

## Complaint#2 of 2

<b>Respondent Name</b>
City of Olympia
<b>Complainant Name</b>
Robert Shirley
<b>Complaint Description</b>
<u><a href="#">Robert B. Shirley</a></u> reported via the portal (Wed, 12 Apr 2023 at 7:37 PM)  The complaint and related information is attached as files. The complaint alleges the City of Olympia violated RCW 42.17A.555 when it produced and mailed a flyer on the topic of Ballot Proposition 1 concerning creation of a Regional Fire Authority. Fourteen violations are alleged.
<b>What impact does the alleged violation(s) have on the public?</b>
The alleged violation alleges a flyer produced by City of Olympia employees and mailed at taxpayers' expense misleads voters about City of Olympia Ballot Proposition 1 to be voted on by April 25, 2023. The Ballot Proposition concerns establishment of a Regional Fire Authority.
<b>List of attached evidence or contact information where evidence may be found</b>
Evidence is attached as files. Information in addition to the attached complaint and related material is available from the cities of Olympia and Tumwater and their employees and from the potential witnesses listed below.
<b>List of potential witnesses</b>
Jim Lazar  Larry Dzeiza
<b>Certification (Complainant)</b>
I certify (or declare) under penalty of perjury under the laws of the State of Washington that information provided with this complaint is true and correct to the best of my knowledge and belief.

April 12, 2023

To: Public Disclosure Commission

From: Robert B. Shirley, Olympia Resident

RE: Complaint for Violations of RCW 42.17A.555

### CITY OF OLYMPIA EMPLOYEES PRODUCED AND MAILED A FLYER IN SUPPORT OF A BALLOT MEASURE

RCW 42.17A.555 prohibits city employees from producing and distributing flyers that support (as well as flyers that oppose) ballot propositions. City of Olympia employees produced and mailed a flyer in support of City Proposition No. 1 that arrived in Olympia voters' homes during the week of April 3 concerning an election for April 25, 2023. On information and belief, the city (with a contribution from the City of Tumwater) distributed 44,758 mailers at a printing cost of \$9,057.63 and a mailing cost of \$13,184.75; there is no information on the staff time or consultant time (and thus cost) invested by the Olympia that is available to complainant.

### CITY EMPLOYEES INVOLVED

Several City of Olympia staff were involved in the creation and distribution of the illegal flyer. On information and belief, those employees involved are the City Manager, Jay Burney; City Attorney, Mark Barber; Assistant City Attorney, Michael M. Young; Strategic Communications Director, Kellie Purce Braseth; and likely other employees.<sup>1</sup>

### EMPLOYEES WERE AWARE OF RCW 42.17A.555 VIOLATION IN 2019

In PDC complaint case 59039, filed in 2019 and decided on stipulation in 2020, the Commission determined the then Olympia City Manager Steve Hall violated RCW 42.17A.555 and fined Hall \$10,000 dollars (and stayed half of that fine). That case involved a flyer produced and mailed by the City of Olympia concerning a ballot measure just as this complaint concerns a flyer produced and mailed concerning a ballot measure. That 2019 flyer used the phrase "Vote No." Several staff were involved in the production of the flyer but the Commission chose to find a violation by only one employee and no elected council members.

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<sup>1</sup> Complainant has been a resident of Olympia for more than 40 years and follows city activities in the council and the administration. That 40 years of experience of the operations of the city and review of its staff listed online support the information and belief.

At the time of the 2019 violation, at a minimum the following employees listed immediately above were employed in the same, or much the same, positions as they are in 2023: Mayor Cheryl Selby; City Manager, Jay Burney (in 2019 Burney was Assistant City Manager); City Attorney, Mark Barber; Assistant City Attorney, Michael M. Young; Strategic Communications Director, Kellie Purce Braseth.

PDC INTERPRETATION No. 04-02 PLACES DUTY ON SUPERVISORY PERSONNEL TO KNOW AND APPLY RCW 42.17A.555.

Supervisory personnel<sup>2</sup> have a duty to know, apply, and communicate to their staffs the difference between acceptable information activities and inappropriate promotional activities in support of local government ballot measures.

PDC Interpretation No. 04-02, Basic Principles, No. 4.<sup>3</sup>

AFTER 2019 VIOLATION, PDC STAFF ENCOURAGED REVIEW BY OLYMPIA OFFICIALS OF PDC INTERPRETATION No. 04-02

In two letters dated July 22, 2020 Kurt Young, PDC compliance officer, and BG Sandahl (on behalf of Peter Lavalley, Executive Director) wrote to City Attorney Mark Barber, and copied Assistant City Attorney Michael M. Young, to advise:

PDC staff is reminding the Mayor Selby and the Olympia City Council about the prohibitions of using city employees and facilities to support or oppose any candidate or ballot proposition, especially the inclusion of “Vote No” or “Vote Yes” statements *and other promotional or oppositional appeals* in publications produced and distributed concerning a ballot

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<sup>2</sup> There was a Regional Fire Authority working group that included both supervisory and non-supervisory personnel that discussed how to inform the public about the proposed authority. Staff Workgroup: City of Olympia: Jay Burney, City Manager; Aaron BeMiller, Finance Director; Kellie Braseth, Strategic Communications Director; Linnaea Jablonski, Human Resources Director; Mark Barber, City Attorney. City of Tumwater: Councilmember Eileen Swarthout; Councilmember Leatta Dahlhoff; Chair Councilmember Michael Althaus. City of Tumwater: John Doan, City Administrator; Troy Niemeyer, Finance Director; Ann Cook, Communications Manager; James Trujillo, Administrative Services Director. Ex Officio Non-Voting Members: Tumwater Fire Chief Brian Hurley; IAFF Local 2409 James Osberg. See p.1 (after two unnumbered pages): <https://mccmeetingspublic.blob.core.usgovcloudapi.net/tumwater-meet-53e0d7c817c148ecba25002173a7d063/ITEM-Attachment-001-90ee125e912c4f84a6d036061aec0ff4.pdf>

<sup>3</sup> Complainant cites here and elsewhere PDC Interpretation No. 04-02 as authoritative. There is one exception in complainant’s view: Basic Principles #8: “The PDC attributes publications or other informational activity of a department or subdivision as the product of the local agency as a whole.” RCW 42.17A.555 places responsibilities on individual employees to avoid the perverse circumstances where taxpayer funds are used to violate the law and then even more taxpayer funds would be used to pay a fine.



*measure. In addition, staff is also encouraging Mayor Selby and the Olympia City Council to review the guidelines found in PDC Interpretation #04-02 to ensure compliance with RCW 42.17A.555.*

Italics supplied.

<https://pdc-case-tracking.s3.us-gov-west-1.amazonaws.com/3304/City%20of%20Olympia%20Mayor%20%26%20City%20Council%20Complaint%20Return%20Letter%20with%20Reminder%20Cover%20Ltr%20%28PDC%20Case%2059039%29.pdf>

The paragraph quoted appears in both letters sent by the PDC that day.

#### PDC REVIEW CONSIDERS TONE AND TENOR OF COMMUNICATION

In guidance to local governments, the PDC staff has stated:

As part of our review process, we look at aspects such as the timing, tone, and tenor of a communication, and the “normal and regular” conduct of the agency. In addition, we also review whether a communication appears to be an objective and fair presentation of the facts that, if lacking, could make the communication objectionable under RCW 42.17A.555.

Election-Related Communications by Local Government Agencies, January 12, 2015.

<https://www.pdc.wa.gov/sites/default/files/2021-09/Fact.Sheets.pdf>

The statement above is a boiler-plate statement included in all three examples appended to the 2015 publication. As a boiler-plate statement the guidance provided is clearly a statement of policy and interpretation that must be applied to the flyer at the heart of this complaint. That is, the flyer must be examined in totality, meaning the “tone and tenor,” to see if the flyer impermissibly supports (or opposes) a ballot proposition.

#### COMPLIANCE WITH RCW 42.17A.555 REQUIRES THE FLYER TO BE AN “OBJECTIVE AND FAIR PRESENTATION OF THE FACTS”

The January 2015 guidance to local government cited immediately above notifies local agencies that flyers must be an “objective and fair presentation of the facts.”

The same guidance informs local agencies that certain statements must be avoided:

In addition, an “objective and fair presentation of the facts” must **avoid** the following:

- Overtly promotional or oppositional content (including inflammatory or emotionally-driven language; check marks and other indications of support; and *gratuitous photos that tend to provoke an emotional reaction*—e.g. an image of a body on an EMT stretcher, or a house exploding in flames);
- Statements that speculate about possible secondary or tertiary impacts of a ballot proposition;
- *Statements seeking to minimize the cost of a ballot proposition*, e.g., through comparisons to small-ticket items such as coffee, pizza, or a magazine subscription;
- Statements purporting to describe the sponsoring agency’s responsible fiscal management;
- Detailed information about property tax exemptions; and
- Detailed information about the conduct of elections (e.g. ballot drop-off locations), unless it is the normal and regular conduct of the agency to provide such information in the manner of the proposed publication.

Bold in original; italics supplied.

Note the guidance immediately above states things that “must” be avoided. Violations One to Three, below, concern the prohibition of “gratuitous photos that tend to provoke an emotional reaction—e.g. an image of a body on an EMT stretcher, or a house exploding in flames.”

#### STATEMENTS OF “VOTE YES” AND “VOTE NO” NOT REQUIRED FOR VIOLATION OF RCW 42.17A.555

The 2019 violation include the statement “Vote NO” on the flyer. Such a statement is not required for a violation of RCW 42.17A.55. As the two segments above explain, the review for an alleged violation must determine if the flyer is an “objective and fair presentation of the facts,” and whether the overall tone and tenor of the flyer, including photographs, is intended to induce voters to choose “yes” or “no.”

#### THE “PLAN” REFERENCED IN THE BALLOT PROPOSITION IS ESSENTIALLY UNAVAILABLE TO VOTERS

The flyer recites the “**BALLOT LANGUAGE Proposition No. 1**” that includes a reference to voters approving a “Plan” (see last line of ballot language). The Plan is 31 pages long but the flyer does not identify any information (either quotations or generalizations) taken from the Plan, and does not provide a website address that a voter could use to read a copy of the Plan.



Complainant was unable to find a copy of the plan by searching for “Regional Fire Authority Plan,” and similar search terms on each city’s website. Only after contacting a person who followed the Regional Fire Authority process for months and even attended at least one public meeting was your Complainant able to find a copy of a Plan that *might* be the Plan referred to in the ballot proposition language printed in the flyer. The indicators that what your complainant could find *might not* be the Plan on which voters will decide is that there is no indication that it is final and approved, and there is no date on the document. See: <https://mccmeetingspublic.blob.core.usgovcloudapi.net/tumwater-meet-53e0d7c817c148ecba25002173a7d063/ITEM-Attachment-001-90ee125e912c4f84a6d036061aec0ff4.pdf>

It seems reasonable to assert the flyer failed to provide voters with an “objective and fair presentation of the facts” because the flyer did not provide voters with information that would lead a voter to the 31-page Plan that is incorporated in the ballot language (in fairness, perhaps the flyer authors believed the three-line-long URL was not consistent with the aesthetic of the flyer).

THE BALLOT MEASURE CONCERNS *ONLY* THE STRUCTURE FOR FIRE SERVICES BY CREATION OF A REGIONAL FIRE AUTHORITY AND THAT THE NEW AUHTORITY WILL BE FUNDED BY PROPETY TAXES AND A NEW FEE

The flyer focuses on fire and emergency medical services (EMS). The flyer includes several promises of new services, promises of enhanced and improved services, and promises of better response times (each inaccurate promise is the subject of an alleged violation below). But nothing in the ballot proposition concerns those topics; the ballot is limited to changing the governing structure, a change in property taxes, and imposition of a new fee.

Even the essentially unavailable Plan does not make any of the promises printed in the flyer. The opposite is true. At the time the flyer was prepared, the City had available to it information from the Regional Fire Authority Planning Committee (established by the two cities pursuant to RCW 52.26.030) that approval of the ballot measure would not result in even one additional firefighter or paramedic. That information is contained in tab RFASTRAT in the attached spreadsheet file, TORFA, obtained by public records request from the City of Tumwater, and discussed more fully under Violation 6, below. That spreadsheet file is attached as an appendix to this Complaint.

In conclusion, the flyer is misleading to the extent it focuses on fire and EMS activities, including promises of new and enhanced services, when the ballot measure is concerned with administration and funding and not with activities and services.<sup>4</sup>

### VIOLATION ONE

Photographs used in the flyer violate RCW 42.17A.555 because three of the eight photographs are pictures of circumstances specifically called out by the PDC as pictures that “must” be avoided: “an image of a body on an EMT stretcher, or a house exploding in flames.” See 2015 Guidance.

One of the three largest pictures in the flyer is a structure exploding in flames. One of the three smallest (but large enough to be very clear) pictures is “a body on an EMT stretcher.” Another of the smallest pictures, next to the picture of the body on the stretcher, is firefighters inside what appears to be a burning house.

The use of specifically prescribed pictures can only be understood as an appeal to emotion, not to any fact, and therefore is a flagrant violation.<sup>5</sup>

### VIOLATION TWO

PDC Guidance states local agency flyers should not “lend[] an urgent tone to the publication that may be perceived as an attempt to promote a ballot proposition” and must avoid “gratuitous photos that tend to provoke an emotional reaction.” See 2015 Guidance, p.1, and its appended letter to City of Sequim, p.2.

The flyer contains eight photographs, including the three proscribed photographs described above, and every picture is of firefighters and emergency personnel. Eight photographs total that are all depictions of firefighters and emergency personnel on a short flyer qualify as “gratuitous photos that tend to provoke an emotional reaction,” and when viewed together the effect of the photographs gives “an urgent tone” to the flyer that has the effect of impermissibly promoting the ballot proposition.

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<sup>4</sup> Complainant acknowledges The Office of Financial Management forecasts significant growth in population for Olympia and Tumwater, and complainant does not doubt that an increase in emergency response personnel over the coming years will likely be needed to provide the service at or near the current level. But there is nothing in the ballot proposition or the Plan that requires, or funds, or provides “enhanced” services or a “better response” regardless of changes in future population.

<sup>5</sup> The specific prohibitions cited from the January 15 Guidance are not hidden in some dusty corner of the PDC website. Your complainant found the 2015 Guidance and the specific prohibitions within 30 minutes of beginning his search and review of PDC sources on RCW 42.17A.555. There is no excuse for ignorance of PDF guidance on the subject of permissible and impermissible flyer contents.



### VIOLATION THREE

In the short flyer, most of which is taken up with photographs, there is missing any kind of neutral, *non-verbal* presentation of “objective and fair presentation of the facts.” That is, there are no charts or graphs that would assist a taxpayer in understanding basic impacts of the ballot proposition on taxpayers’ total property tax bills (the fee is included on the property tax *bill* even though it is a fee and not a property tax). The omission of “objective and fair” information presented neutrally on the topic of increased taxpayer expenditures is a clear indication that the flyer, over-all, promotes the ballot proposition.<sup>6</sup>

### VIOLATION FOUR

In the section of the flyer titled “Stabilize funding using dedicated sources,” the city states “funding levels to support the growing demands on our fire agencies are becoming strained at an unsustainable rate.” This is not true.

The statement is not true because the city can choose to spend more (or for that matter less) on fire services if the city council chooses to do so in its budget. A city council budget choice to establish the current limit of fire service funding is not proof of unsustainability but is only the result of local agency budget trade-offs.<sup>7</sup>

The use of that untrue assertion in the flyer is promotion of the ballot measure because it is intended to make voters believe they may soon suffer reduced service if they do not vote for the ballot proposition.

### VIOLATION FIVE

In the same section of the flyer titled “Stabilize funding using dedicated sources,” the city states “The Fire Authority would rely on multiple, dedicated funding streams pooled

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<sup>6</sup> Neutral charts and graphs of this nature are not difficult to create or present; nearly every school district levy flyer contains one or more such charts and graphs.

<sup>7</sup> This complaint is directed at Olympia employees. However, it is worth noting on the topic of future spending for fire services that the City of Tumwater states on its RFA FAQ page:

Q. Can I count on the same level of service?

A. Yes. The Fire Authority will preserve and enhance service levels.

There is nothing in the ballot proposition that requires a newly-formed RFA to “preserve and enhance service levels.” That is a Q&A in support of the ballot measure without any factual support and is thus a violation RCW 42.17A.555. The Commission may want to investigate Tumwater employee’s relevant activities.

See <https://www.ci.tumwater.wa.us/departments/city-meetings/Commissions-advisory-boards/olympia-tumwater-fire-authority/fire-authority-faqs>



regionally to support current and future demands for fire and medical services.” This statement supports the ballot measure through omission.

The lack of information explaining the new fee and its relationship to property taxes and no statement of, for example, the increase in the average or median total property tax bill (tax and fee combined) is contrary to the 2015 Guidance. See, for example in the same 2015 Guidance, letter to Winlock School District, p.2., “We recommend that you provide more specific information about the cost of the levy, in terms of dollars and cents levied against a home of average value in the school district.” (Cf. guidance to City of Sequim, p.2, “we recommend that you explain, *in neutral tone*, the plan to finance the proposed police station and EOC...” Italics supplied.

## VIOLATION SIX

In the section of the flyer titled “Meet the Needs of Growing Community,” the city states “Call volumes currently exceed capacity for both agencies. The Regional Fire Authority would provide a framework for better response to the demand for services and increased call volume from our growing communities.” There is nothing in the ballot proposition that requires (or even hints at) a “better response” to the demand for services.

The city had available to it contradictory information concerning whether the ballot proposition would result in a “better response.” The Regional Fire Authority Planning Committee had extensive meetings and extensive presentations from a consulting team. The workpapers of one of those meetings, dated October 14, 2022, contains the following data on the lack of planned growth in fire (firefighter or FF) and emergency medical personnel (paramedic, or PM) if the RFA were approved. The only growth is in primarily *administrative* positions over the seven-year study period, highlighted in green on the chart below: growth consists of two human resource specialists, one information technology supervisor, one information technology specialist, and one maintenance worker (four out of five new positions will be administrative and a maintenance worker is neither a firefighter nor an EMS technician).

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PERSONNEL COUNT BY Rank	2024	2025	2026	2027	2028	2029	2030
Commissioner	6.00	6.00	7.00	7.00	7.00	7.00	7.00
Fire Chief	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Deputy Chief-Support Svc	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Deputy Chief-Ops	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Asst Chief-Ops	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Asst Chief-EMS	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Asst Chief-FM	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Bat Chief-Day	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Bat Chief	7.00	7.00	7.00	7.00	7.00	7.00	7.00
Capt-MSO	2.00	2.00	2.00	2.00	2.00	2.00	2.00
Capt-AFM	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Capt	-	-	-	-	-	-	-
Lt-Day	2.00	2.00	2.00	2.00	2.00	2.00	2.00
Lt-PM	7.00	7.00	7.00	7.00	7.00	7.00	7.00
Lt	30.00	30.00	30.00	30.00	30.00	30.00	30.00
Prevention Officer	4.00	4.00	4.00	4.00	4.00	4.00	4.00
FF-PM	28.00	28.00	28.00	28.00	28.00	28.00	28.00
FF	71.00	71.00	71.00	71.00	71.00	71.00	71.00
Prog/Plan Super	2.00	2.00	2.00	2.00	2.00	2.00	2.00
Social Worker	2.00	2.00	2.00	2.00	2.00	2.00	2.00
Fin Dir	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Acct Spec	2.00	2.00	2.00	2.00	2.00	2.00	2.00
Hr Dir	1.00	1.00	1.00	1.00	1.00	1.00	1.00
HR Spec	-	2.00	2.00	2.00	2.00	2.00	2.00
IT Super	-	-	1.00	1.00	1.00	1.00	1.00
IT Spec	-	-	1.00	1.00	1.00	1.00	1.00
Communications Coord	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Admin Super	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Bus. Ops. Spec.	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Sr. Prog Spec	-	-	-	-	-	-	-
Fleet Super	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Mechanic	5.00	5.00	5.00	5.00	5.00	5.00	5.00
Fleet Inventory Spec	1.00	1.00	1.00	1.00	1.00	1.00	1.00
Admin Asst	5.00	5.00	5.00	5.00	5.00	5.00	5.00
Maint Worker	-	-	1.00	1.00	1.00	1.00	1.00
Total Staff Assigned	182.00	184.00	187.00	187.00	187.00	187.00	187.00
Elected Commissioners	6.00	6.00	7.00	7.00	7.00	7.00	7.00

Source: TORFA Spreadsheet obtained via public records request from City of Tumwater by Larry Dzieza. Tab *Regional Fire Authority Strat.* NB color backgrounds were added by complainant. Attached as Appendix 2.

The combination of promising a “better response” when that is not provided for by the ballot proposition and the failure to inform voters that there will be no new firefighters or new EMS technicians who might create that supposed “better response” is the opposite of an “objective and fair presentation of the facts” as required by the PDC. See PDC Interpretation No. 04-02.



## VIOLATION SEVEN

In the section of the flyer titled “Maintain a Healthy Workforce,” the city states “Fire and emergency responders are under greater stress and working longer hours with increased demand for services, growing call volumes, and insufficient staffing. Post-traumatic stress injury is recognized as an employment-related condition affecting firefighters in our communities. The Fire authority would support expanded mental health resources for firefighters.”

This language provokes an emotional reaction that the January 2015 warns against. The language can only be understood as intended to garner support for the ballot measure through appeal to emotion because there is nothing in the ballot measure that concerns post-traumatic stress disorder or “expanded mental health resources.” In other words, the city makes promises that are not based on facts about the ballot measure and therefore the city violates the requirement for an “objective and fair presentation of the facts.”

## VIOLATION EIGHT

In the section of the flyer titled “Increase Service Efficiencies,” the city states the “Regional Fire Authority would bring enhanced...services.” Nothing in the ballot measure addresses enhanced services. As described above, the proponents of the ballot measure published information that clearly demonstrates that passage of the ballot measure will not result in new hires of firefighters or EMS personnel.

The city’s reference to enhanced services is not based on facts about the ballot measure and therefore the city violates the requirement for an “objective and fair presentation of the facts.”

## VIOLATION NINE

In the same section of the flyer titled “Increase Service Efficiencies,” the city states the Regional Fire Authority would create “A CARES unit to respond to non-urgent situations that don’t require a traditional EMS response.” There is nothing in the ballot proposition that requires or promises creation of a CARES unit. The city’s promise of creation of a CARES unit is not based on facts about the ballot measure and therefore the city violates the requirement for an “objective and fair presentation of the facts.”

As has been explained above in this complaint, the only likely (but not required by the ballot proposition) personnel increases are administrative and maintenance employees. None of those employee types would be staff for direct services to the public in a CARES unit.

## VIOLATION TEN

In the same section of the flyer titled “Increase Service Efficiencies,” the city states the Regional Fire Authority would create “New transport services to reduce the time to get patients to local hospitals and put fire and EMS back in service more quickly.” There is nothing in the ballot language that requires a reduction in “the time to get patients to local hospitals and put fire and EMS back in service more quickly.” The city’s promise of “new transport services” is not based on facts about the ballot measure and therefore the city violates the requirement for an “objective and fair presentation of the facts.”

## VIOLATION ELEVEN

In the same section of the flyer titled “Increase Service Efficiencies,” the city states the Regional Fire Authority would create “Enhanced public education efforts related to community risk reduction, health and safety.” There is nothing in the ballot language that requires enhanced public education. The city’s promise of “enhanced public education efforts” is not based on facts about the ballot measure and therefore the city violates the requirement for an “objective and fair presentation of the facts.”

## VIOLATION TWELVE

In the same section of the flyer titled “Increase Service Efficiencies,” the city states the Regional Fire Authority would create “Standardized training tactics and response times, which may improve the fire rating and reduce fire insurance costs.” If passage of the ballot proposition “may” improve the fire rating and reduce fire insurance costs then it is the case that adoption of the ballot measure *may not* result in the proffered improvements. The dangled reduction in fire insurance costs is not supported in fact drawn from the ballot language and so the city entices and misleads rather than provides an “objective and fair presentation of the facts.”

## VIOLATION THIRTEEN

The failure to provide in the flyer information about the Plan and the failure to provide a URL or other pointer to the Plan is the opposite of providing an “objective and fair presentation of the facts.” Accordingly, there is a violation by omission.

## VIOLATION FOURTEEN

A large portion of the flyer is labeled “Overview.” The Overview repeats, in the same or similar words and phrases, the impermissible assertions and promises made in the material that is the subject of the thirteen alleged violations above. It is not necessary or efficient to repeat all the same analysis that demonstrates the city produced a flyer that promotes the ballot proposition through non-factual assertions and promises of new and



enhanced services that are not the topic of the ballot proposition that only changes the administration and funding scheme to a regional fire approach and that does not address any particular service, lack of service, or increased service.

The shortest Q&A in the Overview demonstrates the city intends its flyer to support the proposed ballot proposition:

Can I count on the same level of service?

Yes. The fire authority will preserve and enhance service levels.

There is nothing in the ballot proposition that requires a newly-formed Regional Fire Authority to “preserve and enhance service levels.” The ballot measure does only two things: it authorizes the formation of the Regional Fire Authority with sources of revenue, and it approves the Plan. The Plan (which is essentially not available to voters) does not include anything that would enhance service levels, and the underlying workpapers for the Plan show it would not enhance service levels. In fact, the Plan specifically states that service levels will not be affected:

Upon the Effective Date, the Regional Fire Authority will initially adopt Olympia’s Standards of Coverage Document for the Olympia jurisdictional boundary area and Tumwater’s Standards of Coverage Document for the Tumwater jurisdictional boundary area. As such, services, levels of service, standards of coverage, development standards and customer expectations of each Participating Jurisdiction on the Effective Date shall remain unaffected.

Regional Fire Authority Plan, section 8(A)(2).

<https://mccmeetingspublic.blob.core.usgovcloudapi.net/tumwater-meet-53e0d7c817c148ecba25002173a7d063/ITEM-Attachment-001-90ee125e912c4f84a6d036061aec0ff4.pdf>

Moreover, as stated above, available to the city at the time it prepared the flyer there was information from the Regional Fire Authority Planning Committee that the measure would not result in even one additional firefighter or paramedic as explained above under Violation 6.

“FOR INFORMATION PURPOSES ONLY  
NOT INTENDED TO SUPPORT OR OPPOSE THE BALLOT PROPOSITION”

The city placed those phrases on the 2023 flyer. A departure from the 2019 flyer’s “Vote No” that violated RCW 42.17A.555 and for which one Olympia employee was fined \$10,000. However, like nearly every statement on the flyer now at issue, those phrases

are not true. The content of the flyer is not “information” but assertions and promises with no basis in fact. Uniformly, the assertions and promises, and the one-sided, emotionally-gripping photographs, are not based on the content of the ballot proposition and so are not the required “objective and fair presentation of the facts” required by the PDC. See PDC Interpretation No. 04-02.

### ACTION REQUESTED

The Public Disclosure Commission should fine the several employees who produced and distributed the flyer in violation of RCW 42.17A.555. The Commission should not fine the city because that will only punish city taxpayers. See fn.3, *supra*.

The City Manager should be held to the standard enunciated by the Commission:

Supervisory personnel have a duty to know, apply, and communicate to their staffs the difference between acceptable information activities and inappropriate promotional activities in support of local government ballot measures.

PDC Interpretation No. 04-02, Basic Principles 4.

The City Manager today was the Assistant City Manager when the \$10,000 fine was imposed on his predecessor city manager. Apparently that amount did not make an impression on current city manager. A fine of \$20,000 would be appropriate and would let other city managers understand that RCW 42.17A.555 is to be heeded.

The non-supervisory employees that participated in production and distribution of the flyer who also participated in production and distribution of the 2019 flyer should also be fined for participation in violation of RCW 42.17A.555 because the statute places a burden on all public employees and not just supervisors.<sup>8</sup> Without doubt, the City Attorney and the Assistant City Attorney had knowledge of the requirements of RCW 42.17A.555 and were in receipt of letters in July 2020 that brought PDC Interpretation No. 04-02 to their attention and therefore should be fined substantially. This is so even though they are not supervisors of administrative staff or managers but because they have the training to know how to find and follow laws and guidance and because they, like supervisors, are seen as authoritative by administrative and managerial employees. See fn.5, *supra*.

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<sup>8</sup> “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.” Italics supplied.

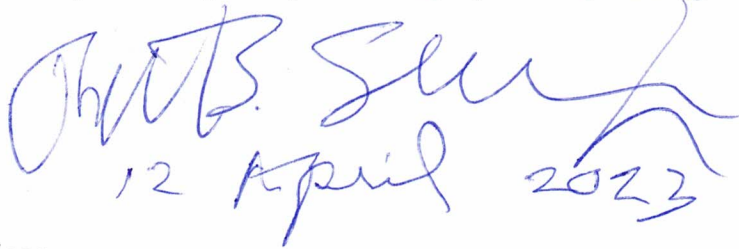


The author of the flyer should also be fined because only the most willfully ignorant employee could have lived through the events of 2019-20 and not understood there is PDC guidance to be followed concerning the content of flyers produced by local agencies.

Finally, the Commission should decide if Mayor Selby has any responsibility for the violations. In 2019, the Commission determined that elected members were not responsible (or not responsible enough) to warrant being fined. But in 2020 the Commission wrote to Mayor Selby and advised her in clear language that she should study PDC Interpretation No. 04-02. See July 2020 PDC letters. Under the circumstance, it is reasonable to suggest that Mayor Selby bears some responsibility even if it is a lesser amount of responsibility than, for example, the City Manager. See fn.8.

Signed:

Date:

  
12 April 2023

360-556-7205

#### Appendices

Appendix 1: The Regional Fire Authority "Plan" approved by the Olympia and Tumwater City Councils. The ballot measure, Proposition 1, seeks voter approval for the formation of the Regional Fire Authority, and the Plan.

Appendix 2: TO RFA Spreadsheet, dated October 14, 2022, obtained by Larry Dzieza via a public records request to the City of Tumwater. The complaint refers to certain tabs within this spreadsheet.