



STATE OF WASHINGTON
PUBLIC DISCLOSURE COMMISSION

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BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

In RE COMPLIANCE WITH
RCW 42.17 and RCW 42.17A

Lynnwood Transportation Benefit
District & City of Lynnwood
Officials

Respondent.

PDC Case 1345 (Formerly Complaint
T15-042 and Case 915)

Report of Investigation

I.

Background

- 1.1 The City of Lynnwood (City) is a code city operating under Titles 35 and 35A RCW, located in Snohomish County with approximately 36,000 residents. The City is authorized to establish a transportation benefit district within the City. Transportation benefit districts are quasi-municipal corporations with the authority to acquire, construct, improve, provide, and fund transportation improvements within the district. Transportation districts have limited funding mechanisms. A transportation benefit district has the authority to impose a vehicle license of up to \$20 per vehicle, or certain transportation impact fees on commercial or industrial development, without first obtaining voter approval. With voter approval, a transportation benefit district can impose a vehicle license registration fee of up to \$100 per vehicle, a sales tax in an amount up to 0.2 of one percent, or certain vehicle tolls.
- 1.2 On May 24, 2010, the City of Lynnwood (City) formed the Lynnwood Transportation Benefit District (Lynnwood TBD, TBD or District) by enacting Ordinance 2837. The District's boundaries are the same as the City's boundaries. The Lynnwood Transportation Benefit District is a separate legal entity from the City of Lynnwood, but the District's board members (Lynnwood TBD Board, TBD Board, or Board) are the Lynnwood City Council members, and the City's Finance Director serves as the District's treasurer. The City's Mayor is not a member of the Lynnwood TBD Board. Don Gough, the complainant in this matter, was the Mayor when the Lynnwood TBD was formed. On November 29, 2010, the District adopted a vehicle license registration fee of \$20 per vehicle.

- 1.3 The Lynnwood TBD does not employ its own employees, but contracts for services through an interlocal agreement with the City. This means that City staff performs the operating functions for the District with an appropriate reimbursement submitted to the City from District funds. Employees of the City's Public Works Department provide most of the contract work for the District.
- 1.4 On August 18, 2014, the Public Disclosure Commission (PDC) received a complaint from Don Gough concerning activities of officials of the Lynnwood TBD and the City of Lynnwood.

II. **Allegations**

- 2.1 On August 18, 2014, the Public Disclosure Commission received a complaint from Don Gough alleging that officials of the Lynnwood TBD and the City of Lynnwood may have violated RCW 42.17A.555 by using facilities of the District and the City to support Proposition 1, a ballot measure on the November 4, 2014 general election ballot, to raise funds for the District's transportation projects by imposing a 0.2 percent sales tax increase. Proposition 1 was rejected by voters with 4,362 No Votes (52.85%) and 3,892 Yes Votes (47.15%). **(Exhibit 1)**
- 2.2 The complaint alleged that TBD and City officials may have violated RCW 42.17A.555 by: (1) engaging in public outreach (by approving the public outreach or a consultant contract for the outreach) that promoted Proposition 1; and (2) conducting a survey as part of its public outreach (by approving use of the survey) that promoted Proposition 1 by targeting specific groups and asking questions relating to the level of taxation that persons responding to the survey would support.
- 2.3 On September 10, 2014, Mr. Gough supplemented his complaint with additional evidence concerning a survey paid for by the City. The additional evidence included: **(Exhibit 2)**
 1. Lynnwood TBD 2014 Transportation Awareness Survey Key Findings & Results;
 2. Page 35 of Complaint concerning City of Lynnwood's Website as of the date the complaint was filed;
 3. July 24, 2014 email from Kimbra Wellock of PRR to David Mach of City of Lynnwood Re: TBD Survey Report;
 4. July 24, 2014 email from Kimbra Wellock of PRR to David Mach of City of Lynnwood Re: TBD Survey Report;
 5. July 15, 2014 email from David Mach of City of Lynnwood to Julie More of PRR Re: Including TBD Survey Report information Fall Inside Lynnwood community newsletter;
 6. July 2, 2014 email from Kimbra Wellock of PRR to David Mach of City of Lynnwood Re: PRR budget update for public outreach work, including TBD Survey Report.

III. **Findings**

- 3.1 On August 28, 2014, Rosemary Larson, Attorney for the Lynnwood TBD and City Attorney for the City of Lynnwood, requested a two-week extension until September 18, 2014 to reply to Mr. Gough's complaint, to accommodate previously planned vacations by TBD board members and other City or TBD officials or employees, and because of the length and complexity of the complaint, and the need for the TBD board members to discuss the complaint with legal counsel prior to responding to the PDC.
- 3.2 On September 18, 2014, Ms. Larson submitted a written response to the complaint. She provided a description of the City of Lynnwood and the Lynnwood Transportation Benefit District, noting that the Lynnwood TBD is a new entity that was formed by ordinance of the City of Lynnwood on May 24, 2010 as described in the background section of this report. **(Exhibit 3)**

Lynnwood TBD Public Outreach Effort

- 3.3 Ms. Larson stated that the Lynnwood TBD engaged in public outreach efforts to inform their decisions about transportation projects and funding. They expressed a desire to make decisions in light of the priorities of the members of the public living within the boundaries of the District. They discussed public outreach generally in January and February of 2011, October of 2012, and in March and April of 2013. At these meetings, the Board discussed funding options, but did not decide whether to place a matter on the ballot, or what funding method would be used to finance a future transportation project. In March of 2013, the Board discussed not moving forward until they had heard from the citizens as to what they wanted and what they were willing to spend.

Table Events, Neighborhood Open Houses, and a Survey

- 3.4 Over the summer and fall of 2013, the City's Public Works Department staff searched for a firm to assist the Lynnwood TBD in its public outreach effort, and eventually, the Board selected PRR, Inc. (PRR). At a meeting on October 14, 2013, the Lynnwood TBD Board authorized a contract with PRR for consulting services to develop and conduct the public outreach at a cost not to exceed \$59,972, which included a \$5,000 management reserve. The scope of services included preparing informational handouts, conducting various community events, such as "table events" and neighborhood open houses, conducting focus groups, preparing articles for "Inside Lynnwood" (the City's newsletter) and preparing and conducting a statistically valid public survey, including the questionnaire and a findings report. In December of 2013, staff issued a notice to proceed to PRR, and PRR began developing, preparing, and conducting public outreach on behalf of the District.
- 3.5 In 2014, when the activities that are central to the alleged violations occurred, the District's seven Board members (who are also Lynnwood City Council Members) were Loren Simmonds, Sid Roberts, Van AuBuchon, Benjamin Goodwin, M. Christopher Boyer, Ruth Ross, and Ian Cotton. The City's Mayor was Nicola Smith. At a February 10, 2014 TBD Board Meeting, staff and a PRR representative discussed the proposed public outreach with the Board. The presentation to the Board stated that the purpose of

the public outreach effort would be to give people several opportunities to learn about the state of transportation in the City, how it is funded, and transportation needs, so the public would have enough background to provide informed feedback to the Board about their priorities. At this time, a potential ballot measure was mentioned incidentally. The Board discussed communicating the cost and priority of projects.

- 3.6 In late February and early March 2014, PRR conducted five “information table” events at several locations to receive input from a variety of persons. Approximately 90 members of the public attended and provided input. The purpose of these table events was to “raise general awareness of transportation issues; encourage participation in transportation neighborhood meetings; and engage community members who are unlikely to attend one of the transportation neighborhood meetings.”
- 3.7 At a March 10, 2014 TBD Board meeting, staff and two PRR representatives discussed the public outreach conducted to date. They reported to the Board that the table events indicated a lack of awareness of transportation needs and funding needs, a belief that the City’s transportation system is in good repair, satisfaction with how the City is accommodating growth, a belief that certain transportation projects are needed, a need to maintain bus/transit service, questions about light rail and bus service, and the importance of maintenance and capacity-building projects. The Board’s meeting minutes indicated interest in pedestrian and bicycle facilities, and a preference for a “pay-as-you-go” funding option such as a sales tax, instead of a lump-sum option, such as a car tab fee.
- 3.8 At the March 10, 2014 TBD Board meeting, the Board also discussed the proposed survey with staff and PRR representatives. After a discussion, the Board passed a motion authorizing staff to move forward with the survey. The Board concluded that they could review the results of the survey at the June 2014 Board meeting and make a decision in July about whether to submit a ballot measure to voters at the November 4, 2014 general election.
- 3.9 In March 2014, PRR and staff conducted three open houses with approximately 23 people attending. The open houses were advertised in several ways, including online notices in the Everett Herald and Lynnwood Today (local Lynnwood newspaper), flyers in utility bills mailed to approximately 3,700 addresses, email notices to approximately 1,080 subscribers to the City’s e-news list serve, posting notices to the TBD webpage and the City’s home webpage, and door hangers on properties in neighborhoods adjacent to the open house venues. The purpose of the open houses was “to engage community members in a discussion about transportation priorities.” Participants were asked to use “sticker dots” on two display boards to indicate their priority projects, and to indicate their preferred funding option (sales tax or vehicle license registration fee). The results of the open houses were similar to the results of the table events.
- 3.10 On April 22, 2014, PRR initiated an on-line survey, which was a non-statistical version of the survey. On April 25, 2014, the statistical survey was mailed to 5,000 randomly selected addresses within the TBD’s boundaries. The survey included 11 substantive questions. The first seven questions related to satisfaction with the current use of funds for transportation improvement projects, whether participants were aware of the current \$20 vehicle license registration fee, the importance of and willingness to fund certain types of transportation projects, and the level of use of certain streets and access points.

The survey then asked four questions related to the level of support for the two funding options of a sales tax increase or a vehicle license registration fee increase.

Survey Results

- 3.11 The survey of 5,000 randomly selected individuals residing within the boundaries of the TBD found that residents preferred, and would be more likely to support, a sales tax increase over a vehicle license registration fee increase. The survey matched the results of the table events and neighborhood open houses.

TBD Board Action

- 3.12 At a June 30, 2014 TBD Board meeting, PRR summarized the results of the public outreach, including the survey. The Board discussed the results, asked for information about the revenue forecast for the sales tax option, and asked for information about which projects the revenues would be used to fund. The Board then passed a motion directing staff to move ahead with drafting a potential ballot measure to be presented to voters at the earliest opportunity to institute a 0.2 percent sales tax increase.
- 3.13 On July 21, 2014, the TBD Board again discussed various options for presenting a ballot measure to the voting public, and then approved Resolution 5 to submit a ballot proposition to the public at the November 4, 2014 general election. The ballot measure called for a 0.2 percent increase in the sales tax to fund transportation projects.

Response to Allegations in Complaint

- 3.14 As described in the allegations section of this report, the complaint alleged that TBD Board members, who were also Lynnwood City Council Members during 2014, violated RCW 42.17A.555 by authorizing the use of public facilities to conduct public outreach, including a survey that targeted specific groups and included questions regarding the level of taxation that persons responding to the survey would support.
- 3.15 In her response, Ms. Larson summarized RCW 42.17A.555, including paragraph (3) which states that the prohibition against using public facilities to promote or oppose a ballot proposition does not include “(3) Activities which are part of the normal and regular conduct of the office or agency. ...” The response then cited WAC 390-05-271, the definition of “normal and regular conduct” at WAC 390-05-273, and PDC Interpretation 04-02, Guidelines for Local Government Agencies in Election Campaigns.”
- 3.16 Ms. Larson explained that the City of Lynnwood has conducted public outreach and surveys as far back as 2002, and that PRR was selected as the District’s consultant because of its qualifications and experience in providing similar public outreach, including survey work, for other jurisdictions in Washington State. Ms. Larson demonstrated that TBD’s public outreach and survey was consistent with its established practice of communicating with the public. She stated that TBD’s public outreach was part of its normal and regular conduct, conducted in its usual manner.
- 3.17 Ms. Larson explained that the TBD’s public outreach program was consistent with the PDC’s Interpretation 04-02, Guidelines for Local Government Agencies in Election

Campaigns.” She stated that its public outreach program was designed to meet its responsibility to inform the community of the operational and maintenance issues facing the agency, including informing the community of the needs of the agency that the community may not realize exist, in particular, information relating to the need for future transportation facility maintenance, as well as for capital transportation improvement projects, and associated costs. The District’s survey also included questions relating to satisfaction with the current use of funds for transportation projects, awareness of the current vehicle license fee, the importance of and willingness to fund various transportation projects, and the level of use of certain streets and access points.

- 3.18 Ms. Larson denied that the survey was targeted to voters, contrary to the Guidelines. She stated that the five table events were held at different locations: (1) the Lynnwood Senior Center; (2) the Lynnwood Library; (3) the Edmonds Community College; (4) a local coffee shop; and (5) the Lynnwood Recreation Center. The three open houses were held at: (1) a local elementary school; (2) the Lynnwood City Hall; and (3) the Lynnwood Operations and Maintenance Center. She stated that all locations were selected in an effort to receive input from a variety of persons and from a broad spectrum of the population. The open houses were advertised to the general public in a variety of ways. Anyone could attend the table events and open houses and voice their opinions.
- 3.19 The survey did not target subgroups, such as registered voters. It was mailed to 5,000 addresses in the District, and those addresses were randomly selected to ensure statistically valid responses. The District also posted the survey on its website, so that persons not selected for a mailed survey could provide input.
- 3.20 The TBD denied that PRR conducted more advanced analysis, as alleged in the complaint, including “cluster analysis” to identify distinct citizen segments toward which more targeted public outreach could be taken. The TBD stated that neither cluster analysis nor any other advanced analysis was done, and no outreach, other than the outreach already described, was conducted.
- 3.21 The complaint alleged that the survey was prohibited because it included questions related to support for different levels of taxation, contrary to what the Guidelines suggest. Four of the survey questions did address the issue of funding options. Those questions were:
 1. Question 8 asked which of four levels of sales tax increase is reasonable to pay for Lynnwood Transportation improvements;
 2. Question 9 asked which of four levels of vehicle registration fee increase is reasonable to pay for Lynnwood Transportation improvements;
 3. Question 10 asked whether the responder would support a ballot measure to collect additional funding for these transportation improvements; and
 4. Question 11 asked the responder to indicate his or her level of support for a sales tax increase of 0.2 percent, or a vehicle registration fee increase of \$80, and which of those two options the person preferred, if he or she had to choose.

- 3.22 Ms. Larson acknowledged that Question 11 is inconsistent with the Guideline stating that agencies “shall not conduct surveys to determine what taxation level the public would support,” and that Questions 8, 9, and 10 arguably are also inconsistent with the Guideline to different degrees. She acknowledged that although the Guidelines are not regulations found in the Washington Administrative Code, they do express the Commission’s understanding of the meaning of RCW 42.17A.555. However, Ms. Larson stated that when the District’s public outreach, including its use of surveys, is viewed in its entirety, there was not a material violation of the statute. She noted that all outreach and research occurred before the Board made a final decision to place a ballot measure on the November 4, 2014 ballot, the outreach and research was not targeted to any subgroup, such as registered voters, and the outreach and research was part of and consistent with the “normal and regular” activities of the District and the City of Lynnwood.
- 3.23 Ms. Larson stated that the overall tone and tenor of its public outreach effort, including its use of surveys, was not a “marketing or sales effort” for a potential ballot measure as described in the Guidelines as a prohibited activity. Rather, she stated that the written materials made available to the public described current funding sources, provided information on the District’s proposed transportation projects, including project costs, stated the shortfall between current funding and needs, described the two primary funding solutions, and informed the public on how to learn more and provide input to the District. Ms. Larson noted that the two funding solutions described in the written materials provided during its public outreach efforts are the two funding methods commonly used by transportation benefit districts.

Conduct of Similar Agencies

- 3.24 Ms. Larson stated that the TBD acted in good faith by contracting with a well-qualified consultant to assist in its public outreach, and the design of its community research, including the survey. Ms. Larson stated that PRR indicated it had prepared and conducted a very similar survey, with almost identical questions relating to support for levels of taxation, for Community Transit. She stated that PRR had also prepared and conducted a survey for Kitsap Transit that included questions regarding support for levels of taxation. Ms. Larson noted that it was the TBD’s understanding that other jurisdictions had presented very similar surveys to the public. She cited the Mercer Island School District in 2013, Snoqualmie Valley School District in 2014, and the King County Parks Department in 2012. Ms. Larson noted that while the actions of other agencies is not a defense, it should be considered as a mitigating factor when evaluating the TBD’s actions.

TBD Board Training

- 3.25 Ms. Larson stated that while TBD board members received training concerning RCW 42.17A.555, the training did not provide specific information about the application of the statute to community outreach and research. She said the fact that Board members attended training on the topic of RCW 42.17A.555 shows that the Board took compliance with RCW 42.17A.555 seriously and were making good faith efforts to meet the requirements of the law. Ms. Larson asked that this effort be considered as a mitigating factor when evaluating the TBD’s actions.

3.26 Ms. Larson stated that when the overall tone and tenor of its community outreach and research is evaluated, the conclusion should be that the District did not violate RCW 42.17A.555, or that any violation was not material. She stated that the purpose of the outreach was to provide information to the community about the operational and maintenance issues facing the District and potential transportation projects and funding options, and to obtain the community's input on priorities for potential transportation projects and funding options. The TBD denied that the community outreach was a "voter persuasion" effort, stating that it was an effort to engage the public to aid the Board's decision-making process.

Response to Additional Allegations in September 10, 2014 Supplement to Complaint (See Paragraph 2.3 under Allegations)

3.27 In its initial response, received September 18, 2014, the TBD, through Ms. Larson, stated that the emails described in the complainant's September 10, 2014 additional allegations, referring to a future newsletter or media outreach (emails dated July 2 and July 15, 2014) were preliminary, brief discussions that did not lead to the preparation of an article on survey results or to any further outreach. Ms. Larson stated that no newsletter had been published, and no article on survey results had been prepared.

3.28 Ms. Larson stated that since the time of those emails, TBD staff had discussions about the application of RCW 42.17A.555, and would not be including information on survey results in its newsletter. She stated that they had no plans to publish the survey results before the election.

3.29 Ms. Larson denied that the emails relating to an allegation that PRR's revisions to its final report two or three days after the Board passed a resolution to place a measure on the ballot (emails dated July 11, 23, and 24, 2014) were designed to influence the election. She stated that PRR's final report was prepared to make a written record, and to inform the District's Board of the results of the survey. She stated that the report was not finalized until a few days after July 21, 2014 because of the staff's and PRR's workload. She characterized the complainant's attribution of improper motive to staff and PRR as unsupported speculation. Ms. Larson stated that neither the report nor other information about the survey results would be posted on the District's or the City's website or otherwise published until after the election on the ballot proposition.

Comments in Conclusion of Lynnwood TBD Initial Response to Complaint

3.30 Ms. Larson stated that its public outreach was consistent with the normal and regular conduct of the District, the City of Lynnwood, and other similar public agencies. She noted that the outreach was performed before the Board made a decision to submit the ballot proposition to the voters, and it was not targeted to any subgroup of the District's residents. She said it was not designed to shore up support for the ballot proposition. She said the purpose of the outreach was to inform the public about transportation project operational and maintenance issues and needs, and to obtain information to assist the TBD Board members in making decisions given the public's priorities for transportation improvement projects and preferred funding options. She said based on these reasons, the TBD does not believe that RCW 42.17A.555 was violated, or that any violation was not material, and asked that the PDC dismiss the complaint.

Request by TBD that PDC Staff Review its Proposed Publication Concerning the November 4, 2014 Ballot Proposition.

- 3.31 On September 25, 2014, PDC staff received a letter from Ms. Larson, asking staff to review a draft publication concerning the Lynnwood TBD's November 4, 2014 ballot measure to increase the sales tax by 0.2 percent to fund certain transportation improvements. Ms. Larson included: **(Exhibit 4)**
1. A draft single-page publication titled "Transportation Benefit District Fact Sheet."
 2. A draft notice/description of the ballot measure which would be placed on the TBD webpage.
 3. A draft webpage titled "Proposition 1: Sales and Use Tax for Transportation Improvements"
 4. An email dated September 25, 2014 from David Mach, a City of Lynnwood staff member providing services for the TBD, describing the manner in which the District proposes to distribute the Fact Sheet, and describing the webpage postings.
- 3.32 On September 25, 2014, PDC staff replied to Ms. Larson, stating that due to reduced staff resources, the PDC was phasing out its review of fact sheets, and would not be able to review the TBD fact sheet. Staff told Ms. Larson that in the near future, there would be fact sheets previously reviewed by staff, on the PDC web site for review by public agencies. Staff also informed Ms. Larson that because of Gough's complaint, it was not appropriate to provide an analysis of the fact sheet. **(Exhibit 5)**

Supplemental Response Received November 2, 2015

- 3.33 On November 2, 2015, in response to the PDC formalizing its investigation and providing an opportunity for the Respondent to submit an additional response, Ms. Larson submitted supplemental response to the complaint on behalf of the Lynnwood TBD and the City of Lynnwood. **(Exhibit 6)**
- 3.34 Ms. Larson stated that the additional materials submitted by the complainant on September 10, 2014 (See paragraph 2.3 under allegations), related primarily to Mr. Gough's allegation that the District was going to improperly use the results of the 2014 survey or outreach in a communication to the public in advance of the November 2014 election. In its initial response, the District stated that it did not intend to include information about the survey results in any newsletter, and that it intended to ask PDC staff to review any such publication for compliance with RCW 42.17A.555. As previously noted, on September 25, 2014, the District asked PDC staff to review a draft publication and related materials concerning the November 4, 2014 ballot measure and its proposed distributions, and PDC staff declined to review the material. Ms. Larson stated that as a result, the District did not publish any fact sheet at all, at any time, regarding the District's November 2014 ballot measure, which she said made the allegations in Mr. Gough's September 10, 2014 supplemental complaint moot. Ms. Larson confirmed that neither the District nor the City published any information about the outreach or survey

results which she said made the allegations in Mr. Gough's September 10, 2014 supplemental complaint moot.

- 3.35 Ms. Larson noted that the ballot proposition at issue in the complaint did not pass. She said the District strongly disagrees with the substance of the allegation that the outreach and survey were intended to be a "voter persuasion effort." Ms. Larson re-stated that the purpose of the outreach and survey was to gather information for the District about transportation needs and options.

Lawsuit in Snohomish County Superior Court

- 3.36 Ms. Larson stated that an action was filed in Snohomish County Superior Court. *Hikel v. Lynnwood Transportation Benefit District*, Snohomish County Superior Court Cause No. 14-2-06652-8. The plaintiff is Ted Hikel, a former Lynnwood City Council Member and a former TBD Board Member. Mr. Gough, the complainant in PDC Case 1154, is acting as Mr. Hikel's attorney. Ms. Larson said Mr. Hikel's lawsuit alleged that the District's Board violated the Open Public Meetings Act by providing inadequate notice of its June 30, 2014 Board meeting, and that at the June 30, 2014 meeting, the Board took "final action" or made a final decision to submit a ballot measure to the voters requesting a 0.2 percent sales tax increase. Ms. Larson said Mr. Hikel's lawsuit also alleged that the District's Board had "pre-determined" that it would submit to the voters the ballot measure requesting a 0.2 percent sales tax increase, before the July 21, 2014 meeting when the Board considered, deliberated, and ultimately passed the ballot measure resolution. Ms. Larson noted that the complainant has made these same allegations to the PDC. The PDC has no jurisdiction over the Open Public Meetings Act, and it appears that the District made its decision to place the measure on the November 4, 2014 ballot on July 21, 2014.
- 3.37 Ms. Larson stated that in the Hikel case, the Superior Court denied the plaintiff's request for a Summary Judgment, resulting in the Court agreeing with the District that the Board did not take final action or make a final decision on the ballot measure until the July 21, 2014 meeting. This issue is relevant because activities that occur close in time to a ballot measure election are likely to draw close scrutiny and careful consideration by the PDC as to whether a violation has occurred.
- 3.38 Ms. Larson stated that the Respondent takes the requirements of RCW 42.17A.555 seriously, and at all times made good faith efforts to meet the requirements of the law. She stated that the District's outreach was consistent with its normal and regular conduct, and that of similar public agencies. She stated that the District conducted its outreach before it made a decision to submit the ballot proposition to the voters, and did not target any subgroups of residents. Ms. Larson reiterated that the purpose of the outreach was to inform the public about transportation project operational and maintenance issues and needs, and to obtain information to assist the Board's decisions about transportation improvement projects given the public's priorities for projects and preferred funding options. She asked the Commission to determine that the Lynnwood TBD did not violate RCW 42.17A.555, or that any violation was not material.

IV. **Scope**

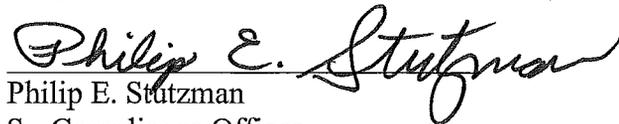
4.1 PDC staff reviewed the following:

- Complaint filed by Don Gough on August 18, 2014, with accompanying materials
- Supplement to complaint filed by Don Gough on September 10, 2014
- Response to complaint received from Rosemary Larson on behalf of the Lynnwood Transportation Benefit District on September 18, 2014
- Supplemental response to complaint received from Rosemary Larson on behalf of the Lynnwood Transportation Benefit District on November 2, 2015

V. **Laws, Rules & PDC Interpretations**

- 5.1 **RCW 42.17A.555** states, in part: “No elective official nor any employee of his or her office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities: ... (3) Activities which are part of the normal and regular conduct of the office or agency.”
- 5.2 **WAC 390-05-273** defines the “normal and regular conduct” of a public office or agency as “conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner.”
- 5.3 **Interpretation 04-02** Guidelines for Local Government Agencies in Election Campaigns - This document is an educational tool that is an expression of the Commission's view of the meaning of RCW 42.17A.555 and relevant administrative rules and case law involving local government and election campaign activity. It is intended to provide guidance regarding the Commission's approach and interpretation of how the statutory prohibition on the use of public facilities for campaigns impacts activities that may be contemplated by government employees and other persons who may seek to utilize those public facilities. Readers are strongly encouraged to review the statute and rules referenced in these Guidelines. For ease of reference, the majority of this interpretation is in chart form. In part, the chart identifies categories of persons, some possible activities, and some general considerations. These illustrative examples in the columns of the chart are not intended to be exhaustive.

Respectfully submitted this 10th day of May, 2016.


Philip E. Stutzman
Sr. Compliance Officer

List of Exhibits

- Exhibit 1** Don Gough Complaint, received August 18, 2014
- Exhibit 2** Don Gough Supplement to Complaint, received September 10, 2014
- Exhibit 3** Lynnwood Transportation Benefit District and City of Lynnwood response to Complaint, received September 18, 2014
- Exhibit 4** Lynnwood Transportation Benefit District Request to Review Proposed Single Publication Regarding Ballot Measure
- Exhibit 5** PDC Response to Request to Review Publication Regarding Ballot Measure
- Exhibit 6** Lynnwood Transportation Benefit District and City of Lynnwood Supplement to Response, received November 2, 2015

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AUG 18 2014

Public Disclosure Commission

1 **Public Disclosure Commission**
2 **Complaint Cover Sheet**

3 1. **Respondent(s)**: Identify who you are filing a complaint against and provide
4 all contact information you have for them.

5 Please see the attached memorandum incorporated by reference.

6 2. **Alleged Violations**: Explain how and when you believe the people/entities
7 you are filing a complaint against violated RCW 42.17/RCW 42.17A or Title
8 390 W AC. Be as detailed as possible about dates, times, places and acts. If
9 you can, cite which specific laws or rules you believe were violated.

10 Please see the attached memorandum incorporated by reference.

11 3. **Evidence**: List the documents or other evidence you have that support your
12 complaint, if any, and attach copies.

13 Please see the attached memorandum incorporated by reference.

14 4. **Witnesses**: List the names and contact information, if known, of any
15 witnesses or other persons who have knowledge of facts that support your
16 complaint.

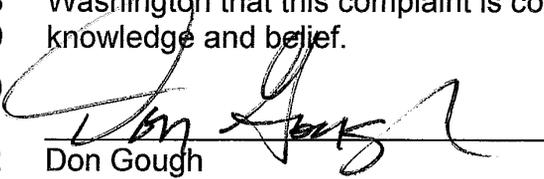
17 Please see the attached memorandum incorporated by reference.

18 **Certification**: In signing this complaint:

- 19 • I have provided all information, documents and other evidence of which I
20 am aware;
21 • if I become aware of additional information, documents or evidence related
22 to my complaint, I will promptly provide it to the PDC; and
23 • I am providing the PDC current information on how to contact me, and will
24 promptly update that information if it changes.

25 **Don Gough, 4324 – 192nd St. S.W.**
26 **Lynnwood, WA 98036 (425)775-9738.**

27 **Oath**: I certify (or declare) under penalty of perjury under the laws of the State of
28 Washington that this complaint is complete, true and correct to the best of my
29 knowledge and belief.

30 
31 _____
32 Don Gough

33 **Date Signed:** August 18, 2014

34 **Signed at:** Lynnwood, Snohomish County, Washington

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Public Disclosure Commission Complaint

A complaint regarding the Lynnwood Transportation Benefit District, and the City of Lynnwood for their respective misuses of public facilities, staff time, taxpayer monies and public resources, in clear violation of RCW 42.17A.555 which expressly prohibits the use of any “public facilities” in support of any ballot measure or campaign. Actions in violation of state law, include but are not limited to, unknown amounts of staff time and other expenditures of resources, but at least \$60,000 for “public education/outreach,” which was a voter persuasion effort and voter survey, both specifically initiated, designed, and conducted, in violation of PDC 04-02 guidelines for local governments, and used to identify voter support for what type, and for what tax level, should be in a ballot measure to raise taxes or fees, and to conduct activities that are intended to be a marketing, persuasion, and sales effort to improperly engineer the circumstances to help pre-determine and thus assist in influencing an election outcome in November 2014, regarding a ballot measure for a two-tenths (.2) of 1% increase in the local city sales tax level.

Please Note: Unless otherwise stated or referenced in the text of this memorandum in support of the complaint, all words, phrases, and/or sentences, which are underlined, in bold case, in colored font, or in italics, are those added by the author to any original quoted text for emphasis.

1 **Introduction & Overview**

2
3 **PDC Interpretation 04-02 (as Amended):**
4 **Guidelines For Local Government Agencies**
5 **Re: Prohibited Uses of Public Facilities**

6 The Washington State Public Disclosure Commission issued Interpretation
7 04-02 (PDC 04-02) ten years ago in 2004, which has since been amended three
8 (3) times, to provide guidance to local governments. The PDC Guidelines are:

9 *“ . . . [I]ntended to provide guidance regarding the commission’s*
10 *approach and interpretation of how the statutory **prohibition** on the*
11 *use of public facilities for campaigns impacts activities that may be*
12 *contemplated by government employees and other persons who*
13 *may seek to utilize those public facilities”¹*

14 PDC 04-02, as last amended May 22, 2013, provides central guidance as to
15 “**permitted**” and “**not permitted**” uses a public facilities related to campaign-like
16 activities, and is used to express the PDC’s view of the meaning of RCW
17 42.17A.555 (formerly RCW 42.17.130).²

18 A majority of PDC 04-02 Guidelines are in chart form for ease of reference
19 and to give illustrative examples, but as the PDC says they “**are not intended to**
20 **be exhaustive.**”³

21 **PDC 04-02: Guideline Basic Principles**

22 The following excerpts of **Guideline “Basic Principles”⁴ (GBP)** from PDC
23 04-02 are used here to set a context. Each excerpt appears to be particularly
24 applicable in this case:

25 **GBP-1.** “....

¹ PDC Interpretation 04-02 at page 1.

² Id. at 1-2.

³ Id.

⁴ Id. at 3-5.

1 **GBP-2.** The Public disclosure commission holds that it is not only the right,
2 but the responsibility of local government to **inform** the general public of
3 the operational and maintenance issues facing local agencies. This
4 includes informing the community of the needs of the agency that the
5 community may not realize exist. Local governments may expend funds for
6 this purpose **provided the preparation and distribution of information**
7 **is not for the purpose of influencing the outcome of an election.**

8 **GBP-3.** ...

9 **GBP-4.** **Supervisory personnel** have a **duty to know, apply, and**
10 **communicate** to their staffs the difference between **acceptable**
11 **information activities** and **inappropriate promotional** activities in support
12 of local government ballot measures.

13 **GBP-5.** Local elected officials are free to support agency ballot issues and
14 engage in other political activities as long as such activities **do not make**
15 **use of government facilities, time or resources . . .**

16 **GBP-6.** ... The PDC has, over the years, developed methods of considering
17 and analyzing activities engaged in by public offices. Among the **factors**
18 considered are the **normal and regular conduct**, and the **timing, tone,**
19 and **tenor** of activities, in relation to ballot measure elections. As in any
20 matter where **intent** is to be considered, hard and fast rules, which will be
21 applicable to all situations, are difficult to establish.

22 **GBP-7.** (a) . . .

23 (b) . . .

24 (c) **Agencies** are urged to read the definitions of "normal and regular"
25 at **WAC 390-05-271** and **WAC 390-05-273**. Agencies need to be
26 aware, however, that **in no case will the PDC view a marketing**
27 **or sales effort related to a campaign or election as normal and**
28 **regular conduct.**" See WAC Secs. 271 & 273 in **Exhibit 1**.

1 **PDC Guidelines – Surveys and “Other Community Research”**

2 PDC 04-02 Guidelines at pages 24 and 25 (see **Exhibit 1**) specifically
3 relating to “surveys” and “community research” are quoted, but slightly
4 reformatted below to show the elements within each paragraph.

5 **Surveys And Other Community Research**

6 **[#1] Permitted:** “Agencies *may conduct surveys* and/or other
7 *community research*, including demographic questions, to
8 determine:

- 9 • the community’s *priorities*,
- 10 • public perception of *performance*,
- 11 • and/or to *inform* the community about agency programs and
12 policies.”

13 **Not Permitted:** “Agencies *shall not conduct surveys to determine*
14 *what taxation level the public would support.*”

15 -----
16 **[#2] Permitted:** “Agencies *may conduct community research* (including
17 but not limited to the use of *questionnaires, surveys, workshops,*
18 *focus groups, and forums*) to determine:

- 19 • the community’s *priorities* for both programs and/or facilities
20 • “

21 **Not Permitted:** “Agencies *shall not conduct surveys designed to*
22 *shore up support* or opposition *for a ballot measure.*”

23 **General Considerations:** “Does the election – related *survey*
24 *target specific subgroups.*”

25 -----
26 **[#3] Permitted:** “The *surveys* and/or other *community research* can be
27 conducted *before or after* the governing body has *approved a*
28 *resolution to place a ballot measure on the ballot.* However,
29 research conducted after the adoption of the resolution may be
30 subject to greater scrutiny.

1 **Not Permitted:** “Agencies shall **not target registered voters or**
2 **other specific subgroups** of the jurisdiction in conducting their
3 **election–related surveys.”**

4 **General Considerations:** “Is the **survey or community research**
5 **consistent with normal and regular activities** of the agency?”
6

7 **[#4] Permitted:** “Agencies may **publish survey results** if it is consistent
8 with the ***normal and regular conduct*** of the agency.”

9 **Not Permitted:** “agencies **shall not use survey results** in **any**
10 **manner designed to support** or oppose a . . . ballot measure.”

11 **A Reminder.** As PDC 04–02 makes clear on page 1, “chart-form”
12 guidelines are for ease of reference and to give illustrative examples, but as
13 the PDC says, they “**are not intended to be exhaustive.**” Keeping that in
14 mind, the following observations are respectfully offered for consideration.

15 **Some Observations & A Framework.** First, the phrase, “**surveys and/or**
16 **other community research**” appears to clearly include “surveys” within the group
17 of “other” ways by which “community research” may be conducted. “Community
18 research” is the overall category. Surveys are just one means of doing
19 “community research,” although they do also present some unique issues.

20 Second, the chart-guideline appear to have three (3) distinct aspects that cut-
21 across the various chart-guidelines regarding “community research”:

- 22 A. A scope of **permitted purposes and/or objectives** for which local
23 governments may conduct “community research;” and,
24 B. A broad range of **permitted ways and means** by which local
25 governments may conduct “community research;” and,
26 C. Clearly defined limits with **prohibited purposes and reasons, and/or**
27 **conduct** for which local governments shall **not** do “community
28 research.”

1 Third, to assist in presenting the issues involved here, an analytical framework
2 of the three (3) aspects of the chart-guidelines it seems can be compiled, and is
3 respectfully offered, as follows:

4 **A Chart-Guidelines Analytical Framework**

- 5 • **Scope of “Permitted” Community Research.** Agencies may conduct
6 and publish community research consistent with the “normal and regular”
7 activities of the agency, and which may include demographic questions
8 rationally related to research purposes and not prohibited, before or after
9 approval by the governing body of a ballot measure :
 - 10 ○ To determine the community’s **priorities**;
 - 11 ○ To determine community **priorities for programs and/or facilities**;
 - 12 ○ To determine public perception of **performance**;
 - 13 ○ And/or to **inform** the community about agency programs and
14 policies.
- 15 • **Range of Research Activities.** Community research may be conducted
16 by mail, phone, on-line, in-person or by other means, but is not limited to,
 - 17 ○ Formal scientifically valid surveys; and,
 - 18 ○ Informal methods of questionnaires, workshops, focus groups, forums
19 and/or other survey methods.
- 20 • **“Not Permitted” and Prohibited Purposes, Reasons, Activities &**
21 **Scrutiny.** Local agencies are “not permitted” and prohibited from
22 conducting any community research:
 - 23 ○ To determine what taxation level the public would support;
 - 24 ○ To shore up support or opposition for a ballot measure;
 - 25 ○ To target registered voters or any specific community subgroups;
 - 26 ○ In any manner designed to support or oppose a ballot measure;
 - 27 ○ And, community research conducted after the adoption by the
28 governing body of a ballot measure may be subject to greater scrutiny.

29 This framework will be used to assist the presentation and summary of the issues
30 here.

1 **Background**

2 ***In 2010 the City of Lynnwood Created a***
3 ***“Transportation Benefit District” Allowed by a New State Law***

4 The **City of Lynnwood**, Washington, is a municipal corporation, operating as
5 a non-charter code city under RCW 35A.12. Under a recent change in state law,
6 the city created by Ordinance #2837 in 2010, the **Lynnwood Transportation**
7 **Benefit District**. The City of Lynnwood is a “local agency” as defined in RCW
8 42.17A.005(2).

9 The **Lynnwood Transportation Benefit District (TBD)**, by state law is a
10 quasi-municipal corporation established in Lynnwood Municipal Code Chapter
11 12.14, pursuant to the authority granted to the city in RCW 35.21.225 and
12 chapter 36.73 RCW. The TBD’s “general powers” are set forth at RCW
13 36.73.040. The **Lynnwood Transportation Benefit District** is a “local agency”
14 as defined in RCW 42.17A.005(2).

15 **Quick Reference:** Lynnwood Municipal Code 12.14, Ordinance #2837, plus
16 RCW 35,21,225 and RCW 36.73.040, are attached for your quick reference in
17 **Exhibit 2.**

18 **Transportation Benefit Districts: A Unique Structure by State Law.** State
19 law provides that the board for the TBD is to be **same** as the seven (7) member
20 Lynnwood City Council.⁵ Therefore, a city mayor is excluded from direct
21 participation and is not on the TBD board. The TBD has **no staff**, therefore, it
22 gets from the city staff time and resources, and all other facilities, supplies, and
23 items, all of which is tracked and the TBD must pay for.⁶

24 The TBD Board President is the chief administrative officer of the TBD.⁷ The
25 President has authority to set agendas, direct staff efforts, and sign and execute

⁵ Lynnwood Transportation Benefit District, Resolution #1, See Exhibit 3, Sec. 5.02

⁶ Id. Sec. 5.03

⁷ Lynnwood Transportation Benefit District, Resolution #1, See Exhibit 3, Sec. 5.04

1 TBD ordinances, resolutions, and negotiate and approve administrative matters,
2 contracts, and all other forms of official documents.⁸

3 The city mayor continues to have under state law general supervisory
4 authority and duties, over the city staff even while they are providing services to
5 the TBD.⁹ According to TBD minutes, Lynnwood Mayor Smith attended virtually
6 all of the 2014 TBD meetings , i.e. February, March, June, and possible in July,
7 too.¹⁰ Therefore, the mayor had actual knowledge of the actions of the TBD
8 board, its officers, and city staff in regard to implementing the
9 “outreach/educational” effort and the city-wide survey. The mayor has authorized
10 the use of non-TBD, city resources to conduct activities discussed in this
11 complaint, such as use of the city newsletter (about 18,000 circulation) and other
12 city resources in support of the TBD;s voter persuasion and “outreach.”

13 The Lynnwood City Attorney is also TBD legal counsel.¹¹

14 The Lynnwood Finance Director is also TBD Treasurer, and therefore, is
15 charged with critical responsibilities for the use, accounting, conservation and
16 protection of public tax monies and assets of the TBD.¹² The Finance Director is
17 reported to have attended the October 2013 and June 2014 meetings.

18 **Quick Reference:** The Lynnwood Transportation Benefit District’s Resolution
19 #1, its organizational and operational charter, is in **Exhibit 3.**

20 **Statement Of Facts**

21 ***It All Started with a \$60,000 Consultant Contract***

22 **October 14, 2013.** A TBD board regular meeting. Agenda Item 80 was a
23 **“Consultant Contract: Community Education And Outreach.”** The cover
24 page for item 80 requested:

⁸ Id. Sec. 5.04

⁹ RCW 35A.12.100

¹⁰ See minutes correction on July 21, 2014.

¹¹ Id. Sec. 5.07

¹² Id. Sec. 5.06

1 **"ACTION: Authorize the TBD board president to enter into and execute**
2 on behalf of the TBD a contract with PRR of Seattle, WA for the purpose of
3 providing **community education and outreach services** in the amount of
4 **\$60,000**, which includes management reserve of approximately 10% and is
5 consistent with the TBD budget.

6 **ATTACHMENTS: None**

7 When item 80 came up for discussion, city staff made an oral presentation about
8 the solicitation, interviews, and selection of a consultant to do "public outreach"
9 and the general scope of work to be done. TBD board members asked
10 questions about the nature and scope of work to be done. Several times city staff
11 indicated that they intended using their city work time to help provide services
12 and support, together with the consultants, to accomplish the
13 "outreach/educational" effort, and tasks to be done under the proposed contract.

14 **TBD Action (10/13/14).** Five (5) of seven (7) board members were present at
15 the meeting, and Board President Simmonds, VP Roberts, and board members
16 Lonergan–Dreke, AuBuchon, and Boyer, unanimously voted for the action
17 requested. **No written contract was presented for approval at the meeting.**
18 Public works director Franz "commented that staff would **come back with a**
19 **more detailed plan** of the scope of (sic) sequence to make sure the board is
20 comfortable with it."

21 **Quick Reference.** See **Exhibit 4** for TBD minutes for October 14, 2013.

22 **Consultant Contract #2264 – Negotiation & Execution.** During the three
23 (3) weeks after the October 14th TBD board meeting, city staff and TBD Board
24 President Simmonds prepared and reviewed Contract #2264, including its Scope
25 of Work for professional services by PRR. It was signed by PRR on November
26 4, 2013. It was approved and executed by Board President Simmonds on
27 November 25, 2013. The contract is officially dated December 5, 2013. The TBD
28 board did not have another meeting after October 14, 2013, until February 10,
29 2014.

30 **Consultant Contract #2264: "Tactics" To Be Used With The Public.**
31 **Schedule A** of the consultant contract contains a "**Scope of Services,**" to be

1 performed by PRR and begins at page 14. It includes three (3) numbered pages
2 of a "Scope of Work" on PRR letterhead. On page 3 of that Scope of Work, item
3 3 is titled "Community Survey" which states:

4 "PRR will conduct a **survey** to solicit public input to support
5 program objectives. PRR and the city of Lynnwood will **meet**
6 **early** in the project to **clarify the survey's specific objectives**.
7 **Knowing exactly how the survey results might be used** will
8 help PRR answer **key research and design** questions. . . .

9 **Tactics:**

- 10 • . . .
- 11 • More **advanced analysis** will also **be conducted**. For
12 example, logistical regression can be used to **predict which**
13 **types of residents are most likely to support a ballot for**
14 **transportation improvements**. PRR will also conduct cluster
15 analysis **to identify any district citizen segments** toward
16 which more **targeted** public outreach/education approaches
17 may be taken."

18 **Quick Reference:** See **Exhibit 5** for the three (3) page Scope of Work.

19 Consultant Contract #2264 firmly planted the seeds for the wrongful use of public
20 facilities, staff time, public monies, and the "tactics" to be used on the public.
21 Apparently, the early meeting(s) between the city and PRR to "clarify the survey's
22 objectives," and how its results would "be used," quickly crystalized into a clear
23 intent and purpose. It was to use public taxpayer monies to pay for a survey to
24 identify voter support, and for a voter contact marketing, persuasion, and sales
25 plan, with the "overall goal of the survey is to assess Lynnwood residents'
26 willingness to support a ballot measure."¹³ Then, it was to determine how to pass
27 a tax increase ballot measure in November 2014. Relatively speaking, very little
28 was about "education/outreach" and "community priorities."

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¹³ See the March 10, 2014, TBD board minutes at 2, lines 17-22, and at page 22 infra...

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January 2014:
***At the Very Beginning, TBD Board Leadership
Directed & Approved the Overall Goal & Purpose
of the “Outreach Effort” as a Marketing,
Persuasion & Sales Effort for a Pre-Determined
Tax Increase Ballot Measure Scheduled for
November 2014***

The **Outreach Event Summary**¹⁴ (OES) report prepared by PRR consultants candidly admits, with succinct and revealing statements: the **pre-determined** nature of; what the **true intentions** were for; and what activities actually happened at, the public workshop meeting events which began in February 2014. On page 1, paragraph 1, the OES report states:

“Introduction.

The Transportation Benefit District Board is considering a possible future ballot measure to increase the local sales tax and/or increase the vehicle registration fee to generate revenue for transportation projects. In **January 2014** the Transportation Benefit District Board launched an outreach and education program to . . . **find out the answer to the following questions:**

- . . .
- **Would you support a ballot measure to collect additional funding for transportation improvements?**
- **Which funding solution do you prefer – license tab fee increase or a sales tax increase?”**

Quick Reference: See **Exhibit 6** for the **Outreach Event Summary.**

¹⁴ **Please Note:** The **Outreach Event Summary** (OES) report was presented to the TBD board as part of its agenda packet on **June 30, 2014**, at item 50, pages 50-2 through 50-7. The actual text of the public **survey** is at pages 50-8 and 50-9. Each TBD meeting full agenda packet is on the TBD portion of the city website.

1 **“The Brochure.”** Consistent with the board and city staff’s intentions, the first
2 and only written mass communication document in January and early February
3 which was directed at voters was a four (4) page brochure titled, **“Reinvesting in**
4 **Lynnwood’s Transportation Future.”** That brochure was handed out beginning in
5 February 2014 to every citizen participant at the public “outreach/educational”
6 workshop meetings and small group (or 1 on 1) information table events. It was also
7 sent out in response to public inquiries.

8 **“The Brochure: A Newsletter Version.”** The four (4) page brochure was later
9 condensed to three (3) pages in the spring 2014 issue of the city newsletter whose
10 circulation is about 18,000 Lynnwood city only postal addresses.

11 Both the brochure and the newsletter article pushed very hard the cost and
12 underfunded status of city transportation projects. The brochure and newsletter
13 article both say:

14 **“The Transportation Benefit District Board is considering a**
15 **possible future ballot measure to increase the local sales tax**
16 **and/or increase the vehicle registration fee to generate**
17 **revenue for much-needed¹⁵ transportation projects.**

18 Both describe the **pre-determined “Solutions”** as a choice between **only two**
19 **(2) tax increases:** (1) a sales tax increase, or (2) a license tab increase.

20 Specifically, both described the tax increase options as:

21 **“License Tab Fee.** (\$80 increase, from \$20 to \$100 per vehicle per
22 **year). Raises \$2.5 million for transportation projects annually.”**

23 **“Sales Tax.** (0.2%, from 9.5% to 9.7%). Raises up to \$4 million for
24 **transportation projects annually. (Approximately, \$30 per year per**
25 **household, based on \$15,000 in annual taxable spending.)”**

26 **Quick Reference:** See **Exhibit 7** for copies of both the brochure handed out to
27 every citizen participant, and city newsletter article.

28

¹⁵ Only the word “much-needed” is different from the Outreach Event Summary and what is stated in the brochure and newsletter article.

1 **Violating 42.17A.555**

2 RCW 42.17A.555 prohibits the use of “public facilities,” city staff work time,
3 paid consultant time, public monies and other resources in support of a ballot
4 measure.

5 **Clear Intentions: January Planning, Design & Preparation.** The evidence
6 right from the TBD’s and City of Lynnwood’s own consultant OES summary
7 report, the draft city brochure, and city newsletter article, clearly show the TBD’s
8 and City of Lynnwood’s **real purpose and clear intentions.**

- 9 • It was **not** to do a fair, reasonable, open, and unbiased, outreach for
10 “community research.”
- 11 • It was **not** to fairly and reasonably “***inform***” the community.
- 12 • Instead, **before** city staff or the consultants did the first “outreach” event, or
13 **even spoke to the first citizen in late February**, the TBD and city had
14 already **pre-determined** in January:
 - 15 ○ To get voters to answer two (2) tax increase questions;
 - 16 ○ That the “solution(s)” was one (1) of **only** two (2) types and amounts of
17 tax increases. See page 4 of the brochure in **Exhibit 7**.
 - 18 ○ That one tax increase “solution” was going onto the November ballot.

19 And, as for the citizens – well, lucky them – they get to **choose what type of tax**
20 **and how much of a tax increase** would be levied on them through that election.

21 The written documents, articles, materials, and planning and design for
22 workshops, meetings, etc. of the so-called “outreach/education” effort were
23 primarily and essentially a **marketing, persuasion and sales pitch**. Information
24 about community priorities, program performance, or to fairly and reasonably
25 inform the community, were only distant considerations compared to the TBD’s
26 and City’s goal of getting control of millions of dollars per year in higher revenues
27 from increased taxes or increased fees via a one-sided, taxpayer funded
28 marketing, persuasion, and sales pitch.

29 **January: The Clearly Intended & Over-Riding Goal - A November Ballot**
30 **Measure.** The TBD’s and City’s ultimate intentions and goal are best reflected
31 by the official approved one page **schedule and timeline** (see **Exhibit 8**)

1 created in January and handed out at the February 10, 2014, TBD board
2 meeting. The schedule and timeline already pre-determined by TBD leadership
3 and city staff that a tax increase would go on the ballot. It states:

4 **“TBD Board Action:**

5 **July: “TBD meeting: Proceed with Ballot measure and in what format.”**

6 **August: “Nov. 2014 ballot filing due by August 5”**

7 There was no question as to what was going to happen. There wasn't even the
8 least amount of conditionality to the statement:

9 **“*Proceed with Ballot measure and in what format.*”**

10 The only real issue left was “in what format.” They had already decided that
11 one (1) of the only two (2) solutions, would be in a ballot measure, leaving only
12 which “*type of tax*” and “*level*” to be answered.

13 **June 30, 2014, “Final Action” Selecting the Sales Tax Increase Ballot**

14 **Option.** Although scheduled for July 2014, the TBD Board actually jumped the
15 gun and took “*final action*” on June 30, 2014, and decided to select the sales tax
16 increase option which answered the ballot measure question of “*in what format.*”

17 **Analytical Framework Points**

- 18 • **Scope of “Permitted” Community Research.** Agencies may conduct
19 and publish community research consistent with the “normal and regular”
20 activities of the agency. Here, the TBD and Lynnwood may have started
21 with the best of intentions – but seriously strayed off course.
- 22 • **Range of Research Activities.** The TBD and Lynnwood in January did
23 planning and preparation for acceptable methods of community research.
- 24 • **“Not Permitted” and Prohibited Purposes and Reasons.** The TBD and
25 Lynnwood planned, designed, and prepared, to conduct community
26 research for prohibited purposes and reasons, including:
- 27 ○ To determine what taxation level the public would support;
 - 28 ○ To shore up support . . . for a ballot measure;
 - 29 ○ In any manner designed to support . . . a ballot measure;

30

1 Thus, as shown by the evidence above, from the very beginning:

- 2 • In the \$60,000 consultant contract #2264 scope of work; and
- 3 • In early January planning, design, preparation, and drafting of written
- 4 materials;
- 5 • And, in public workshop event design;

6 the TBD and City of Lynnwood intended activities clearly violating RCW
7 42.17A.555, and the clear, simple PDC 04-02 chart-guidelines.

8 **February 2014:**

9 ***The TBD Board Reviewed & Approved All Aspects***
10 ***of the Outreach/Education Voter Identification,***
11 ***Support, Marketing, Persuasion, and Contact Plan***

12 **February 10, 2014:** A TBD “special” meeting. The board received a
13 presentation and then discussed at item 50, the “**Transportation Planning,**
14 **Funding and Community Education/Outreach.**” Board members had an
15 extensive meeting packet of information about the “outreach” effort including:

- 16 • The **schedule timeline** to get a tax or fee increase on the November 2014
17 ballot which stated simply and clearly:

18 **July: “TBD meeting: Proceed with Ballot measure and in what format.”**

19 **August: “Nov. 2014 ballot filing due by August 5”**

- 20 • A draft of the four (4) page **brochure** to be handed out to each workshop
21 participant;
- 22 • A list of public **workshop events** either: 1 on 1 or small group information
23 table events; neighborhood “open houses:” and city hall workshops, i.e.
24 senior center.

25 All items were accepted and approved and city staff and the consultants were
26 now free to implement the “outreach/education” effort as planned in January
27 2014.

28 The evidence shows that always in the forefront of discussions was the push
29 to put a tax or fee increase on the November 2014 ballot. Even when there were

1 statements in meetings about a so-called “education first” efforts (2/10/14
2 minutes), the actual implementation was designed primarily to put pressure on
3 citizens to select one of only two pre-determined tax increase options –
4 either of which was already intended for the fall 2014 election ballot.

5 **Quick Reference:** See **Exhibit 8** for:

6 (a) February 10, 2014, board minutes;

7 (b) **Schedule timeline** from February – August 2014;

8 (c) Agenda Item #50, a three (3) page summary of “outreach/education”
9 events, activities, and communications both **before & after the ballot**
10 **resolution**; and

11 (d) A draft copy of the four (4) page **brochure**.

12 ***Actual “Outreach” Implementation & Its Results:***
13 ***Information Tables***

14 **Five (5) Workshop “Tabling Events” Before the March 10, 2014 Regular**
15 **Meeting.** PRR consultants reported to the TBD board on March 10, 2014 that
16 five information workshop “tabling events” (1 on 1, or small group) had been held
17 around the city and reached about **90 people**. On page 2 of the **Outreach**
18 **Event Summary (OES)**, describes what happened at these workshop events
19 and says:

20 **“Event Overview**
21 **Information Tables.**

22 . . .

23 Project **staff provided a brochure to each participant** that described
24 transportation funding sources and needs, priority projects, and the **two**
25 **funding options** the transportation benefit district board is considering for
26 **a possible future ballot measure** and answered questions.”

27 **Quick Reference:** The six page **Outreach Event Summary** is in **Exhibit 6.**

28 In the March 10, 2014, board minutes at page 2, the consultant reported and
29 described what results came from about **90 citizens** at those events.

1 “. . . As far as **preferred funding options**, a lot of people indicated a
2 preference in the pay as you go nature of **sales tax** as opposed to the
3 lump sum bill you would get when you renew **license tabs**. There was
4 some feedback that increases wouldn't be favorably seen.

5 Note how the focus and emphasis of staff and consultant *presentations*, and
6 board *discussion*, is all about **voter levels of support** and **voter "preferences"**
7 **for tax or fee increases** and the ballot measure. **Not** "community priorities!"

8 **Quick Reference:** March 10, 2014, TBD meeting minutes are in **Exhibit 9**.

9 ***Actual "Outreach" Implementation & Its Results:***
10 ***Neighborhood Workshop "Open Houses"***

11 **Three (3) Workshop "Open House" Meetings After the March 10, 2014,**
12 **Meeting.** The board was advised that three (3) neighborhood workshop "open
13 house" meetings were scheduled after the March 10, 2014, meeting.¹⁶ A total of
14 **23 people** attended these three (3) events. The workshop **Outreach Event**
15 **Summary** on page 2 says:

16 **"Open Houses**

17 . . . Participants provided input by:

- 18 • . . .
- 19 • **Using dot stickers** to indicate a **preferred funding solution** (license
20 **tab fee increase or sales tax increase**)."

21 Here citizens were directed to actually do a "straw ballot" vote on the **type and**
22 **level of tax increase** preferences. On page 5 of the workshop **Outreach Event**
23 **Summary (Exhibit 6)**, it further describes the results from those "public event"
24 meetings by saying:

25 **"Support for a Ballot Measure**

26 Some participants indicated they **would consider approving a ballot**
27 **measure** to raise additional funding for transportation improvements . . ."

¹⁶ March 10, 2014, TBD board minutes at 2, lines 15-16.

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“Preferred Funding Solution

In general, participants **preferred increasing the sales tax** to generate revenue for transportation projects over increasing **license tab fees**. Participants seem to prefer the “pay-as-you-go” nature of **sales tax** to the **license tab fee** payment which is an annual lump sum payment. Participants also noted that the **sales tax option** would be paid by people outside Lynnwood which would mean less burden on Lynnwood residents.”

Violating 42.17A.555

RCW 42.17A.555 prohibits the use of “public facilities,” staff work time, paid consultant time, public monies and other resources in support of a ballot measure.

TBD Board was Fully Advised. The evidence shows that the TBD Board at the February 2014 meeting actively reviewed all aspects of the “outreach/education” voter identification, support, marketing, persuasion, and contact plan. It was fully advised.

TBD Board Knew and Approved Questions & Purposes Violating State Law. The evidence shows that the TBD began its “outreach” to voters knowing the two (2) impermissible tax “support” and “solution” questions, to wit:

“In **January 2014** the Transportation Benefit District Board launched an outreach and education program to . . . **find out the answer to the following questions:**

- . . .
- **Would you support a ballot measure to collect additional funding for transportation improvements?**

- 1 • **Which funding solution do you prefer – license tab fee**
2 **increase or a sales tax increase?”¹⁷**

3 The evidence shows that the TBD began its “outreach” to
4 voters knowing it already had **pre-determined** the **only** two (2)
5 alleged “solutions,” to be put in written materials, to wit:

6 **The Brochure (and later the Newsletter Article(s)) state:**

7 **“The Transportation Benefit District Board is considering a**
8 **possible future ballot measure to increase the local sales tax**
9 **and/or increase the vehicle registration fee to generate**
10 **revenue for much-needed¹⁸ transportation projects.**

- 11 • **“License Tab Fee. (\$80 increase, from \$20 to \$100 per**
12 **vehicle per year). Raises \$2.5 million for transportation**
13 **projects annually.”**
- 14 • **“Sales Tax. (0.2%, from 9.5% to 9.7%). Raises up to \$4**
15 **million for transportation projects annually. (Approximately,**
16 **\$30 per year per household, based on \$15,000 in annual**
17 **taxable spending.)”**

18 The evidence shows the TBD Board through its city staff and consultants
19 actually **implemented** its voter persuasion “outreach/education” plan through
20 public workshop events, i.e. information tables and neighborhood “open houses,”
21 and through on-line and other means of communication. But, the written and oral
22 communications contained content to ask voters “***to determine what taxation***
23 ***level the public would support***” and were “***designed to shore up support***”
24 **for a ballot measure.** This evidence is clear and convincing.

25 Of course, the staff and consultant reports and presentation show – **not**
26 **surprisingly** – that actual implementation of the persuasion effort gave results
27 consistent with the **actual, clear, and unequivocal, intentions** of both the TBD
28 and City to identify and shore up support for a tax increase ballot measure.

¹⁷ See the **OES Summary** at page 1, paragraph 1.

¹⁸ Only the word “much-needed” is different from the Outreach Event Summary and what is stated in the brochure and newsletter article.

1

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3 **Analytical Framework Points**

4 • **Scope of “Permitted” Community Research.** Agencies may conduct
5 and publish community research consistent with the “normal and regular”
6 activities of the agency. But here, the TBD and Lynnwood planned,
7 designed, approved in February, and then actually implemented a voter
8 persuasion “outreach” effort, and – surprise -- got the exact results
9 intended.

10 • **Range of Research Activities.** The TBD and Lynnwood implemented its
11 voter persuasion effort using acceptable means of community research.

12 • **“Not Permitted” and Prohibited Purposes and Reasons.** The TBD was
13 fully advised, and Lynnwood city staff and the consultants actually
14 conducted the voter persuasion plan as directed for clearly prohibited
15 purposes and reasons, including:

- 16 ○ To determine what taxation level the public would support;
- 17 ○ To shore up support . . .for a ballot measure;
- 18 ○ In any manner designed to support . . . a ballot measure;

19 Thus, as shown by the evidence above, the TBD and City of Lynnwood
20 approved and conducted implementation of the voter persuasion plan for
21 purposes and reasons clearly violating RCW 42.17A.555, and the clear, simple
22 PDC 04-02 chart-guidelines.

23 **March 2014:**

24 ***The TBD Board Reviewed & Approved All Aspects***
25 ***of the Mail-Out Survey in the Voter Identification,***
26 ***Support, Marketing, Persuasion, and Contact Plan***

27 **The “Overall Goal” and Intentions of the April – May 2014 Mail-Out**
28 **Survey.** The consultant contract “tactics” sewed seeds for the very activities that
29 appear to blatantly violate the state prohibition against using public facilities,
30 public monies, city staff and consultant time, etc. in support of a ballot measure.

1 It seems helpful to recall that on page 3 of the Scope of Work in the October
2 2013 consultant Contract #2264, item 3 titled "Community Survey" states:

3 "PRR will conduct a **survey** to solicit public input to support
4 program objectives. PRR and the city of Lynnwood will **meet**
5 **early** in the project to **clarify the survey's specific objectives**.
6 **Knowing exactly how the survey results might be used** will
7 help PRR answer **key research and design** questions. . . .

8 **Tactics:**

- 9 • . . .
- 10 • More **advanced analysis will also be conducted**. For
11 example, logistical regression can be used to **predict which**
12 **types of residents are most likely to support a ballot for**
13 **transportation improvements**. PRR will also conduct cluster
14 analysis to **identify any district citizen segments** toward
15 which more **targeted** public outreach/education approaches
16 may be taken."

17 On March 10, 2014, about one (1) to two (2) months before the formal mail-
18 out survey went to 5,000 selected Lynnwood voters, the TBD board fully
19 reviewed the actual questions in the proposed survey. The **true intent** of the
20 whole "outreach" and voter persuasion effort, including the formal survey was
21 exposed by the PRR consultant:

22 ". . . Bruce Brown from PRR gave a general overview of the proposed
23 survey which is planned to be administered in mid to late April. The **overall**
24 **goal of the survey is to assess Lynnwood residents' willingness to**
25 **support a ballot measure** to support transportation funding. He explained
26 that they would be using a combination of **paper surveys** and **online**
27 **surveys**. . . ."19

28 Board members had questions about how to use the survey results and
29 information in regards to supporting a ballot measure. And, the consultants
30 bluntly answered, such as:

19 March 10, 2014, TBD board minutes at 2, lines 17-22..

1 “Board President Simmonds asked **how the information** about race, age,
2 languages, income, voting records, etc. **would be used**. Mr. Brown
3 replied that it could be useful in targeting outreach and messaging to
4 those **potential segments** better. Board President Simmonds commented
5 that the 2010 census showed that ethnic minorities now constitute about
6 40% of our permanent residents, but that **doesn’t appear to be reflected**
7 **in the voting records**. . . .”²⁰

8 Board President Simmonds’ fixation, if not obsession, with votes, voter records,
9 and voter support for increasing taxes or fees, noticeably and grossly **omits** any
10 discussion of the inclusion of, or actions related to, “**community priorities**,” and
11 how those might be worked into TBD decision-making,

12 At no time through doing the formal survey and receiving its results on June
13 30, 2014, did the TBD act to consider, adjust or otherwise clarify what the new
14 increase tax issues would specifically be used for. There is still no specific plan
15 or set of projects.²¹ Instead, discussions again only focused on election
16 campaign tactics of targeting, segmenting and messaging to subgroups, and how
17 those tactics could be used to build voter support and shore up support for the
18 pre-determined ballot measure to raise taxes at the November election.

19 **Analytical Framework Points**

- 20 • **Scope of “Permitted” Community Research.** Agencies may conduct
21 and publish community research surveys consistent with the “normal and
22 regular” activities of the agency. But here, the TBD and Lynnwood
23 reviewed and unanimously voted in March to authorize implementing a
24 voter persuasion survey, and again -- surprise -- got the exact results
25 intended.
- 26 • **Range of Research Activities.** The TBD and Lynnwood use of a survey
27 is an acceptable means of doing community research.
- 28 • **“Not Permitted” and Prohibited Purposes and Reasons.** The TBD and
29 Lynnwood elected leadership and city staff were fully advised. The TBD
30 Board voted unanimously to authorize implementing the voter persuasion

²⁰ Id. at 2, lines 28-33.

²¹ See June 30, 2014 minutes.

1 survey containing questions, and for purposes and reasons, clearly
2 prohibited by PDC 04-02 chart-guidelines which state:

- 3 ○ **#1] Not Permitted:** “Agencies ***shall not conduct surveys to***
4 ***determine what taxation level the public would support.***”
- 5 ○ **#2] Not Permitted:** “Agencies ***shall not conduct surveys***
6 ***designed to shore up support*** or opposition ***for a ballot***
7 ***measure.***”
- 8 ○ **#3] Not Permitted:** “Agencies shall ***not target registered***
9 ***voters or other specific subgroups*** of the jurisdiction in
10 conducting their ***election–related surveys.***”
- 11 ○ **#4] Not Permitted:** “Agencies ***shall not use survey results***
12 ***in any manner designed to support*** or oppose a . . . ballot
13 ***measure.***”

14 The evidence shows a continuing course of intended conduct to do a voter
15 persuasion survey for clearly prohibited purposes and reasons.

- 16 ● It started in the initial consultant contract.
- 17 ● It continued through early planning and design of public workshops and
18 events, and the writing of the brochure, and other voter contact
19 communications.
- 20 ● It continued right into the design, implementation, and intended uses of the
21 voter persuasion survey authorized by the TBD board.

22 All of these activities were conducted for prohibited purposes and reasons, and
23 contained elements in direct violation of RCW 42.17A.555, and PDC 04-02
24 guidelines for local governments.

25 **Please Note:** The discussion here is focused on the fact that
26 the TBD Board and City electeds and staff were totally involved,
27 fully advised and knowledgeable about the content of the voter
28 persuasion survey that was authorized and conducted. A page
29 by page review of the voter persuasion survey results is set
30 forth below in the June 30th meeting section.

31 **Quick Reference:** March 10, 2014 TBD meeting minutes are in **Exhibit 9.**

1 Research Center, Inc. in Colorado, which is a firm specializing in
2 performance measurement and evaluation. A fireworks survey
3 was also done in 2008.

4 The City very well knows the difference between those kinds of
5 surveys and the political campaign-type survey here to do voter
6 identification, support, marketing, persuasion, and contact.

- 7 • **Survey:** Voter “**support for a ballot measure**” and “**preference for**
8 **sales tax increase**” at presentation page 5.

9 ○ **Comment:** PDC chart-guideline pages 24-25 say:

10 **[#1] Not Permitted:** “Agencies ***shall not conduct surveys to***
11 ***determine what taxation level the public would support.***” See
12 also chart-guidelines #2, #3 & #4.

- 13 • **Survey:** Voter **behavior subgrouping** – i.e. 86% having voted 2 to 4
14 times in the last four elections at presentation page 6.

15 ○ **Comment:** PDC chart-guidelines pages 24-25 say:

16 **[#3] Not Permitted:** “Agencies shall ***not target registered***
17 ***voters or other specific subgroups*** of the jurisdiction in
18 conducting their ***election-related surveys.***” See also #4.

- 19 • **Survey:** Voter “**willingness**” to pay for ten (10) types of transportation
20 projects at presentation page 9

21 ○ **Comment:** PDC chart-guideline pages 24-25 say:

22 **[#1] Not Permitted:** “Agencies ***shall not conduct surveys to***
23 ***determine what taxation level the public would support.***” This
24 result appears to be inappropriate because it sets up the “cost”
25 factors that drive the amount of ballot sales tax increase. See the
26 related next item re: “willingness.”

- 27 • **Survey:** Voter “**Willingness to Pay**” via “**two different tax scenarios**”
28 and it also includes the **specific tax or fee increase options**, including
29 “**Overall Ballot Support**” at presentation page 11

30 ○ **Comment:** PDC chart-guideline pages 24-25 say:

31 **[#1] Not Permitted:** “Agencies ***shall not conduct surveys to***
32 ***determine what taxation level the public would support.***” See
33 also chart-guidelines #2, #3 & #4.

- 1 • **Survey:** Voter “**Support for Ballot.**” Here citizens were “. . . to rate
2 **their level of support**” for tax/free increase options at presentation
3 page 12.
 - 4 ○ Comment: PDC chart-guideline pages 24-25 say:
 - 5 **[#1] Not Permitted:** “Agencies *shall not conduct surveys to*
6 *determine what taxation level the public would support.*” See
7 also chart-guidelines #2, #3 & #4.
- 8 • **Survey:** “**Most influential**” factors in getting citizens “. . . to **support** a
9 **sales tax ballot** . . .” then showing 4 specific **subgroups** identified for
10 favorable **voter support** of sales tax ballot at presentation page 13.
 - 11 ○ Comment: PDC chart-guideline pages 24-25 say:
 - 12 **[#1] Not Permitted:** “Agencies *shall not conduct surveys to*
13 *determine what taxation level the public would support.*” See
14 also chart-guidelines #2, #3 (*prohibiting subgroupings*
15 *specifically*) & #4. This is pure campaign targeting and marketing
16 preparation information.
- 17 • **Survey:** Past **voting behavior subgroups** or **segments**, relative to
18 support for sales tax ballot at presentation page 13.
 - 19 ○ Comment: PDC chart-guideline pages 24-25 say:
 - 20 **[#1] Not Permitted:** “Agencies *shall not conduct surveys to*
21 *determine what taxation level the public would support.*” See
22 also chart-guidelines #2, #3 (*prohibiting subgroupings*
23 *specifically*) & #4. This is pure campaign targeting and marketing
24 preparation information.
- 25 • **Survey:** Voter **income** segments and **racial** subgroups relative to
26 “**willingness to support** either ballot option” at presentation page 13.
 - 27 ○ Comment: PDC chart-guideline pages 24-25 say:
 - 28 **[#1] Not Permitted:** “Agencies *shall not conduct surveys to*
29 *determine what taxation level the public would support.*” See
30 also chart-guidelines #2, #3 (*prohibiting subgroupings*
31 *specifically*) & #4. This is pure campaign targeting and marketing
32 preparation information.

1 You'll note at the meeting there was no discussion about "next steps" since
2 the original schedule and timeline handed out and approved by the board in
3 February, states rather clearly and bluntly their intent:

4 **"TBD Board Action:**

5 **June: "TBD meeting – present survey and outreach findings."**

6 **July: "TBD meeting – Proceed with Ballot measure and in what format."**

7 **August: "Nov. 2014 ballot filing due by August 5"**

8 The evidence shows that from the very beginning the TBD and City of
9 Lynnwood had pre-determined intentions to put one of two tax increase
10 measures on the November 2014 election ballot. City Councilmembers/TBD
11 Board members were so determined and anxious to complete their plan to take
12 action to decidewhich tax increase option to put on the election ballot, that on
13 June 30, 2014, they actually jumped the gun and unanimously decided to select
14 the sales tax increase "format." The motion was for a:

15 *"... ballot measure to be presented to the public at the*
16 *earliest opportunity to institute a .2 of 1% increase in*
17 *sales tax ...*

18 The TBD board took "***final action***" on Agenda Item #50 by unanimously
19 voting for a motion which decided the selection of the sales tax increase option
20 for the November ballot "format," which was one of only two (2) tax increase
21 solutions the board pre-determined in January 2014. The Open Public
22 Meetings Act (OPMA) at RCW 42.30.020(3) defines "*final action*" as:

23 **"Final action"** means a collective positive or negative decision, or an
24 actual vote by a majority of the members of a governing body, when sitting
25 as a body or entity, upon a motion, proposal, resolution, order, or
26 ordinance."

27 TBD Board President Simmonds early on during the board discussion pushed
28 hard for "*final action*" to decide which tax increase to put into the ballot measure.
29 The TBD board minutes for June 30, 2014, at page 2, state:

1 [Board President Simmonds] “. . . reviewed options available to
2 the board for proceeding with the topic at hand and asked for
3 input from the board.”²²

4 [After three board members spoke, then . . .]

5 “Board President Simmonds summarized that it appeared the
6 Board was in support of moving forward with this.

7 ***“Motion made by Board Member Boyer, seconded by
8 Board Member Cotton, to instruct staff to move ahead
9 with the writing of a potential ballot measure to be
10 presented to the public at the earliest opportunity to
11 institute a .2 of 1% increase in sales tax for the
12 purpose of street maintenance and repair. Motion
13 passed unanimously.”***²³

14 The board member making the “final action” motion to decide to select the sales
15 tax increase for the ballot measure, had this to say during the discussion:

16 “Board Member Boyer commented that the numbers show a 57% overall
17 support for a ballot measure of some kind in this area and at least 45%
18 support for no more than .2 of 1% sales tax. He commented that potential
19 electoral support seems good.”

20 Boyer’s comments show clearly, unequivocally and exactly, what the taxpayer-
21 funded persuasion and “outreach” effort, and formal survey were intended to do,
22 which is exactly what is prohibited by RCW 42.17A.555. At no point in the
23 discussion when taking “final action” were any “community priorities” included
24 for action as a part of the decision-making process.

25 **Analytical Framework Points**

- 26 • **Scope of “Permitted” Community Research.** Agencies may conduct
27 and publish community research surveys consistent with the “normal and
28 regular” activities of the agency. But here, the TBD and Lynnwood
29 reviewed and unanimously voted in March to authorize implementing a

²² June 30, 2014 TBD minutes at 2, lines 42-43.

²³ Id. at 2, lines 75-78.

1 voter persuasion survey, and again -- surprise -- got the exact results
2 intended.

3 • **Range of Research Activities.** The TBD and Lynnwood use of a survey
4 is an acceptable means of doing community research.

5 • **“Not Permitted” and Prohibited Purposes and Reasons.** The TBD and
6 Lynnwood elected leadership and city staff were fully advised. The TBD
7 Board voted unanimously to authorize implementing the voter persuasion
8 survey containing questions, and for purposes and reasons, clearly
9 prohibited by PDC 04-02 chart-guidelines which state:

10 ○ **[#1] Not Permitted:** “Agencies ***shall not conduct surveys to***
11 ***determine what taxation level the public would support.***”

12 ○ **[#2] Not Permitted:** “Agencies ***shall not conduct surveys***
13 ***designed to shore up support*** or opposition ***for a ballot***
14 ***measure.***”

15 ○ **[#3] Not Permitted:** “Agencies shall ***not target registered***
16 ***voters or other specific subgroups*** of the jurisdiction in
17 conducting their ***election–related surveys.***”

18 ○ **[#4] Not Permitted:** “Agencies ***shall not use survey results***
19 ***in any manner designed to support*** or oppose a . . . ballot
20 ***measure.***”

21 The evidence shows a continuing course of intended conduct to do a voter
22 persuasion survey for clearly prohibited purposes and reasons.

- 23 • It started in the initial consultant contract.
24 • It continued through early planning of public workshops and events, and
25 the writing of the brochure, and other voter contact communications.
26 • It continued right into the design, implementation, and intended uses
27 authorized by the TBD board.

28 All of these activities were in direct violation of RCW 42.17A.555, and PDC 04-02
29 guidelines for local governments.

1 **TBD Action 6/30/14**). TBD board members who unanimously voted for the
2 **“final action”** deciding to select the sales tax increase option for the ballot
3 **measure format** were: Board President Simmonds, Vice President Roberts, and
4 members AuBuchon, Goodwin, Boyer, Ross and Cotton. The sales tax increase
5 ballot measure paperwork was prepared and also unanimously approved by the
6 TBD board on July 21, 2014.

7 TBD Treasurer and city Finance Director Lorenzo Hines attended this
8 meeting.

9 **Quick Reference:** See June 30, 2014, TBD minutes in **Exhibit 11**.

10 **Quick Reference:** See the 38 page Lynnwood TBD survey presentation and
11 data and cross-tab sheets, plus the original schedule/timeline is in **Exhibit 12**.

12 **July 2014:**

13 ***The TBD Approved the Paperwork to Put the Sales***
14 ***Tax Increase “Format” on the November Ballot***
15 ***Which was Unanimously Decided on June 30, 2014***

16 **July 21, 2014**. A TBD special meeting. The unanimous vote from June 30,
17 2014, deciding to select the sale tax increase option for the November ballot, was
18 repeated to unanimously approve the ballot measure paperwork at this meeting.
19 Those present and voting to approve the ballot measure paperwork were: Board
20 President Simmonds, Vice President Roberts, and members AuBuchon,
21 Goodwin, Boyer, Ross and Cotton.

22 TBD Treasurer and Finance Director Hines attended the meeting.

23 **Quick Reference:** See July 21, 2014, draft TBD minutes in **Exhibit 13** for:

24 (a) July 21, 2014 draft minutes.²⁴

25 (b) Official signed copy of TBD Resolution #5 dated July 21, 2014.

26 (c) Official ballot “Explanatory Statement” sent to Snohomish County Auditor
27 on July 29, 2014.²⁵

²⁴ Approval of minutes delayed on Monday, August 4, 2014 to a future TBD meeting.

²⁵ Attached to 7/29/14 cover letter from City Attorney Rosemary A. Larson.

1 **Lynnwood City Elected Officials & Directors:**

2 ***Training & Awareness of the State Prohibition Against the Use***
3 ***of Public Facilities in Support of Ballot Propositions***

4 The city of Lynnwood has regularly made both its elected officials and
5 administrative leadership aware of the state law prohibition on the use of public
6 facilities and support or opposition to ballot propositions. This occurred often, but
7 at least every two years during municipal election (odd numbered) years. It was
8 usually headed by the City Attorney.

9 **City Directors/Administration Awareness of the State Prohibition.** In
10 spring 2013 the past Mayor, prior to the formal commencement of the municipal
11 election season in May 2013, had a staff meeting with department directors to
12 once again increase their normal awareness of the state law prohibitions in RCW
13 42.17A.555 (formerly 42.17.130).

14 **Exhibit 14** shows the “Mayor Staff Meeting Agenda” agenda for Tuesday, April
15 9, 2013, which states:

16 “A-3 Use of Public Facilities for Campaign Purposes – see attached e-mail
17 from City Attorney Larson”

18 That discussion took place.

19 At 4:32 on that same afternoon, **Exhibit 14** contains the email from the Mayor’s
20 Assistant City Administrator (Mayor’s office) which states, in part:

21 “This is to follow up the 2 things the Mayor asked each of you to do:

22 1. . . .

23 2. Use of Public Facilities for Campaign Purposes

- 24 • Please email the attached city attorney communications to your
25 management staff
26 • Also, please discuss with your management staff the city’s policy
27 against using public facilities for campaign purposes and answer any
28 questions your management staff may have.
29 • One the two items above have been completed, please send to the
30 Mayor’s Office (to me would suffice) an e-mail confirming the 2 items
31 above have been accomplished.”

32 **Exhibit 14** contains an email by Public Works Director William Franz. The city
33 staff that directly support and provide staff services to the **Lynnwood**

1 **Transportation Benefit District** is the Public Works Department. Director Franz's
2 email on Thursday, April 11, 2013, at 11:30 a.m. stated that he had completed the
3 requested tasks regarding his and department staff awareness of the state
4 prohibition of the use of public facilities for campaign purposes. This is about six
5 (6) months before the negotiation of the PRR consultant contract which was
6 finalized in December 2013.

7 **Elected City Councilmembers Awareness of the State Prohibition. Exhibit**
8 **14** also includes an email from City Attorney Larson dated Monday, April 8, 2013,
9 at 1:02 p.m. directly to all city council members:

10 **“Subject: Information re Use of Public Facilities for Campaign Purposes”**

11 You'll note the follow up one (1) hour and six (6) minutes later (2:08 p.m.) by
12 Assistant City Administrator Ceniza that he also printed out the City Attorney's
13 “documents” regarding the state prohibition, and put them in “Council [mail]
14 Boxes.”

15 **Please note: The fully redacted portions of emails and/or email**
16 **attachments from the City Attorney have been left out of Exhibit 14 to**
17 **save unnecessary expense and space.**

18 **Elected City Councilmember Training Re; State Prohibition.** After each
19 cycle of municipal elections the Association of Washington Cities (AWC) presents
20 a full day (or more) workshop to newly electeds and those already elected about
21 what their elected job entails. The training is “**Elected Officials Essentials.**”
22 Besides a thorough presentation about various legal aspects of being an elected
23 official by former city attorney Stephen P. DiJulio, Foster & Pepper, each attendee
24 receives a copy of the MRSC Report No. 47 Revised (2009):

25 **“Knowing the Territory: Basic Legal Guidelines for Washington**
26 **City, County, and Special Purpose District Officials”**

27 **Exhibit 15** contains the report cover-page, page two of the table of
28 contents, and a copy of pages 24 and 25 of that report, which section is
29 titled:

30 **“Statutory Prohibition – Using Public Office Facilities for**
31 **Political Purposes”**

32 **Exhibit 15** also contains from the AWC website training records for
33 municipal leadership training for city councilmembers. The AWC
34 records show that

- 1 • On January 13, 2012, the following Lynnwood elected city
2 councilmembers attended the "**Elected Officials Essentials**"
3 training: Simmonds, AuBuchon, Cotton, Goodwin & Roberts.

- 4 • Council member Ross was not on the city council for 2012-13,
5 nor do the records show that she attended the "essentials"
6 training after her election in 2013. The prior training for newly
7 elected was titled, "**Welcome to City Hall**" and covered the
8 same legal topics as the 2012 training. She attended that
9 training in 2002.

- 10 • Council member Boyer was not on the city council for 2012-
11 13, nor do the records show that he attended the training after
12 his appointment in December 2012, or his election in 2013.

- 13 • Council President and TBD Board President Simmonds
14 attended the same orientation and legal orientation in
15 "Welcome to City Hall" 2000; "Newly Elected Officials" 2006 &
16 2008 and "Elected Officials Essentials" 2010 & 2012.

17 Both the City elected officials and administrative leadership were
18 trained and fully aware of the state prohibition.

19 *Lynnwood City Elected Officials & Directors:*

20 *PDC Chart-Guidelines Re: the State Prohibition Against the*
21 *Use of Public Facilities in Support of Ballot Propositions*

22 The Public Disclosure Commission enforcement staff has a breadth
23 of knowledge as to how its "chart-guidelines" are applied. It would
24 seem that the following areas may be appropriate for inquiry in regard
25 to this complaint:

- 26 1. Chart-Guideline page 6-7 regarding "Agency Administrators."
- 27 2. Chart-Guideline page 9, regarding "Local Government Elected
28 Officials."
- 29 3. Chart-Guideline page 10-11, regarding "Management Staff or
30 Their Designess."
- 31 4. Chart-Guideline page 21-22, regarding "Agency Publications
32 (Specific to Elections)" and "Agency Publications (Regular)"

33 The chart-guideline pages referenced are in **Exhibit 1**.

Jacob Berkey

From: thedg1@aol.com
Sent: Wednesday, September 10, 2014 5:10 PM
To: Jacob Berkey
Cc: rlaron@insleebest.com; TheDG1@aol.com
Subject: PDC Complaint No. T15-042 - City of Lynnwood
Attachments: TBD_-_email_Jul2'144_PRR.pdf; TBD_-_Email_J_Moore_Jul15'14.pdf;
TBD_-_Email_-_Jul22'14_PRR.pdf; TBD_-_Email_-_Final_Survey_Exec_-_Jul24'14.pdf;
TBD_-_Compl._Pg_35.pdf; TBD_Rev_Survey_Jul24'14.pdf; TBD_-_Compl._Pg_35.pdf

Please forward this to the staff member dealing with the above referenced complaint.

Pursuant to the directions on the PDC complaint form, I wish to provide some additional evidence. Yesterday, September 9, 2014, I received a public records request response from the City of Lynnwood. Attached are seven (7) items for your attention. The issues in the complaint center around a public survey paid from city monies which does not appear to comply with PDC 04-02 guidelines.

I have attached page 35 of the complaint which deals with continuing use of the survey and pure political promotion of the ballot proposition anticipated for the fall election. As I say it should be halted or at least the PDC should contact and work with the city to properly determine what can be legally said to the public.

Email July 2, 2014: Consultant firm PRR (Wellock) contact Lynnwood City Staff (Mach) to talk about future "media relations strategic advice" and another City of Lynnwood newsletter article promoting the ballot proposition including more information about the survey results to "provide a context for the upcoming ballot measure." Respectfully, this seem far afield from what's allowed under PDC 04-02.

Email July 15, 2014: Lynnwood city employees - D. Mach to Julie Moore, city newsletter staff, re: about an article which "gets delivered prior to the last week of October to be there early enough before November 4th (General Election Day). Respectfully, this seem to be definitely design to influence the election and again far afield from what's allowed under PDC 04-02.

Email July 22, 2014: This is the day AFTER the TBD board voted to put the sales tax increase on the ballot. Consultant is informed there may be a future role for "PRR's involvement."

Email July 23-24, 2014: This is two-to-three days AFTER the TBD board voted to put the sales tax increase on the ballot measure. Consultant sends substantially revamped "final survey report," with revisions and more detail. than that shown to the board or public on June 30, 2014.

But since the TBD board already made the decision why more work on a "final report" except for promoting the ballot measure during the election with taxpayer monies. Respectfully, this seem to be definitely design to influence the election and again far afield from what's allowed under PDC 04-02.

Revised Final Survey Report - July 2014: The July 23-24 emails show the interaction/communications. The so-called "revised" report is virtually a rewrite and condensation. It reads like the recipe book for running a political campaign. It's filled with election targeting and marketing data, i.e. on page 11 it goes through an elaborate analysis of what type of people will support what ballot proposition -- if you're "Caucasian" then you vote for, if you're "Non-Caucasian or have an ethic background" then you'll vote for, or your voting frequency is, therefore you'll vote ... -- this is truly

repulsive to be using public money to do such an analysis. And, that analysis has nothing to do with a good transportation system used by everyone. It's just about where you can get the votes to control millions in sales tax monies.

As stated on page 35, I ask that the PDC get in touch with the city and counsel them as to what is allowable and can be legally be done to communicate with the public.

Respectfully submitted as an addendum to Complaint No. T15-042. /s/ Don Gough.

Lynnwood TBD

2014 Transportation Improvement Project Survey

Prepared for City of Lynnwood

July 2014



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Executive Summary

What was the purpose of the survey?

The City of Lynnwood Transportation Benefit District Board hired PRR, Inc. to a program to educate Lynnwood residents about existing transportation conditions and solicit comments and recommendations on projects and funding options to inform a potential transportation ballot measure in November 2014.

PRR used several outreach strategies to meet this goal including information tables at high-traffic community locations, neighborhood meetings, printed materials, and media outreach. PRR also conducted a community survey to solicit statistically valid public input.

The goals of the survey were to measure:

- Resident perception and awareness of transportation funding in Lynnwood
- Resident satisfaction of current tax dollars spent on transportation
- Transportation improvement priorities
- Importance and willingness to pay for particular transportation improvements
- Use and preference for improvements to major arterials
- Funding preferences for transportation projects
- Overall willingness to support a transportation funding ballot

How was this survey conducted?

PRR and the Transportation Benefit District Board developed a statistically valid survey. The final survey had 19 questions and provided postage for easy mail back. It also provided an online option. The survey was pretested by four City of Lynnwood employees that did not work in the area of transportation.

On April 25, 2014, PRR mailed the survey to 5,000 random residents who lived within the city limits of Lynnwood. The survey remained open until May 15, 2014. A follow-up reminder postcard was sent mid-way. Each resident that was mailed a survey was also provided a unique ID number that was required to take the online survey, and was used to ensure that only invited residents included in the random sample completed the survey. The ID number was also used to ensure that residents took the survey one time only.

A separate online and public version of the survey was also available. The public version of the survey was publicized at public meetings, in the media, and through Lynnwood eNews, the City's email alert service. This non-random version of the survey was completed by 123 residents, and gave those that were not randomly selected a venue for expressing their opinions. Only results from the statistically valid survey are presented in this report. However, it should be noted that the results of the public version of the survey were similar to the results of the statically valid survey.

The survey was completed by 448 residents* (355 paper questionnaire and 93 online). The final sample only includes Lynnwood residents and those with valid, as well as non-duplicative, survey ID numbers. The margin of error is +/- 4.6%. To ensure demographic representation, data was weighted using census data by age and sex proportionate to the population in the City of Lynnwood.

The results are presented in the following report. Note that that the totals in some charts add up to somewhat less or somewhat more than 100% due to rounding, and in some cases where respondents were allowed to provide multiple responses. Significant correlations that are stronger than .10 are also presented (probability \leq .05).



Executive Summary (continued)

Key Findings

- More than two-thirds (70%) of respondents were moderately satisfied, but less (16%) were very satisfied with the current use of funds for transportation improvements in Lynnwood.
- More than half of the respondents (58%) were not aware of the \$20 vehicle registration fee enacted in 2011, and of those aware of this fee (43%) only about a quarter (24%) knew the fee paid for transportation improvements in Lynnwood.
- Even though just over a third (36%) of respondents "don't know" if the right amount of money is spent on transportation projects in Lynnwood, about two-fifths (43%) indicate that just right or too much money is spent.
- When looking at which improvements were given the highest importance ratings by respondents, maintaining existing pavement, street maintenance, and traffic signal operations were the most highly rated as important as well as rated as the improvements respondents were most willing to pay for.
 - Also when asked to choose the two most important improvements, respondents similarly chose: Maintaining existing pavement (57%), Traffic signal operations (35%), Street Maintenance (31%), Traffic flow improvements to arterials (19%) as the most important.
- The most used arterials by respondents are 44th Ave W, 196th Street SW, and the 1-5/196th Interchange. The most commonly selected arterial improvements were adding/improving sidewalks, adding/updating traffic signals, improving/rebuilding pavement, and also adding additional lanes.
- Two-thirds (66%) of respondents were willing to pay 0.1 to 0.4 tenths of a percent increase in sales tax, and just over half of the respondents (55%) were willing to pay up to a \$50 increase on their annual car fee.
- A majority (57%) of respondents also indicated they would be willing to support a ballot measure to collect funds for transportation improvements.
- High support for the sales tax increase option is marginal (37%), but considerably more support is given by respondents to this option than annual vehicle registration fees (7%).
- A strong majority (80%) of respondents prefer the sales tax increase over the annual vehicle registration fee (20%) to fund transportation improvements in Lynnwood.
- The factors that are the most influential in getting respondents to support a sales tax ballot were if they indicated a willingness to pay for maintaining existing pavement, if they were satisfied with the current use of transportation funds, if they most often commute to work by driving alone, and naturally if they were willing to pay a higher sales tax increase.
- Whether a respondent is a voter (vote 2-4 times in recent elections) or not does not influence overall willingness to support a ballot, but those who vote more often are significantly more willing to support a sales tax increase over an annual vehicle registration fee.
- Those with higher incomes are slightly more willing to support either ballot option (sales tax or vehicle fee) and those that are from a non-white racial background are slightly more supportive of annual vehicle fees.

Sample Profile (weighted by Age and Gender)

- Age
 - 18 to 24 – 13%
 - 25 to 34 – 19%
 - 35 to 54 – 36%
 - 55 to 64 – 15%
 - 65 to 74 – 8%
 - 75 and over – 9%
- Gender
 - Male - 48%
 - Female - 51%
- Hispanic/Latino background – 7%
- Race
 - Black/African American – 3%
 - White/Caucasian – 75%
 - American Indian or Alaska Native – <1%
 - Asian – 18%
 - Native Hawaiian or other Pacific Islander – <1%
 - Other race or combination – 3%
- Income
 - Below \$15,000 – 8%
 - \$15,000 to \$35,000 – 20%
 - \$35,000 to \$50,000 – 14%
 - \$50,000 to \$100,000 – 35%
 - \$100,000 to \$150,000 – 18%
 - \$150,000 and over – 5%
- Voted in...
 - 3-4 of last 4 elections – 75%
 - 1-2 of last 4 elections – 17%
 - None/not registered – 8%
- Commute to work
 - Drive alone – 61%
 - Bus – 21%
 - Carpool – 13%
 - Bike – 4%

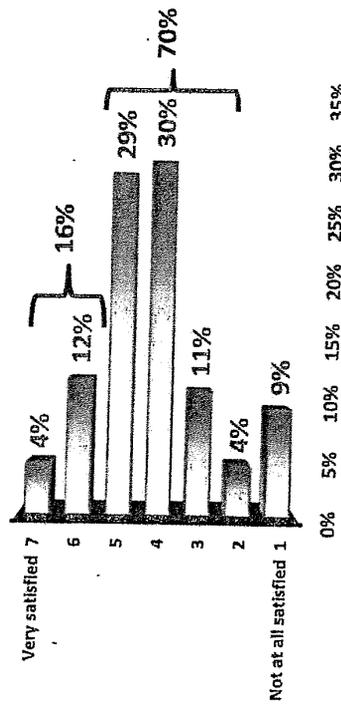
Satisfaction & Awareness

Respondents were asked if they were satisfied with the current use of transportation funds and if they were aware of the \$20 vehicle fee enacted in 2011.

- More than two-thirds (70%) of respondents were *moderately satisfied* (rated from a "3" to a "5"), but less (16%) were *very satisfied* (rated a "6" or a "7") with the current use of funds for transportation improvements in Lynnwood.
- More than half of the respondents (58%) were not aware of the \$20 vehicle registration fee enacted in 2011, and of those aware of this fee (43%) only about a quarter (24%) knew the fee paid for transportation improvements in Lynnwood.

How satisfied are you with the current use of funds for transportation improvements in Lynnwood?

BASE: ALL SURVEY RESPONDENTS (N=444)

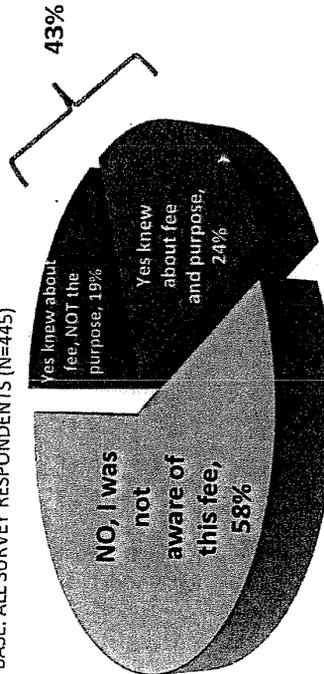


Respondents are more likely to be satisfied if:

- Improvements are important, particularly traffic signals
- They use 36th Ave. W less often
- They are generally willing to pay for improvements, except for traffic flow, sidewalks, bicycle, or city center improvements
- Willing to pay an increase in sales tax or annual vehicle fee

Were you aware that in 2011 the Lynnwood Transportation Benefits District enacted a \$20 vehicle registration fee...for transportation improvements?

BASE: ALL SURVEY RESPONDENTS (N=445)



Respondents that are more aware of the current \$20 vehicle fee are:

- Less satisfied with transportation improvements
- Use 44th Ave. W less often
- More willing to pay sales tax increases

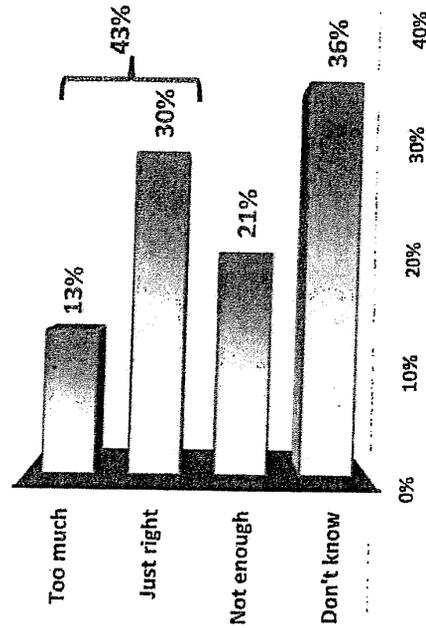
Spending on Transportation

Respondents were asked about the amount of money spent on transportation projects in Lynnwood and what types of projects in general they thought were more important.

- Even though just over a third (36%) of respondents “don’t know” if the right amount of money is spent on transportation projects in Lynnwood, about two-fifths (43%) indicate that *just right* or *too much* is spent, and about a fifth (21%) indicate *not enough* is spent.
- Almost half of the respondents (45%) indicated that maintaining the existing transportation system was most important to them, but even more respondents (48%) felt that both maintaining and building new projects was important.

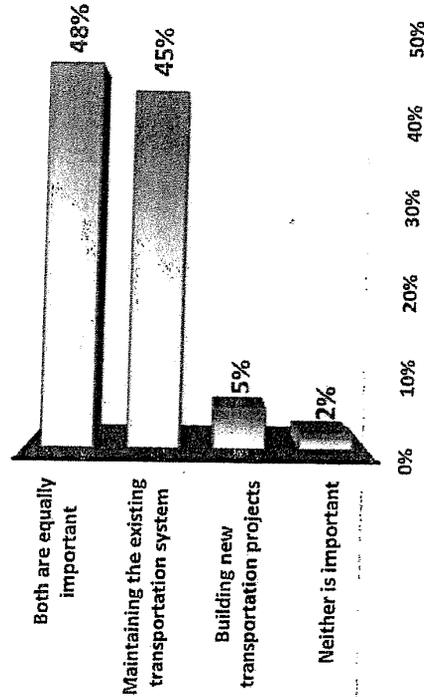
Do you feel the amount of money that is spent on transportation projects in Lynnwood is:

BASE: ALL SURVEY RESPONDENTS (N=438)



Given the limited resources for transportation, which is more important to you?

BASE: ALL SURVEY RESPONDENTS (N=442)



Most Important Transportation Investments

Respondents were asked to rate the importance of particular transportation investments, to rate their willingness to pay for them, and to choose the two most important investments.

➤ When looking at which improvements were given the highest ratings (a "6" or a "7" on a scale of 1 to 7), *maintaining existing pavement, street maintenance, and traffic signal operations* were the most highly rated in importance and willingness to pay for.

➤ When asked to choose the two most important improvements, respondents similarly chose:

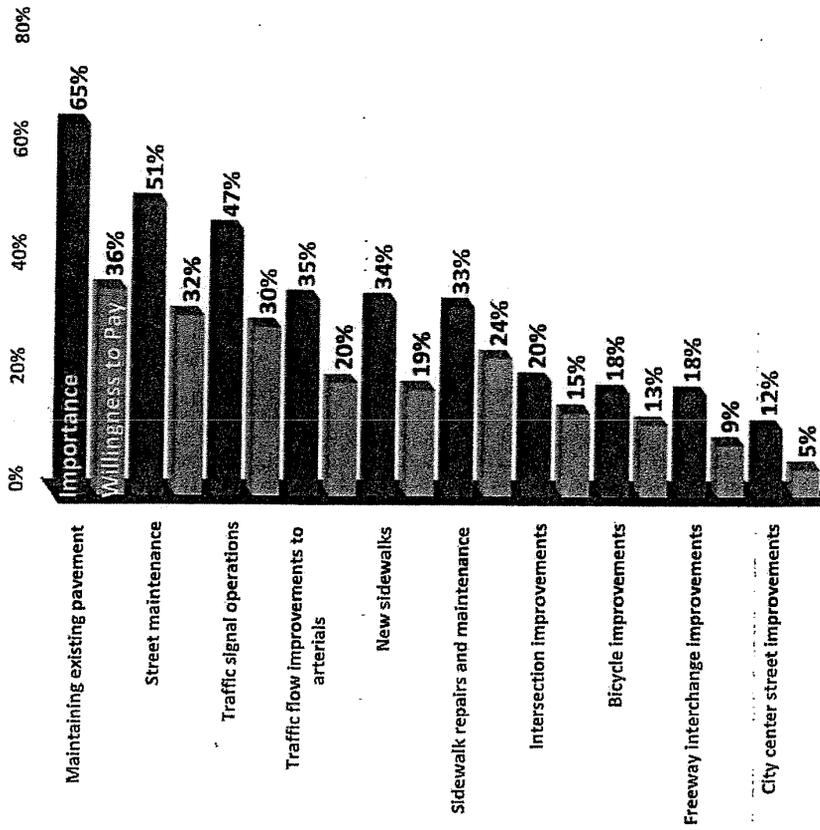
- Maintaining existing pavement (57%)
- Traffic signal operations (35%)
- Street Maintenance (31%)
- Traffic flow improvements to arterials (19%)

Respondents are more likely to rate items as important if:

- They are more willing to pay an increase in sales tax and annual vehicle fees
- They are older and have slightly higher incomes
- Use 196th Interchange, 196th Street SW, and 44th Ave W more often

Importance of transportation investment types vs. the willingness to pay for them

BASE: ALL SURVEY RESPONDENTS (N=398 TO 429)

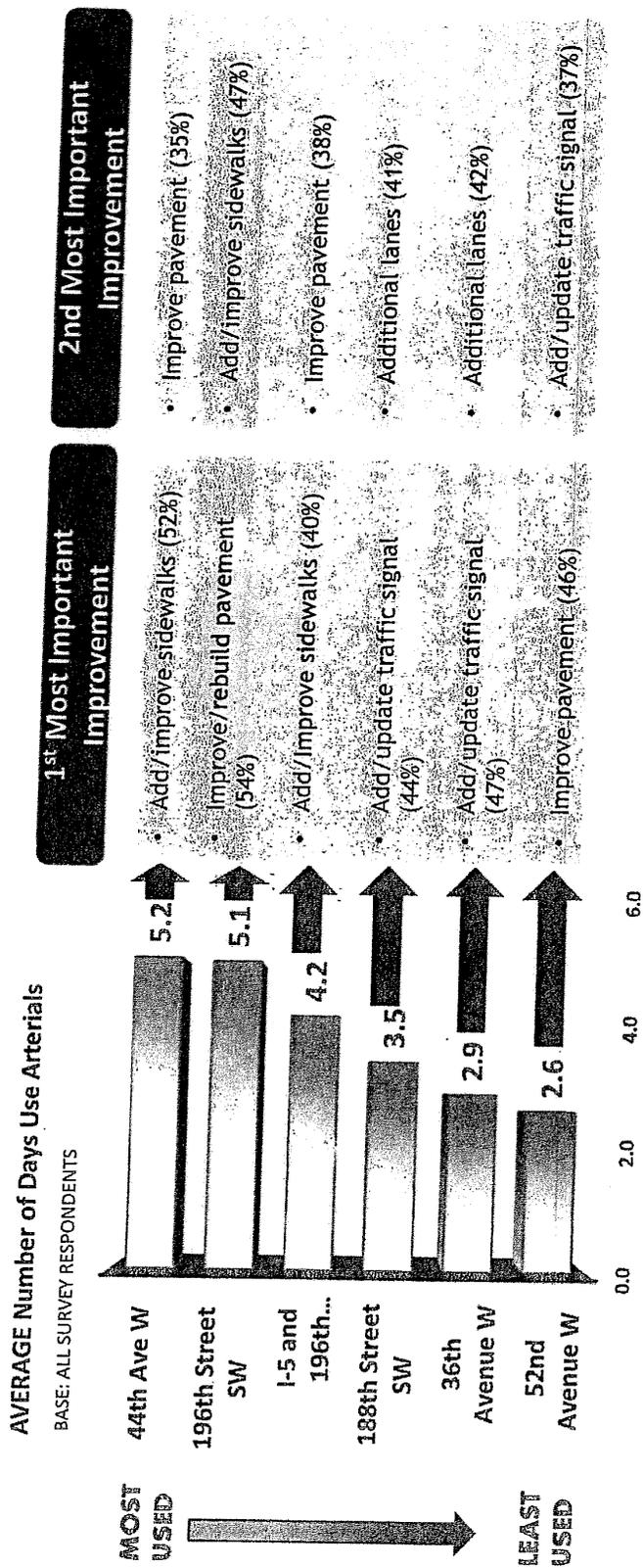


Rated a "6" or a "7" on a scale of 1 to 7, with 7 being very important or very willing.

Arterial Improvements

Respondents were asked the number of days a week they used particular arterials; they were also asked to choose the two improvements to those arterials they thought were needed most.

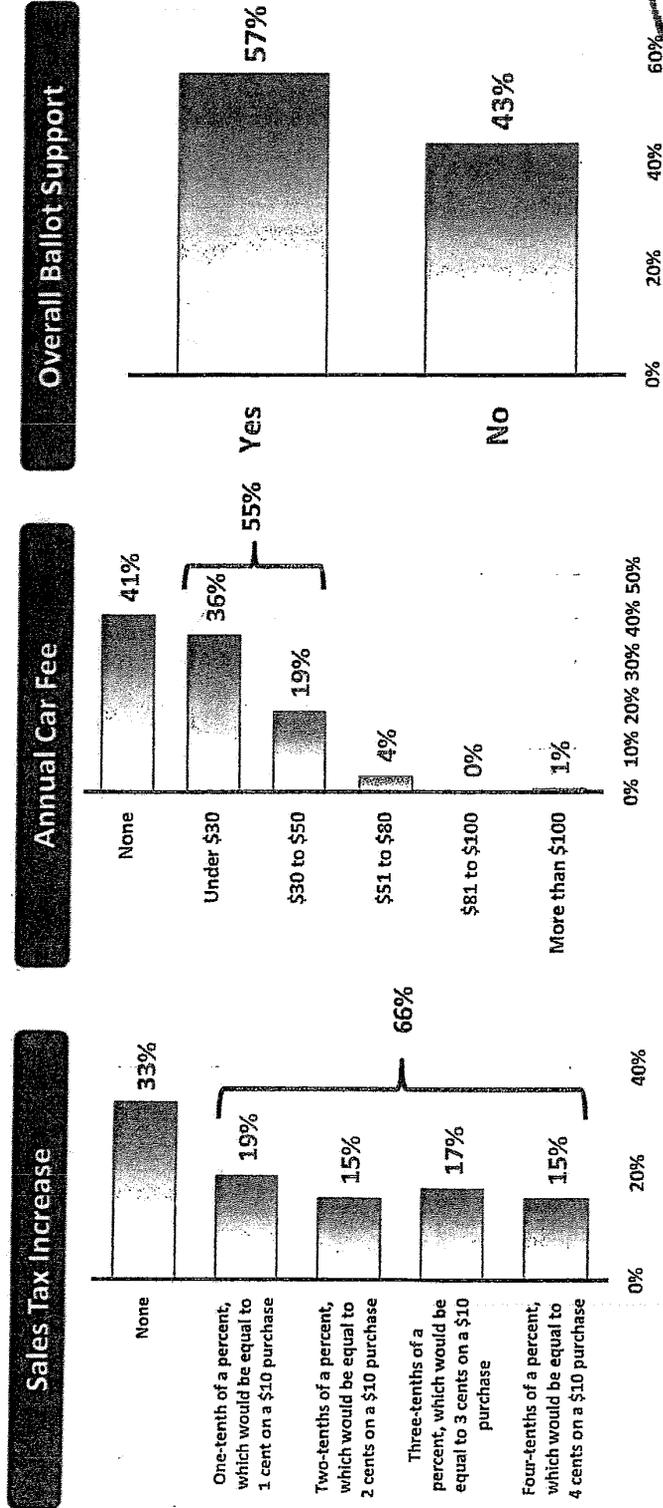
- The most used arterials are 44th Ave W, 196th Street SW, and the I-5/196th Interchange.
- The most commonly selected arterial improvements were adding/improving sidewalks, adding/updating traffic signals, improving/rebuilding pavement, and also adding additional lanes.



Willingness to Pay for Transportation Improvements

Respondents were asked how willing they were to pay for transportation improvements utilizing two different tax scenarios: an additional sales tax increase and a flat vehicle registration fee increase.

- Two-thirds (66%) were willing to pay 0.1 to 0.4 tenths of a percent increase in sales tax, and just over half of the respondents (55%) were willing to pay up to a \$50 increase on their annual car fee.
- A majority (57%) of respondents also indicated they would be willing to support a ballot measure to collect funds for transportation improvements.

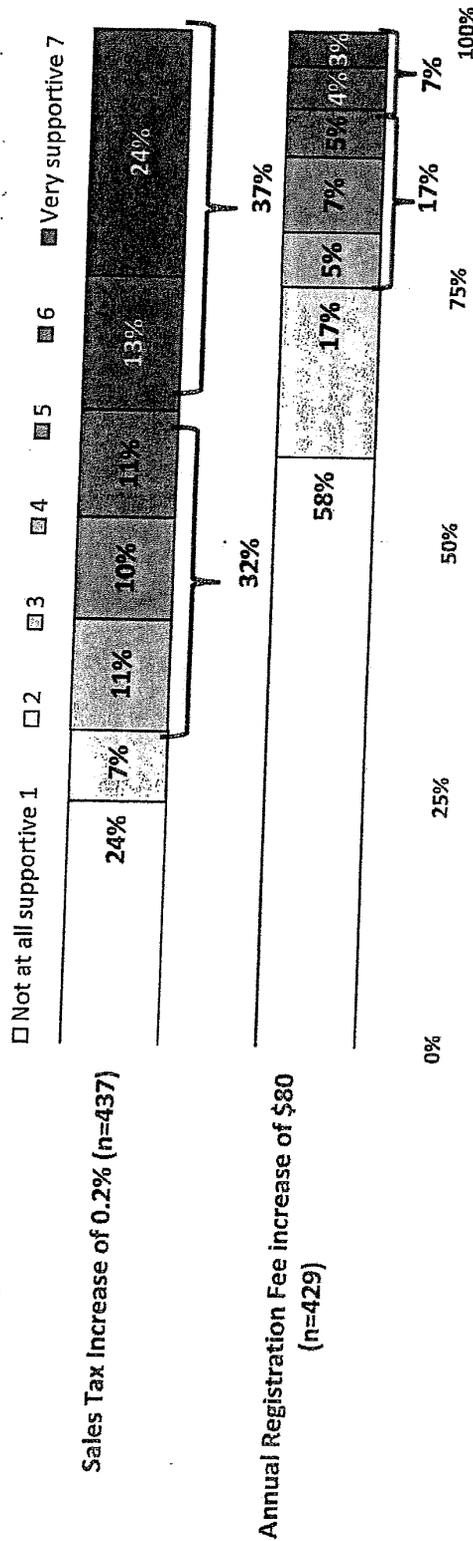


Support for Transportation Funding Ballot

Respondents were asked specifically to rate their level of support for a sales tax increase of 0.2% and an annual vehicle registration fee increase of \$80, and to choose the funding ballot option they most preferred for funding transportation improvements in Lynnwood.

- High support (rated "6" or "7") for the sales tax increase option is marginal (37%), but considerably more support is given by respondents to this option than annual vehicle registration fees (7%).
- The sales tax option also has considerably more moderate support (32%) from respondents than does annual vehicle registration fees (17%).
- A strong majority (80%) of respondents prefer the sales tax increase over the annual vehicle registration fee (20%) to fund transportation improvements in Lynnwood.

On a scale of 1 to 7, please indicate your level of support for the following transportation improvement ballots:



Overall Conclusions

- The factors that are the *most influential* in getting respondents to support a *sales tax ballot* were if they indicated a willingness to pay for maintaining existing pavement, if they were satisfied with the current use of transportation funds, if they most often commute to work by driving alone, and naturally if they were willing to pay a higher sales tax increase.
- Whether or not a respondent is a voter (vote 2-4 times in recent elections) does not influence overall willingness to support a ballot measure. However, those who vote more often are significantly more willing to support a sales tax increase over an annual vehicle registration fee increase.
- Those with higher incomes are slightly more willing to support either ballot option (sales tax or vehicle fee increase) and those that are from a non-white racial background are slightly more supportive of an annual vehicle fee increase.

Sales Tax Increase Ballot

Respondents are more likely to support a sales tax increase ballot of 0.2% if:

- They are more satisfied with current transportation improvements
- They rate proposed improvements as important, particularly traffic signals, sidewalks, maintaining existing pavement, and street maintenance
- They are willing to pay for these improvements
- Use 196th SW Street more often, but use 36th Ave W less often
- They are more willing to pay an increase in sales tax or pay an increase in annual vehicle fees
- They are Caucasian
- They have slightly higher incomes
- They voted more often in last 4 elections

Annual Car Fee Ballot

Respondents are more likely to support an annual vehicle fee increase of \$80 if:

- They are more satisfied with current transportation improvements
- They rate proposed improvements as important, particularly bicycle, city center, and sidewalk improvements
- They are willing to pay for these improvements
- They are more willing to pay an increase in sales tax or pay an increase in annual vehicle fees
- They are Non-Caucasian or have an ethnic background
- They have slightly higher incomes

Overall Ballot Support

Respondents are more likely to support a ballot to pay for transportation improvements if:

- They are more satisfied with current transportation improvements
- They rate proposed improvements as important, particularly bicycle, city center, and freeway interchange improvements
- They are willing to pay for these improvements
- They are more willing to pay an increase in sales tax or pay an increase in annual vehicle fees
- They are younger

1
2 *Lynnwood Current Website & Uses of
Voter Persuasion Efforts and Impermissible Survey*

3 The TBD Board on July 21, 2014, approved the paperwork to put a resolution
4 increasing the sales tax increase on the November 2014 ballot.

5 As of Sunday, August 17, 2014, the TBD through the City of Lynnwood
6 website has all the survey, voter persuasion "outreach," brochure, newsletter
7 articles, and other documents on its website available to voters and the public.
8 According to its marketing, persuasion, and sales "outreach" effort plan approved
9 in February 2014, there are actions that clearly appear to in violation of RCW
10 42.17A.555, that are planned now and through the November election. It is
11 respectfully requested that the PDC contact the City of Lynnwood and
12 Transportation Benefit District and apply its normal review and advice regarding
13 what is acceptable "objective and fair presentation of the facts" to the public.
14 And, further, to request that inappropriate promotional, marketing, persuasion
15 and sales materials, **be taken down by the city immediately**. And,
16 furthermore, that no promotional activities, communications or other prohibited
17 conduct by done by the city between now and the November election.

18 The great people who created our country and the United States Constitution
19 knew that government needed constraints in its actions and protections for the
20 common person against government overreaching – hence the Bill of Rights.
21 Also, the huge potential, and now actual, power of government with virtually
22 unlimited resources to "drive" a one-sided conversation on public policy and
23 taxes, was seen by them and the creators of our Initiative 276 (passed by 72%)
24 of the public, as that which needed direct and meaningful restraints.

25 Here, the \$60,000, plus a huge amount of 24/7/365 city staff time, and other
26 additional city resources (i.e. city newsletter articles, etc.) used for a one-sided
27 TBD and City of Lynnwood voter persuasion "outreach" effort, may have been
28 well intended. Surely, a lot of good information was probably gathered. But, the
29 prohibited purposes and reasons in state law against the use of public facilities to
30 engineer the circumstances and thereby essentially attempt to "set-up" and "pre-
31 determine," and thus influence the outcome of a tax election in support of a ballot
32 proposition, must take precedence. It is a breach of the public trust. And,
33 attempts to continue using such materials by the TBD or the city now and
34 through the November election should be halted.

35
36 Respectfully submitted.

David Mach

From: Kimbra Wellock <kwellock@prrbiz.com>
Sent: Thursday, July 24, 2014 1:05 PM
To: David Mach
Cc: Katherine Schomer
Subject: RE: TBD Survey Report
Attachments: TBD Survey Full Report_to Client 7-24-14.pdf

Hi David,

The revised survey report is attached. To answer your question about the 20-year spread vs 10-year spread in the ages in the sample profile. The reason it is different is because we collapsed this category in the paper survey as a way to save space. It was part of our attempt to minimize space but keep all the important demographic questions.

Please let me know if you have any other changes. Thanks!

KIMBRA WELLOCK, AICP
Senior Associate
206.462.6351 | kwellock@prrbiz.com

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1501 Fourth Avenue, Suite 550
Seattle, Washington 98101
www.prrbiz.com

Experts in human-powered change

From: David Mach [mailto:dmach@ci.lynnwood.wa.us]
Sent: Wednesday, July 23, 2014 8:49 AM
To: Kimbra Wellock
Cc: Katherine Schomer
Subject: RE: TBD Survey Report

One more thing, I noticed there is no page 4.
Thanks,
David

From: David Mach
Sent: Wednesday, July 23, 2014 8:46 AM
To: 'Kimbra Wellock'
Cc: Katherine Schomer
Subject: RE: TBD Survey Report

Hi Kimbra,
We had a few minor comments on the survey report (see attached). Please revise accordingly and email me the final.
Thanks,
David

From: Kimbra Wellock [mailto:kwellock@prrbiz.com]
Sent: Friday, July 11, 2014 3:42 PM

To: David Mach
Cc: Katherine Schomer; Jeanne Acutanza
Subject: TBD Survey Report

Hi David,

Attached is the draft of the final survey report for your review. This contains the findings slides we presented to the Board on June 30 (with some minor revisions) and detail on methodology. Please let us know if you have any questions or revisions.

We had previously discussed a possible need for PRR participation in upcoming TBD Board meetings. Given the Board's decisions at the last meeting, it seems this may no longer be necessary, but please let me know if that is not a correction assumption.

Finally, let me know if you have any thoughts about some of the ideas for next steps I outlined in my past email. No immediate hurry there. I will put a task reminder to check in with you in a week or so to see how things are going.

Please let me know if there is anything I can help you with.

Thanks!

KIMBRA WELLOCK, AICP
Senior Associate
206.462.6351 | kwellock@prrbiz.com

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From: Kimbra Wellock
Sent: Wednesday, July 02, 2014 1:30 PM
To: David Mach
Subject: Budget Update

Hi David:

We have \$3,000 remaining in our budget, after we complete the final survey report. This includes the \$550 remaining in the management reserve.

Other than the final survey report, the remaining deliverables in our scope are:

- Up to six (6) hours of media relations strategic advice or support (we have not used any of this budget)
- One (1) Inside Lynnwood article (our scope calls for three articles, we completed articles for the Spring and Summer editions)

I like the idea of running one final Inside Lynnwood article to communicate the results of the survey – we used the summer article to communicate the results of the open houses and tell people the survey was fielded. It would be nice to circle back and share the findings and if appropriate, talk about the Board's decision on the ballot and what the revenue would be used for (provide the context for the upcoming ballot measure). If you would like to proceed with

this, we should discuss what is appropriate given the election. The content deadline for the next issue is early September and the article would be published mid-October.

If you would like some support crafting a media outreach plan, PRR's Diana Steeble is a great resource (our in house media relations expert). We can set up some time with her to talk through what your goals are and what kind of support you would like (I know you have a great in house team as well).

Please let me know how you would like to proceed. Thanks!

KIMBRA WELLOCK, AICP
Senior Associate
206.462.6351 | kwellock@prrbiz.com

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For more information please visit <http://www.mimecast.com>

David Mach

From: Kimbra Wellock <kwellock@prrbiz.com>
Sent: Tuesday, July 22, 2014 4:01 PM
To: David Mach
Subject: RE: TBD Update

Congrats! Fantastic news!!!

KIMBRA WELLOCK, AICP
Senior Associate
206.462.6351 | kwellock@prrbiz.com

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Seattle, Washington 98101
www.prrbiz.com

Experts in human-powered change

From: David Mach [<mailto:dmach@ci.lynnwood.wa.us>]
Sent: Tuesday, July 22, 2014 3:52 PM
To: Kimbra Wellock
Subject: TBD Update

Hi Kimbra,

wanted to send you a quick update. The TBD Board passed the resolution 7 to 0 yesterday. We are currently working on submitting the ballot measure documents (due August 5th). Will know more about PRR's involvement over the next few days.

Thanks,

David Mach, P.E. | Project Manager | City of Lynnwood | 425-670-5275 | dmach@ci.lynnwood.wa.us | 19100 44th Ave W | Lynnwood, WA 98036-5635

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David Mach

From: David Mach
Sent: Tuesday, July 15, 2014 1:34 PM
To: Julie Moore
Cc: kwellock@prrbiz.com
Subject: Fall Inside Lynnwood

Hi Julie,

I got your voicemail. Your tentative date of October 15th should work just fine for us. I'm thinking as long as it gets delivered prior to the last week of October to be there early enough before November 4th. Don't reschedule anything on account of us at this time. I'm just looking at options.

Thanks,

David Mach, P.E. | Project Manager | City of Lynnwood | 425-670-5275 | dmach@ci.lynnwood.wa.us | 19100 44th Ave W | Lynnwood, WA
98036-5635

David Mach

From: Kimbra Wellock <kwellock@prrbiz.com>
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To: David Mach
Subject: Budget Update

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Public Disclosure Commission

September 18, 2014

Mr. Philip E. Stutzman, Director of Compliance
Public Disclosure Commission
711 Capitol Way, Rm. 206
P.O. Box 40908
Olympia, WA 98504-0908

Re: Response to Complaint No. T15-042 – City of Lynnwood and
Lynnwood Transportation Benefit District Officials
VIA HAND DELIVERY

Dear Mr. Stutzman:

I am the Attorney for the Lynnwood Transportation Benefit District and the City Attorney for the City of Lynnwood. On August 22, 2014, the Transportation Benefit District and the City received your letter dated August 20, 2014 enclosing a copy of Complaint No. T15-042, which alleges that City and Transportation Benefit District officials violated RCW 42.17A.555 (“Complaint”). The District and the City also received an email dated September 10, 2014 relating to this matter. This letter responds to the issues raised in the Complaint and email.

The respondents note that the Complaint specifically names the current Transportation Benefit District Board Members as respondents, and also appears to include the City’s Mayor. The Complaint discusses actions of City staff generally, acting on behalf of the Transportation Benefit District, but does not name a particular employee or position as a respondent. Therefore, this response addresses all of the current District Board Members, the City’s Mayor, and City staff generally.

In addition, respondents would like to emphasize at the outset that they take the requirements of RCW 42.17A.555 seriously. At all times, respondents were making good faith efforts to meet the requirements of the law and were acting with a good faith belief that they and the District were acting in accordance with RCW 42.17A.555.

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A. Summary of Allegations in Complaint.

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The Complaint alleges that City and Transportation Benefit District officials acted to support a ballot proposition in violation of RCW 42.17A.555 by: (1) causing the Transportation Benefit District to undertake certain public outreach (by approving the public outreach and/or a consultant contract for the outreach); and (2) causing the Transportation Benefit District to conduct a survey as part of the public outreach (by approving use of the survey). In connection with the survey, the Complaint alleges in part that the survey violated RCW 42.17A.555 because it was targeted to specific groups, and because it included questions that relate to the level of taxation that persons responding to the survey would support.

B. Factual Background Relevant to Allegations in Complaint.

1. Description of the City and the Lynnwood Transportation Benefit District.

The City of Lynnwood is a code city operating under Titles 35 and 35A RCW. The City is located in Snohomish County, and has a population of approximately 36,000 persons. Pursuant to RCW 35.21.225, the City is authorized to establish a transportation benefit district within the City, in accordance with Chapter 36.73 RCW. Transportation benefit districts are quasi-municipal corporations, with all the usual powers of a corporation for public purposes and all other powers specifically conferred by statute. RCW 36.73.040. In particular, transportation benefit districts have authority to acquire, construct, improve, provide and fund certain transportation improvements within the district. See Ch. 36.73 RCW generally. To accomplish their purposes, transportation benefit districts have limited funding mechanisms. A transportation benefit district has the authority to impose a vehicle license registration fee of up to \$20 per vehicle, or certain transportation impact fees on commercial or industrial development, without first obtaining voter approval. RCW 36.73.065(4). When authorized by the voters, a transportation benefit district has the authority to impose a vehicle license registration fee of up to \$100 per vehicle, a sales tax in an amount up to .2 of one percent, or certain vehicle tolls. RCW 36.73.040; LMC 12.14.030B.¹

The Lynnwood Transportation Benefit District is a new entity, and was only formed in 2010. On May 24, 2010, the Lynnwood City Council enacted Ordinance No. 2837, creating the District pursuant to Chapter 36.73 RCW. See Ch. 12.14 LMC. The District's geographic boundaries are the same as the City's boundaries. LMC 12.14.010.

The Transportation Benefit District is a separate legal entity from the City. However, under state law, the City Council Members serve ex officio as the Transportation Benefit

¹ In addition, transportation benefit districts may issue general obligation bonds, without voter approval, and the voters may authorize a one-year property tax. RCW 36.73.060; .070.

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District Board Members, and the City's Finance Director serves as the Transportation Benefit District Treasurer. RCW 36.73.020(3) and (4); LMC 12.14.020. In accordance with Chapter 36.73, the City's Mayor is not a member of the Transportation Benefit District Board. When the District was formed in 2010, the Board Members were Loren Simmonds, Ted Hikel, Jim Smith, Mark Smith, Kerri Lonergan-Dreke, Kimberly Cole, and Stephanie Wright. The City's Mayor at the time was Don Gough (the complainant in this matter). Shortly thereafter, Stephanie Wright resigned and Ed Dos Remedios was appointed to fill the vacant position.

On November 29, 2010, the Transportation Benefit District adopted a vehicle license registration fee in the amount of \$20 per vehicle, as authorized by RCW 36.73.065(4) and LMC 12.14.030A. District Ordinance No. 2. The state Department of Licensing collects this fee on behalf the District.

The Transportation Benefit District does not employ its own employees. Consistent with the practice of most such districts, it contracts for services through an interlocal agreement with the City. Thus, City staff performs the operating functions for the District, and the District reimburses the City for those services. The City's Public Works Department are the primary staff performing work for the District. Other staff perform incidental services, such as the Finance Department and Deputy City Clerk.

2. The Transportation Benefit District Undertakes Public Outreach.

As part of fulfilling the District's statutory purpose, the Transportation Benefit District Board necessarily has to make decisions regarding the transportation improvement needs within its jurisdiction, the scope and cost of the needed projects, the priority to place on the projects, and the manner in which they will be funded. As responsible public officials, the Transportation Benefit District Board believed it was important to make these decisions in accordance with the desires of the members of the public that they serve. Thus, the Board discussed public outreach generally in January and February of 2011, and in October 2012.²

In 2013, the District Board Members (and City Council Members) were Loren Simmonds, Mark Smith, Kerri Lonergan-Dreke, Van AuBuchon, Sid Roberts, Benjamin Goodwin, and M. Christopher Boyer. The public outreach topic was discussed, again generally, in March and April of 2013. Although the Board also discussed the Transportation Benefit District's funding options during this time, the Board had not decided whether or not to present a ballot proposition to the public on any of the voter-approved funding methods. The Board had certainly not decided what mechanism, if any, to submit to the voters, or if a sales tax proposal was submitted to the voters, what tax amount would be proposed. In fact, at the March meeting, Board Member Lonergan-Dreke stated that it was important "not to rush or

² Relevant Meeting Minutes from 2012, 2013 and 2014 are attached to this Response as Attachment 1. Relevant Agenda Materials from that time period are attached as Attachment 2.

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move forward on a possible ballot measure until they have heard from the citizens as to what they want and what they are willing to spend,” and that “they need to represent and really listen to the people.” Staff present concurred. March 25, 2013 Minutes.

Over the summer and fall of 2013, Public Works Department staff conducted an extensive search to determine the most qualified consultant to assist the District with the outreach. On behalf of the District, staff solicited proposals from interested parties; seven firms responded. After reviewing the proposals, staff interviewed three firms. Staff determined that PRR, Inc. had the highest level of expertise, based on its work on similar outreach programs. As one example, PRR had worked with Community Transit on that agency’s public outreach on issues similar to those facing the Transportation Benefit District.

After the April 2013 meeting, the Board’s next regular meeting was set for October 14, 2013. Board Members Mark Smith and Benjamin Goodwin were not present at this meeting. Based on staff’s recommendation, the Transportation Benefit District Board authorized a contract with PRR, Inc. for consulting services to develop and conduct the public outreach. The contract amount was not to exceed \$59,972, which included a \$5000 management reserve. The scope of services included preparing informational handouts, conducting various community events, such as “table events” and neighborhood open houses, conducting focus groups, preparing articles for “Inside Lynnwood” (the City’s newsletter), and preparing and conducting a statistically valid public survey, including the questionnaire and a findings report. PRR Contract, attached as Attachment 3.

In December 2013, staff issued a notice to proceed to PRR. Thereafter, PRR in consultation with staff developed, prepared and conducted the public outreach, as outlined below.

In 2014, the District Board Members (and City Council Members) were Loren Simmonds, Sid Roberts, Van AuBuchon, Benjamin Goodwin, M. Christopher Boyer, Ruth Ross, and Ian Cotton.³ The City’s Mayor was Nicola Smith, who took office on January 1, 2014. At a February 10, 2014 Transportation Benefit District Board meeting, staff and a PRR representative discussed the proposed public outreach with the Board. Mayor Smith did attend this meeting, primarily as an observer. As stated by Kimbra Wellock of PRR at the meeting:

[T]he purpose of all this [the public outreach program] is to give people a number of opportunities to really learn about the state of transportation in the City, how it’s funded, and where some of the shortfalls are, so they have enough background information to give informed feedback about their priorities. The primary goal is

³ Board Member Boyer was appointed to a vacant Council position in 2012, and then was elected to the position in November 2013. Board Members Ross and Cotton were also elected in November 2013.

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to generate enough input to give the Board some really strong information to base a decision on later.

February 10, 2014 Minutes, p. 2. As reflected in the minutes, the Board's discussion focused on order of priority for transportation projects, and the types of and locations for the public outreach. A potential ballot measure was only mentioned incidentally. Id. p. 4 ("... even if they go to a ballot measure it is only good for ten years"). Again, at this time, the Board had not made any decision on whether the District would submit any ballot measure to the voters, and if so, what the measure might be. The Board did not discuss specific questions to be asked at the table events or open houses, or that "sticker dots" on poster boards would be used. The Board did discuss communicating the cost of projects and priority of projects. Id. p. 2, 3.

In late February and early March 2014, PRR conducted the five "information table" events, held at the Lynnwood Senior Center, the Lynnwood Library, the Edmonds Community College, a local coffee shop, and the Lynnwood Recreation Center. The locations were selected in order to receive input from a variety of persons, rather than any one group. Staff did not attend these events. Approximately 90 members of the public attended. The purpose of the table events was to "raise general awareness of transportation issues; encourage participation in transportation neighborhood meetings described in Task 1.3 [sic]; and engage community members who are unlikely to attend one of the transportation neighborhood meetings." See PRR Contract, Scope of Work, p.1.

At a March 10, 2014 Transportation Benefit District Board meeting, staff and two PRR representatives discussed the status of the public outreach with the Board. Board Member Goodwin was not present at this meeting. Again, Mayor Smith attended as an observer. The agenda materials indicate that the topics of discussion at the table events included lack of awareness of transportation needs and funding needs, belief that the City's transportation system is in good repair, satisfaction with how the City is accommodating growth, belief that certain transportation projects are needed, need to maintain bus/transit service, questions about light rail and bus service, and the importance of maintenance and capacity-building projects. In addition, the meeting minutes indicate that event participants showed interest in pedestrian and bicycle facilities, and indicated a preference for a "pay-as-you-go" funding option such as a sales tax, instead of a "lump sum" option such as a car tab fee. March 10, 2014 Minutes, p. 2. The Board also discussed the proposed survey with staff and the PRR representatives. PRR provided sample documents, including a survey that PRR had prepared for Community Transit. One Board Member commented that he is an alternate on the Community Transit board, and that agency found its survey very helpful. Id. p. 3. After the discussion, the Board passed a motion authorizing staff to move forward with the survey.

Again, at this time, the Board had not made any decision on whether the District would submit any ballot proposition to the voters, or if so, what the proposition would be. In fact, at the March meeting, Board Member Roberts asked "how much time they would have to review

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information from the survey before being asked to make a decision about putting it on the ballot.” Staff referred to a schedule in the agenda packet, and indicated that the Board could review the information at the June 2014 meeting and make a decision about whether to submit a ballot measure in July. March 10, 2014 Meeting Minutes.⁴ Respondents strongly dispute the allegation in the Complaint that the Board had “pre-determined” that it was going to pass a resolution submitting a ballot proposition to the public.

Next, in March 2014, PRR and staff conducted three open houses, held at a local elementary school, Lynnwood City Hall, and the Lynnwood Operations and Maintenance Center. Approximately 23 people attended. Again, the locations were selected to receive input from a wide variety of persons, rather than any one segment of the population. The open houses were advertised in many ways, including online notices in the Everett Herald and Lynnwood Today (the local Lynnwood newspaper), fliers in utility bills mailed to approximately 3700 addresses (the City provides water and sewer service to the vast majority of properties in the City), email notices to approximately 1,080 subscribers to the City e-news list serve, posting notices on the Transportation Benefit District webpage and the City’s home webpage, and door hangers on properties in neighborhoods adjacent to the open house venues. The PRR Scope of Services describes the purpose of the open houses (or neighborhood meetings) as “to engage community members in a discussion about transportation priorities.” PRR Contract, Scope of Work, p. 1. Participants were invited to view display boards and other information regarding the City’s current transportation system, the importance of maintaining transportation facilities, funding, and potential future transportation improvement projects. See copies of Display Boards, attached as Attachment 4. Participants were asked to use “sticker dots” on two display boards to indicate their priority projects, and to indicate their preferred funding option (sales tax or vehicle license registration fee). They were also given the opportunity to provide written comments. PRR and staff were available at the open houses to answer questions. The results of the open houses were similar to those of the table events.

On April 22, 2014, an on-line survey was initiated (which was a non-statistical version of the survey). On April 25, 2014, the statistical survey was mailed to 5000 randomly selected addresses within the Transportation Benefit District’s boundaries. The addresses were not chosen with reference to any particular group(s) of persons; to the contrary, they were randomly selected in order to obtain statistically valid survey results. The survey included 11 substantive questions. The first seven questions related to satisfaction with the current use of funds for transportation improvement projects, whether participants were aware of the current \$20 vehicle license registration fee, the importance of and willingness to fund certain types of transportation projects, and level of use of certain streets and access points. The survey then

⁴ The Complaint asserts that because a ballot measure resolution was included in the schedule, this demonstrates the Board had already decided to pass the resolution. This is not accurate; the schedule was provided so the Board had information as to when it would have to make a decision on whether or not to pass the resolution, in order to have any potential ballot measure submitted at the November 2014 election.

asked four questions that related to levels of support for the two funding options of a sales tax increase or a vehicle registration fee increase.

After the March 10 meeting, the Transportation Benefit District's next Board meeting was on June 30, 2014. Again, Mayor Smith attended as an observer. PRR provided the Board with a summary of the results of the public outreach, including the survey. The Board discussed the results, asked for information about the revenue forecast from the sales tax increase funding option, and asked for information about which projects the revenues would be used to fund. At the end of the discussion, the Board passed a motion for staff to move ahead with drafting a **potential** ballot measure to the voters at the earliest opportunity to institute a .2 of one percent sales tax. See June 30, 2014 Minutes.

3. The Transportation Benefit District Board Approves a Resolution Submitting a Ballot Proposition to the Voters Regarding a Sales Tax Increase.

To the extent relevant, although the Transportation Benefit District Board passed the June 30 motion, this was not the Board's final action deciding to present a ballot proposition to the voters. The Board's decision on the matter did not occur until the next Board meeting, on July 21, 2014. The Mayor did not attend that meeting. Notably, and notwithstanding the motion authorizing staff to prepare the potential ballot measure resolution, it was not a foregone conclusion that the Board would approve the resolution or approve it in the same form. During the discussion of the matter, Board Member Roberts moved to amend the resolution to provide for a ballot measure submitting a .1 of one percent sales tax increase to the voters. Although the motion to amend the resolution failed, there was detailed discussion on the motion. There was also additional discussion on the topic of an increased vehicle license fee.

Ultimately, after the motion to amend did not pass, the Board did approve Resolution No. 5, submitting the ballot proposition to the voters at the November 2014 election. The Assistant City Attorney (acting as the Transportation Benefit District's attorney) then presented information on the state law's prohibition against using public facilities to support or oppose a ballot proposition. A memorandum on this topic was included in the agenda materials for the July 21 meeting. July 21, 2014 Minutes and Agenda Materials.

Following the July 21 meeting, staff submitted Resolution No. 5 to the Snohomish County Department of Elections.

C. Response to Claims in Complaint.

As noted above, the Complaint can be summarized as alleging that City and Transportation Benefit District officials acted to support a ballot proposition in violation of RCW 42.17A.555 by: (1) causing the Transportation Benefit District to undertake certain

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public outreach (by approving the public outreach and/or a consultant contract for the outreach); and (2) causing the Transportation Benefit District to conduct a survey as part of the public outreach (by approving use of the survey). In connection with the survey, the Complaint alleges in part that the survey violated RCW 42.17A.555 because it was targeted to specific groups, and because it included questions regarding the level of taxation that persons responding to the survey would support.

RCW 42.17A.555 provides in pertinent part:

No elective official ... nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of a public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency. However, this does not apply to the following activities:

...

(3) Activities which are part of the normal and regular conduct of the office or agency. ...

RCW 42.17A.555 does not prevent a public office or agency from (a) making facilities available on a nondiscriminatory, equal access basis for political uses or (b) making an objective and fair presentation of facts relevant to a ballot proposition, if such action is part of the normal and regular conduct of the office or agency. WAC 390-05-271. Further, "normal and regular conduct of a public office or agency" is defined as:

conduct which is (1) lawful, i.e., specifically authorized, either expressly or by necessary implication, in an appropriate enactment, and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner. No local office or agency may authorize a use of public facilities for the purpose of assisting a candidate's campaign or promoting or opposing a ballot proposition, in the absence of a constitutional, charter, or statutory provision separately authorizing such use.

WAC 390-05-273; see *King County Council v. Public Disclosure Commission*, 93 Wn.2d 559, 561, 611 P.2d 1227 (1980) ("Normal" means usual or customary.' ... 'Regular' means lawful or conducted in conformity with established rules").

The Public Disclosure Commission has issued an interpretation, which is an expression of the Commission's view of the meaning of RCW 42.17A.555, the relevant administrative

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rules, and case law. PDC Interpretation No. 04-02 (last amended May 22, 2013), titled "Guidelines for Local Government Agencies in Election Campaigns" ("Guidelines"). The Guidelines are "intended to provide guidance regarding the Commission's approach and interpretation of how the statutory prohibition on the use of public facilities for campaigns impacts activities that may be contemplated by government employees or other persons who may seek to utilize those public facilities." Guidelines, p. 1; see *Wash. Education Ass'n v. Public Disclosure Commission*, 150 Wn.2d 612, 619, 80 P.3d 608 (2003)(holding that similar guidelines for school districts have no legal or regulatory effect, and are advisory only).

Under the heading of "Basic Principles," the Guidelines state in part:

1. Public facilities may not be used to support or oppose a candidate or ballot proposition. RCW 42.17A.555. ...

2. The Public Disclosure Commission holds that it is not only the right, but the responsibility of local government to inform the general public of the operational and maintenance issues facing local agencies. This includes informing the community of the needs of the agency that the community may not realize exist. Local governments may expend funds for this purpose provided that the preparation and distribution of information is not for the purpose of influencing the outcome of an election. ...

6. The PDC is charged with enforcing RCW 42.17A.555. This requires consideration and analysis of activities, which may or may not be determined to be in violation of the statute. The PDC has, over the years, developed methods of considering and analyzing activities engaged in by public offices. Among the factors considered are the normal and regular conduct and the timing, tone, and tenor of activities in relation to ballot measure elections. As in any matter where intent is to be considered, hard and fast rules, which will be applicable to all situations, are difficult to establish.

The combination of a number of activities into a coordinated campaign involving close coordination between agency activities and citizens' committee activities which closely resembles traditional election campaign activities and which is targeted at and/or occurs close in time to a ballot measure election is likely to draw close scrutiny and careful consideration by the PDC as to whether a violation has occurred. ...

[7.c] Agencies are urged to read the definition of "normal and regular" at WAC 390-05-271 and WAC 390-05-273. **Agencies need to be aware, however, that in no case will the PDC view a marketing or sales effort related to a campaign or election as normal and regular conduct. ...**

Emphasis in original. In addition to stating Basic Principles, the Guidelines advise that the following actions specific to "Surveys and Research" are permitted:

- Agencies may conduct surveys and/or other community research, including demographic questions, to determine the community's priorities, public perception of performance, and/or to inform the community about agency programs or policies.
- Agencies may conduct community research (including but not limited to the use of questionnaires, surveys, workshops, focus groups, and forums) to determine the community's priorities for both programs and/or facilities and their associated total costs and projected dollars per thousand assessment.
- The surveys and/or other community research can be conducted before or after the governing body has approved a resolution to place a ballot measure on the ballot. However, research conducted after the adoption of the resolution may be subject to greater scrutiny.
- Agencies may publish survey results if it is consistent with the normal and regular conduct of the agency.

Guidelines, p. 24-5. The Guidelines advise that under the PDC's interpretation of RCW 42.17A.555, the following actions are not permitted with respect to "Surveys and Research":

- Agencies shall not conduct surveys to determine what taxation level the public would support.
- Agencies shall not conduct surveys designed to shore up support or opposition for a ballot measure.
- Agencies shall not target registered voters or other specific subgroups of the jurisdiction in conducting their election-related surveys.
- Agencies shall not use survey results in a manner designed to support or oppose a candidate or ballot measure.

Id. Finally, specific to "Surveys and Research," the Guidelines state that the following general considerations are relevant:

- Has the elected legislative body passed a resolution authorizing a measure to be placed on the ballot? (If so, actions may be more closely scrutinized.)
- Does the election-related survey target specific subgroups?
- Is the survey or community research consistent with normal and regular activities of the agency?

Id.

1. The Transportation Benefit District's Public Outreach Was Consistent with the District's and the City's Normal and Regular Activities.

Regarding the Transportation Benefit District's public outreach in general, the public outreach did not violate RCW 42.17A.555. The outreach included the five table events, three open houses (with associated written materials), and the survey. As noted above, RCW 42.17A.555 contains an exception for "activities which are part of the normal and regular conduct of the office or agency." The Guidelines generally allow for community research, including surveys. The District's public outreach and community research was part of the District's normal and regular activities, and was consistent with the normal and regular activities of the City, and other public agencies. These types of outreach and community research, including surveys, are commonly used by local governments in Washington.

The District's public outreach met the definition of "normal and regular conduct" under WAC 390-05-273. First, the public outreach was lawful. Under state law, the District is a quasi-municipal corporation, with all the usual powers of a corporation for public purposes and all other powers specifically conferred by statute. RCW 36.73.040. This broad authority includes the power to communicate with the public that the District serves, and to conduct research regarding the desires of the community in connection with the District's purposes to acquire, construct, improve, provide and fund transportation improvements.

Second, the public outreach activities were usual. They were not effected or authorized in or by some extraordinary means or manner. See WAC 390-05-273. The Transportation Benefit District is a new agency; it was created in 2010, and has only been operational since approximately 2011. The District first adopted its \$20 per year vehicle license registration fee in November of 2010. Due to the time necessary for the Department of Licensing to begin collecting the fee and transmitting it to the District, the District did not receive a full year of revenues until 2012. The Board did not begin making significant decisions regarding transportation improvement priorities and funding until 2012 and 2013, and there was no need to begin considering community research until that time. However, the fact that this was first opportunity for a new agency to conduct public outreach does not require the conclusion that the outreach was not a normal and regular activity. Otherwise, a new agency could never conduct community research.

The District was created by the City, and has the purpose of acquiring, constructing, improving, and funding transportation improvements within the District's boundaries, which are also the City's boundaries. Thus, in determining whether the public outreach was a "normal and regular" activity, it is appropriate to look to whether the City has conducted similar activities. The City has engaged in similar community outreach on many occasions. Examples in the recent past include, but are not limited to:

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- In 2013, the Public Works Department, with the assistance of a consultant, conducted community research in connection with the proposed Poplar Way Extension Bridge project to identify community issues associated with the project. The scope of services included two open houses, news releases, newsletter articles, displays, presentations, mailers, and email list-serve messages.
- In 2012, the Public Works Department, with the assistance of a consultant and with Snohomish County, conducted community outreach and research in connection with the proposed 36th Avenue W. Improvements project to establish a forum for the community and affected property owners to provide input on the project's development and to provide information to the public about the project and its status. The outreach included a newsletter and an open house (with display graphics and a power point presentation) to provide the public with then-current project information and an opportunity to provide input on key project issues.
- In 2011, the Public Works Department, with the assistance of a consultant, conducted community outreach and research in connection with the proposed SR99 Safety Improvement project, which included meetings with property owners, business owners, community groups and the general public, to provide information regarding the safety issues, review safety improvement alternatives, and obtain input from the attendees.
- In 2011, the Public Works Department, with the assistance of a consultant, conducted community outreach and research in connection with a proposed 48th Avenue W. Sidewalk Improvements project, which included two public open houses (with display graphics), to provide citizens with information on the project and the opportunity to provide input on key project issues, including project design.
- In 2009, the Public Works Department conducted community outreach and research in connection with a proposed Multi-Choice Transportation System Improvements project/program, which included a newsletter article, press release, webpage, distribution of project information and comment handouts and other project information materials to numerous bicycle groups and associations, other community groups and clubs, Edmonds School District, and the general public, discussions with the Lynnwood Transportation and Traffic Task Force, and three public open houses, all to provide citizens with information on the project and the opportunity to provide input on key project issues, including the project scope, design and costs.
- The City, with the assistance of a consultant (National Research Center), periodically conducts City-wide public/citizen surveys regarding policy issues facing the City and ratings of various characteristics of the City. These include surveys in 2002, 2006, 2010 and 2014. Each survey included demographic questions, such as general health, employment status, type of residence and housing cost, income level, race, age, and gender. These demographic questions are very similar to those used in the PRR survey at issue here. The 2002 survey included questions relating to whether persons responding would (1) support actions to increase revenues to maintain existing levels of service, and (2) would vote in favor of general obligation bonds to finance different types of capital projects.

- In 2014, the City plans to conduct a survey regarding the Parks Comprehensive Plan.
- In 2010, the City conducted community research for a project to develop a City “brand.” This included focus groups, personal interviews, and three formal public surveys. The surveys included demographic questions, such as age, income levels and race.
- In 2008, the City conducted a public survey relating to proposals to regulate fireworks.
- Over the years, the City has also conducted public outreach and research on a variety of planning and community development topics, such as proposed comprehensive plan amendments, sub-area plans, or development regulations under the Growth Management Act.

In addition, the public outreach was not effected in or authorized by some extraordinary means or manner. The Transportation Benefit District went through an extensive process to select a qualified consultant to assist it in developing and conducting the public outreach, which included the solicitation of proposals, review of submissions from interested consultants, interviews of three proposing firms, and the Board’s approval of a contract with the most qualified consultant. See Factual Background, above. The District selected PRR as the most qualified service provider. PRR represented itself as having performed similar services for numerous local governments and state agencies in Washington, and specifically that it had worked with agencies providing transportation services. For example, PRR had performed similar services for Community Transit, a public agency providing bus and other transportation services in Snohomish County, and for Kitsap Transit, a public agency providing bus and other transportation services in Kitsap County. The services provided by PRR for these agencies included citizen surveys. In particular, the public outreach developed by PRR for Community Transit included a survey with almost identical questions to those asked in the Transportation Benefit District survey. See CT Materials, Attachment 5. Based on this, staff believed that PRR was well-qualified to develop and conduct community research for the District, and recommended that the Board approve a contract with that firm.

Thus, the Transportation Benefit District’s public outreach was part of the District’s normal and regular activities, and was authorized and effected in a normal, regular and usual manner.

2. The Transportation Benefit District’s Public Outreach Was Consistent with the PDC’s Guidelines.

Regarding the Transportation Benefit District’s public outreach program in general, the public outreach was not in violation of RCW 42.17A.555. The Guidelines indicate that public agencies such as the District have not only the right, but the responsibility, to inform the community of the operational and maintenance issues facing the agency. This includes informing the community of the needs of the agency that the community may not realize exist. The District’s public outreach was designed to meet this responsibility. In particular,

information relating to the need for future transportation facility maintenance, as well as for capital transportation improvement projects, and associated costs was presented at the information table events and open houses held in February and March of 2014. The survey also included questions relating to satisfaction with the current use of funds for transportation projects, awareness of the current vehicle license fee, the importance of and willingness to fund various of transportation projects, and level of use of certain streets and access points.

The Guidelines also indicate that agencies do not violate RCW 42.17A.555 by conducting community research, including surveys, to determine the community's priorities, public perception of performance, and/or to inform the community about agency programs or policies. Surveys may include demographic questions. Further, agencies may conduct community research (including but not limited to using questionnaires, surveys, workshops, focus groups, and forums) to determine the community's priorities for both programs and/or facilities and their associated total costs and projected dollars per thousand assessment. Again, the District's public outreach, in general, met these parameters.

The Guidelines indicate that community research, including surveys, may be performed before or after the agency's governing body passes a resolution submitting a ballot proposition to voters on the same topic as the research, but that if the survey or other research occurs after the resolution is passed, the research will be more closely scrutinized. Here, the District's community research and survey occurred **before** the Board passed the resolution submitting the ballot measure to the voters. Moreover, and contrary to the allegations in the Complaint, the District conducted its community research and survey **before** the Board had made a decision to submit a ballot measure to the voters. Respondents strongly disagree with the Complaint's allegations that the Board had "pre-determined" to place a ballot measure for election. As indicated in the meeting minutes and agenda materials for meetings in 2013 and in February, March and June 2014, although a ballot measure was discussed sporadically, the topic was debated and there was no decision or consensus that it was appropriate, or if so, what form it should take. Even at the June 30, 2014 meeting, the ballot measure was discussed as "potential." And even as late as the July 21, 2014 meeting, Board Members asked questions regarding whether a vehicle license fee would be appropriate and debated whether .1 percent of one percent, or .2 percent of one percent, would be the appropriate proposed sales tax increase. See July 21, 2014 Meeting Minutes. The Complaint emphasizes that agenda packets prior to July 2014 included a schedule showing passage of a resolution, but the schedule was prepared so that the Board would have information as to when a resolution would need to be passed, to meet Snohomish County's requirements for the November 2014 election. Similarly, the Complaint argues that because at the June 30, 2014 meeting the Board passed a motion for staff to draft a **potential** ballot measure authorizing a .2 of one percent sales tax increase, this

shows the Board had made a final decision. That is not the case; the Board did not make a “final decision” until it discussed and then passed the resolution at the July 21 meeting.⁵

The Complaint claims that the Transportation Benefit District’s public outreach, and in particular the survey, violated RCW 42.17A.555, alleging that the outreach was “targeted” at specific subgroups (voters) contrary to the Guidelines. However, neither the community events nor the survey were targeted at any particular segment of the population. The five table events were each held at a different location: the Lynnwood Senior Center, the Lynnwood Library, the Edmonds Community College, a local coffee shop, and the Lynnwood Recreation Center. These locations were selected to enable the District to receive input from a variety of persons, rather than any one group or segment of the population. Likewise, the three open houses were held at different locations (a local elementary school, Lynnwood City Hall, and the Lynnwood Operations and Maintenance Center), again selected to receive input from a broad spectrum of the population. The open houses were advertised to the general public in many ways, including online notices in the Everett Herald and Lynnwood Today (the local Lynnwood newspaper), fliers in utility bills mailed to approximately 3700 addresses (the City provides water and sewer service to the vast majority of properties in the City), email notices to approximately 1,080 subscribers to the City e-news list serve, posting notices on the Transportation Benefit District webpage and the City’s home webpage, and door hangers on properties in neighborhoods adjacent to the open house venues. Anyone could attend the table events and open houses and voice their opinions; there were no prerequisites for attendance and they were not “invitation only” events.

Likewise, the survey did not target specific categories of persons. The survey was mailed to approximately 5000 addresses in the District. These addresses were randomly selected by the District’s consultant, PRR, in order to obtain statistically valid responses. In addition, the survey was posted on the District’s website, so that persons who did not receive a survey in the mail could provide input. Again, there was no pre-requisite for submitting a survey response. The survey did contain demographic or classification questions, such as gender, age brackets, race, income brackets, whether the person lived within Lynnwood city limits, and number of times the person voted in the last four elections. However, these questions are not improper; the Guidelines indicate that it is permissible to include demographic questions in community surveys. They do not support the conclusion that the survey was improperly targeted at subgroups. To the contrary, the demographic questions, including the questions relating to race and Hispanic background, are necessary in order to ensure statistically valid survey results that can be properly extrapolated to the general public being surveyed. The demographic questions are very similar to those included in other surveys performed by the City. In fact, according to PRR, those questions relating to race and

⁵ The Complaint selectively quotes the motion passed by the Board, omitting the word “potential” from the motion. Complaint, p. 28. In any event, the survey and other outreach were all performed before June 30, 2014.

Public Disclosure Commission

Hispanic background are identical to those used on U.S. Census questionnaires. See Community Transit materials, attached.⁶

The Complaint asserts the survey was improper because it included questions related to support for different levels of taxation, contrary to the Guidelines. Four survey questions did address the issue of funding options. Question 8 asked which of four levels of sales tax increase is reasonable to pay for Lynnwood transportation improvements. Question 9 asked which of four levels of vehicle registration fee increase is reasonable to pay for Lynnwood transportation improvements. Question 10 asked whether the responder would support a ballot measure to collect additional funding for these transportation improvements (the question did not specify the type of funding). Question 11 asked the responder to indicate his or her level of support for a sales tax increase of .2 of one percent, or a vehicle registration fee increase of \$80, and which of those two options the person preferred, if he or she had to choose.

Respondents now recognize that Question 11 is inconsistent with the Guideline stating that agencies “shall not conduct surveys to determine what taxation level the public would support,” and Questions 8, 9 and 10 arguably are also inconsistent with that Guideline to different degrees. Respondents note that the Guidelines are not regulations, but agree that they are the Commission’s expression of the meaning of RCW 42.17A.555. However, when the District’s public outreach is viewed in its entirety, respondents submit that at the very least there was not a material violation of the statute. The outreach and research all occurred before the time that the Board determined to submit a ballot proposition to the voters, the outreach and research was not targeted at any subgroup, and the outreach and research was part of and consistent with the normal and regular activities of the District (and the City). The outreach and research was equally, if not more, focused on providing information on potential transportation project costs and needs and on obtaining information regarding the community’s perception of the use of transportation funds within the District, the community’s priorities for transportation projects, and preferred funding methods.⁷ Contrary to argument in the Complaint, the overall tone and tenor of the outreach was not a marketing or sales effort for a potential ballot measure.

⁶ The Complaint, at p. 22, refers to a provision in the PRR Scope of Work indicating that PRR will conduct more advanced analysis, including “cluster analysis” to identify any distinct citizen segments toward which more targeted public outreach/education approaches may be taken. See PRR Contract, Scope of Work, p. 3. However, neither cluster analysis nor any other advanced analysis was done, and no other outreach has been conducted.

⁷ Contrary to the Complaint (p. 14, 15), the written materials available to the public were not a “marketing or sales effort.” The materials described current funding sources, provided information on the District’s proposed transportation projects, including project costs, stated the shortfall between current funding and needs, described the two primary funding solutions (the license fee increase or the sales tax increase), and informed the public on how to learn more and provide input to the District. See document included in February 10, 2014 agenda materials, and copies of Display Boards. The Complaint notes that the written material only mentioned two funding solutions, but those are the two funding methods commonly used by transportation benefit districts.

Public Disclosure Commission

The District contracted with a well-qualified consultant to assist in the public outreach, who designed the community research, including the survey. The consultant indicated that it had prepared and conducted a very similar survey, with almost identical questions relating to support for levels of taxation, for Community Transit. The consultant had also prepared and conducted a survey for Kitsap Transit that included questions regarding support for levels of taxation.⁸ Further, City staff understands that other jurisdictions have presented very similar surveys to the public. For example, in September of 2013, Mercer Island School District conducted a community survey to determine the level of support for a proposed voter-approved bond issuance. Shortly thereafter, on September 26, 2013, that District's board of commissioners passed a resolution submitting the bond approval ballot proposition to the voters at the February 14, 2014 election. In May/June of 2014, Snoqualmie Valley School District conducted a telephone survey to determine the level of support for a potential election on a bond issuance that would require voter approval. In 2011, the Seattle Parks Foundation conducted a survey to determine the level of support for tax measures for various purposes, and in 2012 the King County Parks Department likewise conducted a survey to determine the level of support for a potential tax levy (which appears to have been approved by the voters in 2013). While this understanding that other jurisdictions have conducted very similar surveys may not be a defense, it is a mitigating factor.

No respondent had any actual knowledge that the Guidelines advised against these types of survey questions. The Complaint implies that most, if not all, of the Board Members had attended trainings that covered the topic of RCW 42.17A.555, and that therefore all Board Members were aware that the statute prohibited the survey questions. However, the trainings did not provide specific information on the application of the statute to community research; the trainings simply did not address that aspect of the statute. See, e.g., Complaint Attachment 15. The Complaint also points out that the City had provided information regarding RCW 42.17A.555 to staff members in 2013. Again, the information provided did not address the application of the statute to community outreach and research. On the other hand, the facts that Board Members had attended trainings that included the topic of RCW 42.17A.555, that the City had provided information on the statute to staff, and that the Board Members received information on the statute at the Board's July 21, 2014 meeting, all indicate that the District, Board Members and staff, and the Mayor, took compliance with RCW 42.17A.555 seriously and were making good faith efforts to meet the requirements of the law. Again, while this may not be a defense, it is a mitigating factor.

Respondents submit that when the overall tone and tenor of the community outreach and research is considered, there was no violation of RCW 42.17A.555, or any violation was not material. The outreach had the purpose and was designed to provide information to the

⁸ The Community Transit survey was conducted in 2013. Respondents understand that Community Transit is still considering whether to submit a ballot proposition to the voters. Kitsap Transit apparently submitted its ballot proposition to voters at the February 2007 election.

community regarding operational and maintenance issues facing the District and potential transportation projects and funding options, and to obtain the community's input on priorities for potential transportation projects and funding options, before the Board made decisions on these topics. Contrary to the allegations in the Complaint, the community outreach was not a "voter persuasion" effort; it was an effort to engage the public to aid the Board's decision-making process.

By email dated September 10, 2014, the complainant submitted emails between staff members, and between staff and PRR, regarding inclusion of survey results in a future newsletter or further outreach (emails dated July 2 and July 15, 2014), and regarding final revisions to the PRR Report on the survey results (emails dated July 11, 23 and 24, 2014). First, the emails referencing the future newsletter or media outreach were sent in July, and were preliminary, brief discussions that did not lead to preparation of an article on survey results or to any further outreach. The newsletter has not been published yet, and no article on survey results has been prepared. Since the time of those emails, staff have had discussions regarding the application of RCW 42.17A.555, and will not be including information on survey results in the newsletter.⁹ All respondents are mindful that the PDC Guidelines permit a single jurisdiction-wide objective and fair presentation of the facts relating to a ballot measure. The District intends to request that the PDC review any such single publication, prior to its distribution. In any event, the July emails do not evidence any violation of RCW 42.17A.555.

Regarding the few emails relating to revisions to PRR's final report, the complainant asserts that because the report was being revised two or three days after the Transportation Benefit District's Board passed the ballot proposition resolution, this evidences that the final report was designed to influence the election. However, with all due respect, there was nothing unlawful or otherwise improper about PRR finalizing its report. The report was not prepared to support the ballot proposition; it was prepared to make a written record, and inform the District's Board, of the results of the survey. The report was not finalized until a few days after July 21, due to staff's and PRR's workload. Seven of the eleven substantive survey questions obtained information on community priorities for transportation projects. The Complaint does not allege that these questions were improper. The complainant's attempt to attribute improper motive to staff and PRR in this regard is unsupported speculation. Moreover, neither the report nor other information about the survey results will be posted on the District's (or City's) website or otherwise published until after the election on the ballot proposition (or until such other time as the PDC deems appropriate).

⁹ The District understands that RCW 42.17A.555 and the PDC Guidelines do not prohibit the use or publication of survey results and other information received about community priorities for transportation projects, and so the District may use those results for future decision-making. However, the District has no plans to publish those results before the November 2014 election. Respondents welcome information from the PDC if this understanding is not correct.

Public Disclosure Commission

As mentioned at the outset of this Response, the Complaint specifically names the Transportation Benefit District Board Members as respondents. To the extent relevant, respondents have found no Public Disclosure Commission orders ruling that an elected member of an agency's governing body violated RCW 42.17A.555 based on similar circumstances, such as approving contracts or expenditures for public outreach consulting services or passing a motion authorizing staff to proceed with a survey. See PDC Letter dated February 25, 2005, dismissing Public Facilities District Facilities officials as they believed actions were in compliance with law and primary purpose of three District ads was to educate public; see also PDC Letter dated October 25, 2004, dismissing complaint as Snohomish Health District officials had good faith belief they acted in compliance with law).

To the extent that the Complaint is based on the Transportation Benefit District Board Members' approval of the PRR contract, two current Members were not on the Board when the contract was authorized (Board Members Ross and Cotton) and Board Member Goodwin was not present at the pertinent meeting. See October 14, 2013 Minutes. To the extent that the Complaint is based on the Board's motion authorizing staff to proceed with the survey, Board Member Goodwin was also not present at that meeting. March 10, 2014 Minutes.

Finally, the Complaint specifically alleges that the City's Mayor violated RCW 42.17A.555. The Complaint claims that the current Mayor violated the statute because she was present at some of the meetings of the Transportation Benefit District, and has supervisory authority over City staff.¹⁰ However, these factors do not establish a violation of the statute. The District is a separate entity from the City. The Mayor is not a member of the District's governing board. The Mayor is not part of the District; the Mayor's only connection to the District is in the role of chief administrative officer of the City, which includes general supervision over City staff, who perform services for the District through the interlocal agreement between the District and the City. After taking office in January 2014, the Mayor only attended a few District meetings as an observer; the meeting minutes do not indicate that she even participated in any discussions. The Mayor was not involved in performing any services for the District. Again, respondents have found no Commission orders ruling that an elected official violated RCW 42.17A.555 based on similar circumstances. At the very least, the Mayor should be dismissed from this matter, or not included in any further investigation by the Commission. See PDC Letter dated February 25, 2005, dismissing Cowlitz County Commissioners as the Public Facilities District was separate entity from the County.

¹⁰ The Complaint also mentions that the City's Finance Director, acting ex officio as the District's Treasurer, attended the October 14, 2013 and June 30 and July 21, 2014 Board meetings. Complaint, p. 9, 31. If that reference is intended to name the Finance Director as a respondent in this matter, on its face it falls far short of alleging that the Finance Director took any action that violated RCW 42.17A.555. (The July 21, 2014 meeting minutes do not list the Finance Director as being in attendance, so that reference is incorrect.)

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Public Disclosure Commission

D. Conclusion.

In conclusion, the Transportation Benefit District's public outreach was consistent with the normal and regular conduct of the District, the City and other similar public agencies. The outreach was performed before the Board made a decision to submit the ballot proposition to the voters, and it was not targeted at any subgroups of the District's residents or other citizens. It was not designed to shore up support for the ballot proposition. The purpose of the outreach was to inform the public about transportation project operational and maintenance issues and needs, and to obtain information to assist the Transportation District Board Members in making decisions given the public's priorities for transportation improvement projects and preferred funding options. Therefore, respondents do not believe that RCW 42.17A.555 was violated, or that any violation was not material, and request that the Public Disclosure Commission dismiss the Complaint. However, if the Commission determines to undertake further investigation of the matter, respondents wish to fully cooperate with the Commission in its investigation. If the Commission deems it appropriate, respondents would welcome the opportunity to meet with the Commission at any time.

We thank you for your consideration of this response.

Very truly yours,


Rosemary A. Larson

cc: Lynnwood Transportation Benefit District Board Members
Nicola Smith, Mayor
Bill Franz, Director of Department of Public Works



Skyline Tower
Suite 1500
10900 NE 4th Street
Bellevue, WA 98004

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SEP 26 2014

Rosemary A. Larson
Attorney at Law
Dir: 425.450.4249
rlarson@insleebest.com

Public Disclosure Commission

September 25, 2014

Mr. Tony Perkins
Public Disclosure Commission
711 Capitol Way, Rm. 206
P.O. Box 40908
Olympia, WA 98504-0908

Re: Lynnwood Transportation Benefit District – Review of Proposed
Single Publication Regarding Ballot Measure
VIA REGULAR MAIL AND EMAIL(tony.perkins@pdc.wa.gov)

Dear Mr. Perkins:

I am the Attorney for the Lynnwood Transportation Benefit District. On July 21, 2014, the District’s Board passed a resolution submitting to the voters a ballot proposition on whether to increase sales tax in the District by .2 of one percent to fund certain transportation improvements. The ballot measure will be submitted to the voters at the November 4, 2014 election.

Public Disclosure Commission Interpretation No. 04-02 (as amended May 22, 2013) indicates that an agency may prepare and distribute throughout its jurisdiction “one jurisdiction-wide objective and fair presentation of the facts per ballot measure.” The District understands that the Public Disclosure Commission will review an agency’s proposed publication for compliance with the Commission’s interpretation of RCW 42.17A.555, which generally prohibits use of public funds to support or oppose a ballot proposition.

The District has prepared a draft publication regarding the ballot proposition described above, and requests that the Commission review the publication and provide comments, as appropriate. Thus, please find enclosed:

1. The draft single-page publication titled “Transportation Benefit District Fact Sheet.”
2. A draft notice/description of the ballot measure which would be placed on the Transportation Benefit District webpage.

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3. A draft webpage titled "Proposition 1: Sales and Use Tax for Transportation Improvements" (which is almost identical to the draft single-page publication).
4. An email dated September 25, 2014 from David Mach, a City of Lynnwood staff member providing services for the Transportation Benefit District, describing the manner in which the District proposes to distribute the Fact Sheet, and describing the webpage postings. The email also included a copy/link to the current City of Lynnwood homepage, as an example of how the City's homepage would link to the "Proposition 1: Sales and Use Tax for Transportation Improvements" page.

Please let me know if you have any questions about this, or if you need additional information in order to provide comments. The District (and the City) do not intend to distribute or publish any of these materials until hearing from the Commission.

We thank you for your time in reviewing these materials.

Very truly yours,


Rosemary A. Larson

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Public Disclosure Commission

cc: Loren Simmonds, Transportation Benefit District Board President
Nicola Smith, Mayor
Bill Franz, Director of Public Works
David Mach, Project Manager

Rosemary A. Larson

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From: David Mach <dmach@ci.lynnwood.wa.us>
Sent: Thursday, September 25, 2014 8:53 AM
To: Rosemary A. Larson
Cc: Jeff Elekes; William Franz; Marcie MacQuarrie; Julie Moore
Subject: Lynnwood TBD Proposition #1 Fact Sheet for PDC Review
Attachments: Fact Sheet.pdf

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Public Disclosure Commission

Rosemary,

The Lynnwood TBD intends to provide "one-jurisdiction-wide objective and fair presentation of the facts" regarding the November 4th general election Proposition #1. Our intent is to distribute as follows:

- 1) The "fact sheet" (attached) will be included as part of the fall edition of the Inside Lynnwood Newsletter. The newsletter is a quarterly publication which is mailed to all addresses within the city "area-wide". It is anticipated to be mailed sometime in the week of October 27th. Hard copies of the "fact sheet" will also be available at city hall if requested by the public.
- 2) Regarding the TBD webpage, the intent is to include very similar content as shown on the "fact sheet". The following links show what is intended:

Brief notice/description on TBD webpage (this is not currently active for the public, preview only):

<http://www.ci.lynnwood.wa.us/CM/WebUI/PageTypes/GeneralContent/GeneralContent.aspx?PageID=1441&PageMode=Preview>

Proposition #1 webpage (this is not currently active for the public, preview only):

<http://www.ci.lynnwood.wa.us/CM/WebUI/PageTypes/GeneralContent/GeneralContent.aspx?PageID=1442&PageMode=Preview>

- 3) Lastly, the homepage of the City's website will also provide a brief notice/description on Proposition #1 and link to the TBD/proposition webpage. FYI, see the following link for the City's homepage (as currently posted without the TBD Proposition #1 notice): <http://www.ci.lynnwood.wa.us/>. The City's homepage currently cycles through four notices (stuff and truck, Lynnwood just got a little more social, volunteers makes a difference, eNews). These notices get removed and replaced from time to time depending on current topics of the season.

The web content described in #2 and #3 above will be posted sometime after permission from the PDC is obtained and run through November 4th.

Please forward this email to the PDC for their review and concurrence and let me know if they have any questions or comments. We hope to finalize this review prior to October 6th if possible. Your assistance is much appreciated.

Thank you,

David Mach, P.E. | Project Manager | City of Lynnwood | 425-670-5275 | dmach@ci.lynnwood.wa.us | 19100 44th Ave W | Lynnwood, WA 98036-5635

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Public Disclosure Commission



LYNNWOOD WASHINGTON

Fact Sheet

November 4, 2014 General Election Ballot Measure Proposition 1: Sales and Use Tax for Transportation Improvements

What is Proposition 1?

Voters are being asked to consider a sales tax increase of two-tenths of one percent (0.2%) on the November 4, 2014 ballot. If approved, Proposition 1 would raise the sales tax rate in Lynnwood from 9.5% to 9.7%. If passed, the measure would increase sales tax by \$0.01 on a \$50 taxable purchase. The sales tax increase would remain in effect for ten years.

What transportation projects would be funded by Proposition 1?

If approved, the ballot measure would generate about \$4 million in additional revenue per year for the programs and projects described below.

Citywide Programs

Pavement Maintenance and Reconstruction

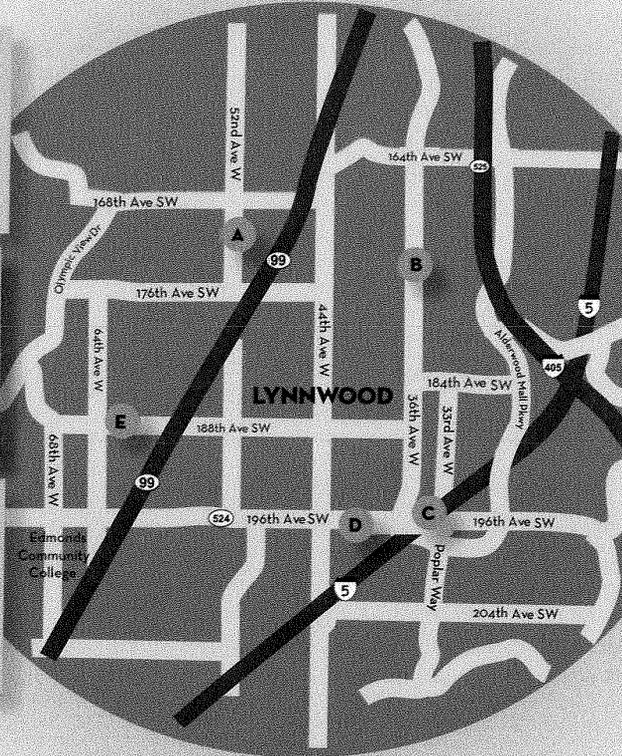
Proactive maintenance activities including crack repair, chip sealing, patching, and pavement overlays.

Street and Operations Maintenance

Routine maintenance activities such as pothole repairs, striping, signage, street cleaning, snow removal, landscaping maintenance, and minor sidewalk repairs.

Traffic Signal Operations and Maintenance

Includes the repair, maintenance, and upgrades to traffic signal systems; rebuilding old traffic signals; and operating the Traffic Management Center at City Hall.



Capital Building Projects

A 52nd Avenue W

Add turn lanes, new bicycle lanes, sidewalks, concrete curbs and gutters, and intersection improvements on 52nd Avenue W between 176th Street SW and 168th Street SW.

B 36th Avenue W

Fully rebuild pavement and add new bicycle lanes, sidewalks, concrete curbs and gutters, and intersection improvements on 36th Avenue W between Maple Road and 164th Street SW.

C Poplar Way Bridge Extension

Build a new 750-foot bridge across I-5 between 196th Street SW and 33rd Avenue West/ Alderwood Mall Boulevard to help relieve congestion in Lynnwood's City Center and mall area.

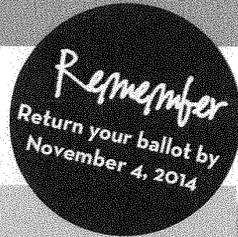
D 196th Street SW

Add two additional lanes (one lane in each direction), center median, wider sidewalks, and landscaping to 196th Street SW between 48th Avenue W and 36th Avenue W.

E 188th Street SW

Add turn lanes, new bicycle lanes, sidewalks, and concrete curbs and gutters on 188th Street SW between 60th Avenue W and 68th Avenue W.

For a complete project list, map, and information, visit:
www.ci.lynnwood.wa.us/TBD



What is a Transportation Benefit District?

The Lynnwood City Council formed the Transportation Benefit District on May 24, 2010 to fund construction, maintenance, and operation of the City's street and traffic system. State law allows cities to form Transportation Benefit Districts to fund transportation projects within city limits.

City of Lynnwood
Transportation Benefit District
PO Box 5008
Lynnwood, WA 98046-5008

www.ci.lynnwood.wa.us/
TBD
(425) 670-5000

SEP 26 2014

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Transportation Benefit District Test 1

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City Council

Mayor Nicola Smith

City Departments

Budget and Finance

Codes, Ordinances, and Resolutions

Proposition 1 - November 4, 2014 General Election Ballot Measure



Voters are being asked to consider a sales tax increase of two-tenths of one percent (0.2%) on the November 4, 2014 ballot. If approved, Proposition 1 would raise the tax rate in Lynnwood from 9.5% to 9.7%. If passed, the measure would increase sales tax by \$0.01 on a \$50 taxable purchase. The sales tax increase would remain in effect for ten years.

LEARN MORE

Background:

A Transportation Benefit District (TBD) is a Quasi-municipal corporation and independent taxing district created for the sole purpose of funding transportation improvements within the district. A TBD is created by ordinance of legislative authority (county or city) and may include other counties, cities, port districts, or transit districts through Inter-local agreements.

At the November 29th 2010 Board Meeting, after conducting a public hearing, the TBD Board adopted TBD Ordinance #2 enacting a \$20 vehicle registration fee (for each eligible vehicle registered in Lynnwood). The \$20 vehicle registration fee went into effect on July 1st 2011 and generates approximately \$420,000 annually for transportation projects. The projects to be funded (in whole or in part) include:

1. City of Lynnwood Street Fund 111 (operation and maintenance)
2. Pavement Overlay Program
3. Traffic Signal Rebuild Program
4. Traffic Signal Reconstruction: Scriber Lake Road at 196th Street SW
5. 48th Avenue W Sidewalk: 183rd Place SW to 180th Street SW

Upcoming Meetings

Monday, Oct, 13, 2014

6:00 PM Transportation Benefit District Meeting

Monday, Mar, 09, 2015

6:00 PM Transportation Benefit District Meeting

View Agendas, Minutes, & Documents

Upcoming Board Meetings:

Regular Board meetings are held on the second Monday of March and the second Monday of October of each year in the City of Lynnwood City Council Chambers starting at 6:00 PM. In addition to the regular Board meetings, special Board meetings may be scheduled from time to time.

September 15, 2014

October 13, 2014

March 9, 2015

October 12, 2015

TBD Board Members

Board President Loren Simmonds

Board Vice President Sid Roberts

- Board Member Ruth Ross
- Board Member Benjamin Goodwin
- Board Member Ian Cotton
- Board Member Van AuBuchon
- Board Member M. Christopher Boyer

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SEP 26 2014

Public Disclosure Commission

Contact Information:

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Staff Contact David Mach, Project Manager, 425-670-5275

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City Council

Mayor Nicola Smith

City Departments

Budget and Finance

Codes, Ordinances, and Resolutions

Proposition 1: Sales and Use Tax for Transportation Improvements

Voters are being asked to consider a sales tax increase of two-tenths of one percent (0.2%) on the November 4, 2014 ballot. If approved, Proposition 1 would raise the tax rate in Lynnwood from 9.5% to 9.7%. If passed, the measure would increase sales tax by \$0.01 on a \$50 taxable purchase. The sales tax increase would remain in effect for ten years.



What transportation improvements would be funded?

If approved, the ballot measure would generate about \$4 million in additional revenue per year for the programs and projects described below.



Pavement Maintenance and Reconstruction

Proactive maintenance activities including crack repair, chip sealing, patching, and pavement overlays.



Street and Operations Maintenance

Routine maintenance activities such as pothole repairs, striping, signage, street cleaning, snow removal, landscaping maintenance, and minor sidewalk repairs.



Traffic Signal Operations and Maintenance

Includes the repair, maintenance, and upgrades to traffic signal systems; rebuilding old traffic signals; and operating the Traffic Management Center at City Hall.

A 52nd Avenue W

Add turn lanes, new bicycle lanes, sidewalks, concrete curbs and gutters, and intersection improvements on 52nd Avenue W between 176th Street SW and 168th Street SW.

B 36th Avenue W

Fully rebuild pavement and add new bicycle lanes, sidewalks, concrete curbs and gutters, and intersection improvements on 36th Avenue W between Maple Road and 164th Street SW.

C Poplar Way Bridge Extension

Build a new 750-foot bridge across I-5 between 196th Street SW and 33rd Avenue West/ Alderwood Mall Boulevard to help relieve congestion in Lynnwood's City Center and mall area.

D 196th Street SW

Add two additional lanes (one lane in each direction), center median, wider sidewalks, and landscaping to 196th Street SW between 48th Avenue W and 36th Avenue W.

E 188th Street SW

Add turn lanes, new bicycle lanes, sidewalks, and concrete curbs and gutters on 188th Street SW between 60th Avenue W and 68th Avenue W.

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SEP 26 2014

Public Disclosure Commission

Remember to return your ballot by November 4, 2014

City of Lynnwood
19100 44th Ave W
PO Box 5008
Lynnwood WA 98046-5008
425-670-5000
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Search Keywords

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GOVERNMENT

PUBLIC SAFETY

CHOOSE LYNNWOOD



City-Wide Clothing Drive

Drop off your new or gently used children's clothing at one of our several city locations Sept 1st-25th, and then on September 25th help us Stuff the Truck at the Lynnwood Farmers Market!



STUFF the TRUCK!

City-Wide Clothing Drive...[Read More](#)

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<p>Press Releases & Announcements</p> <p>Lynnwood Fire Department Partners with Swedish Edmonds Emergency Department Physicians to Pioneer New Community Health Services</p> <p>City of Lynnwood Sells Surplus Property in City Center for Redevelopment</p> <p>Lynnwood Mayor Submits 2015-16 Proposed Preliminary Budget</p> <p>View All News</p>	<p>Project Updates</p> <p>City of Lynnwood Sells Surplus Property in City Center for Redevelopment</p> <p>What is going on at Highway 99 and 196th St SW?</p> <p>Lynnwood City Council Approves Major City Center Project</p>	<p>Road Construction</p> <p>Lynnwood Construction Project on 44th Avenue West to Start May 5 - Traffic Congestion and Delays Expected</p> <p>Starting on Monday May 5, 2014, The City of Lynnwood is officially launching the 44th Ave Pavement Preservation Project.</p>		

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SEP 26 2014

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PO Box 5008
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Tony Perkins

From: Phil Stutzman
Sent: Thursday, September 25, 2014 7:14 PM
To: MPhommahaxay@insleebest.com
Cc: Tony Perkins
Subject: RE: Lynnwood Transportation Benefit District - Review of Proposed Single Publication Regarding Ballot Measure

Rosemary Larson,

Tony Perkins asked me to respond to your request that PDC staff review a proposed fact sheet for the Lynnwood Transportation Benefit District. I will be out of the office on Friday, September 26th, and I wanted to get back to you before I leave. Due to reduced staff resources, we are phasing out of reviewing fact sheets, but hope to post past fact sheet reviews on our website in the near future, for review by public agencies. In addition, we are currently reviewing a complaint by Don Gough against officials of the Lynnwood Transportation Benefit District concerning alleged activities related to the ballot proposition described by this fact sheet, so we do not feel it would be appropriate for us to provide an analysis of the fact sheet while there is an unresolved complaint concerning this election. I will talk with Tony on Monday when I return to confirm whether we are able to provide any feedback on the proposed fact sheet.

Phil Stutzman



Philip E. Stutzman
Director of Compliance
Direct Line: 360-664-8853
Email: phil.stutzman@pdc.wa.gov
PDC Main No. 360-753-1111
Toll-Free in Washington State
1-877-601-2828
Website: www.pdc.wa.gov
Follow us on [Facebook!](#)

From: Tony Perkins
Sent: Thursday, September 25, 2014 4:35 PM
To: Phil Stutzman
Subject: FW: Lynnwood Transportation Benefit District - Review of Proposed Single Publication Regarding Ballot Measure

This is 2 of 2. Thanks.

Tony Perkins

(direct) 360.586.1042 | (toll free) 1.877.601.2828
tony.perkins@pdc.wa.gov

From: Michelle Phommahaxay [<mailto:MPhommahaxay@insleebest.com>]
Sent: Thursday, September 25, 2014 1:57 PM
To: Tony Perkins
Subject: FW: Lynnwood Transportation Benefit District - Review of Proposed Single Publication Regarding Ballot Measure

Mr. Perkins I am re-sending.

From: Michelle Phommahaxay
Sent: Thursday, September 25, 2014 1:59 PM
To: 'tony.perkins@pdc.wa.gov'
Cc: 'jacob.berkey@pdc.wa.gov'; Rosemary A. Larson
Subject: Lynnwood Transportation Benefit District - Review of Proposed Single Publication Regarding Ballot Measure

Dear Mr. Perkins:

Attached is a letter (with enclosures) dated 9/25/14 from Rosemary Larson regarding the above-referenced matter. The original will follow by regular mail.

Sincerely,

Michelle Phommahaxay | Legal Assistant to Rosemary A. Larson

INSLEE BEST DOEZIE & RYDER, P.S.
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Bellevue, WA 98004

Rosemary A. Larson
Attorney at Law
Dir: 425.450.4249
rlarson@insleebest.com

October 29, 2015

Mr. Tony Perkins, Director of Compliance
Public Disclosure Commission
711 Capitol Way, Rm. 206
P.O. Box 40908
Olympia, WA 98504-0908

Re: Response to Complaint Filed by Don Gough against Lynnwood
Transportation Benefit District and City of Lynnwood Officials,
PDC Case No. 915
VIA REGULAR MAIL AND EMAIL DELIVERY

Attorneys at Law

Richard A. Bersin
Kay L. Brossard
Don E. Dascenzo
Eric C. Frimodt
Henry R. Hanssen, Jr.
J. Todd Henry
Anneliese E. Johnson
Chris M. Kang
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Rosemary A. Larson
David J. Lawyer
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Christopher W. Pirnke
Dawn F. Reitan
Milan Gail Ryder
Daniel N. Shin
Andrew L. Symons
Gregory L. Ursich
Katherine F. Weber
Barbara A. West
Brett N. Wiese
Kinnon W. Williams

Dear Mr. Perkins:

Thank you for your correspondence dated October 15, 2015, informing the Lynnwood Transportation Benefit District and City of Lynnwood that the Public Disclosure Commission (“Commission”) has opened a formal investigation of the Complaint referenced above, and providing the District and City officials the opportunity to submit a supplemental response by October 29, 2015.

A. Supplemental Response.

Regarding the additional materials submitted by Don Gough on September 10, 2014, the District and the City did receive a copy of Mr. Gough’s September 10, 2014 email and its attachments. The respondent’s Response to Complaint No. T15-042, filed on September 18, 2014 (“Response”), responded to the allegations in the September 10 email and its attachments. However, the respondents would like to inform the Commission of several relevant factual matters that have occurred since the time that respondents filed their initial Response.

Regarding the September 10, 2014 email and attachments, those additional materials primarily related to Mr. Gough’s allegation that the District was going to improperly use the results of the 2014 survey and/or outreach, in a communication to the public in advance of the November 2014 election on the District’s ballot measure. In the Response, respondents stated that the District did not intend to include information regarding the survey results in any newsletter. Further, respondents indicated that the District planned to request

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that the Commission review any such publication for compliance with RCW 42.17A.555. See Response, p. 18. Accordingly, by letter dated September 25, 2014, the District requested that the Commission review (1) a draft single-page publication titled “Transportation District Fact Sheet”; (2) a draft notice/description of the ballot measure which would be placed on the District’s webpage; and (3) a draft webpage titled “Proposition 1: Sales and Use Tax for Transportation Improvements” (which was almost identical to the draft single-page publication). The District requested the Commission’s input based on its understanding that the Commission would review an agency’s proposed publication for compliance with the Commission’s interpretation of RCW 42.17A.555. However, by email dated September 25, 2014, the Commission informed the District that it could not review the District’s proposed publication due to reduced staffing, and because the Commission was reviewing the Complaint filed by Mr. Gough. Therefore, the District (and the City) did not publish any fact sheet at all, at any time, regarding the District’s November 2014 ballot measure. Thus, the allegations in September 10, 2014 email and attachments are moot.

Likewise, to the extent that the Complaint alleges that the survey and outreach results would be improperly used in communications regarding the November 2014 ballot measure to potential voters or other members of the public, the District (and the City) did not publish any such communications, and those allegations in the Complaint are moot.

Further, the District’s November 2014 ballot measure did not pass. To the extent that the Complaint alleges that the outreach and survey were intended to be a “voter persuasion effort,” that allegation is moot. (Respondents strongly disagree with the substance of that allegation; as stated in the respondent’s Response, the outreach and survey were intended to provide information to the District.)

In addition, after the Complaint was filed with the Commission, an action was filed against the District in Snohomish County Superior Court. *Hikel v. Lynnwood Transportation Benefit District*, Snohomish County Superior Court Cause No. 14-2-06652-8. In that case, Theodore Hikel, a former City Council Member and a former Lynnwood Transportation Benefit District Board Member, is the plaintiff, and Don Gough (the former City Mayor and the complainant in this matter before the Commission) is acting as Mr. Hikel’s attorney.¹ The lawsuit involves several of the same issues that Mr. Gough has asserted in this Complaint filed with the Commission. In the *Hikel* case, the plaintiff alleged, among other things, that the District violated the Open Public Meetings Act by providing inadequate notice of its June 30, 2014 meeting. In making this claim, the plaintiff argued that at the June 30, 2014 District Board meeting, the District’s Board took “final action” or made a final decision to submit a ballot measure to the voters requesting a .2 percent sales tax increase. Similarly, the plaintiff

¹ Mr. Hikel was a Council Member and District Board Member in 2010 and 2011, but was not re-elected in the November 2011 election.

alleged that the District's Board "pre-determined" that it would submit to the voters the ballot measure requesting a .2 percent sales tax increase, before the July 21, 2014 meeting when the Board considered, deliberated and ultimately passed the ballot measure resolution. Here, in this Complaint before the Commission, the complainant makes the identical allegations. In fact, in this matter, the complainant alleges that the District's Board had decided to submit the ballot proposition at even earlier meetings.

In the *Hikel* case, the plaintiff presented the claims alleging that the District's Board made a final decision on the ballot measure (took final action on the issue) at the June 30 meeting in a motion for summary judgment. The District submitted a Response Brief presenting its position that the District's Board did not make a final decision or take final action on a ballot measure until the Board's July 21, 2014 meeting. Thus, each party presented the same positions on this topic as in this matter before the Commission. However, in the *Hikel* case, the Superior Court agreed with the District and denied the plaintiff's motion for summary judgment. In order to deny the motion, the Court (Judge Ellen Fair) necessarily agreed with the District's position that the Board did not take final action or make a final decision on the ballot measure until the July 21, 2014 meeting. Thus, a court has decided this issue in the District's favor.²

B. Conclusion.

In conclusion, Respondents take the requirements of RCW 42.17A.555 seriously. At all times, respondents were making good faith efforts to meet the requirements of the law and were acting with a good faith belief that they and the District were acting in accordance with RCW 42.17A.555. The District's public outreach was consistent with the normal and regular conduct of the District, the City and other similar public agencies. The outreach was conducted before the District's Board made a decision to submit the ballot proposition to the voters, and it was not targeted at any subgroups of District residents or other citizens. It was not designed to shore up support for the ballot proposition. The purpose of the outreach was to inform the public about transportation project operational and maintenance issues and needs, and to obtain information to assist the District's Board Members in making decisions given the public's priorities for transportation improvement projects and preferred funding options. Therefore, respondents request that the Public Disclosure Commission determine that RCW 42.17A.555 was not violated, or that any violation was not material, and dismiss the Complaint.

² The pleadings filed by the parties in connection with the motion for summary judgment consist of hundreds of pages, and therefore are not attached to this letter. However, if the Commission wishes to review those pleadings, please let us know and respondents will provide copies.

Very truly yours,


Rosemary A. Larson

cc: Lynnwood Transportation Benefit District Board Members
Nicola Smith, Mayor
Bill Franz, Director of Department of Public Works