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November 20, 2019

VIA EMAIL & U.S. MAIL

Tabitha Townsend
Compliance Coordinator
Washington Public Disclosure Commission
Evergreen Plaza
711 Capitol Way S., #206
Olympia, WA 98504
Email: pdc@pdc.wa.gov

Re: PDC Case No. 59732; City of Medina Response to W. Edmonds Complaint Regarding Levy Proposition Mailer

Dear Ms. Townsend:

This comes in response to the Public Disclosure Commission's (PDC) November 5, 2019 email advising of a complaint by Wilma L. Edmonds concerning a City-wide mailer issued in connection with Medina's recent ballot Proposition 1 levy.[1] We appreciate the opportunity to provide a response to the PDC.

We serve as Medina City Attorney and were asked to prepare the response to Ms. Edmonds' complaint. In doing so, we discussed the complaint and reviewed the City's activities with City Manager Michael Sauerwein and Finance Director Julie Ketter, and obtained relevant records. The results of that work are reflected below.

The complaint is narrowly focused and alleges that the sole City-wide mailer related to Medina's 2019 general election ballot proposition was "very expensive" and "implies that if they do not vote FOR [sic] this Prop 1 they will suffer." The PDC categorized this complaint as falling within RCW 42.17A.555 for potential "misuse of public facilities", but has not made a decision whether an investigation of the complaint is warranted.

Summary of City's Response

Medina did not violate RCW 42.17A.555 nor did it misuse its facilities relating to the mailer. Medina followed State law, PDC guidelines and precedent, the King County Elections 2019 Jurisdiction Manual, and applicable judicial precedent with regard to the mailer. The City used the services of the City Attorney's Office early on to ensure that staff and Council were advised of applicable

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[1] The PDC's November 5, 2019 email was sent to Medina City Manager Michael Sauerwein and Medina City Attorney Scott Missall. The email address used for Mr. Missall was incorrect. The PDC resent the email on November 12, 2019 with a corrected address, at which time it was first received by Mr. Missall.

legal and conduct requirements concerning the ballot proposition, and consulted with our Office on those topics during the course of the election cycle. We made formal and informal presentations to and had discussions with the Council and staff, and distributed summaries of the law and the complete PDC Interpretation No 04-02 in doing so. The City retained Lund Faucett, an experienced public affairs and educational communications firm with a substantial background limited to public sector representation, to assist Medina in the performance of its legal responsibilities. For the reasons below, the PDC should decline to investigate the complaint.

Background

The Medina City Council adopted Ordinance No. 970 on March 11, 2019 approving a levy proposition for the 2019 general election ballot. Prior to doing so the City engaged in a lengthy analysis of the City's financial situation and need for the proposition. During the latter stages of that, the City Attorney's office provided instruction and briefing on State law and PDC requisites. The levy proposition was accepted by the King County Department of Elections without alteration, as were all subsequent City materials (e.g., the ballot explanatory statement, etc.).

City Mailer at Issue

Mailer and Distribution. The mailer at issue is attached in pdf format as **Exhibit A**. It is a color, tri-fold, one piece mailer with six faces. The plain language is a straightforward factual presentation that describes the impacts and outcomes of passage or rejection of the levy so that City residents would understand the issues. The mailer was the only election-specific item sent by the City during the general election and went to all 1,601 Medina addresses.

Direct Costs. Consolidated Press LLC performed the printing and distribution of the mailer. Its Invoice No. 24411, attached as **Exhibit B**, reflects a total charge of $2,885.65 for producing 1,698 copies of the mailer, inkjet mailing prep, resident list, application of 1 address tab per mailer, postage, and state tax. TCi Design prepared the mailer graphics. Its Invoice No. 9225, attached as **Exhibit C**, reflects its charge of $3,390.00. Total direct costs were thus $6,275.65, for an average cost per mailer of $3.69.

Content. The mailer was based in significant part on materials previously prepared and used in connection with the City's annually required budget and revenue analyses. See generally RCW Chapters 35.34 and 35A.33. In 2019, that included analyses of revenues, costs and expenses for City services in 2020 and succeeding years. Some of that material was also presented in prior editions of the City's regular quarterly newsletter, and of course in numerous open and public City Council presentations and discussions. Lund Faucett participated in preparing the mailer content, and the City Attorney provided legal review. The mailer is a fair and balanced presentation of the fiscal facts facing the City, and was intended to educate Medina residents about the future of City services. The mailer is titled "Voter Information", explains the facts of City costs, expenses and revenues, and asks Medina's residents to decide what level of City services are appropriate, all of which is consistent with state law and PDC guidelines.

These facts confirm that the mailer is not "very expensive" and certainly does not imply (let alone state) that voters "will suffer" as the complaint asserts. They also confirm the City met State law and PDC requirements and performed its normal and regular conduct as discussed below.

Applicable State Law and PDC Guidance

The City examined the following legal authorities and applied them to its conduct regarding the general election, specifically including preparation of the mailer.[2]

State Law. RCW 42.17A.555 prohibits the use of public facilities and funds to promote or oppose a ballot proposition, but specifically exempts "activities which are part of the normal and regular conduct" of the City. In interpreting and applying that statute, WAC 370-05-271(2) declares that the statute "does not prevent a public office or agency from 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 390-05-273 defines "normal and regular conduct" as used in the statute to mean, in pertinent part: "(1) lawful, ... and (2) usual, i.e., not effected or authorized in or by some extraordinary means or manner."

PDC Interpretation 04-02 (last amended 5.22.3013). RCW 42.17A.555 is extensively analyzed and applied in PDC Interpretation No. 04-02 (hereafter "Interpretation"), after which it describes numerous guidelines for governmental conduct that meet (and do not meet) statutory requirements. The Interpretation is directly pertinent to the complaint and mailer in the following specifics, beginning with the description of its function and purpose:

> These Guidelines are meant to aid and assist in compliance with law.
>
> This [Interpretation] is an educational tool ... express[ing] 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 [the statute]. Readers are strongly encouraged to review the statute and rules referenced in these Guidelines.

Interpretation at 1.

The Interpretation sets forth ten Basic Principles that arise from the statute, three of which are directly pertinent to the complaint and mailer:

> 2. The [PDC] 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. (Emphasis added)
>
> 7a. Historically, the PDC has routinely advised and held with respect to election-related publications [that] *one jurisdiction-wide objective and fair presentation of the facts per ballot measure is appropriate.* (Emphasis added)
>
> 7b. The PDC will presume that every agency may distribute throughout its jurisdiction an objective and fair presentation of the facts for each ballot measure.

Interpretation at 3-4.

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[2] These authorities were also included the City Attorney's legal and conduct presentations to and discussions with City staff and officials.

The Interpretation also creates Guidelines for Local Government Agencies in Election Campaigns. The Guidelines for Use of Equipment and Supplies allow the following conduct:

> Agency employees, in the course of their employment, may produce information that is an objective and fair presentation of the facts using public resources.

Interpretation at 14. The Guidelines for Agency Publications (Specific to Elections) allow these actions:

> Agencies may develop an objective and fair presentation of the facts regarding agency needs and the anticipated impact of a ballot measure, and may distribute it in the agency's customary manner. [....]

Interpretation at 21.

Medina followed these (and other) PDC admonitions as to the mailer with the intent of meeting its legal obligations and responsibilities, and performing its work in a manner fully compliant with the law. For example, the mailer urges residents to vote, not "which way" to vote. Using the financial information from its annual budget analysis, the mailer explains where City revenues come from and what they are spent on, explains how the City has implemented cost savings measures and what other cost savings can be achieved, explains how taxing jurisdictions share tax revenues, explains what the dollar cost of the levy will be to an average homeowner, and explains the consequences of levy approval or rejection on the level of City services. The mailer does not urge a specific vote, is not threatening, and makes no implication that people will suffer if they don't vote for the levy.

Case Law and PDC Precedent

Case law on RCW 42.17A.555 is sparse, with only seven reported cases that cite the statute, none of which is factually similar or particularly useful. While there are many PDC decisions that cite the statute and concern mailers, the following decision is illustrative of the PDC's approach. PDC Complaint 1371 (decided by letter dated Dec. 4, 2015) found that South King County Fire and Rescue had not violated RCW 42.17A.555 when it sent out a mailer regarding a 2015 ballot proposition because it comprised an objective and fair presentation of the facts, was neutral in tone, and aimed more at getting people out to vote than inducing them to vote in any particular manner. Medina's mailer compares favorably with the Fire District mailer by including more evaluative information, and clearer information about the impacts of the levy. Like the Fire District mailer, it simply urges residents to vote in the election without indicating a "yes" or "no" vote.

Conclusion

Based on the foregoing information, Medina respectfully asks the PDC to find that Medina's mailer did not violate RCW 42.17A.555, and is a fair and neutral presentation of the facts in conformance with the City's educational responsibilities and PDC guidelines. For those same reasons, Medina further requests that the PDC find the complaint does not support nor warrant further investigation.

Please contact the undersigned if you have any further questions or concerns. I would be happy to talk with you.

Sincerely,

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

Scott M. Missall
Medina City Attorney

SXM:lxs
Enclosures

EXHIBIT A

VOTER INFORMATION

PROPOSITION 1: MAINTAIN MEDINA LEVY LID LIFT

MAINTAIN MEDINA

YOU WILL DECIDE THE FUTURE OF MEDINA CITY SERVICES

State law caps cities' property tax revenue increases at 1% annually unless voters approve raising the limit. On the November ballot, Medina residents will decide whether to keep the 1% cap in place or "lift the lid" and provide additional funding for Medina City services.

If approved by voters, Proposition 1 would maintain Medina's 2019 level of services and provide sustainable funding for the next decade. If rejected by voters, Medina will have to reduce its service levels based on funds available under the 1% cap.

BALLOTS ARE DUE BY NOVEMBER 5, 2019

For election information, visit kingcounty.gov/depts/elections

This informational mailer was prepared by the City of Medina. Learn more:
MaintainMedina.org

City of MEDINA WASHINGTON

Medina City Hall
501 Evergreen Point Road
PO Box 144
Medina, WA 98039

MEDINA ONLY GETS $0.08 OF EVERY DOLLAR IN PROPERTY TAXES

Most of your property taxes fund State and County services including schools, transit, libraries, etc. with a small amount staying in Medina. And, the 1% mandated property tax cap on cities means that Medina's 2020 increase will only be about $28,000, which isn't sufficient to maintain current levels of City services. Police costs alone are expected to increase nearly four times that $28,000 projection next year.

MEDINA: $0.08

YOUR TAX DOLLAR:

- Schools: $0.64 (State & Local)
- King County: $0.20 (Including Library)
- Sound Transit: $0.025
- Other: $0.055

UNSUSTAINABLE FINANCIAL FUTURE

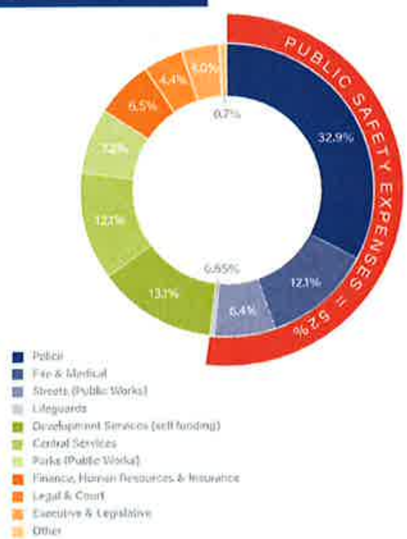
Rising costs (4-5% per year) aren't keeping pace with revenue growth (2.5% per year) threatening delivery of essential City services—police, fire, medical aid, municipal court, streets and sidewalks, parks and natural spaces, permiting, public records and elections.

The City has implemented cost saving measures, identified available revenue sources and utilized reserves to date, but without additional funding, the City's projected deficit will be $500,000 in 2020, growing to $3.3 million by 2025.

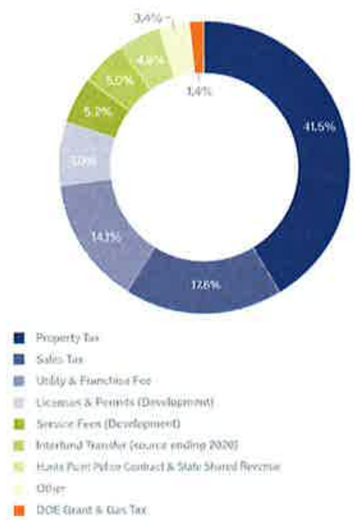
CITY BUDGET SNAPSHOT

- More than half of the total budget (52%) is spent on public safety
- 95% of the budget is spent on services mandated by law and the necessary services that support them
- City's general operations budget is approximately $6.9 million
- Property taxes are the single largest source of funding
- Medina's property tax rate is the 4th lowest in King County

2019 EXPENSES FOR GENERAL OPERATIONS (BY DEPARTMENT)



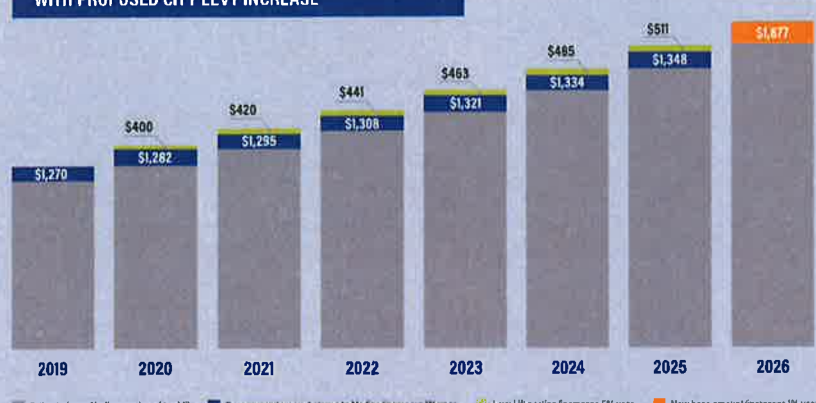
2019 REVENUE SOURCES FOR GENERAL OPERATIONS



WHAT WILL IT COST?

The levy increase will be gradual. A Medina resident with a $2 million house (based on King County's assessed value) will pay less than $60 a month at the end of the 6-year levy period (2025). This plan was developed to ensure enough funding to maintain current service levels today and for the next decade. Low-income seniors and people with disabilities will be exempt from the increase. All levy dollars will go directly to Medina city services.

PROPERTY TAX BILL FOR $2M ASSESSED VALUE HOME WITH PROPOSED CITY LEVY INCREASE



Consolidated Press LLC
600 S Spokane St
Seattle, WA 98134
Phone: (206) 447-9659
Fax: (206) 447-9477
Email: accounting@consolidatedpress.com

consolidatedpress
Effective Solutions In Print

INVOICE

Invoice #	24411
Invoice Date	9/30/19
Date Shipped	10/16/19
Ship Via	Seattle P.O. Postal
Salesperson	Greg Andersen
Terms	.5 Down, .5 COD
P.O. Number	
Job Number	24411

Lund Faucett
Kris Faucett
411 University Street, Ste. 1200
Seattle, WA 98101

Quantity	Description	Unit Price	UM	Amount
1,698	Medina Direct Mail Flyer			1,897.93
1,601	Inkjet Mailing Prep			290.80
1,601	Resident list			91.00
1,601	Apply 1 tab face only			81.03

Thank you for your business.
FSC: SCS-COC-000964

Subtotal	2,360.76
Sales Tax	238.31
Deposit	-2,360.07
Postage Due	286.58
Postage Paid	-286.58
Total Due	$239.00

Customer Code :	00008587
Invoice Number :	24411
Invoice Date :	9/30/19
Invoice Amount :	$239.00
Amount Paid :	____________

Remit To:

Consolidated Press LLC
600 S Spokane St
Seattle , WA 98134

Remitter:

Lund Faucett
Kris Faucett
411 University Street, Ste. 1200
Seattle, WA 98101

EXHIBIT B

7001 Seaview Ave NW, Suite 120
Seattle, WA 98117
(206) 352-0700
totalcreative.net

TCi Design+ Branding

INVOICE

BILL TO
Cocker Fennessy
411 University Street
Suite 1200
Seattle, WA 98101 USA

INVOICE # 9225
DATE 10/04/2019
DUE DATE 11/03/2019
TERMS Net 30

SHIP DATE	SHIP VIA	P.O. NUMBER	SALES REP
09/23/2019	electronic	Verbal - Kris F	TC

ACTIVITY	QTY	RATE	AMOUNT
Graphics Services City of Medina Lid Lift Proposition Direct Mail Design and development of print files for tri-fold mailer	1	3,390.00	3,390.00T

Please note that invoices paid by credit card will incur an additional 3% convenience fee. To make payment by credit card please phone Lisa @ (206)352-0702. Thank you for your business!

SUBTOTAL	3,390.00
TAX (0%)	0.00
TOTAL	3,390.00
BALANCE DUE	**$3,390.00**

EXHIBIT C