkland use, then there shall be no net loss of parkland with equivalent or better land provided. B. Within twenty days of service of the notice of appeal, the City, at its sole expense, shall file the complete record of the action appealed, including transcripts of the evidence and the papers and exhibits relating to the action for which a complaint has been filed. C. Any person who prevails against the City in any action in the courts seeking to protect parkland as provided in this Chapter shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. If the City prevails, the City shall not be awarded costs, attorney fees, or expenses of any kind. A City Council decision not to change the use of parkland is not appealable.

**Section 2: Severability/Validity and Captions.** The provisions of this ordinance are declared separate and severable. If any section, subsection, clause, or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this ordinance. Captions provided are not substantive. The City Clerk may renumber or format this chapter, this ordinance, or these sections for proper codification in Mercer Island City Code, without changing substance.

**Section 3: Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

**Section 4: Effective date.** If a majority of the number of votes cast favor this ordinance, it shall become effective immediately. In the event, the City sells, leases, transfers, or changes parkland to a non-park use after the filing of the initiative petition for this ordinance and before the ordinance takes effect, the City must purchase or receive land that is equivalent or better than the converted parkland of the same size, value, and usefulness, in the same vicinity.

**We Need Help! 3,000 valid signatures are needed to place the initiative on the November 8, 2016 ballot!**

**Volunteers and donations are needed! If you would like to help us, please provide us your name/email/phone below:**

Please send donations by separate envelope to the address provided on this petition.  
Please make checks payable to “Concerned Citizens for Mercer Island Parks” or to “CCMIP.”  
**THANK YOU!**

# **EXHIBIT B**

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## March 2016 City Update - Super Tuesday

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From: **Dan Grausz** (Dan.Grausz@mercergov.org)

Sent: Tue 3/01/16 12:27 PM

To: Dan Grausz (dangrausz@gmail.com)

March 1, 2016

Fellow Islanders:

With Spring almost upon us, there is much happening in our City that I think you may be interested in hearing about. As always, if you would prefer not receiving these updates, please send me an email. Also, while I think everyone already knows this, these updates reflect my viewpoint and should not be read as being an official City report or reflective of the views of other Councilmembers.

1. Mercer Island Center for the Arts (MICA): by a 6-1 vote, the Council approved on February 22<sup>nd</sup> a Memorandum of Understanding (MOU) with MICA that will enable them to undertake a State Environmental Policy Act (SEPA) review of the proposed project in the NW corner of Mercerdale Park, at the site of the old Recycling Center. The MOU includes as an exhibit a Ground Lease that the City and MICA can choose to enter into in the form attached or as modified following the conclusion of the SEPA review. It will come as no surprise to readers of these updates that I strongly supported the MOU.

The SEPA review, which is expected to take at least two months, will include identification of all environmental impacts of the project and a determination by the City of required mitigation measures. Prior to Council



approval of the MOU and in response to the threat of legal challenges from MICA opponents, MICA had already redesigned the project to avoid placing any structures on the existing wetland. In some ways, this was actually unfortunate as MICA was proposing to replace a small part of what is recognized as a degraded wetland with a new functioning wetland further to the south.

On the day after the Council meeting, MICA opponents filed an initiative with the City Clerk that, while not mentioning MICA by name, is written in a manner that I assume they believe will stop the project if approved by voters. The law requires them to collect about 3,000 signatures within a 90-day period to get the initiative on the ballot.

2. Residential Density: at our January Planning Session, the Council gave tentative approval to the hiring of a staff member who will spearhead what I believe to be essential work on updating the single family portions of our Development Code. Staff had made it clear that without an additional person, it would be impossible to tackle this project in the near future. The Council is also hoping this person can provide some additional strategic planning expertise to reduce our dependence on outside consultants for what has become and will likely remain a steady stream of substantial Development Code and Comprehensive Plan updates.

I am hopeful this position will be filled within the next two months so that we can consider Code modifications that will better preserve neighborhood character by looking at issues involving trees, erosion, lot coverage, setbacks, floor/area ratios, impervious surface deviations, subdivisions and tall fences. It is expected the position will be paid for primarily from development fees.

3. Drinking Water: the City is continuing the remedial work we initiated following the contaminated water scare of two summers ago. The Council received a positive update in January that included information on substantial

upgrades made to potential weak points in the system (those with the highest risk of contamination entering the water supply) and water testing data showing that by various means, we have been able to maintain higher chlorine levels than we were seeing when the contamination occurred.

What was really impressive about the testing data was that we achieved this by improved circulation and without having to add more chlorine to the system as we were initially doing. This enables us to be at a higher chlorine level than before which makes the system safer but below the levels that were causing Islanders to object to the water taste. Stated another way, we are where we want to be from a chlorine level standpoint and we have got there without having to add more chlorine to the water.

We also now have a theory on what caused by contamination in the first place. Suffice it to say that at this point, we are discussing our theory with the City of Seattle, which is our water supplier, and studying what we both need to do to avoid a reoccurrence. If there can be good news when talking about water contamination, this event will ultimately leave our City with a much safer water system.

4. Town Center Visioning Process: the Planning and Design Commissions, sitting as a Joint Commission, continue their work on writing a new Development Code for the Town Center. The next opportunity for the public to provide input will be at 6:30pm on March 9th at West Mercer Elementary.

While their work involves much more than the height of new buildings, that continues to be the issue many Islanders are focused on. They are now considering two main options as to heights, one which would maintain the current height restrictions with some changes in the boundaries as to the 3-story, 4-story and 5-story areas, and the other which would cap most heights

south of 27<sup>th</sup> St. at 3 stories.

Additional issues they are looking at include setbacks, parking requirements, building design, required public amenities, mid-block connections for our longer blocks, landscaping, height calculation methodology and others. Updates on their work can be found on the City's website. The goal remains for the Joint Commission to get its recommendations to the Council by April for final Council action in May in order to avoid the need to further extend the development moratorium.

5. Dogs: a significant number of Islanders are up in arms following the recommendation of the Open Space Conservancy Trust Board that the City Council require dogs in the NW quadrant to be on leash rather than just under voice control. As I have already posted on Nextdoor, this matter has been referred to the Council's Parks and Recreation Committee (Debbie Bertlin, Wendy Weiker and myself). While the Committee has no decision-making authority, it will discuss with staff what the process for public input and action (if any) should be going forward.

At this point, however, the Council has not scheduled any vote on any issue involving dogs in Pioneer Park or anywhere else. I do not know whether there will be Councilmember support to place a proposal on the Council agenda, what that proposal will look like and when it might be considered. I feel pretty confident in saying, however, that it will not be any time soon and I can certainly say it will not happen without Islanders having ample opportunity to weigh in. I continue to encourage people to stand down on this issue until we know what the proposal will actually be that needs to be commented on and when it will be considered.

6. Giving from the Heart Breakfast: thanks to the generosity of many Islanders and Islander businesses, the MI Youth and Family Services Foundation

raised over \$220,000 at their annual Giving from the Heart Breakfast. Special thanks to our co-chairs, Sandy and Ken Glass, our Master of Ceremonies, Sara Page, and our amazing Youth and Family Services staff who do so much for this community.

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Thank you again for enabling me to represent you on the City Council. As I have said before and always tell people, it is an honor and a privilege to work on behalf of this community.

Dan Grausz

Mercer Island City Councilmember

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# EXHIBIT C

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## **FW: letter to Basset, Bertlin, Lancaster, and Sand. MY THOUGHTS ON A COVER LETTER**

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From: **Gary Robinson** (gdrobinsong@gmail.com)

Sent: Fri 3/11/16 4:05 PM

To: 'Bruce Bassett' (bruce.bassett@mercergov.org); 'debbie.bertlin' (debbie.bertlin@mercergov.org)

Cc: 'Steve Lancaster' (steve.lancaster@mercergov.org); 'Kari Sand' (kari.sand@mercergov.org)

Mayor Bassett,

CCMIP respects and appreciates your even handed and gentlemanly approach to all Citizens including those whose points of view you may not support. As you know, we have limited our Appearance presentations in the spirit of cooperation. It is, therefore, disappointing that a member of Council does not reflect your standards, and takes it upon himself to bully, harass, and intimidate constituents, particularly female. The incident below was written up by one of our members. The actions of Council Member Grausz are totally inappropriate.

We thought it best to first bring this to your attention and trust in your goodwill in giving it the attention it deserves.

*March 11, 2016*

*My name is Elma Borbe, member of Concerned Citizens for Mercer Island Parks (CCMIP). On Wednesday, March 9, 2016, I went to the West Mercer Elementary School to collect signatures for the Protect Our Parks Initiative, on behalf of CCMIP. As I walked through the doors of the school, I said hi to Robin Peterson, a MICA supporter, greeting citizens. Two CCMIP members were already inside the school/hallway. So, I decided to accompany Robin, to distribute flyers for the initiative.*

*Mr. Dan Grausz stepped outside and I introduced myself, reaching out to shake Mr. Grausz's hands. I was pleased to see him and looked forward to talking with him – I've voted for him every time he ran for office. However, he purposely placed his hand inside his pocket, saying I'm not going to shake your hand. He said: You are associated with that group whose members have caused so many problems for the City. They are liars. You don't know them. I know them. You shouldn't use your talents with this group. They are just using you.*

*Mr. Grausz also said that I will not be able to talk about the initiative during public appearances anymore - at Council meetings. He/they will stop me from asking for help of the community to sign*

*the initiative. He said that talking about the initiative during the appearance is use of “public facilities.” I am not a lawyer, but I’ve reviewed RCW 42.52.180 Use of public resources for political campaigns [Attachment A] and my interpretation of this law is that the limits are for city staff and elected officials. City and elected officials are prohibited from using public facilities during a campaign/ballot election. I tried to explain that collecting signatures for the initiative is not a campaign and that the initiative is not considered “ballot” until we get the required number of signatures. Mr. Grausz dismissed me saying that they won’t allow me to talk about the initiative anymore. I said, thank you very much and he didn’t respond, gruffly walking inside.*

*Later, Tom Acker, walked up and gave Robin a hug, being long-time friends. Mr. Acker shared with Robin that Mr. Grausz did something that he didn’t agreed with. Mr. Grausz asked if Mr. Acker would publically opposed the Protect Our Parks Initiative. Mr. Acker refused and said that he wouldn’t be bullied by Mr. Grausz.*

*After these incidents transpired, I felt belittled and bullied by Mr. Grausz. He publically humiliated me. He intimidated me, saying that what I was doing was wrong and that I was with the wrong people. He questioned my judgement. By stating that he/they will prohibit me from talking about the initiative and asking for help from the community during public appearances, I believe that he is violating my constitutional right to free speech. I believe that the RCW/state limits use of public facilities during a campaign – and those actions are limited to city employees and elected officials. I am neither a city employee nor am I an elected official. I believe that collecting signatures for the initiative is not considered a ballot. Until we collect the appropriate number of signatures, the initiative is a piece of paper. It is not a ballot.*

Attachment A:

RCW 42.52.180

*Use of public resources for political campaigns.*

*(1) No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.*

*(2) This section shall not apply to the following activities:*

*(a) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition as long as (i) required notice of the meeting includes the title and number of the ballot proposition, and (ii) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an*

*opposing view;*

*(b) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry. For the purposes of this subsection, it is not a violation of this section for an elected official to respond to an inquiry regarding a ballot proposition, to make incidental remarks concerning a ballot proposition in an official communication, or otherwise comment on a ballot proposition without an actual, measurable expenditure of public funds. The ethics boards shall adopt by rule a definition of measurable expenditure;*

*(c) The maintenance of official legislative web sites throughout the year, regardless of pending elections. The web sites may contain any discretionary material which was also specifically prepared for the legislator in the course of his or her duties as a legislator, including newsletters and press releases. The official legislative web sites of legislators seeking reelection shall not be altered between June 30th and November 15th of the election year. The web site shall not be used for campaign purposes;*

*(d) Activities that are part of the normal and regular conduct of the office or agency; and*

*(e) De minimis use of public facilities by statewide elected officials and legislators incidental to the preparation or delivery of permissible communications, including written and verbal communications initiated by them of their views on ballot propositions that foreseeably may affect a matter that falls within their constitutional or statutory responsibilities.*

*(3) As to state officers and employees, this section operates to the exclusion of RCW [42.17A.555](#).*

We believe that Councilmember Grausz' behavior is a transgression of not only appropriate conduct for a City Council Member but is false and was clearly an effort of a 6 foot, 200 lb (estimate) man (Grausz) to intimidate a 5 foot, 95 lb (estimate) woman. Moreover this is not the first incident where Councilmember Grausz has sought to intimidate or harass a woman with which he disagrees.

We appreciate your consideration of our concern..

Thank you.

Best,





**G.**

*For the Concerned Citizens Committee for Mercer Island Parks*

[protectmiparks@gmail.com](mailto:protectmiparks@gmail.com)

[www.protectmiparks.org](http://www.protectmiparks.org)