

MEMORANDUM

TO: Seattle Ethics and Elections Commission

FROM: Councilmember Sally Bagshaw

SUBJECT: Supplemental Information Requested for Consideration of Advisory Opinion Related to Involvement in Waterfront LID

DATE: August 2, 2013

The Ethics and Elections Commission (EEC) conducted a hearing to consider my request for an advisory opinion on July 19, 2013. At that hearing, the EEC requested additional information regarding the City of Seattle's downtown population, both residential and business. This memo provides that information, and illustrates the widespread interests involved in the Waterfront proposal. This memo also provides examples of potential City Council involvement in upcoming Waterfront LID-related issues in order to assist the Commission in crafting an advisory opinion.

I. Population numbers for consideration in an advisory opinion

During the July 19, 2013 hearing, the EEC considered whether the Waterfront LID as applied to my property involved a financial interest "shared with a substantial segment of the City's population." If a substantial segment of the population shares my financial interest, under current rules my continued involvement would be appropriate pursuant to SMC 4.16.070(A)(1)(d).

As explained in the Commission's bench memo and my memo to you dated July 12, 2013, this commission has determined that councilmembers may participate on issues where they have a financial interest so long as the councilmembers' vote does not affect their personal interest in ways different from the interests of citizens generally.

As you will see from the population numbers below, my interests in the LID and the decisions to be made on the Waterfront meet this test. My interests are the same as interests of a broad number of our citizens generally, and are the same as 100% of those who live in the LID geographic boundaries and will be assessed monetarily. If we are to pay for the additional assessment, every one of us in the LID area wants to receive a fair benefit for the new burden applied.

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LIDs typically involve widespread financial interests, and the same is true in the matter before us. As previously described, nearly 10,000 parcels of property will be involved in the Waterfront LID. Courts across the country have concluded that an official's participation in the legislative LID process is not prohibited under the relevant ethics law at issue because of the large number of people who are impacted. See Bagshaw memorandum to EEC dated July 12, 2013 discussing the prevailing rule followed by the state Supreme Courts in California, Idaho, Montana, North Dakota and Minnesota.

Here are the numbers you asked for at our last meeting:

- The resident population of downtown Seattle is approximately 56,000 people, or approximately 9.2% of the City's total population according to 2010 U.S. Census numbers. See *Downtown Seattle Association 2013 State of Downtown Economic Report*, page 12¹
- The daytime population of downtown is approximately 214,000, or approximately 35% of the City's total population. *Id.*
- As estimated by the Puget Sound Regional Council, the daytime working population strictly within the proposed LID boundaries is approximately 139,000 individuals, or approximately 23% of the City's total population.²

In 2009, the City Council amended the Ethics Code to include the 4.16.070(A)(1)(d) exception for interests shared with a substantial segment of the population. There is

¹ The 2010 U.S. Census Bureau population estimate for the City of Seattle can be accessed by entering Seattle, WA at the following link:

http://factfinder2.census.gov/faces/nav/jsf/pages/community_facts.xhtml.

The *Downtown Seattle Association 2013 State of Downtown Economic Report* can be accessed at the following link:

<http://www.downtownseattle.com/resources/economicprofile/>

² The Puget Sound Regional Council (PSRC) compiles and publishes these numbers by U.S. Census Bureau "census tracts." Some census tracts are completely within the preliminary boundaries of the proposed Waterfront LID, while some are only partially within the LID boundaries. For the census tracts that are only partially within the boundaries, we have estimated the percentage of the tract within the proposed LID by consulting the census tract map attached as Exhibit 1. We then included the corresponding percentage of individuals employed within the LID in the calculation of employees. For example, if only approximately 10% of the census tract was within the proposed LID, and the total census tract included 10,000 employees, we added only 1,000 individuals to the total calculation. A chart detailing this calculation for each census tract is attached as Exhibit 2. The employment numbers are based on employment summaries from the Quarterly Census of Employment and Wages (QCEW). Those employment summaries are based on administrative records employers report, by law, to the Washington State Employment Security Department (ESD). The original data set can be accessed here: <http://www.psrc.org/data/employment/covered-emp/>. The totals cited in this memo are based on 2008 data, the most recent data published by the PSRC.

nothing in the legislative history to support a conclusion that the intent was to apply the exception in a manner that conflicts with the prevailing rule established by the courts regarding LIDs. As shown above, a significant percentage of the City's total population – both residential and workers -- is downtown daily and will share in the benefits of our Waterfront. As case law supports, the downtown working population of the City of Seattle contributes to this “substantial segment” of the City's population and should be considered by this Commission when determining whether my personal interest is the same as the substantial segment of the city generally.³

II. Potential future scenarios where the City Council may consider LID related issues

The City Council's consideration of Waterfront LID related matters begins with the legislative formation of the LID itself, which will include a general description of the proposed improvements to be funded by the LID, and the finalization of the LID's geographic boundaries.

Once the LID is finalized the City Council will likely be involved in the review of more detailed design issues related to the general list of improvements funded by the LID.

As a project of such broad scope, there will be many other issues that come before the City Council that tangentially involve the LID or LID funds. For example, the City Council is likely to consider contracts or agreements with entities such as the Pike Place Market Development Association, Seattle Aquarium or the Washington State Department of Transportation involving the Waterfront LID proposal and LID funds.

These are the primary issues I want to continue to consider and address. As I have previously submitted to you, I have worked for nearly a decade on these issues, and want to see our city build the best possible Waterfront to be enjoyed by everyone.

As I wrote in our Waterfront for All Master Vision Collaborative report,

“Fifty years ago, our civic leaders made a serious mistake. They cut off Seattle from its waterfront by building the Alaskan Way Viaduct. Now the people Seattle and the Northwest have an opportunity to correct this error and redirect the future of the region...”

My goal is to redirect the future of the region to include a glorious waterfront; an improved economy for our whole region; a transportation network that works for everyone; a humane

³ See *Aldom v. Borough of Roseland*, 42 N.J. Super. 495, 503, 127 A.2d 190, 194 (1956) (discussed at pages 12-13 of the bench memo).

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city that provides housing and services for those in need and more. All of these issues will come before the Council during our Waterfront deliberations.

If this Commission were to conclude that my involvement in any aspect of the Waterfront proposal is inappropriate, then it could result in my exclusion from even any discussion of these matters with my colleagues and neighbors, for many years into the future. This is what I am trying to avoid.

I respectfully request that the Commission follow the prevailing rule, consistently applied across the country since at least the beginning of the 20th century, which would allow my full participation in the Waterfront deliberations and in the legislative phase of the proposed Waterfront LID. In addition, I request the Commission to conclude that the SMC 4.16.070(A)(1)(d) exception applies when the general benefits, including financial benefits, of the Waterfront LID proposal accrue to downtown Seattle and affect approximately 1/4, and potentially over 1/3 of the City's total population.

Thank you for your consideration of this matter, and the opportunity to provide more detailed information.